

## Does the Authority of Law Derive from the People?

**"If a nation expects to be ignorant and free, in a state of civilization, it expects what never was and never will be." - Thomas Jefferson.,**

When the prosecution in a courtroom refers to itself as “the people” it is supposed to mean that its authority derives from the people, because, as nearly every state constitution declares in one form or another, “All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people”<sup>1,2,3</sup> Or, as Charles Weisman in *The Authority of Law*, put it: “The fundamental concept of American government is that all political power resides in the people.”

But if all political power is inherent in the people, doesn’t that mean that the delegation of duties to the government is lawful only when people have authorized them? That is what is supposed to be the result of the ratification by the people of constitutions, which are the operating orders for government.

This writing is about a study of the ratification of the states’ constitutions, but before going any further, the word “constitution” needs to be examined. The articles for a federal government could be titled “Articles for ...” or “Articles establishing ...” or simply “The Federal Government for the united States of America”, but the word “constitution” was used the first time ever to establish a government when the Constitution for the United States of America was written in 1787.

A key to the use of “constitution” may lie in the word “constitutor”, which, in Black’s 2<sup>nd</sup> Law Dictionary, is defined as “one who, by a simple agreement, becomes responsible for the payment of another’s debt.” Could it be that the Constitution for the United States of America is a debt instrument?

If so, the questions are: what is the debt, and who is/are the constitutor(s)? The debt referred to is no doubt the 2 million pounds of French silver borrowed by the colonies to help pay for the revolutionary war. Regarding constitutors, wouldn’t they be the ones signing or ratifying the instrument – in this case the states?

Could it be that ‘the founders’ secreted themselves in a private meeting –the constitutional convention– to renegotiate a way for the king to get paid before 7 years had elapsed since establishing the debt? After all, “repayment of all debts” was written by King George in the Paris Peace Treaty of 1783 ending the revolution; King George, as France’s titular head, had claim to the money the colonies borrowed from France, and the Articles of Confederation had no provision for collecting taxes.

On the other hand, there were many economic reasons supporting a federal government: to support the national currency and the repayment of all loans, not just the kings; to establish and enforce uniform trade tariffs; to collect import and export duties to pay for the federal government and national defense; and to facilitate commerce among the states. However, with the above clarification in mind, what if the states ratified the Constitution for the United States of America, becoming responsible for the national debt only to write their own constitutions for the people to ratify and become the sureties for the debt? A debtor is what a “citizen of the United States” is today – for the amount of about 1 million dollars.

But what if the people haven’t ratified the constitutions? The fact is: some have and some haven’t, as will be explained further in this report on a study of the constitutions of states admitted before 1860.

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<sup>1</sup> Article I, Sect 2, California Constitution (1849);

<sup>2</sup> “That all power is vested in, and consequently derived from the people; and magistrates are their trustees and servants, and at all times amenable to them” – Virginia Constitution (1776).

<sup>3</sup> “All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them” – Massachusetts Constitution (1790).

The results show that governments have usurped the people's authority by issuing constitutions that claim to be 'ordained and established by the people', but which have either not been ratified by the people or have been ratified by 'citizens of the United States', which are government-created fictions.

- What if the entire nation's legal system and the legal systems of all of the states have been promulgated –printed and issued– without people's authority?
- Wouldn't no authority mean there is no law? – that what exists *de facto* is for-profit corporations masquerading as governments enforcing their un-countable volumes of unauthorized color-of-law legislation, statutes, codes, ordinances, policies, rules, procedures, etc. on the people without lawful authority?

This summary report and its exhibit support an affirmative answer to the above questions.

The summary is the result of a survey of all the constitutions of states that were admitted to the union prior to the war of federal aggression (not a 'civil' war). The war is the demarcation point, because its culmination officially established as *de facto* law the 2<sup>nd</sup> class status "citizen of the United States". American Citizens prior-to and during this period may have not had a problem with the concept of a 'federal citizen' who, also as 'taxpayer' would help pay for the federal government, but since the act 'to free the slaves' nearly everyone has been turned into a slave.

The exhibit about a study of California's two constitutions shows that since 1879 California has operated under an administrative form of law separate from the constitutional form of law established by the 1849 California Constitution. Administrative law is law via unilateral contract (signed only by the one making the request) which obligates the requestor to the terms and conditions of the contract (all the statutes, codes, rules, ordinances, policies, etc.) but not the administrator(s), which perform the executive, legislative, and judicial functions without recourse to the applicant, i.e, unlimited rule.

Weisman saw it: "Yet the evidence is clear today that our country has been invaded by a hostile, alien people who promote a law and religion that is contrary to the fundamental law and Christian foundations originally established in this land. They can be called socialists, communists, globalists, anti-Christ, and subversives, but **their objectives are to enrich themselves** by controlling your life, liberty and property. Their agenda and objectives cannot be implemented with the established frame of constitutional government, thus **they have laws enacted which are oppressive**, contrary to individual rights, and which build up a socialistic type of government."<sup>4</sup> And Freneau saw it 200 years earlier.<sup>5</sup>

This describes the current state of affairs in which people are subjected to never-ending increases in taxes and fees from governments with their insatiable budget appetites extorting the people using gun-carrying thugs contrary to "the protection, security and benefit of the people" while often in violation of constitutional limitations, statutes, and codes that should apply to them (i.e. no official bonds).

To further muddy the waters, Congress, re-defined the word "state" into a term with an opposite meaning to the common meaning and the meaning at the time the nation was founded<sup>6</sup>, making "state", "State", and "STATE" a res in the District of Columbia for all subsequent legislation.

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<sup>4</sup> The Authority of Law, Charles Weisman

<sup>5</sup> <http://www.constitution.org/cmt/freneau/republic2monarchy.htm>

<sup>6</sup> *And be it further enacted*, That wherever the word state is used in this act it shall be construed to include the territories and the District of Columbia ... ["An Act to provide Internal Revenue to support the Government, to pay Interest on the Public Debt, and for other Purposes," Ch. 173, Sec. 182, 13 Stat. 223, 306, June 30, 1864]; The word "State," when used in this Title, shall be construed to include the Territories and the District of Columbia ... [*Revised Statutes of the United States, Passed at the First Session of the Forty-third Congress, 1873—'74*, Title 35, Ch. 1, p. 601, approved retroactively as of the Act of March 2, 1877, amended and approved as of the Act of March 9, 1878]; The term "United States" when used in a geographical sense includes only the States and the District of Columbia. [26 USC 7701(a)(9)]

The results of the survey of the state's constitutions are as follows (from the chart on the next page):

Number of states in which the people have never ratified a constitution = 2

States with constitutions not requiring an elector to be a "citizen of the United States" = 4

Subsequent ratified constitutions requiring an elector to be a "citizen of the United States", but without a prior amendment authorizing the former constitution's change to "citizen of the U.S." = 7

Number of states in which the people did not ratify a constitution prior to the war = 3

States in which the people voluntarily ratified "citizens of the United States" for suffrage = 9

U.S. territories with enabling acts from Congress requiring, as a condition for statehood, that constitutions require all voters to be "citizens of the United States" = 9

There is supposed to be a doctrine whereby states joining the union subsequent to the 13 colonies are ceded with the same "equal footing". But as the results show and the chart illustrates, there was no equal footing regarding who was qualified to be an elector even among the colonies.

An important find resulting from the review of the 34 states constitutions is that the term "citizen of the United States" was in usage well before the [so called] 14<sup>th</sup> Amendment: it was required for voters in Connecticut's first constitution in 1818. Given the above discussion about sureties for the debt, it is no wonder that a term designating a legal fiction (citizen<sup>7</sup> of<sup>8</sup> the United States<sup>9</sup>) presumably to be subrogee for the debt would be written by lawyers early on.

This is supported by the fact that 1) Congress stipulated in the enabling acts for all U.S. territories as a condition for admission to the Union that they require a voter to be "citizen of the United States" in their constitutions and 2) nearly all states issued new constitutions requiring a voter to be "citizen of the United States" after the war between the states and the federal government.

For anyone who is not sure why "citizen of the United States" created by the 14<sup>th</sup> Amendment is a 2<sup>nd</sup> class status, exhibit 2: "The Truth about the 14<sup>th</sup> Amendment" is provided. And exhibit 3: "Who Do You Think You are" clearly explains that a "citizen of the United States" (residing in the District of Columbia federal zone<sup>10</sup>) is not protected by any constitution and is only granted privileges and allowances from the U.S. Congress, which has no constitutional limitations – Congress is in the D.C. federal zone, where the constitution does not apply (more about Congress on page 5).

This is why judges in courtrooms say "if you bring up the Constitution again, I will have you arrested for contempt." They are administering public policy, not law.

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<sup>7</sup> citizen: 5. In the U. States, a person, native or naturalized, who has the privilege of exercising the elective franchise, or the qualifications which enable him to vote for rulers, and to purchase and hold real estate. Webster's 1828 Dictionary:

<sup>8</sup>: OF. 1. From or out of; proceeding from, as the cause, source, means, author, or agent bestowing. Hence *of* is the sign of the genitive case, the case that denotes production; as the son of man, the son proceeding from man, produced from man. *Of* sometimes implies a part or share. *From* is then the primary sense of this preposition.

*Of* then has one primary sense, *from*, departing, issuing, proceeding *from* or *out of*, and a derivative sense denoting possession or property. Webster's 1828 Dictionary

<sup>9</sup> 28 USC 3002 (15) "United States" means - (A) a Federal corporation; (B) an agency, department, commission, board, or other entity of the United States; or (C) an instrumentality of the United States.

"The United States Government is a foreign corporation with respect to a state." NY vs. re Merriam, 36N.E. 505; 141 N.Y 479; affirmed 16 S.Ct. 1073; 41 L.Ed. 287. Volume 20 of Corpus Juris Secundum at 1758.

<sup>10</sup> "Therefore, the U.S. citizens residing in one of the states of the union, are classified as property and franchises of the federal government as an "individual entity." – Wheeling Steel Corp. v Fox, 298 U.S. 192, 80 L.Ed. 1143, 56 S.Ct 773 "A U.S. citizen" upon leaving the District of Columbia becomes involved in "interstate commerce", as a "resident" does not have the common-law right to travel of a Citizen of one of the several states." – Hendrick v. Maryland S.C. Reporter's Rd. 610-625 (1914).

**The 34 States  
in the Union  
prior to the war  
of federal  
conquest**

	No constitution has ever been ratified by the people	No constitution requiring voters to be 'citizens of the U.S.'	No amendment to constitution ratified by the people changing electors to 'citizens of the U.S.' prior to the war	Constitutions ratified by the people 'citizens of the U.S.' prior to the war	Enabling act by the Congress of the United States" requiring voters to be "citizens of the United States"	Last constitution not ratified by the people
Delaware	X					
Pennsylvania		X				
New Jersey		X				
Georgia		X				
Connecticut				X	-	
Massachusetts	X					
Maryland				X	-	
South Carolina			X			
New Hampshire	X					
Virginia		X				
New York	X					
North Carolina	X					
Rhode Island				X	-	
Vermont	X					
Kentucky		X				
Tennessee				X	-	
Ohio				X	1802	
Louisiana				X	1811	
Indiana				X	1816	
Mississippi				X	1808	1890
Illinois		X				
Alabama				X	1819	1891
Maine				X		
Missouri				X	1820	
Arkansas			X			
Michigan				X	-	
Florida			X		-	
Texas				X	-	
Iowa				X	1838	
Wisconsin				X	1836	
California		X				
Minnesota				X		
Oregon				X	-	
Kansas				X	1854	
	2	4	7	3	18	

Total green = 17 (including last column)

Summary:

Number of states in which the people have never ratified a constitution = 2

Number of states with constitutions not requiring "citizens of the U.S." for suffrage = 4

Number of constitutions ratified requiring "citizens of the U.S." for suffrage but with no amendment authorizing the change = 7

Number of states in which the people did not ratify a constitution prior to the war = 3

States with constitutions ratified by the people requiring "citizens of the U.S." for suffrage without Congress' requirement = 9

Former U.S. territories with enabling acts by Congress requiring "citizens of the U.S." for suffrage = 9

The prior statements about the District of Columbia federal zone begin here:

PERMANENT GOVERNMENT FOR DISTRICT OF COLUMBIA—1878<sup>11</sup>  
[Forty-fifth Congress, Second Session]

An Act providing a Permanent form of government for the District of Columbia [1<sup>st</sup> paragraph excerpt]

“Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the territory which was ceded by the State of Maryland to the Congress of the United States for the permanent seat of the Government of the United States shall continue to be designated as the District of Columbia. Said District and the property and persons that may be therein shall be subject to the following provisions for the government of the same, and also to any existing laws applicable thereto not hereby repealed or inconsistent with the provisions of this act. The District of Columbia shall remain and continue a municipal corporation, as provided in section two of the Revised Statutes relating to said District, and the Commissioners herein provided for shall be deemed and taken as officers of such corporation;”

Comments on the above excerpt:

1. Note that the “Senate and House of Representatives of the United States of America in Congress assembled” is issuing authority to the “Congress of the United States” and the “Government of the United States” in the District of Columbia. This clearly shows that there is a difference between the U.S.A. and the U.S. and that the Congress of the United States and the Government of the United States only operate within D.C.
2. The subject territory of the act is designated the “District of Columbia,” not the “United States.” (“district” is a military term, like “territory”), so there is no land known as the “United States” which has been designated by the Senate and House of Representatives of the United States of America in Congress assembled.
3. That leads to the question “does the United States even exist, except as a concept?” All the land is within the states –even D.C.– which belongs to Maryland and Virginia (they ceded land to Washington D.C., but “cede” means to obtain authority over, not own as evidenced by Virginia’s retro-ceding its former part of D.C. on the south side of the Potomac)
4. If the United States doesn’t exist, how can anything derive from it, such as a ‘citizen’?

### Conclusion

The federal scheme, as Weisman explains very well, is the following: although governments may not be operating under lawful constitutional authority, they are not operating unconstitutionally, either; how they are operating is ‘non-constitutionally’. They are operating under contract with the people – with each one who has requested a benefit, privilege, or license; is registered to vote, has any kind of debt, is a government employee or beneficiary, etc. All of these categories of unilateral contracts – never signed by the government, only signed by the one agreeing to the terms and conditions- invokes all the statutes, codes, ordinances, rules, policies, etc. from whichever level of government he/she is contracting with.

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<sup>11</sup> pg. 641 The Federal and State Constitutions Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America (Thorpe) Compiled and Edited Under the Act of Congress of June 30, 1906 by Francis Newton Thorpe Washington, DC : Government Printing Office, 1909; <https://archive.org/details/federalstatecons01thorials>

California code is very simple and clear on this. It's all about contracts:

“Every person [*de facto*] is bound, without contract, to abstain from injuring the person or property of another [*de jure*], or infringing upon any of his or her rights.”<sup>12</sup> (keep in mind: state code applies to state agents and policy enforcers, as well as those who contract to be under its jurisdiction).

So the solution for those wanting to be free from unlimited government and from liability for a share of the out-of-control national debt is to have no contracts invoking government jurisdiction. It's not an easy task, but it can be done. The enjoyment of freedom from government is well worth occasional inconveniences that, once the work-arounds become the norm, are less and less a difficulty.

An important consideration is what form of law is one under without lawful government? Is it common law, or one's own law, military law, God's law, or no law? Common law is unwritten law, or the law of custom and usage. If it's unwritten, how can one quote it or send it to someone else? How can one expect someone else to have the same definitions or interpretations than the one claiming it? Based on the logic that a definition of terms is included as an appendix in a public notice, anyone writing his own law would be prudent to publish it and lawfully notice everyone he might encounter, in advance.

There's a good argument that the military law (Lieber Code, or General Orders 100) invoked during the war between the states and the federal government still exists. But does the military have authority if the people haven't given it authority? A likely answer is “yes”: armed authority. But that is the law of military force, not peace. Actually, the U.S. Army *Law of Peace* Pamphlet, PAM 27-161-1 sets forth the military law for peace, but what is its authority without the people establishing lawful government?

People who believe in the creator can live under yahuwah's law (god's law) – yahuwah's 10 mandates and his eternal covenant that never changes. It is the law invoked when one swears to an oath of office (implied, regardless of whether it's in the actual words of the oath). Therefore for one in yahuwah's kingdom encountering a commercial corporate policy enforcer, the highest judge over both is the same –yahuwah- ministering right rulings from the highest law. The Bible, although it does not include all the scriptures, was declared “The Word of God” by Congress,<sup>13</sup> which acknowledged the “formative influence the Bible has been for our Nation, and our national need to study and apply the teachings of the Holy Scriptures.” If “government” is ‘control of thought’, who would be better to govern than the creator, upon whose shoulders is government?

This writing was intended to provide some answers for people who wonder why government seems to act contrary to their best interest and against life, liberty, and the pursuit of happiness.

As George Washington said: “Government is not reason; it is not eloquence; it is force! Like fire, it is a dangerous servant and a fearful master.”

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<sup>12</sup> California Civil Code §1708

<sup>13</sup> Public law 97-280, October 4, 1982

## The People's (non-)Ratification of California's 1879 Constitution

Recently examined was a document titled "Fraudulent Adoption of the 1879 Constitution of California", part of court records of a lawsuit against the Church of Scientology from 20 years ago. The document references "Exhibit B" as being the key evidence for the fraudulent adoption of the Constitution with this paragraph:

It is a fact that "citizens of California" were never authorized to vote for the "adoption" of the 1879 quasi/constitution. Only "citizens of the United States" were authorized to vote for the 1879 quasi/constitution see Exhibit B. Note that "exhibit B" acknowledged that it was a revision of "exhibit A". The express statement of "citizen of California" was purposefully removed by "revision" in the creating of the quasi/constitution of 1879

Unfortunately, Exhibit B is missing from the 5-page referenced document; however it also says that the key evidence was found at the Los Angeles Law Library.

Instead of traveling to LA, the website for California Statutes at Large (record of session laws) was checked to see if the evidence in "Exhibit B" was the enabling act or any other record for voting or ratification in 1879 for the new Constitution. The California State Statutes are available in pdf from 1850 until well after 1900, but for some reason the year 1879 is missing from the state statutes website.

After a call to the local Law Library, which doesn't have state statutes "going that far back", the LA Law Library was called and the question asked. An hour later a return call reported that the LA Law Library does not have the State Statutes for 1879.

A call was then made to the state Archives in Sacramento asking the same question. An archivist said he would check and call back with the answer, but he suggested that in the mean time the state archives website be checked for the information it has on the 1879 Constitutional Convention.

He directed me to <http://www.sos.ca.gov/archives/collections/constitutions/1879/> where I saved the pdf files found there and started by reading "Inventory of the Working Papers of the 1878-1879 Constitutional Convention", listed on the web page as "Finding Aid (PDF)".

On page 11, a parenthetical remark in the 2<sup>nd</sup> full paragraph states "the legislature did not convene that year", referring to 1879, because all legislators were occupied from October 1878 until April 1879 writing the new constitution. So this answered the question "where are the 1879 California Statutes at Large?" There aren't any session laws because there was no legislative session that year.

So what and where is the evidence in "Exhibit B"?

Above "Finding Aid (PDF)" on the referenced web page is "User's Guide (Read Me First)" ; clicking on it opens a new window: "User's Guide – 1878–1879 Constitutional Convention Working Papers", which has 3 html links for 'Volumes 1, 2, & 3'. These volumes are titled "Debates and proceedings of the Constitutional convention of the state of California, convened at the city of Sacramento, Saturday, September 28, 1878"

Going to near the end of Volume 3, on page 1414 under the heading "Section 2, Circulation of the Constitution" are two paragraphs: 1) a committee's proposed wording for circulating the constitution in the state for ratification and 2) a proposed change specifying that copies of the constitution are to be sent to "registered voters".

At the end of the proceedings of Section 2 (at the top of page 1415) the record states “The amendment was adopted” and “The amendment of the committee, as amended, was concurred in”.

Three other documents in the California Archives for the 1879 Constitutional Convention: Minutes (file number F3956-269), Printer’s draft of Articles (F3956-174), and “Proposed Amendments and Articles” (F3956-154) show the amendment in the Schedule for ratification of the new Constitution verbatim as follows:

“Sec. 7, Every citizen of the United States, entitled by law to vote for members of the Assembly in this State, shall be entitled to vote for the adoption or rejection of this Constitution.”

(For those not aware of the difference between a Californian or American and a 14<sup>th</sup> Amendment “citizen of the United States”, the article “The Truth About the 14<sup>th</sup> Amendment” is included for edification – see bookmark.)

Article X of the 1849 Constitution states “if the people shall approve and ratify such amendment or amendments, by a majority of the electors qualified to vote for members of the legislature, voting thereon, such amendment or amendments, shall become part of the Constitution”. There were only 3 proposed amendments made to the 1849 Constitution. An 1856 Amendment states that amendments “shall be submitted to the people” ... “for their ratification or rejection.” An 1862 Amendment refers to “qualified electors”, an ambiguous term. But there was no amendment to the 1849 Constitution ratified by the people providing that amendments, revision or changes to the entire Constitution should be ratified by “registered voters”.

A search for “voter registration in California” led to a March 19, 1866 act titled as follows:

“An Act to provide for the registration of the citizens of this State, and for the enrolment in the several election districts of all the legal voters thereof, and for the prevention and punishment of frauds affecting the elective franchise.”

This act, with numerous references to terms such as “Great Register”, “registered” “registration”, “residing”, “resident”, “residence”, “person”, “persons”, and “U.S. citizen”, at Section 27 stipulates that “registration in the Great Register” ... “is sufficient evidence that the person registered was, at the time of registration, a citizen of the United States, domiciled in the county.”

This seems to fit the description of “Exhibit B”: “Only “citizens of the United States” were authorized to vote for the 1879 quasi/constitution”. (this was only 11 years after the 14<sup>th</sup> Amendment – which ratification by the necessary number of states is in itself questionable).

Each volume of the California Statutes at Large begins with the constitution. The 1877-78 California Statutes begin with the 1849 Constitution and the 1880 Statutes begin with the 1879 Constitution. There is no enabling act in the statutes for the completely revised 1879 Constitution, other than the same verbiage preceding the 1879 Constitution that precedes the 1849 Constitution (which was written by necessity because it was before there was any legislature or state officers). But the following statement preceding the 1879 Constitution is deceptive:

“ADOPTED IN CONVENTION, AT SACRAMENTO, MARCH THIRD, EIGHTEEN HUNDRED AND SEVENTY-NINE; RATIFIED BY A VOTE OF THE PEOPLE ON WEDNESDAY, MAY SEVENTH, EIGHTEEN HUNDRED AND SEVENTY-NINE.”



The statement of ratification for the 1879 Constitution does not state “ratified by a vote of the registered voters” or “ratified by a vote of the citizens of the United States in California”, it says “ratified by a vote of the people”. However the convention committee decision to send ballots to registered voters means that the 1879 Constitution was ratified by citizens of the United States, not the people.

Since the 1849 Constitution was submitted to the U.S. Congress prior to California being offered entry into the United States, it seems logical that the completely re-written 1879 California Constitution would similarly be required to be ratified by Congress. But that didn’t happen.

Also, one would expect an act of the legislature or a statement in the new constitution stating that it replaces the old constitution, but neither can be found.

The logical conclusions of the above information are the following:

1. The 1879 California constitution was not lawfully ratified in accord with the 1849 Constitution, i.e. ratified by the people.
2. The 1849 California Constitution remains in effect.
3. The 1879 constitution created a new form of law –administrative law<sup>1</sup> – separate from the *de jure* law established by the 1849 Constitution.
4. The 1879 California constitution, along with all of its amendments and revisions currently in effect as California codes can be voluntarily acquiesced to by anyone entering into the jurisdiction of said codes via contract, benefit, or privilege.<sup>2</sup>
5. What the state purports to be the current Constitution –California Code– is not law as codes do not apply to anyone who has no contract with the *de facto* State Government.<sup>3</sup>

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<sup>1</sup>The 1879 constitution constructs a private system of legislative administration for newly created 14<sup>th</sup> Amendment (2<sup>nd</sup> class) “citizens of the United States” through un-enacted statutes, revised statutes, and codes, separate from the law that applies to the people. People requesting benefits or privileges from the government, commercial, or banking systems (for example credit, insurance, a bank account, or registering to vote) voluntarily and unknowingly acquiesce to and take on the label of “citizens of the United States”, a fictitious entity domiciled in Washington, D.C. written in all capital letters.

<sup>2</sup> "Inasmuch as every government is an artificial person, an abstraction, and a creature of the mind only, a government can interface only with other artificial persons. The imaginary, having neither actuality nor substance, is foreclosed from creating and attaining parity with the tangible. The legal manifestation of this is that no government, as well as any law, agency, aspect, court, etc. can concern itself with anything other than corporate, artificial persons and the contracts between them."

- S.C.R. 1795, Penhallow v. Doane's Administrators (3 U.S. 54; 1 L.Ed. 57; 3 Dall. 54).

<sup>3</sup> CALIFORNIA CIVIL CODE §1708. Every person is bound, without contract, to abstain from injuring the person or property of another, or infringing upon any of his or her rights.

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Stephen Mitchell, Lisa Jan Precious, Kathleen Carey  
In propria persona [NOT PRO SE]

In the superior court[1] for Los Angeles county, California

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FOOTNOTE 1: Concurrent with and equivalent to the district court as created in the Constitution of the State of California of 1849, and the seventeenth judicial district, see Stats 1872, ch. CXIV, p. 116

Stephen Mitchell; Lisa Jan Precious; Kathleen Carey  
Plaintiffs/Demandants,

vs.

DAVID MISCAVIGE, a person, in the capacity as Chairman of the Board of the Religious Technology Center and Inspector General of the Church of Scientology

MIKE RINDER, a person, in the capacity as head of the Office of Special Affairs International

JOHN/JANE DOE #1, a person, in the capacity as head of the L. Ron Hubbard Library

JOHN/JANE DOE, #2-99

Defendants/Respondents,

Case No. BC175367  
Affidavit of Truth in Support of  
Verified Complaint for Libel

The 1879 quasi-constitution has no lawful effect due to the following:

1. It is a fact that the "citizens of California" were expressly authorized to vote for the adoption of the Constitution for the State of California of 1849, see exhibit A.

2. It is a fact that "citizens of California" were **never authorized to vote** for the "adoption" of the 1879 quasi/constitution. Only "citizens of the United States" were authorized to vote for the 1879 quasi/constitution see Exhibit B. Note that "exhibit B" acknowledged that it was a revision of "exhibit A". The express statement of "**citizen of California**" was **purposefully removed by "revision"** in the creating of the quasi/constitution of 1879.

3. This revision hereinabove shown where "citizen of California" was removed, is especially notable when it is taken into consideration that another section from the 1849 Constitution, specifically Article XI, Section 2, see Exhibit C, remained unchanged when placed in the 1879 quasi/constitution at Article XX, Section 2, see Exhibit D, and specifically acknowledged the "citizen of this state". It is clear that the "citizen of this state", i.e. the "citizen of California", is **acknowledged** in, but **not authorized to vote** for the adoption of, the quasi/constitution of 1879.

4. It is indisputable that in the time frame of the 1870's, that it is defined in decisional law that a "citizen of the United States" as created under the Fourteenth Amendment to the federal constitution was specifically nothing more than one of the "freed slaves" (or their offspring) after the Civil War. See Cory v. Carter, 48 Ind. 327, 349 [1874] see Exhibit E, and Van Valkenburg v. Brown, 43 Cal. 43, 47 [1872] see Exhibit F.

5. It is clearly documented that the effective date of the quasi/constitution was repealed November 8, 1960.

6. Virtually the **entire quasi/constitution of 1879 was repealed and replaced from 1949 through 1976 without any lawful authority**. The Plaintiff can find no source of any lawful authority to "repeal", whether it be in the quasi/constitution of 1879 or the organic Constitution for the State of California of 1849.

7. There is a fundamental, indisputable difference between the act of "amending" and the act of "repealing".

7a. Amend. To Improve. To change for the better by removing defects or faults. To change, correct, revise. Black's Law Dictionary, 6th Edition.

7b. Repeal. The abrogation or annulling of a previously existing law ... . To revoke, abolish, annul, to rescind, or abrogate by authority. Black's Law Dictionary, 6th Edition.

8. The following is a listing of the great majority of repealing that took place which was beyond any authority to "amend" or "revise" if the quasi/constitution of 1879 was actually lawfully in effect.

9. In addition the fact presented hereinabove concerning the specific and limited authorization to vote for the adoption of the quasi/constitution of 1879, the fact of the "repealing" is hereby submitted as evidence that the quasi/constitution of 1879 was not, is not, and cannot have any lawful effect as the valid "Constitution for the State of California".

Article I,

Section 1-2 repealed November 5, 1974

Section 3 repealed November 7, 1972

Section 4-7 repealed November 5, 1974

Section 8 - repealed November 8, 1966

Section 9-24 repealed November 5, 1974

Section 26a - repealed November 8, 1949

Article II, repealed November 7, 1972

Article III, repealed November 7, 1972

Article IV, Section 1 repealed November 8, 1966

Section 1b-5 repealed November 8, 1966

Section 7-21 repealed November 8, 1966

Section 22a repealed November 8, 1966

Section 23a repealed November 8, 1966

Section 25a repealed November 8, 1966

Section 25 1/2 repealed November 8, 1966

Section 25.7 repealed November 8, 1966

Section 28 repealed June 8, 1976

Section 31d-38 repealed November 8, 1966

Article V repealed November 8, 1966

Article VI repealed November 8, 1966

Article VII repealed November 8, 1966

Article VIII repealed November 8, 1966

Article IX, Section 4 repealed November 4, 1963

Section 4 repealed November 4, 1963

Section 10-13 repealed November 5, 1974

Section 15 repealed November 5, 1974

Article X, repealed November 7, 1972

Article XI, repealed June 2, 1970

Article XII, repealed November 5, 1974

Article XIII, repealed November 5, 1974

Article XIV, repealed June 8, 1976

Article XV, repealed June 8, 1976

Article XV, Section 2-9, repealed November 6, 1962

Section 12, repealed November 6, 1962

Section 15-21, repealed November 6, 1962

Article XVII repealed June 8, 1976

Article XVIII repealed November 3, 1970

Article XIX repealed November 4, 1952

Article XX, Section 1 repealed November 7, 1972

Section 2 repealed November 3, 1970  
Section 3.5 repealed November 3, 1970  
Section 4 repealed November 3, 1970  
Section 5 repealed June 8, 1976  
Section 9 repealed November 3, 1970  
Section 10, 11 repealed June 8, 1976  
Section 12 - 14 repealed November 3, 1970  
Section 15 repealed June 8, 1976  
Section 16 repealed November 7, 1972  
Section 17-17 1/2 repealed November 3, 1970  
Section 19 - 21 repealed June 8, 1976  
Article XXI, repealed November 7, 1972  
(note that an "new Article III, section 2, acknowledged the existence of the 1849 Constitution as the authority for the statement of the boundaries of California.)  
Article XXII,  
Section 3, repealed November 8, 1960  
Section 4, repealed November 8, 1949  
Section 5, repealed November 8, 1949  
Section 7, repealed November 8, 1949  
Section 8, repealed November 8, 1949  
Section 9, repealed November 8, 1949  
Section 10-12, repealed November 8, 1960  
Article XXII (totally) repealed June 6, 1972  
Article XXIII, repealed June 8, 1976  
Article XXIV, repealed June 8, 1976  
Article XXV, repealed November 8, 1949  
Article XXVII, repealed November 3, 1970  
Article XXVIII, repealed November 5, 1974

10. Based on the foregoing, the Plaintiff demands and requires:

10a. This Court shall take judicial notice 'of the fact that the Constitution for the State of California of 1849 is currently valid and in effect.

10b. This Court shall take judicial notice of the fact that the quasi/constitution of 1879 amounts to nothing more than an "extension of the code" and any lawful effect that it may or may not have does not supersede the Constitution for the State of California of 1849.

We, Stephen Mitchell, Lisa Jan Precious, and Kathleen Carey, hereby swear under penalty of perjury, under the law of the Land in California, one of the United States of America, that paragraphs numbered 1 through 10 hereinabove are true and correct and so done in good faith to the best of our knowledge and belief.

Subscribed and sworn this twenty-ninth day of the seventh month, in the year A.D. nineteen hundred ninety seven.

[L.S.] (SIGNATURE: STEPHEN MITCHELL) seal  
Stephen Mitchell

[L.S.] (SIGNATURE: LISA PRECIOUS) seal  
Lisa Jan Precious

[L.S.] (SIGNATURE: KATHLEEN CAREY) seal  
Kathleen Carey

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# Inventory of the Working Papers of the 1878-1879 Constitutional Convention



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Office of the Secretary of State  
Sacramento, California

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# Contents

	Page
<b>Historical Context and Background</b>	<b>3-19</b>
<b>Series Descriptions of Working Papers</b>	<b>20-49</b>
<b>Appendix A: Lists of Delegates</b>	<b>50-56</b>
<b>Appendix B: Committee Membership</b>	<b>57-61</b>
<b>Appendix C: List of Articles</b>	<b>62-63</b>
<b>Appendix D: References Cited</b>	<b>64-65</b>



## HISTORICAL CONTEXT AND BACKGROUND

The framers of California's first state constitution of 1849 provided for both constitutional amendment and revision in Article X of that document--"Mode of Amending and Revising the Constitution." Section one outlined the procedure for amending the constitution, and section two presented procedural guidelines for revising the entire document.<sup>1</sup>

According to Article X, any proposal to amend or revise the state constitution had to originate in the legislature. After a majority of both houses of two consecutive legislatures approved an amendment, it was submitted to the people for ratification. If ratified by a majority of the electors voting at the election, the amendment became part of the constitution.<sup>2</sup>

Any proposal to revise or change the entire constitution had to be approved by two-thirds of both houses of the legislature. After concurrence, the legislature would enact a statute "recommending" the electors to vote for or against calling a constitutional convention. If a majority of electors casting ballots voted for the convention, the legislature, during its next session, had to enact another statute that would provide for the convention. Within six months of the passage of the statute, the convention would convene. The minimum number of convention delegates had to equal the total membership of both houses of the legislature.<sup>3</sup>

In 1857, California voters ratified an amendment that added four sentences to Section two of Article X of the constitution. The amendment provided procedural guidelines for the remainder of the revision process. The new constitution adopted by the convention would be submitted to popular vote for ratification at a special election called for that purpose. Voters would deposit "tickets" inscribed either "For the New Constitution," or "Against the New Constitution" in the ballot box. Specifically named state officers counted and certified the election returns to the governor. If the "majority of the whole number of votes cast" were in favor of the revised document, the executive of the state then declared, by proclamation, that the revised document was the constitution of the state.<sup>4</sup>

It is important to note that at each election in the amendment or revision process,

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<sup>1</sup> J. Ross Browne, Report of the Debates in the Convention of California on the Formation of the State Constitution in September and October, 1849, reprint ed. (New York: Arno Press, 1973), Appendix, "Constitution of the State of California," p. x.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Statutes of California, 1855, "Proposed Amendments to the Constitution," pp. 311-12.

the votes in favor of either change had to represent a majority of the total ballots cast at the election, rather than simply more yes than no votes. For example, electors voted for or against calling a convention at the same time that they voted for assembly members at general elections. An elector had the choice of voting for the convention, against the convention, or not voting at all on that issue. Prior to 1877, the legislature called the question of constitutional revision at three general elections, but a majority of voters chose not to address the question on their ballots. Although more electors voted for than against the convention, the affirmative votes did not constitute a majority of votes actually cast. The call to revise the constitution was repeatedly defeated.<sup>5</sup>

On April 3, 1876, the California legislature passed An Act recommending to the electors of the state to vote for or against a Convention to revise and change the Constitution of the State (Chapter 516, Stats. 1875-76). The statute called for the electors to vote for or against a constitutional convention, "at the first general election for members of the Legislature had after the passage of this Act." In the September 5, 1877, general election, 73,460 of the 146,055 electors casting ballots voted "for the convention," 44,214 electors voted "against the convention," and 28,381 declined to address the issue on their ballots. The 73,460 votes "for the convention" represented a majority of the total ballots cast in the election.<sup>6</sup>

The California Legislature passed on March 30, 1878, An Act to provide for a Convention to frame a new Constitution for the State of California (Chapter 490, Stats. 1877-78). The statute called for a special election to be held on the third Wednesday in June, 1878, for the purpose of electing delegates to the convention. The act provided that a total of 152 delegates be elected, consisting of 120 delegates specifically apportioned by county, and thirty-two delegates elected "at large," eight from each congressional district. As in legislative and congressional districting, the legislature based apportionment on population.<sup>7</sup>

In the eighty days that passed between the passage of the act and election day (June 19, 1878), California's political parties quickly organized for the purpose of nominating delegates. While the conservative, moderate, and liberal press editorialized

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<sup>5</sup> Carl Brent Swisher, Motivation and Political Technique in the California Constitutional Convention, 1878-79 (New York: Da Capo Press, 1969), p. 17. Swisher noted that in 1857, and again in 1859, more votes were cast for calling a constitutional convention than against it, but the proposition failed both times because the "for" votes did not constitute a majority of the total ballots cast. He added, "The legislature which was dominated by the independent party, in 1873-74, recommended that a convention be called, but again the project failed."

<sup>6</sup> Statutes of California, 1875-76, p. 791; Secretary of State, Election Papers, Statement of Vote, September 5, 1877 General Election, California State Archives, Sacramento, California.

<sup>7</sup> Statutes of California, 1877-78, pp. 759-65.

about candidates in their newspapers, state political conventions met in San Francisco. Local party organizations held county and municipal meetings. By June 19, six major parties were running tickets. The Non-Partisan Party consisted of a coalition of old-line Democrats and Republicans. Those delegates appearing on the straight Democratic or Republican tickets were running in opposition to the old-line Democratic and Republican parties. The Workingmen's Party of California (WPC) was a new party organized principally by Denis Kearney in San Francisco. The Anti-Kearney Workingmen represented a small faction headed by Frank Roney that had broken away from Kearney's leadership. The National Labor Party aligned itself with the socialist Workingmen's Party of the United States (not associated with the WPC).<sup>8</sup>

On June 19, 1878, voters elected the 152 convention delegates on two principal and two lesser political tickets. The Non-Partisan ticket supplied the convention with seventy-nine representatives, a majority. The next largest ticket, the Workingmen's Party of California, filled fifty delegate positions, most of those coming from San Francisco. Voters also elected thirteen Republicans (including two who ran as Independents), and ten Democrats from the "rebellious" straight party tickets (see chart one for a listing of all delegates).<sup>9</sup>

## THE PROCEEDINGS

Following the procedural guidelines as outlined in the **enabling act of 1878**, the elected delegates met "in Convention in the Assembly Chamber at the Capitol, in the City of Sacramento, on the twenty-eighth of September, eighteen hundred and seventy-eight, at twelve o'clock M." Although the act stipulated that "no compensation shall be allowed delegates after the expiration of one hundred days," the convention lasted until March 3, 1879, 157 days. The convention actually convened a total of 127 days, working Monday through Saturday, and taking five holidays. The delegation did not meet on Sundays (a total of twenty-three days), or on Columbus Day (Saturday, October 12), Thanksgiving (Thursday, Friday, and Saturday, November 28, 29, and 30), Christmas (Wednesday, December 25), New Years (Wednesday, January 1), or on George Washington's birthday (Saturday, February 22).<sup>10</sup>

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<sup>8</sup> T. J. Vivian and D. G. Waldron, Biographical Sketches of the Delegates to the Convention to Frame a New Constitution for the State of California, 1878 (San Francisco: Francis & Valentine, 1878), p. 14.

<sup>9</sup> Secretary of State, Election Papers, Statement of Vote, June 19, 1878 Election, California State Archives, Sacramento, California; Vivian and Waldron, Biographical Sketches of the Delegates to the Convention, pp. 1-14; E. B. Willis and P. K. Stockton, Debates and Proceedings of the Constitutional Convention of the State of California, Convened at the city of Sacramento, Saturday, September 28, 1878, Vol. 1, (Sacramento: State Printing Office, 1881), pp. 3-4.

<sup>10</sup> Statutes of California, 1877-78, p. 762; Secretary of

## Organization

The delegates spent the first ten days of the proceedings organizing the convention. Organization included choosing officers, filling vacancies, establishing rules and orders of business, and installing the several committees that would review and revise the constitution, article-by-article. It was during this period of organization that the two principal political factions struggled to gain authority over the proceedings. The WPC, which had been meeting in caucus prior to convening, battled with the small but politically prominent group of conservative Non-Partisans. At stake were the strategic positions of convention president and delegate seats left vacant by resignation and death.

Governor William Irwin presided over the convention until the body elected a president from its own number. For the first two days Irwin called the proceedings to order, administered oaths of office to delegates, and appointed temporary staff. Secretary of State Thomas Beck served as temporary secretary, calling the roll and reading resolutions.

On the afternoon of the second day (Monday, September 30), after heated debate and five roll-call votes, the delegation elected Non-Partisan Joseph P. Hoge president of the convention. The following day, again after five roll-call votes and much debate, the delegation elected J. A. Johnson, nominated by the Non-Partisans, secretary of the convention. After a committee of seven delegates had determined the number and compensation of officers needed, President Hoge appointed such officers as porters, pages, door-keepers, post master, and mail carrier. The delegation elected the remaining officers--president pro tem, assistant secretaries, sergeant-at-arms, assistant sergeant-at-arms, minute clerk, and journal clerk. By October 4, the Committee on Mileage and Contingent Expenses had determined the mileage and *per diem* to be allowed to each delegate, and the pay of officers.

Although the question of the necessity and compensation of a phonographic reporter (or stenographer) caused repeated debate during the convention, by the sixth day, October 4, the convention adopted resolutions providing for a written record of the debates and proceedings. The enabling act had provided for stenographers, but stated only "[t]he Convention may select Phonographic Reporters, and fix the amount of their compensation." E. B. Willis and P. K. Stockton's Debates and Proceedings of the Constitutional Convention, is a verbatim account of the entire proceedings published by the State Printing Office in 1881. Beginning on September 28, 1878, the published Debates indicate that stenographers must have been present from the first day.<sup>11</sup>

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State, California Constitution, 1879, Working Papers of the Constitutional Convention, 1878-79, Minutes, September 28, 1878 to March 3, 1879, box 15-18, California State Archives, Sacramento, California.

<sup>11</sup> Statutes of California, 1877-78, p. 762; Willis and

On October 4 and 5, the delegates were busily engaged with the task of filling vacancies. The heated debate of that Friday and Saturday centered on the political camps of the replacement delegates. The legislature had, in the enabling act, provided for the filling of vacancies through election by the remaining delegates. The act did not, however, stipulate whether the nominations should come from runners-up from the popular election, or whether the replacements should come from the same political party as the original delegate. Thomas Morris, WPC delegate from San Francisco, is an example. Because he was not an American citizen, Morris had to resign his seat at the convention. The WPC delegation struggled ferociously to seat another WPC candidate who had run during the election; but, after seven roll-call votes, Smith B. Thompson, a Republican teacher-carpenter from San Francisco, took his seat.<sup>12</sup>

During the course of the convention, four vacancies occurred due to death, and one vacancy was caused by the "insanity" of a delegate. Former governor Henry H. Haight had been elected on the Non-Partisan ticket, second congressional district, but died before the convention convened. George M. Hardwick, a Non-Partisan delegate representing Merced and Mariposa counties, also died before the convention convened. On October 5, the convention elected Non-Partisans J. West Martin and James M. Strong to replace Haight and Hardwick respectively.

In mid-November James M. Strong died. By late November Bernard F. Kenny, WPC delegate from San Francisco, had also died. The delegation did not act on the vacancies until December 18, when they elected William J. Howard of Mariposa County to replace Strong, and John J. Kenny of San Francisco to fill the vacancy caused by the death of his brother Bernard. Kenny was the only replacement to come from the ranks of the WPC.

On October 21, delegate William W. Moreland, Non-Partisan from Sonoma County, presented a resolution that addressed the "suggested" vacancy caused by the "insanity" of delegate Jehu Berry, Democrat from Siskiyou and Modoc counties. Moreland moved that "on Friday the 25th day of October, 1878 at 11 o'clock A.M.," the convention "proceed to the election of some qualified person to fill said vacancy." On motion of WPC delegate Henry Larkin, the delegation tabled the resolution and did not attempt to fill the vacancy at any later date. On October 23, the minute clerk recorded that Berry, who had been absent since October 14, had been granted indefinite leave of absence "on account of sickness." Jehu Berry did not return for the remainder of the convention, and was not present at the signing of the constitution on March 3. Perhaps thinking Moreland's resolution in poor taste, and out of respect for Berry's privacy and illness, the convention did not fill his vacancy or address the issue further in the debates.<sup>13</sup>

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Stockton, Debates and Proceedings 3 vols.

<sup>12</sup> Swisher, Motivation and Political Technique, Chapter Three, "Organizing the Convention," pp. 32-44.

<sup>13</sup> Working Papers, Minutes, September 28, 1878 to March 3,

On October 2, President Hoge appointed members to the Committee on Rules and Order of Business. By October 7, the committee supplied the delegation with a list of standing committees (delegate members to be appointed by the chair), and with the Standing Rules and Orders of the convention. The following two days President Hoge announced the standing committees along with the names of delegates assigned to each committee (see chart two).

The rules committee had established thirty separate standing committees. Twenty-five committees were to consider individual topics or articles to be included in the constitution. Five committees would handle the special business of the convention and oversee the actual construction of the document. The twenty-five committees, such as the committees on the Preamble and Bill of Rights, Right of Suffrage, Legislative Department, Executive Department, and Judicial Department, were responsible for the drafting of individual articles of the proposed constitution. The five remaining committees were: Revision and Adjustment, Reporting and Printing, Engrossment and Enrollment, Privileges and Elections, and Mileage and Contingent Expenses.

President Hoge occasionally appointed members to special committees created to handle specific, immediate problems. Examples were the committee on a Phonographic Reporter, and the committee on Additional Employees. The delegation authorized the committees to determine the necessity and compensation of an official stenographer, and additional staff. At times the convention requested a regular standing committee to consider a problem outside of their normal article review and advise the body in a special report. For example, the Committee on the Judicial Department provided a special report which determined the legislative intent of the enabling act regarding funds chargeable with the expenses of the convention. The delegation also asked that committee to report on the eligibility of Judge Eugene Fawcett of Santa Barbara to his seat in the convention. The 1849 constitution had specifically restricted judges from holding any other constitutional offices while on the bench (Article VI, Judicial Department, section sixteen).<sup>14</sup>

The seventy-three-item "Standing Rules and Orders" adopted by the delegation on October 8, set out the rules for the proceedings as well as guidelines for conducting the business of the convention. Using Cushing's Law and Practice of Legislative Assemblies (specifically cited in rule fifty-nine), the committee reiterated recognized rules of conduct, debate, and procedure for legislative and parliamentary bodies. The

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1879, box 15-22; Willis and Stockton, Debates and Proceedings, pp. 781, 1124, 1495; the roll calls of the published debates incorrectly show Berry as present on December 20, January 23, and March 1. The roll calls and voting records contained in the Minutes for those same days verify that Berry was not actually present.

<sup>14</sup> Browne, Report of the Debates . . . 1849, Appendix, "Constitution of the State of California," p. ix.

convention rules ranged in subject from the hour of convening (rule one), to debate decorum (rules forty-two, forty-four, and forty-six), to a prohibition against smoking in the assembly chamber (rule sixty-seven). With the exception of a prohibition against amending or suspending rules fifty through fifty-three and fifty-five regarding the amendment process, convention rules could be amended by a two-thirds vote of the members present. Throughout the convention, members debated and amended the rules.<sup>15</sup>

Rule seventeen of the "Standing Rules and Orders" established the official succession of daily business of the convention. The eleven part "Order of Business" proceeded in the following sequence:

1. Roll Call
2. Reading and Approval of the Journal
3. Presentations of Petitions and Memorials
4. Communications from State Officers
5. Reports of Standing Committees
6. Reports of Select Committees
7. Introduction of Resolutions and Propositions relating to the Constitution
8. Unfinished Business
9. Special Orders
10. General Order
11. Miscellaneous Motions and Resolutions<sup>16</sup>

According to the rules committee, the Petitions and Memorials referred to in part three included "remonstrances" and "communications from individuals and public bodies." Throughout the proceedings individuals and public groups petitioned the delegation in the interest of such issues as equal taxation, convict labor, mechanic's liens, women's suffrage, "Local Option" liquor laws, and recognition of the sabbath in the constitution. The working papers contain over forty such petitions, some with signature pages attached measuring over fifteen feet in length. Each day, after the presentation and reading of petitions and memorials, President Hoge referred them to

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<sup>15</sup> The following ninth edition of Cushing's *Lex Parliamentaria Americana* is available in the law section of the California State Library, Sacramento. Perhaps it is the same edition used by the constitutional convention. Luther Stearns Cushing, Elements of the Law and Practice of Legislative Assemblies in the United States of America (Boston: Little, Brown, and Company, 1874); In addition to the draft of the "Standing Rules and Orders" contained in the working papers, a complete listing of the "Rules" of the convention, as adopted October 8, 1878, appears in Willis and Stockton's Debates and Proceedings. pp. 60-64.

<sup>16</sup> Working Papers, Committee Papers, Committee on Rules and Order of Business, "Standing Rules and Order of Business," p. 14, box 2.

the appropriate standing committee. After considering the petitions, the committees either favored the interest with inclusion in their articles for the constitution, or recommended no action at all.<sup>17</sup>

Often committees asked state officers, such as Secretary of State Thomas Beck, to supply data that they required for construction of constitutional articles. The fourth order of business, "Communications from State Officers," included "communications from public officers, and from corporations in response to calls for information." In addition to Secretary of State Beck, state officers such as Surveyor General William Minis, Superintendent of State Printing Frank P. Thompson, State Controller William B. C. Brown, and Adjutant General P. F. Walsh sent reports to the delegation in response to inquiries. As with public petitions, the secretary read the reports to the delegation and the president then ordered them referred to the appropriate committee for action.<sup>18</sup>

## Revising the Constitution

Following part seven of rule seventeen, "Order of Business," each delegate had the opportunity to present two independently proposed amendments to the constitution. By October 9, much of the organization of the convention had been completed. The delegates began to submit their "propositions" (proposed amendments) as the secretary called their names in alphabetic, roll-call order. A delegate handed his proposed amendment or amendments to the secretary, who read them to the body and numbered them sequentially. The chair then ordered each proposition printed and referred to the appropriate committee. The committees considered the individual propositions for inclusion in their new articles of the constitution. On October 10, the delegation adopted a resolution that all propositions be submitted as an article or section of an article "in the proper form to be embodied in the constitution."<sup>19</sup>

Delegates submitted proposed amendments on almost a daily basis until December 4, when the minute clerk recorded the receipt of amendment number 519 in the "minutes." After December 4, the delegates continued to present their propositions, but less frequently. By late January 1879, the secretary had numbered 538 amendments. Not all of the original drafts of the proposed amendments are extant, and some were not numbered. However, the state printing office created two bound volumes of printed, sequentially numbered proposed amendments entitled "Proposed

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<sup>17</sup> Ibid.; Working Papers, "Public Petitions and Memorials," box 3.

<sup>18</sup> Working Papers, Committee Papers, Committee on Rules and Order of Business, "Standing Rules and Orders," p. 14, box 1; Working Papers, Reports from State and Municipal Agencies, box 2.

<sup>19</sup> Working Papers, Committee Papers, Committee on Rules and Order of Business: Report, "Standing Rules and Orders," box 1; Minutes, October 10, 1878, box 16.



## Amendments to the Constitution, 1878-79."<sup>20</sup>

Much of the construction of the constitution took place during the meetings of the standing committees of the convention. Unfortunately, little evidence remains to indicate what actually occurred in committee chambers. Although committees employed clerks, with the exception of a few pages of Revenue and Taxation committee minutes, standing committee meeting minutes are not extant in the working papers. The working papers and published Debates and Proceedings of the convention contain committee majority and minority reports and drafts of articles, but they do not contain accounts of standing committee debate. It should be noted that the convention provided desks for newspaper correspondents to cover the proceedings. On October 15, the convention tabled a resolution presented by delegate Charles Beerstecher stating that the "accredited" members of the press should "be privileged to be present at all regular meetings of standing committees." The researcher is advised to review newspapers such as the Sacramento Record-Union and the Sacramento Bee for evidence of debate in committee chambers.<sup>21</sup>

Meeting in separate rooms and chambers of the capital building (the legislature did not convene that year), the committees probably met in the early afternoons and evenings until they had completed their article draft. Rule fifty-four of the "Standing Rules and Orders" prohibited committee meetings while the convention was in session. On October 15, Henry Edgerton presented a resolution calling for daily adjournment "after completing the sixth order of business" from October 15 to October 23 to allow for committee meetings. The convention adopted the resolution, resolving that the committees begin reporting back to the body by October 23. The convention minutes indicate that for seven days, October 16 to October 23, the convention adjourned for the day before 11:00 a.m. Because the convention typically adjourned at approximately 5:00 p.m. daily, the early hour indicates that the delegates adjourned early to reassemble into committees.<sup>22</sup>

Although the committee on the Preamble and Bill of Rights reported back to the

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<sup>20</sup> Working Papers, Minutes, October 9, 1878 to January 30, 1879, boxes 16-20. The California State Archives has only the first volume of "Proposed Amendments to the Constitution, 1878-79" (WPA #363, Rare Books Library), which contains amendments one through 369. Volume two may perhaps be found at the California State Library, Law or Government Publications divisions. The volumes were probably created for the use of the convention and not published because volume one contains no publication data page.

<sup>21</sup> Working Papers, Minutes, October 15, 1878, box 16.

<sup>22</sup> Working Papers, Committee Papers, Committee on Rules and Order of Business: Report, "Standing Rules and Orders," box 1; Working Papers, Minutes, October 15-23, 1878, box 16.

convention on October 24, many committees did not report until late December or January. No doubt many committees were ready to report, but could not because the convention was occupied with debating and amending previously reported articles. Additionally, newly constructed or controversial articles, such as Revenue and Taxation or Corporations, probably required more time in committee to complete than simply revised articles such as State Indebtedness or Education. The extant minutes of the committee on Revenue and Taxation, dated October 16-18, 21-23, and 29, contain entries such as "7-P.M." and "Evening Session." The committee reported the article on Revenue and Taxation on December 24. The time-consuming debate that followed (eleven days in Committee of the Whole, five days in convention, and two days for second reading) indicates that much contention surrounded the article.<sup>23</sup>

Each of the twenty-two articles that ultimately comprised the new constitution proceeded through the same schedule of activity. Standing committees drafted articles and reported them to the convention. Each delegate received a printed copy of the article. The convention then discussed, debated, amended, or deleted portions of articles, section-by-section, in Committee of the Whole. The Committee of the Whole was the whole delegation resolved into a committee for the purpose of considering one topic only. No other house business could be attended to while a parliamentary or legislative body was in Committee of the Whole. Rule fifty-eight of the "Standing Rules and Orders" mandated that all proposed alterations to the constitution be considered in Committee of the Whole before being debated and finally acted on in convention. The Committee of the Whole reviewed, debated, amended, and adopted or rejected each section of an article by a majority vote. Every proposed amendment to each section had to be put to a vote. Every section had to be adopted or rejected by a majority vote.<sup>24</sup>

Each delegate again received a printed copy of each article as amended in the Committee of the Whole, and the secretary placed the article on General File for the first convention reading. Following rule fifty-three of the convention rules, all proposed amendments reported by committees had to be read and then "placed on a general file to be kept by the Secretary in the order in which they [were] reported." They would be removed and "acted upon" in that order. By January 27, the convention began first readings of the amended articles. The primary purpose of the first reading was to adopt or reject the actions of the Committee of the Whole. The delegation considered each amended section of an article in numeric sequence, either "concurring in" or rejecting Committee of the Whole amendments by majority vote. During the first reading process, additional amendments could be proposed and adopted or rejected by majority. An entirely new section of an article could be proposed and put to vote, but only after all Committee of the Whole amendments were taken up. First reading

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<sup>23</sup> Working Papers, Minutes, October 24, December 24, 1878 to January 8, February 5-11, 25-26, 1879, boxes 16, 19-22, and Committee Papers, box 2.

<sup>24</sup> Working Papers, Committee Papers, Committee on Rules and Order of Business: Report, "Standing Rules and Orders," box 1.

commenced on January 27 with the Preamble and Bill of Rights, and concluded on February 20 with the Miscellaneous Subjects article. When the convention had completed the first reading of an article, the chair would order the article to be engrossed (formally printed) for the second reading.<sup>25</sup>

As before the first readings, the delegates began the second reading consideration of articles with engrossed copies of each article on their desks. Beginning February 20 and ending February 27, the delegation proceeded with the second reading of articles at a faster pace than the first reading. The second reading process allowed the convention to review the work they had done, amend sections of articles, or add new sections with majority concurrence. The second reading concluded with a vote for or against the adoption of the entire article as part of the constitution. By this step in the revision process, most of the debate had concluded. The delegation completed the second readings of six of the final twenty-two articles on February 20, two articles the following day, one article on February 25, four more the next day, and nine articles on February 27. The convention did not convene on Saturday, February 22, George Washington's birthday, or Sunday, February 23. The convention began the second reading of the Judicial Department article Friday, February 21, continued through Monday, and finished the following day. After each second-reading vote on an article, the chair referred the adopted article to the committee on Revision and Adjustment.<sup>26</sup>

The committee on Revision and Adjustment, to which the chair referred all adopted articles, reported back to the convention on four consecutive days: Thursday and Friday, February 27 and 28; Saturday, March 1; and Monday, March 3. On the first day the committee advised the delegation regarding the construction of their report. The final printed report would contain all articles, placed in recommended order and sequentially numbered. To assist the delegation, which would have to concur in all amendments that had been made to each article during the convention, all amendments would be printed in italics, and any words or phrases that had been "stricken out" would appear in brackets.<sup>27</sup>

On Friday the committee on Revision and Adjustment reported on the Preamble, Article I (Bill of Rights), Article V (Executive Department), Article VII (Pardoning Power), Article VIII (Militia), Article XIX (Chinese), Article XXI (Boundary), and Article XIV (Water and Water Rights). Again the delegation reviewed all previously amended sections of each article individually. On majority concurrence the chair referred the articles to the committee on Reporting and Printing for enrollment (final formal printing) in the constitution. With the exception of the Chinese article, which endured even more

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<sup>25</sup> *Ibid.*; Working Papers, Minutes, January 20 to February 27, 1879, boxes 19-22.

<sup>26</sup> Working Papers, Minutes, February 20-27, 1879, boxes 21-22.

<sup>27</sup> Working Papers, Amended Articles Reported by Committee on Revision and Adjustment, box 13.

debate, the delegation quickly reviewed the first seven reported articles.<sup>28</sup>

The committee on Revision and Adjustment reported back the remaining fifteen articles the following day. The committee presented on Saturday: Article II (Right of Suffrage), Article III (Distribution of Powers), Article IV (Legislative Department), Article VI (Judicial Department), Article IX (Education), Article X (State Institutions and Public Buildings), Article XI (Cities, Counties, and Towns), Article XII (Corporations), Article XIII (Revenue and Taxation), Article XV (Harbor Frontages, Etc.), Article XVI (State Indebtedness), XVII (Land and Homestead Exemption), Article XVIII (Amending and Revising the Constitution), Article XX (Miscellaneous Subjects), and XXII (Schedule). The convention immediately "concurred in" the amendments to all but three of the reported articles. The articles on the Judicial Department, Education, and Corporations stood more debate, but were that day referred to the committee on Reporting and Printing for enrollment with the other twelve articles.<sup>29</sup>

On Monday, March 3, the final day of the convention, the committee on Revision and Adjustment presented each delegate with a copy of their final printed report as promised. The report recommended some "changes of phraseology and arrangement," and listed the articles in recommended numbered order, one through twenty-two. The report enumerated, section-by-section, every adopted amendment to each article. After adopting the report, the delegation ordered it printed in the journal. Following the report of the committee on Revision and Adjustment, the committee on Reporting and Printing, the last committee to consider the revised articles, reported the constitution "correctly enrolled on parchment."<sup>30</sup> (Consult chart three for the revision process for each new article).

### **Adopting the Constitution**

With the exception of the reading of the constitution by the secretary, the delegation proceeded on the final day of the 127-day convention in traditional parliamentary manner. After the Committee on Reporting and Printing presented the enrolled constitution, Secretary Smith began to read it. Before long the delegation began to tire of hearing its work. After two motions, the delegates, by a vote of seventy-four to fifty-eight, dispensed with the formality of the reading. The body then adopted the constitution by a vote of 120 ayes, fifteen noes. (Of the 152 original delegates, 120 voted for the constitution, fifteen voted against it, fifteen delegates were absent, and two paired with two absent members to cancel four votes).<sup>31</sup>

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<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Working Papers, Minutes, March 3, 1879, box 22.

<sup>31</sup> Ibid.

After formal adoption of the constitution, the delegates proceeded to authenticate the document with their signatures. First, President Hoge and Secretary Smith signed. Then, as the secretary called their names from the roll-call sheet in alphabetical order, the delegates came to the front of the chamber and applied their signatures. The delegation had passed resolutions on the previous day that outlined procedures for signing, printing, and distributing the completed constitution. Delegate Henry Edgerton presented a resolution directing the Secretary of State, in whose charge the enrolled document would be placed, to allow any absent delegate who had not signed the constitution thirty days to add his signature. To facilitate Edgerton's resolution, President Hoge ordered the names of fourteen absent delegates entered in the journal. Hoge allowed delegate George V. Smith to sign for the fifteenth absent delegate, V. A. Gregg, because Gregg had previously given Smith authorization.<sup>32</sup>

After the last delegate had affixed his name, President Hoge called the convention to order for the purpose of formally placing the enrolled constitution in the custody of Secretary of State Thomas Beck. Hoge ceremoniously addressed Beck:

Mr Secretary: The Constitutional Convention, convened here by authority of law for the purpose of framing a new Constitution for the State of California, have instructed me to place that Constitution, duly attested by its officers and signed by the members of the Convention, in your hands for the purpose of being preserved in the archives of the State. In compliance with that resolution I now place in your hand the Constitution which this Convention has framed and adopted.

Accompanied by the applause of the delegation, Beck "stepped forward and received the Constitution." He responded to Hoge, "Mr. President: The new Constitution which you have placed in my hands I will safely deposit in the archives of the State, and I will duly transmit the same to my successor in office."<sup>33</sup>

Next the convention proceeded to the adoption of their "Address to the People of the State of California." On February 20, delegate Charles W. Cross had presented a resolution directing President Hoge to appoint a committee of nine delegates to prepare

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<sup>32</sup> Ibid.; Willis and Stockton, Debates and Proceedings of the Constitutional Convention, p. 1521. The fourteen names recorded by the minute clerk were: William H. L. Barnes, Jehu Berry, H. C. Boggs, Alexander Campbell, Eugene Casserly, David H. Cowden, Robert Crouch, Eugene Fawcett, Charles G. Finney, Jr., James E. Hale, John F. Miller, Alonzo E. Noel, Albert P. Overton, and Samuel M. Wilson. The signatures of absent delegates Hale and Overton are affixed to the enrolled constitution in alphabetical order with the signatures of the delegates who were present on March 3. The names of the remaining twelve absent members do not appear on the enrolled constitution.

<sup>33</sup> Willis and Stockton, Debates and Proceedings of the Constitutional Convention, p. 1521.

"an address to the people of the State . . . indicating the material changes made in the existing constitution." The delegation rejected Cross's resolution, but later adopted a similar resolution presented by Wilbur F. Huestis. On February 24, a slim majority of delegates adopted Huestis's resolution, sixty-two ayes to fifty-four noes. The resolution directed Hoge to appoint a committee of one member for each judicial district "to prepare an address to the people of the State, setting forth concisely the principal amendments proposed by this convention to the present constitution, and . . . the reasons therefor." On the final day of the proceedings, the convention secretary read the address which the delegation adopted by a vote of 103 ayes to thirty noes. Copies of the address would be distributed with the printed copies of the constitution to the voting public.<sup>34</sup>

After they had adopted the public "address," delegates offered formal resolutions which recorded the "thanks of the convention" to various officers and staff of the proceedings. The delegation adopted resolutions recognizing the assistance of state agencies as well. Resolutions formally thanked President Hoge, "the several Secretaries and Journal Clerks," Assistant Sergeant-at-Arms Benjamin Chambers, the pages, and porters. The convention recognized "the state officers for their prompt and courteous response to the demands of the convention." The delegation thanked Superintendent of State Printing Frank P. Thompson "for the prompt, efficient, and thorough manner in which the work in his department for this convention has been done." Thompson must have worked his staff through many evenings preparing and printing hundreds of copies of documents that had to be ready for the next day's business.<sup>35</sup>

Although it was the final day of the convention, Thompson's work was not nearly finished. Thousands of copies of the constitution and the accompanying address to the people had to be printed for public distribution. Additionally, after unanimously adopting the resolution thanking Thompson, the convention immediately adopted another resolution authorizing him "to print nine hundred and sixty copies of the Constitution, as correctly enrolled, for the use of the delegates."<sup>36</sup>

The final actions of the body included presentations of gifts. Delegate Morris M. Estee, on behalf of the delegation, conferred to Sergeant-at-Arms Thomas J. Sherwood a watch and chain as "a slight token of [their] esteem." Estee told Sherwood that he hoped the gift would serve as "a reminder that this Convention believed that [he] had faithfully performed [his] duty." Delegate Joseph W. Winans presented a golden gavel to President Hoge on behalf of the porters of the convention. Delegate George A. Johnson, speaking for his "*fraters*" at the convention, presented President Hoge with a

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<sup>34</sup> Ibid., 1421, 1449, 1524.

<sup>35</sup> Willis and Stockton, Debates and Proceedings of the Constitutional Convention, pp. 1524-26.

<sup>36</sup> Ibid.

collection of books by writers, essayists, critics, historians, and dramatists such as Charles Dickens, John Motley, Washington Irving, Thomas De Quincey, Michel Montaigne, Thomas Macaulay, and Richard Sheridan. Johnson and the "friends" of Hoge at the convention, offered the "one hundred volumes of standard literary works" as a "slight testimonial of their respect and regard," and to say "Farewell to Mr. President." Hoge responded with humble thanks and a promise to "treasure [the] beautiful gift for all time." The collection would serve as a reminder to his children after he had "gone" that "their father had merited" the "kind consideration and approbation" of the delegation over which he had presided.<sup>37</sup>

The delegation had completed signing of the constitution at noon on the final day, and, by 1:00, weary delegates were moving for adjournment. Perhaps to end the presentations and resolutions of thanks, delegate James E. Murphy, non-partisan Democrat from Del Norte County, stated: "I would like to have thanks returned to everybody and everything--except President Hayes." Amid the laughter caused by Murphy's remark, delegate and former Secretary of State William Van Voorhies moved "that the thanks of the Convention be returned to the 'silent members'." Above the continued laughter, President Hoge declared Van Voorhies's resolution "unanimously adopted." At 1:15 in the afternoon, President Hoge declared the convention adjourned *sine die*.<sup>38</sup>

## RATIFYING THE CONSTITUTION

Section seven of the 1878 enabling act had made general provisions for popular ratification or rejection of the new constitution. Sections four through nine of Article XXII (Schedule) of the revised constitution provided detailed instructions regarding ratification. A special election would be held on the first Wednesday of May, 1879. The election could settle no other question but constitutional ratification. Thirty days before the election, the state superintendent of printing had to print "in pamphlet form" as many copies of the constitution as there were registered voters, and mail one copy to the post office address of each registered voter. Postal carriers would deliver copies to the voters who had not picked up their pamphlets within ten days of receipt at the post office. Thirty days before the first Wednesday in May, the executive had to issue a proclamation, to be "made public" by the "Boards of Supervisors of the several counties," calling the election. On April 2, 1879, Governor William Irwin issued a proclamation that the election would be held on Wednesday, May 7, 1879. Qualified voters were all persons entitled to vote for members of the assembly.<sup>39</sup>

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<sup>37</sup> Ibid., 1525-26.

<sup>38</sup> Ibid.

<sup>39</sup> Statutes of California, 1877-78, Chapter 490, p. 764; Willis and Stockton, Debates and Proceedings, p. 1520; Secretary of State, Governor's Proclamations, Proclamation 121, Filed April 3, 1879, microfilm, California State Archives, Sacramento,

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As had occurred with the elections for constitutional delegates the previous summer, the campaign for and against the new constitution was waged principally in the newspapers of the state. Most major city newspapers, such as those in Oakland, Sacramento, and Stockton, editorialized against the new constitution. Media support of the revised organic law was more conspicuous in the southern part of the state. Newspapers such as the Los Angeles Express reported favorably, while the San Francisco Alta and the Sacramento Record-Union were openly hostile. The San Francisco Chronicle was the only prominent northern newspaper to promote the new document. Calling it a "loyal champion," political scientist Carl Brent Swisher asserted that the San Francisco Chronicle was "probably the most effective organ in the state in support of the work of the constitutional convention."<sup>40</sup>

Complicated constitutional articles, such as the article on revenue and taxation, caused as much controversy before the people as they had caused debate during the convention. The media used sensitive issues such as revenue and taxes as points of attack or defense of the new document. Focusing on regional interests as they related to the issues, local groups formed "constitution clubs" and "anti-constitution clubs" all over the state. Newspapers announced the dates, times, and places of club meetings, and reported topics of discussion. In addition to newspapers, privately funded organizations, particularly those in opposition to the new constitution, printed and distributed circulars and pamphlets to voters. For the two months that passed between the completion of the new constitution and the popular election, California was the scene of an intense political competition.<sup>41</sup>

Twenty days before the election, the state superintendent of printing had to print and send to every county clerk two types of ballots. Printed on "legal ballot paper" furnished by the secretary of state, the ballots would separately state "For the new Constitution," or "Against the new Constitution." After receiving five times the number of each type of ballot as there were registered voters in their counties, the county clerks were to distribute equal numbers of both ballots to the inspectors of elections. As during standard elections, county officers were responsible for canvassing the vote and sending certified returns to the governor. The returns were to be forwarded no later than the second Monday after the election, or May 19, 1879.<sup>42</sup>

As soon as all the returns were in, or within thirty days of the election, the governor, assisted by the controller, treasurer, and secretary of state, had to "open and compute" the vote. The June 6, 1879 statement of vote--attested by Governor Irwin, Controller Daniel Kenfield, Treasurer José Estudillo, and Secretary of State Thomas Beck--listed alphabetically, each county's returns and statewide totals. The total

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California.

<sup>40</sup> Swisher, Motivation and Political Technique, pp. 100-03.

<sup>41</sup> *Ibid.*, 103-07.

<sup>42</sup> Willis and Stockton, Debates and Proceedings, p. 1520.



received statewide was 145,212 votes, including 77,959 ballots for the new constitution, 67,134 ballots against the new constitution, and 119 "votes rejected."<sup>43</sup>

Following the mandates of the enabling act and Article XXII of the constitution, on June 7, 1879, Governor Irwin issued a proclamation certifying that "a majority of the whole number of votes cast" were in favor of the new constitution. The revised fundamental law of the state would become effective as specified in section twelve of the Schedule (Article XXII):

This Constitution shall take effect and be in force on and after the fourth day of July, eighteen hundred and seventy-nine, at twelve o'clock meridian [noon], so far as the same relates to the election of all officers, the commencement of their terms of office and the meeting of the Legislature. In all other respects, and for all other purposes, this Constitution shall take effect on the first day of January, eighteen hundred and eighty, at twelve o'clock meridian.

In his proclamation, Irwin declared the new constitution to be "the Constitution of the State of California."<sup>44</sup>

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<sup>43</sup> Ibid.; Secretary of State, *Election Papers, Statement of Vote, May 7, 1879* Election canvassed June 6, 1879; The Statement of Vote shows the secretary of state's handwritten tally of votes in columns next to a printed list of California counties. The counties of Klamath and Mariposa have no votes. Klamath county ceased to exist in 1874, its territory annexed by Humboldt and Siskiyou counties. Mariposa county's election return must have been lost at the time of the canvassing. The archives contains a "duplicate" copy with a file date of May 12, 1879 by the county clerk, but a "received" date of June 25, 1879--too late to be counted. Mariposa County's total vote of 805, including 447 ballots cast for the new constitution and 358 votes against it, would not have effected the outcome of the statewide total. Names of state officers may be found in Appendix C, E. Dotson Wilson, Chief Clerk of the Assembly, California's Legislature, 1993-94 (Sacramento: California State Assembly, 1994), pp. 193, 195, 197, 198.

<sup>44</sup> Secretary of State, *Governor's Proclamations, Proclamation 122, June 7, 1879*; Willis and Stockton, Debates and Proceedings, p. 1521.

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## Series Descriptions of Working Papers

### 1. Administrative Records. 3 file folders. F3956:1-3

Files contain Oaths of Office of delegates who filled vacancies, including the resignation of delegate Thomas Morris of San Francisco; convention bills and receipts; convention secretary and clerk note fragments.

### 2. Committee Papers. 4 file folders. F3956:4-7

Files contain papers of two committees:

Committee on Rules and Order of Business--"Standing Rules and Orders" of the convention; "Standing Committees" of the convention as reported by the committee and by the Sacramento Record-Union, October 8 and 9, 1878; Notices to amend the rules (folders 4, 5, 6).

Committee on Revenue and Taxation--Minutes (October 16-18, 21-23, 29, 1878), and resolutions introduced in committee (folder 7).

### 3. Special Committee Reports. 8 file folders. F3956:8-15

Reports of special committees and standing committees addressing specific problems that the delegation confronted during the convention.

Files contain reports from:

The Committee on Additional [Convention] Employees.

The Committee on Phonographic Reporter.

The Committee on Reporting and Printing (projected costs of printing debates and journals).

The Committee on the Judiciary (legislative intent of the Constitutional Enabling Act of 1878).

The Committee on the Judiciary (eligibility of [Judge] Eugene Fawcett of Santa Barbara as delegate to the convention, including minority report).

The Committee on Expulsion of Delegate Charles C. O'Donnell. The Committee on Mining (recommendation regarding amendments 91, 345, 450).

### 4. Memorials Drafted by the Convention. 5 file folders. F3956:16-20

Communications, adopted by a majority of the delegation, from the convention to other state and federal entities, and to the people of California.

Files contain memorials to:

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The governors of Oregon, Nevada, and Washington and Arizona territories regarding the Burlingame Treaty.

The President and Congress of the United States regarding the Burlingame Treaty.

The President and Senate of the United States regarding import duties on French wines and spirits.

The United States Congress regarding university land grants. "Address to the People of the State of California," dated March 3, 1879.

## **5. Reports from State and Municipal Agencies. 12 file folders. F3956:21-32**

Six files contain oversize documents.

Reports of agency officers responding to requests from the convention, by formal resolution, for information. The reports address such issues as public lands, corporations, state indebtedness, the railroads, and university lands.

Files contain reports from:

State Surveyor General (public lands).

Secretary of State (convention stationary account; corporations).

Superintendent of State Printing (convention printing costs).

State Controller (state, county, and municipal debt; state militia expenses; convention appropriations).

Clerk of the Supreme Court (business of the court, 1874-78).

University of California, Board of Regents and College of Agriculture (receipts, disbursements, investments, 1868-78).

Adjutant-General (militia expenditures, 1877-78; California National Guard).

Transportation Commissioner (railroad legislation, 1850-78; county debt, railroad bonds).

Superintendent of Public Streets and Highways, San Francisco (private and municipal expenditures, 1867-78).

"City of Stockton" (debt, revenue, expenses, 1878).

## **6. Public Petitions and Memorials. 45 file folders. F3956:33-77**

Signed petitions received by delegates from their constituents addressing interests of individual citizens, political groups, social organizations, and labor societies. Petitions request constitutional provisions respecting such issues as equal taxation, land monopoly, labor, mechanic's liens, women's suffrage, "Local Option" liquor laws, charitable and church property tax exemption, and legal recognition of the Sabbath.

Many petitions have signature pages affixed to them with glue. The signature pages of some petitions, particularly those regarding charitable and church

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property tax exemption, extend to lengths of over ten feet (boxes 5 and 6). One women's suffrage petition from San Francisco contains the signature of Emperor Norton (box 3).

Merchants and Dealers of Nevada County (taxation).  
Citizens of Amador and Nevada counties (taxation).  
Citizens of Mariposa and Merced counties (death of delegate J. M. Strong).  
Citizens and members of the Bar of San Diego, San Bernardino, and Los Angeles counties (protest sitting of supreme court at Sacramento only).  
Citizens of San Francisco (land monopoly and equal taxation).  
M. Montgomery, "An Article to Provide for the Supervision and Accountability of State and County Officers."  
Joseph Ramsey, Tennessee, "A Plan Containing the Elements and Cardinal Principles for a State Constitutional Government."  
E. Steinle, San Francisco, "Sketch of the Framework of a New Constitution of California."  
Representative Assembly of the Trades and Labor Unions of the Pacific Coast (protest against state and municipal labor contracts, prison labor, and child labor).  
Journeyman Stone Cutters Association of the Pacific Coast (protest state contracts for public building construction).  
Carpenter's and Millmen's Association (protest prison labor contracts).  
Mechanic's Leins (2 ff).  
Women's Suffrage (3 ff).  
Voters of San Luis Obispo County (alcohol prohibition).  
Liquor "Local Option" (9 ff).  
Los Angeles, San Francisco Turn Verein, and the Independent German Congregations of San Francisco (protest establishment of state religion).  
Acknowledgement of "Almighty God" in state constitution.  
Objection to recognition of the Sabbath (Sunday, a day of rest) in the state constitution (2 ff).  
San Bernardino County (legislative appropriations to private orphan asylums).  
San Francisco (property of "deaf, dumb, and blind persons" should be tax exempt).  
Exemption from taxation of charitable, educational, and church property (5 ff).  
Exemption from taxation of charitable, educational, and church property (5 ff).  
Printer's drafts (no signatures).  
Unidentified (signature pages only).

## **7. Convention Resolutions. 5 file folders. F3956:78-82**

Resolutions Nos. 1 to 100, plus unnumbered.

Arranged sequentially as numbered by convention secretary. Sequence is broken by nine missing numbers (4, 46, 58, 61, 62, 66, 68, 81, 88). Twenty-four unnumbered resolutions arranged in chronological order of date presented to

convention. Four resolutions are unnumbered and undated. Unnumbered and undated resolutions contained in one folder following resolution 100.

A complete listing of Convention Resolutions, arranged sequentially by number and showing subject, author, and date presented to the convention, follows. Resolution titles (subjects) are transcribed as noted by convention secretary. Folder numbers are indicated.

<u>RES.#</u>	<u>SUBJECT</u>	<u>AUTHOR</u>	<u>DATE INTRODUCED</u>
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(F3956:78, Res. 1-3, and 5-25)

1	Printing journal of proceedings	Beerstecher	Oct 5, 1878
*			
3	Apptmnt. & pay of night watchman	Hilborn	Oct 7, 1878
*			
5	Abolish office of Lt. Governor	Barbour	Oct 9, 1878
6	Single legislative chamber	Barbour	"
7	Hours of labor & Lien law	Condon	"
8	Child factory labor (under 14 yrs)	Farrell	"
9	Trial Jurors	Freeman	"
10	Grand Juries	Freeman	"
11	Land Subsidies	Lindow	"
12	Grand Juries	Mansfield	"
13	Naturalized citizens--elections	E. Martin	"
14	Reading of bills; ayes and noes	McCallum	"
15	Time of meeting of legislature	McCallum	"
16	Abolish fines non-misdemeanors	Morse	"
17	Chinese testimony	Murphy	"
18	Land limitation	Reynolds	"
19	Pardoning power	H. Smith	"
20	Women's suffrage	Steele	"
21	Dispensing with grand juries	Stedman	"
22	Governor's veto power	Townsend	"
23	Apptmnt. of phonographic reporter	McFarland	"
24	Official short-hand reporter	G. V. Smith	"
25	Short-hand reporter	McCallum	"

(F3956:79, Res. 26-45, 47-50)

26	\$40. to McStay, Journal Clerk	Eagon	Oct 9, 1878
27	Payment of Page	Huestis	"
28	Burlingame Treaty	Barbour	Oct 10, 1878
29	Committee rooms	Beerstecher	"
30	Grand Juries	Tuttle	Oct 9, 1878

31	Forced sale of property	Wyatt	"	
32	Rate of Interest	Wyatt	"	
33	Treaty with France	Mansfield	Oct 10, 1878	
34	Proposed treaty with France (Memorial from Los Angeles County viniculturists attached)	Mansfield	"	
35	\$15. to Edwin Morris, Page	Gregg	"	
36	Delegate pay for sick absence only	Stedman	Oct 11, 1878	
37	\$10. daily fine for non-sick absence	Wellin	"	
38	William Grace added to Committee on State Institutions & Public Build.	Filcher	"	
39	S. B. Thompson added to Committee on Rules and Order of Business	Winans	"	
40	Form of Constitution McCoy	Winans (special order for 10/15) Shoemaker	Oct 11, 1878	40** Add
	**[Duplicate #40, Secretarial error?]			
41	Change Rule No. Sixty	McCallum	[unstated]	
42	Submitting separate propositions	Barbour	Oct 12, 1878	
43	\$75. to Steppacher, Clerk to Committee on Rules & Order of Bus.	Rules Comm.	Oct 15, 1878	
44	Authorize Committee on Revenue and Taxation to employ a clerk	Edgerton	"	
45	\$18. to Page, Six days work	Estee	"	
*				
47	Clerk for Sergeant at Arms	Garvey	Oct 16, 1878	
48	Clerk for Committee on Enrollment and Engrossment	Garvey	"	
49	Clerk for Committee on Legislative Department	Terry	Oct 17, 1878	
50	Clerk for Committee on Corporations other than Municipal	Estee	"	

(F3956:80, Res. 51-57, 59, 60, 63-65, 67, and 69-75)

51	Printing and stationary costs	Ayers	"	
52	Porters for committee rooms	[unstated]	Oct 18, 1878	
53	Pay for Kean, Clerk to Sgt at Arms	Strong	"	
54	Finkler, Clerk to Committee on Judiciary	Tinnin	"	
55	Report of Secretary of State, Thanks of convention	Noel	Oct 19, 1878	
56	\$5,000. to Secretary of State	Tully	"	
57	\$105. to Sunetry, Night watchman	Eagon	"	
*				
59	Bureau of Labor & Labor Statistics	Beerstecher	Oct 9, 1878	

60	Chinese citizenship	O'Donnell	Oct 22, 1878
*			
*			
63	Transcribing, indexing, and printing journal	Holmes	Oct 23, 1878
64	Stationary supplies, not to exceed \$10. per delegate	Larkin	Oct 26, 1878
65	Application of federal constitution to state courts--trial by jury	Caples	Oct 28, 1878
*			
67	\$88. to Edward Mason, porter for committee rooms	Barnes	Nov 1, 1878
*			
69	Secretary of State to compile list of stationary account, each delegate	Caples	"
70	Request financial statements, University of California Board of Regents	Martin	Oct 31, 1878
71	Amend Rules Nos. 1 and 2	Stedman	Nov 2, 1878
72	Cost of State Militia, 1856-78	Tinnin	"
73	Request report from Superintendent of Streets, San Francisco	Casserly	"
74	Pay of [convention] employees	Condon	"
75	Report of Senate Committee on Chinese, 1877-78 session	Stedman	"

(F3956:81, Res. 76-80, 82-87, 89-100)

76	Request report from Adjutant General, National Guard/ Militia	Swing	"
77	Pardoning power of governor	Filcher	"
78	Bills for ice and post office box	Edgerton	Nov 5, 1878
79	\$108. to Hiram Clock, Porter	Estee	Nov 8, 1878
80	Request report from Surveyor Gen.	Hager	Nov 6, 1878
*			
82	Clerk for Committee on Right of Suffrage	Eagon	Nov 9, 1878
83	Stationary account, pay back excess over \$10.	Reynolds	"
84	Copies of daily proceedings and committee reports to State Library	Dunlap	Nov 13, 1878
85	Printing Journal, 750 copies	Hilborn	Nov 15, 1878
86	Discharging committee clerks	Larkin	Nov 16, 1878
87	Adjourn 2:00 & return Monday at 2:00	Laine	"
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89	Request information from the San Francisco Gaslight Co., meters sold	Ringgold	Nov 18, 1878
90	Additional pay for Patrick Levy, gas porter	O'Sullivan	Nov 23, 1878
91	Request report from State Printer, cost to state of printing series of "Readers"	O'Sullivan	Nov 25, 1878
92	Instruct Committee on Corporations to amend section twenty of article	Terry	Dec 6, 1878
93	Instruct Committee on Corporations to amend section twenty, Railroad Commissioners	Tinnin	"
94	Instruct Committee on Corporations to amend section twenty-one	Filcher	"
95	Burlingame Treaty--petition govts. of Oregon, Nevada, & Washington Terr.	Dowling	Dec 9, 1878
96	\$10. to J. J. Flynn, clerk to Comm. on State Insts. & Public Buildings	Overton	Dec 10, 1878
97	Memorialize Congress--Reduce cost of third-rate public lands within limits of any railroad; restore preemption and homestead lands within limits of forfeited railroad grants.	Wyatt	"
98	Request Committee on Land and Exemption to report to convention	O'Sullivan	Dec 12, 1878
99	Number of employees at convention	Larkin	Dec 14, 1878
100	Mileage of newly elected delegates	Dowling	Dec 21, 1878

(F3956:82, 24 unnumbered resolutions arranged in chronological order, plus 4 unnumbered and undated resolutions)

(1)	Dispense with phonographic reporter	Beerstecher	Oct 3, 1878
(2)	Elections to fill vacancies	Tinnin	Oct 4, 1878
(3)	Repeal Rule No. 71	Noel	Oct 14, 1878
(4)	Request report of State Printer, cost to date of printing resolutions and propositions	Barton	"
(5)	Vacancy caused by insanity of J. Berry	Moreland	Oct 21, 1878
(6)	Names of members calling for ayes and noes	McFarland	Oct 22, 1878
(7)	Request report from state comptroller	Casserly	Oct 30, 1878
(8)	Criminal case common law juries	Barbour	Oct 31, 1878
(9)	480 extra copies of Amendment No. 444, Corporations, be printed	[unstated]	Nov 8, 1878



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(10) Death of J. M. Strong	Jones	Nov 19, 1878
(11) Eligibility of members of convention to hold office	Huestis	Nov 20, 1878
(12) Assertion made by Mr. Grace in debate (with Barbour's amendments)	Barnes	Nov 21, 1878
(13) Thanksgiving recess	Crouch	Nov 25, 1878
(14) Obsequies of J. M. Strong	Holmes	Nov 26, 1878
(15) Ice Company bill	Hilborn	Dec 3, 1878
(16) Occupancy of capitol building	Martin	Dec 5, 1878
(17) Subsidy to Texas Railroad	Dowling	Dec 6, 1878
(18) Indefinite leaves of absence	White	Dec 19, 1878
(19) Adjournment	S. Wilson	Dec 20, 1878
(20) Discharge of [convention] employees	Filcher	"
(21) Unexpended convention appropriation	Reddy	Dec 21, 1878
(22) Appointment of Asst. Journal clerk	Townsend	Jan 24, 1879
(23) Extension of time of speakers	Inman	"
(24) Appointment of committee to draft an "Address to the people of California"	Tinnin	Jan 27, 1879
(25) A. C. Maud for Night Watchman	Gregg	[unstated]
(26) Adjournment and recess	[illegible]	[unstated]
(27) James Saultery for Watchman	[unstated]	[unstated]
(28) Eugene Fawcett not entitled to seat at convention	[unstated]	[unstated]

## 8. Proposed Amendments and Articles. 79 file folders. F3956:83-161

Proposed Amendments Nos. 1 to 538, plus unnumbered.

Proposed Amendments Nos. 1 to 538 include those that became articles of the new constitution. Amendment articles include standing committee reports, committee drafts of articles, and amended versions (if extant). Individual delegates were authors of most proposed amendments to the constitution. Standing committees authored proposed amendments that became articles of the constitution.

Proposed amendments arranged sequentially as numbered by convention secretary in chronological order of the date they were presented to the convention. Sequence is broken by forty-four missing numbers (4, 46, 58, 61, 62, 66, 68, 81, 88, 4, 19, 33, 49, 59, 78, 140, 167, 198, 199, 210, 239, 250, 280, 282, 288, 300, 329, 342, 391, 409, 427, 437, 441, 452, 456, 466, 470, 474, 478, 508, 513, 516, 527, 531). Four unnumbered, undated proposed amendments are contained in one folder following amendment 538.

A complete listing of Proposed Amendments to the Constitution, arranged

sequentially by number and showing amendment title, author, and date presented to the convention, follows. Proposed amendment titles are transcribed exactly as noted by convention secretary. Box and folder numbers are also indicated.

<u>#</u>	<u>SUBJECT</u>	<u>AUTHOR</u>	<u>DATE INTRODUCED</u>
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(F3956:83, Amendments 1-3, 5-9)

1	Prohibiting granting licences to aliens	Dowling	October 9, 1878
2	Irrigation	Dowling	"
3	Supreme Court	Edgerton	"
*			
5	Discriminatory charges of railroads and vessels	Estee	"
6	Homestead exemption	Evey	"
7	Municipal corporations	Fawcett	"
8	Municipal corporations	Fawcett	"
9	Declaration of rights	Gregg	"

(F3956:84, Amendment 10)

10	Proposed judicial system	Hager	"
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(F3956:85, Amendments 11-18, 20-32)

11	Corporations	Howard	"
12	Revenue and Taxation	Huestis	"
13	Corporations	Freud	"
14	Legislative Department	Freud	"
15	Excessive bails and fines	Hagher	"
16	State officers	Johnson	"
17	Chinese	Joyce	"
18	Chinese	Joyce	"
*			
20	Women's Suffrage	McFarland	"
21	Granting pardons	Moreland	"
22	Equal Taxation	Murphy	"
23	Employment of aliens	Nelson	"
24	Bill of Rights	Noel	"
25	Poll tax	O'Sullivan	"
26	Relative oath	Ringgold	"
27	Judiciary	Rolfe	"

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28	Legislature--bills	Schell	"
29	Equal taxation	Schomp	"
30	Water rights	Ohleyer	"
31	Rights of foreign born citizens	Shoemaker	"
32	Bills of Attainder; Ex post facto laws, etc.	Shoemaker	"

(F3956:86, Amendments 34, 35)

34	Railroads and public highways	E. O. Smith	"
35	Revenue and Taxation	G. V. Smith	"

(F3956:87, Amendments 36-48, 50-52)

36	Education	H. W. Smith	"
37	Liability of contractors	Stedman	"
38	Taxation of vessels	Sweasey	"
39	Suffrage--"White male"	Sweasey	"
40	Equal land taxation	Swenson	"
41	Liability of stockholders in corporations	Swing	"
42	Voters	Thompson	"
43	Suffrage	Tully	"
44	Chinese	Turner	"
45	Trial Juries	Van Dyke	"
46	Taxation without representation	Tuttle	"
47	Freights and fares	Waters	"
48	Bank, mining, and other stocks	Wellin	"
*			
50	Duties of railroad officers	West	"
51	Preamble	Wickes	"
52	Members of legislature	White	"

(F3956:88, Amendments 53-58, 60-73)

53	Education	White	"
54	Taxation	Wilson	"
55	Education	Winans	"
56	Bill of Rights	LaRue	"
57	Grand jurors	LaRue	"
58	Freights and fares	Ayers	"
*			
60	Official bonds	McFarland	"
61	Salary of Governor	Keyes	"
62	Suffrage	Hitchcock	"

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63	Irrigation	Hitchcock	"	
64	Chinese	Ayers	Oct 10, 1878	
65	Responsibility of bank directors	Ayers	"	
66	Lobbying	Barbour	"	
67	Education	Barnes	"	
68	Chinese	Barbour	"	
69	Pardoning power	Barry	"	
70	Chinese	Barry	"	
71	Assessments	Barton	"	
72	Local Option	Barton	"	
73	Hours of labor	Beerstecher	"	

(F3956:89, Amendment 74)

74	State Department of Labor and Labor Statistics	Beerstecher	"	
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(F3956:90, Amendments 75-77, 79-90)

75	Taxation	Belcher	"	
76	"Law Department"	Belcher	"	"
77	Property assessment	Biggs	"	"
*				
79	Education	Blackmer	"	
80	Suffrage	Blackmer	"	
81	Property rights	Brown	"	
82	Railroad Commission	Campbell	"	"
83	Excessive bail	Caples	"	
84	Labor and capital	Condon	"	
85	Judiciary system	Cross	"	
86	Declaration of rights	Crouch	"	
87	Right of suffrage	Davis	"	
88	Eligibility of office holders	Davis	"	
89	Judicial department	Dean	"	"
90	Land	Dowling	"	

(F3956:91, Amendments 91-111)

91	Mining	Dowling	"	
92	Taxation	Dudley	"	
93	Water and water rights	Dunlap	"	"
94	License tax	Eagon	"	
95	Legislative department	Edgerton	"	"

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96	Legislative department	Edgerton	"	"
97	Suffrage	Evey	"	"
98	Suffrage	Evey	"	"
99	Labor and capital	Farrell	"	"
100	Bill of Rights	Farrell	"	"
101	Pardoning power	Fawcett	"	"
102	Legislative sessions	Felcher	"	"
103	Legislative vacancies	Felcher	"	"
104	Land monopolies	Freeman	"	"
105	Federal relations	Freeman	"	"
106	Bill of Rights	Freud	"	"
107	Future amendments	Gorman	"	"
108	Privilege and elections	Grace	"	"
109	Female Suffrage	Grace	"	"
110	Equal taxation	Gregg	"	"
111	Liberty of speech, press	Gregg	"	"

(F3956:92, Amendments 112, 113)

112	Declaration of rights	Hager	"	"
113	Corporations and Eminent Domain	Estee	"	"

(F3956:93, Amendments 114-139, 141-147)

114	Power of legislature over corporations	Hale	"	"
115	Limit powers of legislature	Hall	"	"
116	Compulsory education	Harrison	"	"
117	Educational system	Harrison	"	"
118	Declaration of Rights	Harvey	"	"
119	Militia	Harvey	"	"
120	Militia	Heiskell	"	"
121	Pardoning power	Herold	"	"
122	Corporations	Herold	"	"
123	Legislature	Herrington	"	"
124	Alien's rights	Herrington	"	"
125	Public funds	Heustis	"	"
126	Taxation	Hughey	"	"
127	Public officers	Johnson	"	"
128	Eight hour law	Joyce	"	"
129	Number of senators	Joyce	"	"
130	Chinese	Kenny	"	"
131	Chinese immigration	Kleine	"	"
132	Compulsory education	Lavigne	"	"

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133	Governor's veto power	Lewis	"
134	Divorce	Mansfield	"
135	Publication of laws	Martin	"
136	State and municipal indebtedness	Miller	"
137	Military affairs	Mills	"
138	State tax limit	Moreland	"
139	Banking insitutions	Moreland	"

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141	Right of wife to administer estate of deceased husband	Mason	"
142	Legislative department	Mason	"
143	Land tenures	O'Sullivan	"
144	Rivers and lakes	O'Sullivan	"
145	Elective franchise	Reed	"
146	Declaration of rights	Reed	"
147	State Board of Supervisors	Rhodes	"

(F3956:94, Amendments 148-155)

148	State office vacancies	Shoemaker	"
149	Governor's veto of appropriation bills	Shoemaker	"
150	Taxation	Shoemaker	"
151	Corporation taxes	Shoemaker	"
152	State officer's salaries	Shoemaker	"
153	Preamble	Shurtleff	"
154	Restricting legislature	E. O. Smith	"
155	Redemption of tax sales	E. O. Smith	"

(F3956:95, Amendment 156)

156	Judiciary	G. V. Smith	"
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(F3956:96, Amendment 157)

157	Private corporations	G. V. Smith	"
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(F3956:97, Amendments 158-166, 168-176)

158	Taxation	Stedman	"
159	Legislative powers	Stedman	"
160	Prohibiting municipalities from holding stock in		

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	corporations	Strong	"	
161	Suffrage	Stuart	"	
162	Hours of state labor	Thompson		"
163	Educational qualification for suffrage	Tully	"	
164	Private property	Tully	"	
165	Taxation	Vacquerel	"	
166	Bill of Rights	Vacquerel	"	
*				
168	Corporations	Van Voorhies		"
169	Suffrage	Van Voorhies		"
170	Preamble	Webster		"
171	Bill of Rights	Webster		"
172	Lake Bigler [Tahoe]	Wellin		"
173	Prohibit Chinese from holding lands	Wellin	"	
174	Criminal prosecution	West		"
175	Corporations	Wickes		"
176	Interest of money	White		"

(F3956:98, Amendment 177)

177	Legislature	White	"	
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(F3956:99, Amendment 178, Article: Harbors, Tide Waters, and Navigable Streams)

178 Frontages of navigable water Ayers Oct 11, 1878  
 Became: Article--Harbors, Tide Waters, and Navigable Streams

(F3956:100, Amendments 179-194)

179	Land and homestead exemption	Ayers		"
180	Justices of peace	Barton	"	
181	Taxation	Barton	"	
182	Right to assemble	Beerstecher		"
183	Judicial/mortgage sales of land	Beerstecher		"
184	Legislative malfeasance	Bell	"	
185	Education	Blackmer	"	
186	Suffrage	Boggs	"	
187	Revenue and Taxation	Caples		"
188	Preamble and Bill of Rights	Caples		"
189	Judicial department	Cross	"	
190	Judicial department	Dowling	"	
191	Corporations	Dowling	"	
192	Mining stocks	Eagon	"	

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193	Legislature	Edgerton	"	
194	Judicial department	Edgerton	"	

(F3956:101, Amendments 195-197, 200-208)

195	Salary of judges	Evey	"	
196	Suffrage	Farrell	"	
197	Revenue and Taxation	Farrell	"	
*				
200	Suffrage	Grace	"	
201	Corporations	Grace	"	
202	Declaration of rights	Gregg	"	
203	Forbidding the appropriation of public monies and property for sectarian purposes	Huestis	"	
204	Legislative department	Johnson	"	
205	Banks	Joyce	"	
206	Public officers	Joyce	"	
207	Revenue and Taxation	Kleine	"	
208	Judicial department	Laine	"	

(F3956:102, Amendments 209, 211-220)

209	Legislative department	Laine	"	
*				
211	Executive department	Martin	"	
212	Amending the constitution	Martin	"	
213	Corporations	McCallum	"	
214	Education	McComas	"	
215	Miscellaneous subjects	McComas	"	
216	Municipal corporations	Noel	"	
217	Education	O'Sullivan	"	
218	Revenue and Taxation	O'Sullivan	"	
219	Revenue and Taxation	Overton	"	
220	Miscellaneous subjects	Reddy	"	

(F3956:103, Amendments 221, 222)

221	Appropriation for orphans	Shoemaker	"	
222	Public officials	Shoemaker	"	

(F3956:104, Amendments 223-238)

223	Increasing salaries of officials	H. W. Smith	"	
224	Religious teaching in public			



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	schools	H. W. Smith	"	
225	Municipal corporations	Stedman	"	"
226	Taxation of corporations	Swensen	"	"
227	Taxation	Tully	"	
228	Schedule	Tully	"	
229	Flags	Tuttle	"	
230	Miscellaneous subjects	Vacquerel	"	
231	Common school fund	Webster	"	
232	Wages of laborers and mechanics	Wellin	"	"
233	Preamble and Bill of Rights	Wickes	"	
234	Education	Wickes	"	
235	Rights of women	White	"	
236	Miscellaneous subjects	White	"	
237	Preamble	Wilson	"	
238	Bill of Rights	Wyatt	"	

(F3956:105, Amendments 240, 241)

240	Warehouses	Beerstecher	Oct 14, 1878
241	Taxation	Beerstecher	"

(F3956:106, Amendments 242-249, 251-259)

242	Education	Blackmer	"
243	Law of succession	Blackmer	"
244	Legislative department	Brown	"
245	Juries	Caples	"
246	Jury system	Caples	"
247	Education	Chapman	"
248	Taxation	Chapman	"
249	Judicial System	Condon	"
*			
251	Legislative department	Dowling	"
252	Legislative department	Dowling	"
253	Legislative department	Farrell	"
254	Education	Farrell	"
255	Legislative department	Fawcett	"
256	Preamble and Bill of Rights	Fawcett	"
257	Bill of Rights	Freud	"
258	Special legislation	Freud	"
259	Legislative department	Grace	"

(F3956:107, Amendments 260-272)

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260	Revenue and Taxation	Harrington	"
261	Legislative department	Harrington	"
262	Judiciary	Holmes	"
263	Judiciary	Hughey	"
264	Bill of Rights	Hughey	"
265	Executive department	Joyce	"
266	Chinese	Kleine	"
267	Common schools	LaRue	"
268	Powers of legislature to contract debts	LaRue	"
269	Legislative department	Lindow	"
270	Executive department	Lindow	"
271	Property tax exemption	Mansfield	"
272	Judicial officers	Mansfield	"

(F3956:108, Amendments 273-279, 281)

273	General provisions	Martin	"
274	Judical department	Martin	"
275	Judicial department	McCallum	"
276	Assessors and Revenue collectors	Moreland	"
277	Suffrage	Neunaber	"
278	Militia	Neunaber	"
279	Corporations	O'Donnell	"
*			
281	Ineligibility to office	O'Sullivan	"

(F3956:109, Amendment 283)

283	Amended Schedule	Shoemaker	"
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(F3956:110, Amendments 284-287, 289-297)

284	English only (laws)	Shoemaker	"
285	Water Rights Commission	G. V. Smith	"
286	Executive department	H. Smith	"
287	System of gradual taxation	Swenson	"
*			
289	Revenue and Taxation	Townsend	"
290	Legislative department	Townsend	"
291	Judicial department	Tully	"
292	Chinese	Tuttle	Oct 12, 1878
293	Taxation	Tuttle	Oct 14, 1878
294	Pardoning power	Vacquerel	"
295	Suffrage	Wellin	"

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296	Taxation	Wellin	"	
297	Moral instruction	Wickes	"	
(F3956:111, Amendments 298, 299, 301-304)				
298	Corporations	White	"	
299	Executive department	White	"	
*				
301	Terms of office	Shoemaker	"	
302	State credit	Shoemaker	"	
303	State Board of Equalization	Shoemaker	"	
304	Corporations	O'Donnell	Oct 12, 1878	

(Box 10)

(F3956:112, Amendments 305-309)

305	Bill of Rights	McConnell	Oct 14, 1878	
306	Suffrage	McConnell	"	
307	Executive department	McConnell	"	
308	Legislative department	McConnell	"	
309	Judiciary	McConnell	"	

(F3956:113, Amendments 310-317)

310	Judiciary	McConnell	"	
311	Military	McConnell	"	
312	Revenue and Taxation	McConnell	"	
313	Township and county organization	McConnell	"	
314	Corporations	McConnell	"	
315	Education	McConnell	"	
316	Amending and revising the constitution	McConnell	"	
317	Miscellaneous subjects	McConnell	"	

(F3956:114, Amendments 318-328)

318	Military affaris	Beerstecher	Oct 15, 1878	
319	Taxation	Beerstecher	"	
	Followed by amendment to			
	Amendment 319	Beerstecher	Oct 23, 1878	
320	Libels	Murphy	Oct 15, 1878	
321	Chinese	O'Donnell	"	
322	Grand jury system	Mansfield	"	
323	Future amendments	White	[unstated]	

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324	Executive department	Schell	Oct 15, 1878
325	Revenue and Taxation	O'Donnell	"
326	Importation of coolies, criminals paupers, lepers, and immoral women prohibited	O'Sullivan	"
327	Prohibit employment of chaplains in state institutions	O'Sullivan	"
328	Legislative department	Evey	"

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(F3956:115, Amendments 330-341, 343-347)

330	Revenue and Taxation	Grace	"
331	Suffrage	Sweasey	"
332	Legislative department	Gorman	"
333	Legislative department	Grace	"
334	Grand juries	Huestis	"
335	Jury system	Huestis	"
336	Privileges and elections	Lavigne	"
337	Water rights	Lavigne	"
338	Corporation stocks	Martin	"
339	Legislative department	O'Donnell	"
340	Corporations	O'Donnell	"
341	Contents and order of the articles of the consitution	McConnell	"

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343	Suffrage	McComas	"
344	Corporations	Dowling	"
345	Mining	Dowling	"
346	Taxation	Howard	"
347	Bill of Rights	Hager	"

(F3956:116, Amendments 348-370)

348	Judiciary	Hager	[unstated]
349	Counties	Boucher	Oct 16, 1878
350	Board of Prison Directors	Campbell	Oct 17, 1878
351	County and town government	Shafter	"
352	Chinese	Miller	"
353	Licensing corporations	Larkin	"
354	Legislative department	Weller	Oct 18, 1878
355	School and university endowments	J. W. Martin	"
356	Legislative department	Weller	"
357	Preamble and Bill of Rights	Wickes	"
358	Suffrage	Van Voorhies	"

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359	Legal tender	Wyatt	Oct 19, 1878
360	Taxation	Freeman	"
361	Taxation	Rhodes	"
362	Water rights	Tinnin	"
363	Water rights	Tinnin	"
364	Water privileges	Tinnin	"
365	Judicial department	Edgerton	"
366	Miscellaneous subjects	E. O. Smith	"
367	Judicial department	Schell	"
368	Legislative department	Dowling	"
369	Future amendments	Blackmer	"
370	Lobbying	Wickes	"

(F3956:117, Amendments 371-390, 392)

371	Taxation	Tuttle	"
372	Corporations	Vacquerel	"
373	Legislation	Grace	"
374	Lieutenant governor	Stedman	"
375	Penal colony	Cross	"
376	Boards of supervisors	Burt	Oct 21, 1878
377	Bill of Rights	Edgerton	Oct 22, 1878
379	Revenue and Taxation	Filcher	"
380	University of California	Van Dyke	"
381	Education	H. W. Smith	"
382	Declaration of rights	Schell	"
383	University	Webster	"
384	Taxation	Stuart	"
385	Embezzlement	Thompson	"
386	Juries	Caples	"
387	Legislature	Weller	"
388	Chinese	O'Donnell	"
389	Electors	Condon	"
390	Chinese	Joyce	"
*			
392	Graduated, progressive taxation	O'Sullivan	"

(F3956:118, Amendments 393-401)

393	Declaration of Rights	Dudley	Oct 23, 1878
394	Filling public offices	Dudley	"
395	Taxes	Ayers	"
396	Capital and Labor	Condon	"
397	Bill of Rights	Beerstecher	"
398	Appropriations	E. O. Smith	"

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399	Adjudication of claims against the state	Martin	"	
400	Revenue and Taxation	Hager	"	
401	City and County Organization	Casserly		Oct 24, 1878

(F3956:119, Amendment 402, Article: Preamble and Bill of Rights)

402	Preamble and Bill of Rights	Committee on Preamble and Bill of Rights		Oct 24, 1878
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(F3956:120, Amendments 403-421)

403	Selling of goods under false pretenses, punished as felony	Bell		Oct 26, 1878
404	Judiciary	Barton	"	
405	Education	Lindow	"	
406	Land and Homestead Exemption	E. O. Smith		"
407	Mechanic's Liens	McCallum	"	
408	Revising the constitution	Shoemaker	"	
*				
410	Public Schools	Jones	"	
411	City, County, and Townships	Moreland		"
412	Water and Water Rights	O'Sullivan		"
413	Public Offices	O'Sullivan	"	
414	Miscellaneous Provisions	Harvey		"
415	Militia	Harvey	"	
416	Miscellaneous Provisions	Condon		"
417	Apprentice Law	Herold	"	
418	Taxation	Heughey	"	
419	Foreigners	Freeman	"	
420	Preamble and Bill of Rights	Mansfield		"
421	Person ineligible for citizenship	Ringgold		"

(F3956:121, Amendment 422)

422	City, County, and Township Organization	Hager	"	
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(F3956:122, Amendments 423-443)

423	Foreigners ineligible for	Estee		Oct 28, 1878
424	Legislative Department	Herrington		"
425	Legislative Department	Herrington		"
426	Special Judges	Graves	"	

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428	Irrigation	Dowling	"	
429	City, County, and Township Organization	Vacquerel	"	
430	Homesteads	Barton	"	
431	Fiscal year	Hilborne	"	
432	Intermarriage	Stedman	"	
433	Chinese	O'Donnell	"	
434	City, County, and Township Organization	Rolfe	Oct 29, 1878	
435	Legislative Department	Evey	"	
436	Public Highways	Evey	"	
*				
438	San Francisco	Dowling	"	
439	Revenue and Taxation	Herrington	"	
440	Public school teachers	Doyle	"	
*				
442	Amending the constitution	Shafter	"	
443	Arrests and attachments	Howard	"	

(Box 11)

(F3956: 123-124, Amendment 444, Article: Corporations)

444	Corporations	Committee on Corporations other than Municipal		Oct 30, 1878
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(F3956:125, Amendment 445, Article: Pardoning Power)

445	Pardoning Power	Committee on Pardoning Power		Oct 30, 1878
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(F3956:126, Amendments 446-453)

446	Illegitimate children	Beerstecher	"	
447	Court of Claims	Tinnin	"	
448	State Institutions	Freud	"	
449	State Board of Education	Wickes	"	
450	Mining	Dowling	"	
451	Corporations	Hale	"	
*				
453	Local Government	Herrington	"	

(F3956:127, Amendment 454, Article: Chinese)

454	Chinese	Committee on		
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Chinese

Oct 31, 1878

(F3956:128, Amendment 455)

455 Judicial Department Nelson Oct 31, 1878  
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(F3956:129, Amendments 457-467)

457 Judiciary Barbour "  
458 Corporations McConnell "  
459 Claims against the state Barnes "  
460 State Board of Education Wickes "  
461 Corporations Vacquerel "  
462 Bigamy and polygamy Dowling "  
463 Officers Wellin Nov 1, 1878  
464 Legislature Casserly "  
465 State Institutions Freud "  
\*  
467 City, County, and Township  
Organization Vacquerel "

(F3956:130, Amendment 468, Article: Executive Department)

468 Executive Department Committee on  
Executive Dept. Nov 2, 1878

(F3956:131, Amendments 469-484)

469 Common Schools Huestis Nov 2, 1878  
\*  
471 Labor and Capital Howard "  
472 Street assessments Reynolds "  
473 Registration of voters Andrews "  
\*  
475 Secret tribunals O'Sullivan "  
476 Labor and capital Harvey "  
477 Husband insure his life for heirs E. O. Smith Nov 4, 1878  
\*  
479 City, County, and Township  
Organization Miles "  
480 Legislative Department Mills "  
481 Preamble and Bill of Rights Mills "  
482 Miscellaneous Provisions Freud "  
483 United States Senators Tully "

42



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484	Pardoning Power	Grace	Nov 5, 1878
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(F3956:132, Amendment 485, Article: Militia)

485	Militia	Committee on Military Affairs	Nov 5, 1878
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(F3956:133, Amendments 486-500)

486	Board of Public Commerce, S.F.	Doyle	Nov 6, 1878
487	County seats (moving)	E. O. Smith	"
488	Permanent state capital	O'Donnell	"
489	Gambling prohibited	O'Sullivan	Nov 7, 1878
490	Legislative Department	McCoy	"
491	Secret sessions, grand juries	Ringgold	"
492	Sale of positions	Dowling	"
493	State officers, appear before legislature	Tinnin	Nov 8, 1878
494	Disposition of property	Lavigne	"
495	Municipal taxation of adjacent farm lands prohibited	E. O. Smith	"
496	Fees and salaries of officers	Barbour	"
497	City, County, and Township Organization	Hager	"
498	Railroads	Hughey	Nov 9, 1878
499	United States currency	Barton	"
500	Education	E. Barry	"

(F3956:134-135, Amendment 501, Article: Legislative Department)

501	Legislative Department	Committee on Legislative Dept.	Nov 11, 1878
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(Box 12)

(F3956:136, Amendment 502)

502	Railroads	Herrington	"
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(F3956:137-138, Amendment 503, Article: Judicial Department)

503	Judicial Department	Committee on Judicial Dept.	Nov 11, 1878
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43

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(F3956:139, Amendment 504, Article: Right of Suffrage)

504 Right of Suffrage Committee on  
Suffrage Nov 13, 1878

(F3956:140, Amendments 505-509)

505 Gas and Water companies Reynolds "  
506 Uniform taxation E. O. Smith "  
507 Civil service reform Freud "  
\*  
509 Corporations other than  
municipal, supplementary  
report of committee [See Amendment 444, Box 11]

(F3956:141, Amendment 510, Article: Revenue and Taxation)

510 Revenue and Taxation Committee on  
Revenue & Taxation Nov 18, 1878

(F3956:142, Amendments 511-512)

511 What land will escheat to  
the state E. O. Smith Nov 20, 1878  
512 Acquisition and alienation  
of land Davis Nov 21, 1878  
\*

(F3956:143, Amendment 514, Article: Water and Water Rights)

514 Water and Water Rights Committee on Water  
and Water Rights Nov 22, 1878

(F3956:144, Amendment 515, Article: State Institutions and Public Buildings)

515 State Institutions and Committee on State  
Public Buildings Institutions and  
Public Buildings Nov 23, 1878

(F3956:145, Amendments 517-520)

\*  
517 Hiring of labor Thompson Dec 4, 1878  
518 Railroad Commissioners Herrington "  
519 Banks of navigable waters are

44

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520 public highways Ringgold " "   
 Corporations Vacquerel Dec 6, 1878

(F3956:146-147, Amendment 521, Article: Cities, Counties, and Towns)

521 City, County, and Township Committee on   
 Organization City, County, and   
 Township Org. Dec 7, 1878

(F3956:148, Amendment 522)

522 Local Option (clause of article Committee on   
 on City, County, and Township City, County, and   
 Organization, amendment 521) Township Org. Dec 7, 1878

(Box 13)

(F3956:149, Amendment 523, Article: Education)

523 Education Committee on   
 Education Dec 13, 1878

(F3956:150, Amendment 524, Article: Land and Homestead Exemption)

524 Land and Homestead Exemption Committee on Land   
 and Homestead Ex. Dec 14, 1878

(F3956:151, Amendment 525)

525 Water and water rights H. W. Smith Dec 20, 1878

(F3956:152, Amendment 526, Article: Amending and Revising the Constitution)

526 Amending and Revising the Committee on   
 Constitution Future Amendments Dec 21, 1878

(F3956:153, Amendments 528-530)

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528 Revenue and taxation Dudley Dec 24, 1878

529 Insurance Wellin Jan 2, 1879

530 Trademarks Wellin Jan 4, 1879

(F3956:154, Amendment 532, Article: Schedule)

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532	Schedule	Committee on the Schedule	Jan 18, 1879
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(F3956:155, Amendment 533)

533	State Indebtedness	Casserly	Jan 22, 1879
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(F3956:156, Amendment 534, Article: The Boundary)

534	Boundary	Committee on the Boundary	Jan 24, 1879
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(F3956:157, Amendment 535, Article: Miscellaneous Subjects)

535	Miscellaneous Subjects	Committee on Misc. Subjects	Jan 25, 1879
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(F3956:158, Amendment 536, Article: Distribution of Powers)

536	Distribution of Powers	McCallum	Jan 28, 1879
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(F3956:159, Amendment 537, Article: State Indebtedness)

537	State Indebtedness	Committee on State Indebtedness	Jan 30, 1879
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(F3956:160, Amendment 538)

538	Water Rights	Barbour	[n.d.]
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(F3956:161, Amendments unnumbered and unidentified)

[1]	Land ownership; natuaralized citizens (amendment proposed in Comm. of the Whole?)	[unstated]	[n.d.]
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[2]	Taxation of corporations	[unstated]	[n.d.]
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[3]	Revenue and Taxation	H. C. Wilson	[n.d.]
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[4]	Revenue and Taxation	H. C. Wilson	[n.d.]
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### **9. Amended Articles Reported by the Committee on Revision and Adjustment. 3 file folders. F3956:162-164**

After the convention finally adopted each article, they referred the articles to the Committee on Revision and Adjustment. The committee made sure that all revisions and adjustments made during the amendment process were properly incorporated and noted. The Committee on Revision and Adjustment reported

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back every article of the new constitution to the delegation on February 27, 28, March 1, and 3, 1879. From the Committee on Revision and Adjustment, the articles went to the Committee on Reporting and Printing for final enrollment in the constitution.

Three Committee on Revision and Adjustment reports, arranged chronologically according to the date reported to the convention.

Files contain Committee on Revision and Adjustment reports of:

February 27, 1879

February 28, 1879, including articles I, V, VII, VIII, XIX, XXI, and XIV.

March 1, 1879, including articles II, III, IV, VI, IX, X, XI, XII, XIII, XV, XVI, XVII, XVIII, XX, XXII.

#### **10. Printer's Drafts of Articles. 10 file folders. F3956:165-174**

As with legislative bills, at every stage of article construction and amendment--first draft, Committee of the Whole amendment, first and second reading amendment--articles were printed and reprinted at the state printing office (then located near the capital at 15th and L streets).

Arranged sequentially by original article amendment number (before constitutional article number applied). Does not include every article of the finished constitution.

Files contain extant printer's drafts of:

First draft, proposed amendment 524 (1 ff).

Articles amended in Committee of the Whole, including proposed amendments 178, 402, 414, 454, 485, 501, 503, 504, 510, 514, 515, 521, 523, 524, 532, 535, 536, 537 (5 ff).

Articles amended in convention, including proposed amendments 178, 402, 444, 454, 468, 485, 501, 503, 504, 510, 514, 515, 521, 523, 524, 526, 532, 534, 535, 536, 537 (4 ff)

#### **11. Convention Minutes. 126 file folders. F3956:175-300**

The convention minute clerk recorded each day's business of the convention--including all roll-call votes, resolutions, petitions, motions to amend rules, and amendments--in the Minutes. After daily adjournment, the journal clerk would

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record and verify the Minutes (with a blue check mark) for entry in the journal. With the exception of the Minutes for Tuesday, February 25, 1879, the Minutes are extant for the remaining 126 days that the convention met.

F3956:175-183  
September 28, 1878 to October 8, 1878

F3956:184-198  
October 9, 1878 to October 26, 1878

F3956:199-222  
October 28, 1878 to November 23, 1878

F3956:223-243  
November 25, 1878 to December 21, 1878

F3956:244-271  
December 23, 1878 to January 25, 1879

F3956:272-283  
January 27, 1879 to February 8, 1879

F3956:284-293  
February 10, 1879 to February 20, 1879

F3956:294-300  
February 21, 1879 to March 3, 1879

## APPENDIX A: LISTS OF DELEGATES

**DELEGATES ELECTED ON THE NON-PARTISAN TICKET. (Delegates representing a Congressional District were elected "At large.")**

NAME	BIRTHPLACE	RESIDENCE	AGE	OCCUPATION	PARTY	COUNTY OR
						CONGRESS.
						POLITICAL DISTRICT
						REPRESENTED
Alexander R. Andrews	Kentucky	Shasta City	49	Lawyer*	Democrat	Trinity/Shasta
James J. Ayers	Scotland	Los Angeles	48	Editor	Democrat	4th District
William H. L. Barnes	Mass.	San Francisco	46	Lawyer	Republican	1st District
Isaac S. Belcher	Vermont	Marysville	53	Lawyer*	Republican	3rd District
Marion Biggs	Missouri	Biggs Station	55	Farmer*	Democrat	3rd District
H. C. Boggs	Missouri	Lakeport	58	Farmer	Democrat	Napa/Lake/Son.
Josiah Boucher	Penn.	Chico	59	Farmer	Republican	Butte
Samuel B. Burt	New York	Bath	50	Mining*	Republican	Placer
Alexander Campbell	Jamaica	Oakland	58	Lawyer*	Republican	Alameda
James Caples	Ohio	Sacramento	55	Farmer	Democrat	Sacramento
Eugene Casserly	Ireland	San Francisco	56	Lawyer*	Democrat	1st District
Augustus H. Chapman	New York	Chico	51	Lumb'r dlr	Republican	Plu/Lass/Butte
James M. Charles	Penn.	Vallejo	69	Rancher	Republican	Sonoma
David H. Cowden	Penn.	Marysville	39	Lawyer*	Republican	Yuba
W. L. Dudley		Stockton		Lawyer	Republican	San Joaq/Amadr
Presley Dunlap	Penn.	Sacramento	61	Lawyer	Democrat	Sacramento
John A. Eagon	Virginia	Jackson	51	Lawyer*	Republican	Amador
Henry Edgerton	Vermont	Sacramento		Lawyer*	Republican	2nd District
Morris M. Estee	Penn.	San Francisco	45	Lawyer*	Republican	1st District
Thomas H. Estey	Mass.	Nicasio	52	Farmer	Republican	Contra C/Marin
Eugene Fawcett	Ohio	Santa Barbara	33	Lawyer*	Republican	Santa Barbara
Joseph A. Filcher	Iowa	Auburn	33	Journalist	Democrat	Placer
Abraham C. Freeman	Illinois	Sacramento	35	Lawyer	Republican	Sacramento



Benjamin B. Glascock	Missouri	Spring Valley	35	Farmer	Democrat	Colusa
William J. Graves	Virginia	San Luis Obispo	48	Lawyer*	Democrat	4th District

**(C)**William J. Howard--convention elected to fill vacancy caused by death of J. M. Strong.

**(C)**J. West Martin--convention elected to fill vacancy caused by death of H. H. Haight, elected delegate who died before convention convened.

John S. Hager	New Jersey	San Francisco	56	Lawyer*	Democrat	1st District
James E. Hale	Penn.	Auburn	54	Lawyer*	Republican	2nd District
John B. Hall	Maryland	Stockton	59	Lawyer	Democrat	2nd District
John R. W. Hitchcock	Virginia	Castoria	53	Farmer	Democrat	San Joaquin
Joseph P. Hoge	Penn.	San Francisco	65	Lawyer*	Democrat	1st District
William J. Howard <b>(C)</b>				Lawyer*	Democrat	Mariposa/Merced
Wilbur F. Huestis	Virginia	Eureka	42	Leg. Clerk	Republican	3rd District
Daniel Inman	Tennessee	Livermore	51	Farmer*	Ind. Dem.	Alameda
George A. Johnson	Maryland	Santa Rosa	49	Lawyer*	Democrat	Sonoma
Lewis Fuller Jones	New York	Mariposa City	57	Lawyer	Democrat	Marip/Mer/Stan
John M. Kelly	Missouri	Woodland	53	Farmer*	Democrat	3rd District
Thomas H. Laine	Missouri	Santa Clara	46	Lawyer*	Democrat	Santa Clara
Royal Mills Lampson	Vermont	Chinese Camp	47	Physician	Republican	Tuolum/Calaver
Hugh M. La Rue	Kentucky	Sacramento	48	Farmer	Democrat	2nd District
David Lewis	Vermont	Douglas	50	Rancher	Republican	San Joaquin
John Mansfield	New York	Los Angeles	56	Lawyer	Republican	4th District
Edward Martin	England	Watsonville	45	Merchant	Republican	4th District
J. West Martin <b>(C)</b>	Maryland	Oakland	56	Banker	Democrat	2nd District
John G. McCallum	Indiana	Oakland	48	Lawyer*	Ind. Rep.	Alameda
Rush McComas	Virginia	Santa Clara	48	Farmer*	Republican	Santa Clara
Thomas McConnell	Vermont	Sacramento	51	Rancher	Republican	Sacramento
Thomas B. McFarland	Penn.	Sacramento	50	Lawyer*	Republican	Sacramento
John F. McNutt	Tennessee	Smartsville	63	Carpenter	Democrat	Yuba
John F. Miller	Indiana	San Francisco	47	Lawyer*	Republican	1st District
William W. Moreland	Arkansas	Healdsburg	33	Lawyer	Democrat	Sonoma

**(C)(d)**James M. Strong--convention elected to fill vacancy caused by death of George M. Hardwick, elected delegate who died before the convention convened. Strong then died and the convention elected William J. Howard to replace him.

**(C)**Smith B. Thompson--convention elected to fill vacancy caused by resignation of Thomas Morris, elected Workingmen delegate who was disqualified because he was not a citizen.

James E. Murphy	Maine	Crescent City	32	Lawyer*	Democrat	Del Norte
George Ohleyer	Germany	Yuba City	47	Farmer†	Democrat	Sutter
Albert P. Overton	Missouri	Santa Rosa	48	Lawyer*	Democrat	3rd District
J.M. Porter				Lawyer	Republican	2nd District
William H. Prouty	Ohio	Ione	41	Farmer†	Democrat	Amador
Mark R. C. Pullman	Missouri	Cherokee	54	Mining Co.	Democrat	Butte
Patrick Reddy	New York	Independence	39	Lawyer	Democrat	Mono/Inyo
George W. Schell	New York	Modesto	41	Lawyer*	Republican	4th District
Justus Schomp	Ohio	Acampo	43	Farmer	Republican	San Joaquin
James M. Shafter	Vermont	Marin Co./S.F.	62	Lawyer*	Republican	3rd District
Rufus Shoemaker	Mississippi	Grass Valley	48	Journalist	Democrat	2nd District
Benjamin A. Shurtleff	Mass.	Napa City	57	Physician*	Republican	3rd District
Edward O. Smith	Maryland	San Jose	61	Farmer	Democrat	Santa Clara
George V. Smith	Kentucky	Bakersfield	35	Lawyer	Republican	4th District
George Steele	New York	San Luis Obispo	53	Farmer*	Republican	San Luis Ob.
David C. Stevenson	Ohio	Millville	57	Merchant	Republican	Sis/Mo/Tr/Sha
James M. Strong <b>(C)(d)</b>	Georgia	Hopeton	47	Farmer	Democrat	Mariposa/Merced
Charles V. Stuart	Penn.	Glen Ellen	59	Farmer	Republican	Sonoma
David S. Terry	Mississippi	Stockton	51	Lawyer*	Democrat	San Joaquin
Smith B. Thompson <b>(C)</b>	New York	San Francisco	57	Educator/Carpenter	Republican	San Francisco
Wiley J. Tinnin	Mississippi	Weaverville	49	Merchant*	Democrat	3rd District
Pleasant B. Tully	Tennessee	Gilroy	49	Lawyer	Democrat	4th District
Henry K. Turner	Maine	Sierra Valley	50	Farmer*	Republican	Sierra
Walter Van Dyke	New York	Oakland	55	Lawyer*	Republican	2nd District

William Van Voorhies	Tennessee	Oakland	58	Lawyer*	Democrat	Alameda
Byron Waters	Georgia	San Bernadino	29	Lawyer*	Democrat	4th District
Jonathan V. Webster	Tennessee	Brooklyn	48	Farmert†	Ind. Dem.	Alameda
Joseph R. Weller	New Jersey	Milpitas	59	Farmer	Republican	Santa Clara
Samuel M. Wilson	Ohio	San Francisco	54	Lawyer	Democrat	1st District
Joseph W. Winans	New York	San Francisco	58	Lawyer	Republican	1st District

\*Had previously served in the legislature or judicial system of California, another state, or at the federal level.

†Had previously, or was currently a member of the Grange (state or county level).

**DELEGATES ELECTED ON THE WORKINGMEN TICKET.**

\*\*Edward Evey and John P. West--nominated by Farmers, endorsed by Workingmen. (d)Bernard F. Kenny--died during convention. (C)John J. Kenny--convention elected to replace Bernard.

NAME	BIRTHPLACE	RESIDENCE	AGE	OCCUPATION	PARTY	FORMER
						POLITICAL COUNTY REPRESENTED
Clitus Barbour	Illinois	San Francisco	41	Lawyert†	Republican	San Francisco
Edward Barry	Australia	Downieville	31	Lawyer	Republican	Nevada/Sierra
James N. Barton	Ohio	Ferndale	48	Farmer*	Democrat	Mend/Hum/Del N.
Charles J. Beerstecher	Germany	San Francisco	28	Lawyert†	Republican	San Francisco
Peter Bell	Scotland	San Francisco	33	Painter†	Democrat	San Francisco
John D. Condon	Ireland	San Francisco	32	Cabinet mkr†	Democrat	San Francisco
Charles W. Cross	New York	Nevada City	30	Lawyer	Republican	Nevada
Hamlet Davis	Kentucky	Truckee	69	Merchant	Democrat	Nevada
James E. Dean	Rhode Island	Placerville	41	Mining	Republican	El Dor/Alpine
Patrick T. Dowling	Ireland	San Francisco	30	Mining†	Democrat	San Francisco
Luke D. Doyle	Ireland	San Francisco	60	Gardener†	Democrat	San Francisco
Edward Evey**	Maryland	Anaheim	65	Farmer*	Democrat	Los Angeles

Simon J. Farrell	Mass.	San Francisco	25	Businessman†	Democrat	San Francisco
Charles G. Finney, Jr.	New York	San Buenaventura	48	Lawyer/Farmer	Republican	Ventura
Jacob R. Freud	New York	San Francisco	21	Merchant††	[none]	San Francisco
Joseph C. Gorman	Ireland	San Francisco	35	Eng/Tinner†	Republican	San Francisco
William P. Grace	Tennessee	San Francisco	41	Carpenter†	Republican	San Francisco
Thomas Harrison	England	San Francisco	41	Rigger†	Democrat	San Francisco
Conrad Herold	Germany	San Francisco	47	Grocer†	Democrat	San Francisco
Dennis W. Herrington	Indiana	Santa Clara	52	Lawyer*	Republican	Santa Clara
William P. Hughey	Kentucky	San Francisco	47	Sign painter	Democrat	San Francisco
George W. Hunter	Indiana	Spanish Dry Diggings	49	Merchant*	Democrat	El Dor/Alpine
Peter J. Joyce	Ireland	San Francisco	39	Furniture dlr†	Ind.	San Francisco
Bernard F. Kenny (d)	California	San Francisco	24	Telegrapher†	Democrat	San Francisco
John J. Kenny (C)		San Francisco		Merchant	Democrat	San Francisco
Charles R. Kleine	Germany	San Francisco	48	Shoemaker/Minister	Rep.	San Francisco
Henry Larkin	New York	Diamond Springs	52	Farmer*	Democrat	El Dorado
Raymond Lavigne	France	San Francisco	30	Lithographer†	Democrat	San Francisco
John F. Lindow	Germany	San Francisco	45	Tailor†	Republican	San Francisco
John McCoy	Penn.	North San Juan	41	Mining	Republican	Nevada
William S. Moffatt	New York	Woodside	60	Farmer	Democrat	San Mateo
Lucius D. Morse	Vermont	San Mateo	56	Physician	Republican	San Mateo/S.F.
Thorvald K. Nelson	Norway	San Francisco	30	Wood turner†	Republican	San Francisco
Henry Neunaber	Germany	San Francisco	40	Merchant	Republican	San Francisco
Charles C. O'Donnell	Maryland	San Francisco	44	Physician†	Independent	San Francisco
James O'Sullivan	Ireland	San Francisco	53	Editor†	Independent	San Francisco
James S. Reynolds	New York	San Francisco	47	Lawyer†	Republican	San Francisco
Charles S. Ringgold	Maryland	San Francisco	46	Advert. sales†	Democrat	San Francisco
Henry W. Smith	Maine	San Francisco	40	Plumber†	Republican	San Francisco
Ezra P. Soule	Ohio	Susanville	51	Milling	Republican	Plumas/Lassen
John C. Stedman	California	San Francisco	28	Accountant†	Independent	San Francisco
William J. Sweasey	England	Eureka	73	Merchant*	Independent	Humboldt
Charles Swenson	Denmark	San Francisco	31	Seaman/Inn keeper	Rep.	San Francisco
Daniel Tuttle	Ohio	Pajaro	55	Farmer	Republican	Santa Cruz

Alphonse P. Vacqueral	France	San Francisco	37	Seaman/Cook†	Republican	San Francisco
Hugh Walker	Canada	Olema	35	Merchant	Republican	Marin
Patrick M. Wellin	Ireland	San Francisco	42	Carpenter†	Independent	San Francisco
John P. West**	Ireland	Compton	53	Farmer*	Republican	Los Angeles
William F. White	Ireland	Watsonville	56	Farmer	Democrat	S. Crz/Mntr/S.Benito
John T. Wickes	Maryland	Grass Valley	43	Teacher	Democrat	Nevada
Nathaniel G. Wyatt	Missouri	Salinas City	50	Lawyer*	Democrat	Monterey

\*Had previously served in the legislature or judicial system of California, another state, or at the federal level.

†Active member or officer of the Workingmen's Party of California, or the Workingmen's Party of the United States.

### DELEGATES ELECTED ON THE REPUBLICAN, DEMOCRATIC, AND INDEPENDENT TICKETS

NAME	BIRTHPLACE	RESIDENCE	AGE	OCCUPATION	PARTY	REPRESENTED
Eli T. Blackmer	Mass.	National City	47	Music Instr.	Republican	San Diego
Robert Crouch	Ohio	Napa City	55	Lawyer*	Republican	Napa
Jonathan M. Dudley	New York	Dixon	48	Farmer*	Republican	Solano
V. A. Gregg	Iowa	Bakersfield	34	Lawyer	Republican	Kern
John A. Harvey	New York	Vallejo	40	Lawyer	Republican	Solano
Samuel G. Hilborn	Mass.	Vallejo	43	Lawyer/Real Est.*	Rep.	Solano
James H. Keyes	Connecticut	Nicolaus	47	Farmer	Republican	Yuba/Sutter
Hiram Mills	New York	Martinez	48	Lawyer/Farmer	Republican	Contra Costa
Charles F. Reed	Mass.	Knights Landing	52	Farmer/Eng.*	Republican	Solano/Yolo
John M. Rhodes	Ohio	Woodland	62	Farmer/Miller	Republican	Yolo
Horace C. Rolfe	(the east)	San Bernadino	33	Lawyer*	Republican	San Bern/San D.
Jehu Berry	Ohio	Yreka	52	Lawyer*	Democrat	Siskiyou/Modoc
Joseph C. Brown	Kentucky	Tulare Co.	57	Educator/Farmer*	Democrat	Tulare
James B. Garvey	Penn.	San Andreas	35	Educator/Dpty Shrf	Democrat	Calaveras
Tyler D. Heiskell	Virginia	Oak Dale	55	Farmer*	Democrat	Stanislaus
Samuel A. Holmes	N. Carolina	Borden	48	Farmer	Democrat	Fresno
Volney E. Howard	Maine	San Gabriel	69	Lawyer*	Democrat	Los Angeles

Randolph S. Swing	Ohio	San Bernadino	33	Lawyer	Democrat	San Bernadino
Ferdinand O. Townsend	New York	Ukiah	33	Farmer	Democrat	Mendocino
John Walker	N. Carolina	Sonora	53	Physician	Democrat	Tuolumne
Henry C. Wilson	Kentucky	Tehama City	51	Farmer	Democrat	Tehama
Edmund Nason	New Hampshire	San Felipe	53	Farmer	Independent	San Benito
Alonzo E. Noel	Tennessee	Lakeport	46	Lawyer	Independent	Lake

(both Nason and Noel were formerly Republicans)

\*Had previously served in the legislature or judicial system of California, another state, or at the federal level.

with the balance of the file. There are just two propositions—schedule and State boundary. I hope that the motion will not prevail.

MR. HAGER. Mr. President: We have not got through the file. We have to go through it before we commence at the top again. The rule is to put engrossed bills at the top of the file, but we must go through the calendar before we get back to the top. That is the ordinary rule.

MR. McCALLUM. The rule says that they shall be taken up in order. The Chair can decide it as a point of order. My point of order is, that that which is at the head of the file comes first in order.

THE PRESIDENT. The Convention has unanimously dispensed with that order.

MR. McCALLUM. I object to that any farther.

THE PRESIDENT. The Chair decides that the point of order is not well taken.

MR. McCALLUM. I will submit to the ruling of the Chair, in order that the gentleman may see the effect of it.

#### SCHEDULE.

THE PRESIDENT. The Convention will proceed to the consideration of the report of the Committee on Schedule. The Secretary will read the amendments of the Committee of the Whole.

THE SECRETARY read all the amendments proposed by the Committee of the Whole, and then the amendment to section two, as follows:

#### INSTRUMENTS.

"Sec. 2. That all recognizances, obligations, and all other instruments entered into or executed before the adoption of this Constitution to this State, or to any subdivision thereof, or any municipality therein, and all fines, taxes, penalties, and forfeitures due or owing to this State, or any subdivision or municipality, and all writs, prosecutions, actions, and causes of action, except as herein otherwise provided, shall continue and remain unaffected by the adoption of this Constitution. All indictments or informations which shall have been found, or may hereafter be found, for any crime or offense committed before this Constitution takes effect, may be proceeded upon as if no change had taken place, except as otherwise provided in this Constitution."

Concurred in.

THE PRESIDENT. The Secretary will read the amendment to section four.

#### CIRCULATION OF THE CONSTITUTION.

THE SECRETARY read:

"Sec. 4. The Superintendent of Printing of the State of California shall, at least thirty days before the first Wednesday in May, eighteen hundred and seventy-nine, on such terms as may be reasonable, select and contract with one newspaper proprietor in each county in this State in which a newspaper is published, for the publication and issuance, once a week for two successive weeks next before said election, in their respective papers as a supplement thereto, the printed copies of this Constitution, as hereinafter provided. The circulation of such papers shall be taken into consideration in making such contracts and selection, and the papers so selected shall issue a number of such supplements equal to the circulation of such papers in this State. In counties containing property of an assessable valuation of ten million dollars or over, not more than three such papers may be so selected. The Superintendent of Printing shall cause to be printed and delivered to the newspapers so selected, in due time for publication thereof, a number of such supplements equal to twice the State circulation of such papers. The Governor shall issue his proclamation, giving notice of the election for the adoption or rejection of this Constitution, at least thirty days before the said first Wednesday of May, eighteen hundred and seventy-nine; and the Boards of Supervisors of the several counties shall cause said proclamation to be made public in their respective counties, and general notice of said election to be given at least fifteen days next before said election."

MR. WEBSTER. Mr. President: I offer an amendment.

THE SECRETARY read:

"Strike out all down to and including the word 'papers,' where it occurs in the fifteenth line, and insert the following: 'The Superintendent of Printing of the State of California shall, at least thirty days before the first Wednesday in May, A. D. eighteen hundred and seventy-nine, cause to be printed at the State Printing Office, in pamphlet form, simply stitched, as many copies of this Constitution as there are registered voters in this State, and mail one copy thereof to the Post Office address of each registered voter; provided, any copies not called for ten days after reaching their delivery office, shall be subject to general distribution by the several Postmasters of the State.'"

#### REMARKS OF MR. WEBSTER.

MR. WEBSTER. Mr. President: It occurs to me, sir, that the plan as adopted by the Committee of the Whole is unsatisfactory. I think, sir, under that plan, under the most favorable circumstances, not more than one half of the qualified voters of this State will receive a copy of this Constitution, while other voters of the State would receive from one to ten, owing to the number of papers that they take through which this Constitution was sent out. Now, sir, the object of this matter is that the greatest number of electors of this State should be informed in regard to the work which we have been doing here. Another point is the cost of this publishing and sending out. I took the trouble to go to the State Printing Office and get a statement from the State Printer in regard to the cost of this work, and I find that the supplements will cost more, or as much at least, as the pamphlets. Now, the plan adopted by the Committee of the Whole provides that the State Printer shall select and contract with a certain number of papers to circulate supplements. Now, sir, we will take three papers which, under this plan, must be selected in San Francisco. The average circulation of these three papers would not be less than twenty thousand each. The Call claims

thirty-five thousand. This would make sixty thousand circulation for San Francisco. Take the average of the other sixty-three papers in the State which are to be selected to be one thousand circulation each, including Alameda and Sacramento, and it would make sixty-three thousand additional circulation. Now there would be a sufficient number of supplements furnished to equal twice the State circulation of such papers, which would make the aggregate number to be supplied, at the lowest possible, of two hundred and forty-six thousand supplements. These supplements, according to the estimates of the State Printer will cost eight thousand five hundred and eighty-three dollars. For sending them out through the several papers, there has been different estimates as to what these papers will charge. It is claimed that some of them will do it gratuitously, but the probability is that the rate could not be less than thirty dollars for each; therefore the cost of such circulation would be one thousand nine hundred and eighty dollars, making an aggregate cost of ten thousand five hundred and sixty-three dollars. Now, sir, according to the estimate of the State Printer, for one hundred and fifty thousand copies of this Constitution in pamphlet form, stitched, we have an aggregate cost of seven thousand eight hundred and forty-eight dollars; for mailing, etc., one thousand dollars, making the aggregate eight thousand eight hundred and forty-eight dollars, as against ten thousand five hundred and sixty-three dollars for the supplements—a difference in favor of the pamphlets of one thousand seven hundred and fifteen dollars. The postage on the supplements will be at least equal to the postage on the pamphlets; so that it occurs to me, sir, that it will be much more expeditious and much more satisfactory to have this in pamphlet form than in supplement form, especially when it will cost no more, admitting that the number on the Great Registers of the State equals two hundred thousand. The largest vote polled in this State, which was in eighteen hundred and seventy-six, was one hundred thousand and fifty-five. The vote previous to that was one hundred thousand and twenty-two. But admitting that there are fifty thousand of registered voters in excess of the actual voters, and we have a cost of the pamphlets for two hundred thousand, not greater than the cost of two hundred and forty-six thousand supplements. The trouble with the supplements is that they will not reach more than half the registered voters in the State. Under the plan adopted by the Committee of the Whole, the State Printer has got to enter into negotiations for the purpose of determining what these papers will charge. That will probably consume a month of time. I learn from the State Printer that to print one hundred and fifty thousand pamphlets will take fifteen days, running day and night; and that it will take no additional time to send them out through the mail, because this can be done at the same time the printing is going on. If you print two hundred and forty thousand supplements it will take additional time. Besides, the supplement form would not be convenient to handle and study. It would be torn up a dozen times before it could be completed. If it is in pamphlet form, if the Constitution should be adopted, which we have reason to believe it will be, every qualified voter in the State will have a Constitution in his house, which is subject to his inspection. I think it is not necessary to say anything more upon this subject.

MR. SHAFER. Mr. President: How is it possible for the State Printer here to know the post office address of every voter in the State? I suppose there is a penalty for opening a package addressed to any person, so that they could not be distributed by postmasters.

MR. WEBSTER. I do not know about the penalty for opening pamphlets, but so far as learning the address of voters is concerned there would be little trouble. The great register gives the precincts, and there are post offices in most of the precincts or townships.

MR. SHAFER. I do not myself recollect whether there is a penalty affixed to the opening of pamphlets directed to others, but every one will recollect that there are severe penalties for opening letters.

#### REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. President: I earnestly hope that the amendment of the gentleman from Alameda will be adopted. It is necessary, in fact it is indispensable, that we should advertise the Constitution that we are about to adopt here and place it before the people. The mode presented by the committee is to have supplements printed and have them sent out under contracts with newspaper publishers. Now I submit that this plan is entirely, wholly, and utterly inadequate. There is not only a majority, Mr. President, but there is a vast majority of the voters of California, who do not subscribe for any newspaper. They might see a copy of the Constitution or they might not. The proposition of the gentleman from Alameda is to have it printed in pamphlet form and mailed to every voter in the State. The cost will be little more, if any, and it is the most thorough means of getting the Constitution before the people. It would be worth the money it cost the people of California, because it would be bringing before them a matter that is of vast consequence to them and to the State. It would induce them to take an interest in the politics of the country. It would induce them to inform themselves in regard to the fundamental law of the land, and even if the Constitution should be rejected, it would be worth the money it cost. It is a patent fact that the average voter does not take that interest in public concerns that he should do; that he is not as well informed as he should be in order to discharge wisely the great functions of the elective franchise. Now I can conceive of no method that would be so well calculated to induce the average voter to inform himself as this proposition of sending the Constitution in pamphlet form to every voter in the State. I hope that this amendment will be adopted.

MR. CAMPBELL. Mr. President: So far as the suggestion made by the gentleman from Marin is concerned, it will be observed by reference to the Act of Congress on that subject, that the objection has no force. This clearly would not come, in my judgment, within the meaning of that Act. But if it could, by any possibly strained construction, it would be very easy to indorse in print upon the wrapper: "If not called for

within ten days, deliver to any person applying for it." That would obviate every possible objection that might remain.

The amendment was adopted.

The amendment of the committee, as amended, was concurred in.

#### POLL BOOKS.

**THE PRESIDENT.** The Secretary will read the amendment of section six.

**THE SECRETARY read:**

"Sec. 6. The Clerks of the several counties in the State shall, at least five days before said election, cause to be delivered to the Inspectors of Elections, at each election precinct or polling place in their respective counties, suitable poll books, forms of return, and an equal number of the aforesaid ballots, which number, in the aggregate, must be ten times greater than the number of voters in the said election precincts or polling places. The returns of the number of votes cast at the presidential election in the year eighteen hundred and seventy-six shall serve as a basis of calculation for this and the preceding section; provided, that the duties in this and the preceding section imposed upon the Clerk of the respective counties shall, in the City and County of San Francisco, be performed by the Registrar of Voters for said city and county."

**MR. BLACKMER.** Mr. President: I move to amend section six as amended in Committee of the Whole, by inserting before the words "poll books," in line four, the word "registers." It is a fact that, in many counties in this State, the registers were all used up at the last election for delegates to this Convention, and unless we make it obligatory upon the Clerks to furnish the Election Board or the Inspectors with registers, there will be a probability of some of the counties being without them at that time and unable to furnish them. I think the amendment will commend itself to the judgment of a majority of this Convention.

The amendment was adopted.

The amendment of the committee as amended was adopted.

#### CANVASS OF RETURNS.

**THE PRESIDENT.** The Secretary will read the amendment to section eight.

**THE SECRETARY read:**

"Sec. 8. The officers of the several counties of this State, whose duty it is, under the law, to receive and canvass the returns from the several precincts of their respective counties, as well as of the City and County of San Francisco, shall meet at the usual places of meeting for such purposes on the first Monday after said election. If, at the time of meeting, the returns from each precinct in the county in which the polls were opened have been received, the Board must then and there proceed to canvass the returns; but if all the returns have not been received, the canvass must be postponed from day to day until all the returns are received, or until six postponements have been had, when they shall proceed to make out returns of the votes cast for and against the new Constitution; and the proceedings of said Boards shall be the same as those prescribed for like Boards in the case of an election for Governor. Upon the completion of said canvass and returns, the said Board shall immediately certify the same, in the usual form, to the Governor of the State of California."

Concurred in.

#### FUTURE ELECTIONS.

**THE PRESIDENT.** The Secretary will read the amendment to section ten.

**THE SECRETARY read:**

"Sec. 10. In order that future elections in this State shall conform to the requirements of this Constitution, the term of all officers elected at the first election under the same shall be, respectively, one year shorter than the terms as in this Constitution provided; and the successors of all such officers shall be elected at the last election before the expiration of the terms as in this section provided. The first officers chosen after the adoption of this Constitution shall be elected at the time and in the manner now provided by law."

**MR. MORELAND.** Mr. President: I offer an amendment.

**THE SECRETARY read:**

"Add to section: 'Judicial officers and the Superintendent of Public Instruction shall be elected at the time and in the manner that State officers are elected.'"

**MR. MORELAND.** Mr. President: That amendment is offered for the purpose of getting around the difficulty of having a special judicial election. It would bring the election at the same time that the other State officers are elected.

The amendment was adopted.

**MR. HERRINGTON.** Mr. President: I offer an amendment.

**THE SECRETARY read:**

"Amend section ten as follows: Add at end of section, after the word 'laws,' the following: 'and the first term of all county officers so elected shall commence at the close of the term, now fixed by statute, of their respective predecessors in office.'"

**MR. HERRINGTON.** Mr. President: The terms of many of the county officers in this State terminate on the fourth of March. As we have provided in the Constitution, the officers to be elected will enter upon their duties in January. It would be an injustice to turn all these gentlemen out of office for even the period of a month and a half or two months, as would be the case in this instance, if these officers enter upon the discharge of their duties in January. Under this provision that injustice may be avoided, and I think it is the duty of this Convention to do so, where it can be done without inconvenience and without lumbering up this instrument.

**MR. ROLFE.** Mr. President: By the provisions of this Constitution we turn out of office several Supreme Judges, twenty State Senators, and numerous other State officers and all the Judges of the District and

County Courts. Now, I do not know as it is any more unjust to turn out of office a County Clerk than it is a County Judge, District Judge, Supreme Judge, or a State Senator, or any other officer. I took occasion here, at a former time, to express my objections to turning men out of office, legislating them into office, any more than we could possibly help. The Convention has adopted another rule, and I say, in the language of my friend from San Francisco, what is sauce for the goose is sauce for the gander.

**MR. LARKIN.** That amendment would extend the term of office.

**MR. ESTEE.** You will mix the thing all up.

**MR. HERRINGTON.** They won't go out of office until the fourth of March.

**MR. HAGER.** This amendment will not do in the shape it is in. It would carry over the County Judges, too. If it is expedient to extend the term of any officer, like the Assessor, or Tax Collector, let them be named.

The amendment was rejected.

The amendment of the Committee of the Whole was concurred in.

#### TO TAKE EFFECT.

**THE PRESIDENT.** The Secretary will read the amendment to section eleven.

**THE SECRETARY read:**

"Sec. 11. This Constitution shall take effect and be in force on and after the fourth day of July, eighteen hundred and seventy-nine, at twelve o'clock meridian."

**MR. BEERSTECHEER.** Mr. President: I hope that an opportunity will be given to amend this article. As the matter now stands, if I understand the reading correctly, the provisions relate merely to officers elected under this Constitution.

**THE PRESIDENT.** The section is not before the Convention.

**MR. BEERSTECHEER.** I will come around to it. Now, sir, section eleven says that this Constitution shall take effect and be in force on and after the fourth of July, eighteen hundred and seventy-nine. But as far as the election of officers is concerned, this article does not relate to county officers at all. It relates merely to State officers. You fix the terms of county officers, and then you have got to have your county and city elections long after the Constitution went into effect.

**MR. ESTEE.** That is so. What of it?

**MR. BEERSTECHEER.** Well, we want them all at the same time.

**MR. MORELAND.** Mr. President: I send up an amendment.

**THE SECRETARY read:**

"Add to section: 'so far as it relates to the election of the officers named in this Constitution, and those who have been heretofore provided for, and not prohibited or superseded by this Constitution; but as to all other matters and things, the same shall take effect and be in force on the first day of February, eighteen hundred and eighty, at twelve o'clock meridian.'"

#### RECESS.

The hour having arrived, the Convention took a recess till two o'clock P. M.

#### AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President Hoge in the chair.

Roll called, and quorum present.

#### SCHEDULE CONTINUED.

**THE PRESIDENT.** The question is on the amendment of the gentleman from Sonoma, Mr. Moreland.

**MR. ESTEE.** Mr. President: I offer an amendment to take the place of the amendment of the gentleman, with his consent.

**THE SECRETARY read:**

"Add at the end of section: 'so far as the same relates to the election of all officers heretofore provided by laws, and who are not named or provided for in this Constitution; and also such officers who are named in this Constitution, the commencement of the terms of officers, and the meeting of the Legislature. In all other respects, and for all other purposes, this Constitution shall take effect on the first day of January, eighteen hundred and eighty, at twelve o'clock meridian.'"

#### REMARKS OF MR. ESTEE.

**MR. ESTEE.** Mr. President: This amendment changes it until the first day of January, eighteen hundred and eighty. That is the shortest period that it is possible to fix for the Constitution to go into effect for all purposes. That is the day of the meeting of the Legislature. The reason for that is this: that we have made changes in the system of taxation and the judiciary system. It will be impossible to make the new Constitution work harmoniously until after the Legislature meets. Something of this kind must be adopted.

**THE PRESIDENT.** The question is upon adopting the amendment to the amendment offered by the gentleman from San Francisco, Mr. Estee.

Adopted.

**MR. VAN DYKE.** I wish to offer a new section.

**THE PRESIDENT.** Not in order at present. The question is upon concurring with the Committee of the Whole in their amendment to section eleven as amended.

Concurred in.

**MR. VAN DYKE.** Mr. President: I now offer a new section.

#### A CODE COMMISSION.

**THE SECRETARY read:**

"Amend by adding the following section: 'Sec. 12. Immediately after the adoption of this Constitution, the Governor shall appoint three persons, learned in the law, as Commissioners, whose duty it shall be to carefully examine the various Codes and general laws of this State,



be published in at least one newspaper in each judicial district, if one be published therein, throughout the State, for three months next preceding the election at which it is submitted to the people.

## ARTICLE IX.

## EDUCATION.

SECTION 1. A Superintendent of Public Instruction shall, at the special election for judicial officers, to be held in the year eighteen hundred and sixty-three, and every four years thereafter, at such special elections, be elected by the qualified voters of the State, and shall enter upon the duties of his office on the first day of December next after his election.—[Amended, 1862.]

SEC. 2. The Legislature shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement. The proceeds of all lands that may be granted by the United States to this State for the support of schools which may be sold or disposed of, and the five hundred thousand acres of land granted to the new States, under an Act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A. D. one thousand eight hundred and forty-one, and all estates of deceased persons who may have died without leaving a will or heir, and also such per cent. as may be granted by Congress on the sale of lands in this State, shall be and remain a perpetual fund, the interest of which, together with all the rents of the unsold lands, and such other means as the Legislature may provide, shall be inviolably appropriated to the support of common schools throughout the State.

SEC. 3. The Legislature shall provide for a system of common schools, by which a school shall be kept up and supported in each district at least three months in every year; and any school district neglecting to keep up and support such a school may be deprived of its proportion of the interest of the public fund during such neglect.

SEC. 4. The Legislature shall take measures for the protection, improvement, or other disposition of such lands as have been or may hereafter be reserved or granted by the United States, or any person or persons, to this State for the use of a University; and the funds accruing from the rents or sale of such lands, or from any other source, for the purpose aforesaid, shall be and remain a permanent fund, the interest of which shall be applied to the support of said University, with such branches as the public convenience may demand, for the promotion of literature, the arts and sciences, as may be authorized by the terms of such grant. And it shall be the duty of the Legislature, as soon as may be, to provide effectual means for the improvement and permanent security of the funds of said University.

## ARTICLE X.

## MODE OF AMENDING AND REVISING THE CONSTITUTION.

SECTION 1. Any amendment or amendments to this Constitution may be proposed in the Senate or Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two Houses, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and referred to the Legislature then next to be chosen, and shall be published for three months next preceding the time of making such choice. And if in the Legislature next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each House, then it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people, in such manner and at such time as the Legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments, by a majority of the electors qualified to vote for members of the Legislature voting thereon, such amendment or amendments shall become part of the Constitution.

SEC. 2. And if, at any time, two-thirds of the Senate and Assembly shall think it necessary to revise and change this entire Constitution, they shall recommend to the electors, at the next election for members of the Legislature, to vote for or against a convention; and if it shall appear that a majority of the electors voting at such election have voted in favor of calling a convention, the Legislature shall, at its next session, provide by law for calling a convention, to be holden within six months after the passage of such law; and such convention shall consist of a number of members not less than that of both branches of the Legislature. The Constitution that may have been agreed upon and adopted by such convention shall be submitted to the people at a special election, to be provided for by law, for their ratification or rejection: each voter shall express his opinion by depositing in the ballot-box a ticket, whereon shall be written or printed the words "For the New Constitution," or "Against the New Constitution." The returns of such election shall, in such manner as the convention shall direct, be certified to the Executive of the State, who shall call to his assistance the Controller, Treasurer, and Secretary of State, and compare the votes so certified to him. If, by such examination, it be ascertained that a majority of the whole number of votes cast at such election be in favor of such new Constitution, the Executive of this State shall, by his proclamation, declare such new Constitution to be the Constitution of the State of California.—[Amended November 4, 1856.]

Voucher or  
State Treasurer.

the office of the Treasurer, and shall be to him a voucher for any payments made by him under the provisions of this Act; and in the event that such non-resident foreigner or foreigners do not appear or claim said estate or proceeds, and produce said evidence within said extended term of five years, then said estate or proceeds shall be and become the property of the State, and shall be by the Treasurer of State placed to the credit of the School Fund.

When not  
claimed, escheats  
to State.

School Fund.

Repealing  
clause.

SEC. 2. All Acts and parts of Acts conflicting with the provisions of this Act are hereby repealed.

## CHAPTER CXVII.

### AN ACT

#### Agreeing to the Proposed Amendments to the Constitution, and Providing for its Submission to the People.

[Approved April 19, 1856.]

*The People of the State of California,  
represented in Senate and Assembly, do enact as follows :*

Preamble.

SECTION 1. The Legislature of the State of California, at its sixth session, commenced on the first day of January, A. D. one thousand eight hundred and fifty-five, having, by the required constitutional majority proposed the amendment hereinafter set forth, and the same having been referred to the present Legislature, and having been published for three months, next preceding the late general election, as required by the Constitution—now, the Legislature of the State of California at its seventh session, commenced on the seventh day of January, A. D. one thousand eight hundred and fifty-six, does hereby agree to, and adopt, as an amendment to the present Constitution of this State, the following: Section two of Article ten, is amended so as to read as follows:

Amendments to  
Constitution  
agreed to.

Section two of  
Article X.

SECTION 2. And if, at any time, two-thirds of the Senate and Assembly shall think it necessary to revise and change this entire Constitution, they shall recommend to the electors, at the next election for members of the Legislature, to vote for or against a Convention, and if it shall appear that a majority of the electors, voting at such election, have voted in favor of calling a Convention, the Legislature shall, at its next session, provide, by law, for calling a Convention, to be holden within six months after the passage of such law; and such Convention shall consist of a number of members, not less than that of both branches of the Legislature. The Constitution that may have been agreed upon and adopted by such Convention, shall be submitted to the people, at a special election, to be provided for by law, for their ratification or rejection; each voter shall express his opinion by depositing in the ballot-box a ticket, whereon shall be

written or printed, the words "For the new Constitution," or "Against the new Constitution." The returns of such election shall, in such manner as the Convention shall direct, be certified to the Executive of the State, who shall call to his assistance the Controller, Treasurer and Secretary of State, and compare the votes so certified to him. If, by such examination, it be ascertained that a majority of the whole number of votes cast at such election, be in favor of such new Constitution, the Executive of this State shall, by his proclamation, declare such new Constitution to be the Constitution of the State of California.

SEC. 2. The foregoing proposed amendment to the Constitution, shall be submitted to the people, for their approval and ratification, at the next general election; the vote shall be by ballot, either written or printed, and shall be, "For the proposed amendment to the Constitution," or "Against the proposed amendment to the Constitution."

Submitted to people.

Ballots how worded.

SEC. 3. The votes shall be counted, and returns thereof be made, in the same manner, and within the same time, to the Secretary of State, as is provided for the canvass and return of votes for Governor and Lieutenant-Governor. Said returns shall, during the next session, commencing on the first Monday in January, A. D. one thousand eight hundred and fifty-seven, be published by the Speaker of the Assembly, in the presence of both Houses, in the same manner that the vote for Governor is published and declared; and if a majority of the votes cast, concerning the aforesaid amendment, are in favor of the same, then such amendment shall, forthwith upon said publishing, become a part of the Constitution, and the Governor shall make proclamation thereof.

Return and count of votes.

Speaker to declare result.

If adopted, Governor to make proclamation.

## CHAPTER CXVIII.

### AN ACT

#### Concerning the Records of Yuba County.

[Approved April 19th, 1856.]

*The People of the State of California,  
represented in Senate and Assembly, do enact as follows:*

SECTION 1. The County Recorder of Yuba County is hereby authorized and required, as soon as the same can be conveniently done, to transcribe, in such manner and into such books, as are prescribed by section twelve of the Act entitled "An Act concerning County Recorders," passed March twenty-sixth, eighteen hundred and fifty-one, the following Books of Record in his office of Deeds, Mortgages, Powers of Attorney, and other instruments, namely:

County Recorder to transcribe certain books of record.

Responsibility of Assessors.

be responsible in all respects, and shall be liable under the general laws relating to County Assessors, where the same is not qualified by the provisions of this Act; and the said Assessors are hereby clothed with the same authority, in their official capacity, as are County Assessors, to the extent of each particular township.

Payment.

SEC. 18. Each Township Assessor shall receive a per diem. to be fixed by the Board of Supervisors, not exceeding three dollars; *provided*, that the Board of Supervisors may limit the number of days to which each Assessor may be allowed for assessing his township; and, *provided*, further, that such compensation shall not exceed one hundred dollars in any township, each year.

Act applicable.

SEC. 19. The provisions of an Act entitled an Act to provide Revenue for the Support of the Government of this State, approved May seventeenth, eighteen hundred and sixty-one, shall be applicable in all its provisions to the Township Collectors and Assessors, in their respective townships, as in said Act provided for, for County Collectors and Assessors, except wherein said Act conflicts with the provisions of this Act.

Office of County Assessor abolished.

SEC. 20. On and after the first Monday in March, A. D. eighteen hundred and sixty-four, the offices of County Collector and County Assessor, in and for the County of El Dorado, and on and after the first Monday in March, A. D. eighteen hundred and sixty-three, the offices of County Collector and County Assessor, in and for the County of Amador, shall be abolished.

SEC. 21. Constables may be eligible to election for the office of Collector and Assessor in the Counties of El Dorado and Amador.

CHAP. CCCXVII.—*An Act to provide for the submission of the proposed Amendments to the Constitution of the State, as proposed by the Legislature of eighteen hundred and sixty-one, and adopted by the Legislature of eighteen hundred and sixty-two, to the votes of the qualified electors at the next General Election.*

[Approved April 25, 1862.]

*The People of the State of California, represented in Senate and Assembly, do enact as follows :*

Advertisement.

SECTION 1. It shall be the duty of the Governor to advertise the proposed Amendments to the Constitution, as proposed by the Legislature of eighteen hundred and sixty-one, and adopted by the Legislature of eighteen hundred and sixty-two, in the same manner as he is now directed, by law, in the case of proclamations and official notices, for the space of three months next preceding the next general election.

Governor to prescribe form of voting.

SEC. 2. The Amendments to each article of the Constitution shall be voted upon separately from the others, in the manner and form prescribed by the Governor, which manner and form shall be printed, with the proposed amendments, and for the

same length of time that they shall be advertised, as provided in section one of this Act.

SEC. 3. The votes cast for and against said proposed amendments shall be canvassed in the same manner as now provided by law in the election of State officers, other than Governor and Lieutenant-Governor, and if it shall appear that a majority of all the votes cast upon the question of such amendment or amendments, at said next general election, are in favor of such amendment or amendments, as a part of the Constitution of the State, then the Governor shall issue his proclamation, declaring such fact, and the said amendment or amendments thus adopted shall become and be a part of the Constitution of this State.

SEC. 4. This Act shall take effect and be in force from and after its passage.

CHAP. CCCXVIII.—*An Act to appropriate Money to the Ladies' Relief Society, and other Benevolent Societies.*

[Approved April 25, 1862.]

*The People of the State of California, represented in Senate and Assembly, do enact as follows:*

SECTION 1. Nine thousand dollars are hereby appropriated, out of any money in the Treasury not otherwise appropriated, as follows: Three thousand dollars to the San Francisco Ladies' Relief Society; three thousand dollars to the San Francisco Samaritan Society; and three thousand dollars to the Howard Benevolent Society, of Sacramento. And the Controller of State is hereby directed to draw his warrant for the aforesaid sums, upon the Treasurer, who is hereby authorized to pay the same.

CHAP. CCCXIX.—*An Act to grant the Right to construct a Turnpike Road, between the Town of Grass Valley, in the County of Nevada, and a point on Bear River, at or near McCourtney's Crossing.*

[Approved April 25, 1862.]

*The People of the State of California, represented in Senate and Assembly, do enact as follows:*

SECTION 1. J. R. Rush, together with such associates as he may admit, shall take, have, and enjoy, all the rights, privileges, right of way, franchises, and immunities, hereinafter mentioned, upon condition that he and his associates shall incorporate themselves, under the general laws of the State regulating corporations and providing for the incorporation of turnpike roads, and shall adopt the name of "The Grass Valley and Bear River Turnpike Road Company," and shall abide by and fulfil the further conditions hereinafter mentioned.

**Completion.** SEC. 3. Said company shall within one year from the passage of this Act commence the construction of said road, and within three years build and complete the same, otherwise the rights herein granted shall be forfeited, and this Act become null and void.

**Tolls.** SEC. 4. Said company, upon the construction and completion of said road, are hereby authorized and empowered to charge and collect such rates of toll as the Supervisors of Humboldt County shall annually establish; *provided*, that said Board of Supervisors shall not have the power to reduce the rates of toll so as to yield less than twelve per cent per annum on the capital stock of said company; and *provided*, further, that the capital stock shall not exceed fifty thousand dollars.

**Right of purchase reserved.**

SEC. 5. The rights and privileges are hereby granted upon the express condition that the County of Humboldt may through its Board of Supervisors have the right of purchasing said road at the expiration of eight years after its completion, and of being substituted in all the rights and privileges herein granted said company, by paying the sum actually expended in the construction of said road, together with interest at the rate of ten per cent per annum thereon; and for the purpose of ascertaining said cost of construction, the Board of Supervisors of said county shall appoint one referee, the company shall appoint one referee, and the two referees thus appointed shall appoint a third referee, and said referees shall report the cost of said road upon oath; *provided*, the said Board of Supervisors shall not have the right to purchase the said road except for the use and benefit of the county.

SEC. 6. This Act shall take effect and be in force from and after its passage.

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CHAP CCLXV.—*An Act to provide for the registration of the citizens of this State, and for the enrolment in the several election districts of all the legal voters thereof, and for the prevention and punishment of frauds affecting the elective franchise.*

[Approved March 19, 1866.]

*The People of the State of California, represented in Senate and Assembly, do enact as follows :*

**Books to be provided.**

SECTION 1. Each of the County Clerks of the several counties of this State, including the City and County of San Francisco, shall, immediately after the passage of this Act, be provided with a suitable book or books, strongly bound, with the necessary ruled columns, and appropriate headings and labels, for the registration, as hereinafter provided, of all the citizens of this State resident in their respective counties, who are, or may be within six months, by reason of continuous residence, legal voters thereof, which book shall be designated, entitled, and known in law as the "Great Register."

duction of a naturalization certificate in due form under the seal of the proper Court, that he has been admitted a citizen of the United States within the period of thirty-five days then next preceding, and shall also prove his residence in the district in the same manner as is required and specified in the preceding subdivision of this section.

SEC. 27. Prior to the first day of July, eighteen hundred and sixty-seven, registration in the Great Register shall not be an indispensable prerequisite to enrolment on the poll lists, but during said interval, persons duly qualified, whether native or naturalized citizens, but not registered as aforesaid, may, nevertheless, be enrolled on the poll lists on producing to the proper Board of Registration the same proof of citizenship as would be required to entitle them to registration in the Great Register, and in making up and completing said poll lists all other provisions of this Act shall be strictly observed, as well before as after said date; *provided*, that registration in the Great Register aforesaid, when existing, as well before as after the said first day of July, eighteen hundred and sixty-seven, shall, until the contrary is proved, be received by the Board of Registration as sufficient evidence that the person registered was, at the time of registration, a citizen of the United States, domiciled in the county. Enrolment  
on Poll lists.

SEC. 28. After the first day of July, eighteen hundred and sixty-seven, registration in the Great Register being the only authentic record of domiciliation and citizenship, made upon the prerequisite and proper evidence, presented at the time and in the manner prescribed by law, none but those whose names stand registered and uncancelled upon the Great Register of the county, shall be enrolled upon the poll lists in such county, except only persons naturalized, becoming of age, or coming into the county to reside within thirty-five days next preceding the day of the election for which the poll lists are made up. In all cases, both before and after the said first day of July, eighteen hundred and sixty-seven, persons not registered in the Great Register of the county where they may apply to be enrolled on the poll lists or to vote, shall be required to prove their residence in the proper election district in the same manner as is mentioned and specified in the first subdivision of section twenty-six, and with the same particularity; and if they fall within the first or third exception contained in the first clause of this section, they shall, after the said first day of July, A. D. eighteen hundred and sixty-seven, also be required to produce to the Board of Registration a certified abstract of registration in some other county, given in pursuance of section two of this Act; but if they fall within the second exception contained in said first clause, and claim citizenship by virtue of the naturalization of themselves or of their fathers, they shall be required to produce the certificate of such naturalization in due form as the only evidence thereof. Same.

SEC. 29. No person shall be allowed to vote except at the polls held in the election district where he resides; nor unless his name is enrolled on the poll list where he offers his vote in such district, nor for local or representative officers, unless he Voters, and  
place of  
voting.

# CONSTITUTION OF THE STATE OF CALIFORNIA.

ADOPTED BY THE CONVENTION, OCTOBER TENTH, EIGHTEEN HUNDRED AND FORTY-NINE; **RATIFIED BY THE PEOPLE**, NOVEMBER THIRTEENTH, EIGHTEEN HUNDRED AND FORTY-NINE; PROCLAIMED DECEMBER TWENTIETH, EIGHTEEN HUNDRED AND FORTY-NINE; AND AMENDED EIGHTEEN HUNDRED AND SIXTY-TWO.

We, The People of California, grateful to Almighty God for our freedom, in order to secure its blessings, do establish this Constitution.

## ARTICLE I.

### DECLARATION OF RIGHTS.

SECTION 1. All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety and happiness.

SEC. 2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people; and they have the right to alter or reform the same, whenever the public good may require it.

SEC. 3. The right of trial by jury shall be secured to all, and remain inviolate forever; but a jury trial may be waived by the parties in all civil cases, in the manner to be prescribed by law.

SEC. 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

SEC. 5. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require its suspension.

SEC. 6. Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel or unusual punishments be inflicted, nor shall witnesses be unreasonably detained.

SEC. 7. All persons shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident or the presumption great.

SEC. 8. No person shall be held to answer for a capital or otherwise infamous crime (except in cases of impeachment, and in cases of militia when in actual service, and the land and naval forces in time of war, or which this State may keep with the consent of Congress in time of peace, and in cases of petit larceny, under the regulation of the Legislature) unless on presentment or indictment of a Grand Jury; and in any trial in any Court whatever, the party accused shall be allowed to appear and defend in person and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

SEC. 9. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions on indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

SEC. 10. The people shall have the right freely to assemble together to consult for the common good, to instruct their representatives, and to petition the Legislature for redress of grievances.



# CONSTITUTION

OF THE

## STATE OF CALIFORNIA.

ADOPTED IN CONVENTION, AT SACRAMENTO, MARCH THIRD, EIGHTEEN HUNDRED AND SEVENTY-NINE; RATIFIED BY A VOTE OF THE PEOPLE ON WEDNESDAY, MAY SEVENTH, EIGHTEEN HUNDRED AND SEVENTY-NINE.

### PREAMBLE AND DECLARATION OF RIGHTS.

#### PREAMBLE.

We, the People of the State of California, grateful to Almighty God for our freedom, in order to secure and perpetuate its blessings, do establish this Constitution.

#### ARTICLE I.

##### DECLARATION OF RIGHTS.

SECTION 1. All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety and happiness.

SEC. 2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right to alter or reform the same whenever the public good may require it.

SEC. 3. The State of California is an inseparable part of the American Union, and the Constitution of the United States is the supreme law of the land.

SEC. 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be guaranteed in this State; and no person shall be rendered incompetent to be a witness or juror on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

SEC. 5. The privilege of the writ of habeas corpus shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require its suspension.

SEC. 6. All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed; nor shall cruel or unusual punishments be inflicted. Witnesses shall not be unreasonably detained, nor confined in any room where criminals are actually imprisoned.

SEC. 7. The right of trial by jury shall be secured to all, and remain inviolate; but in civil actions three fourths of the jury may render a verdict. A trial by jury may be waived in all criminal cases, not amounting to felony, by the consent of both parties, expressed in open Court, and in civil actions by the consent of the parties, signified in such manner as may be prescribed by law. In civil actions, and cases of misdemeanor, the jury may consist of twelve, or of any number less than twelve upon which the parties may agree in open Court.

SEC. 8. Offenses heretofore required to be prosecuted by indictment shall be prosecuted by information, after examination and commitment by a Magistrate, or by indictment, with or without such examination and commitment, as may be prescribed by law. A grand jury shall be drawn and summoned at least once a year in each county.

SEC. 9. Every citizen may freely speak, write, and publish his sentiments, on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as

Act for the Admission of California Into the Union

Volume 9  
Statutes at Large  
Page 452

Whereas, **the people of California have presented a constitution** and asked admission into the Union, which constitution was submitted to Congress by the President of the United States, by message date February thirteenth, eighteen hundred and fifty, and which, **on due examination,** is found to be republican in its form of government:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled,* That the State of California shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever.

Sec. 2. *And be it further enacted,* That until the representatives in Congress shall be apportioned according to an actual enumeration of the inhabitants of the United States, the State of California shall be entitled to two representatives in Congress.

Sec. 3. *And be it further enacted,* That the said State of California is admitted into the Union upon the express condition that the people of said State, through their legislature or otherwise, shall never interfere with the primary disposal of the public lands within its limits, and shall pass no law and do no act whereby the title of the United States to, and right to dispose of, the same shall be impaired or questioned; and that they shall never lay any tax or assessment of any description whatsoever upon the public domain of the United States, and in no case shall non-resident proprietors, who are citizens of the United States, be taxed higher than residents; and that all the navigable waters within the said State shall be common highways, and forever free, as well to the inhabitants of said State as to the citizens of the United States, without any tax, impost, or duty therefor. *Provided,* That nothing herein contained shall be construed as recognizing or rejecting the propositions tendered by the people of California as articles of compact in the ordinance adopted by the convention which formed the constitution of that State.

# **The *TRUTH* About the 14<sup>th</sup> AMENDMENT**

**or**

## **Who Are YOU, REALLY?**

This chapter is about the best kept secret in America. The government knows about the information in this chapter, but they will not admit it.

As we learned in chapter 1, every individual **born** in one of the 50 sovereign states was born an individual American sovereign, **with inalienable rights**. Those inalienable rights included life, liberty and the pursuit of happiness. The pursuit of happiness included the right to engage in a common occupation or business without a license, to travel freely from one place to another without permission from the state (driver's license), the inalienable right to acquire and possess property without paying property tax, etc.

Before the Declaration of Independence, there were no Americans Citizens, because there was no America, as a country. The people were subjects of the British Crown. After the Declaration, each state was its own sovereign state, and the citizens were state Citizens. State Citizens had inalienable rights secured by each state's constitution. But I have a problem with the word "citizen". Can you be a citizen and a sovereign at the same time? Is a king a citizen of his own country? Or is he a sovereign and not a citizen? I believe that a 'citizen' is the same as a 'subject', and a subject always has a superior power over him. So, you are either a sovereign, OR a citizen/subject. You cannot be both at the same time.

This is confirmed by an early Supreme Court decision.

**Chisholm v. Georgia 2 Dall (U.S.) 419, 456-480 (1793)** (p.470) *All the country now possessed by the United States was then a part of the dominions appertaining to the crown of Great Britain. Every acre of land in this country was then held mediately or immediately from that crown. All the people of this country were then, subjects of the King of Great Britain, and owed allegiance to him; . . . From the crown of Great Britain, the sovereignty of their country passed to the people of it; . . . Here we see the people acting as sovereigns of the whole country; . . .* (p.471) *At the Revolution, the sovereignty devolved on the people; and they are truly the sovereigns of the country, but they are sovereigns without subjects and have none to govern but themselves; the citizens of America are equal as fellow citizens, and as joint tenants in the sovereignty.*

(p.458) *But in the case of the King, the sovereignty had a double operation. While it vested him with jurisdiction over others, it excluded all others from jurisdiction over him. The law, says Sir William Blackstone, ascribes to the King the attribute of sovereignty: he is sovereign and independent within his own dominions; and owes no kind of subjection to any other potentate upon earth. Hence it is, that no suit or action can be brought against the King, even in civil matters; because no court can have jurisdiction over him: **for all jurisdiction implies superiority of power.** The principle is, that all human law must be prescribed by a superior.* (p.455) *As the State has claimed precedence of the people; so in the same inverted course of things, the Government has often claimed precedence of the State; and to this perversion in the second degree, many of the volumes of confusion concerning sovereignty owe their existence. By a State I mean, a complete body of free persons united together for their common benefit, to enjoy peaceably what is their own, and to do justice to others. It is **an artificial person.** It has its affairs and its interests: It has its rules: It has its rights: And it has its obligations. **It may acquire property distinct from that of its members: It may incur debts***

**to be discharged out of the public stock, not out the private fortunes of individuals.**

**(p. 456) The only reason, I believe, why a free man is bound by human laws, is that he binds himself.** Upon the same principles, upon which he becomes bound by the laws, he becomes amenable to the Courts of Justice, which are formed and authorized by those laws. If one free man, an original sovereign, may do all this, why may not an aggregate of free men, a collection of original sovereigns, do likewise? . . . In one sense, the term sovereignty has for its correlative, subject. In this sense, the term can receive no application; for it has no object in the Constitution of the United States,. Under that Constitution there are citizens, but no subjects.

"ALL jurisdiction implies superiority of power"! So if you are under the jurisdiction of a government, they have the superior power! You are bound by the laws only because you choose to be! When you pledge allegiance to any country, you become a subject of that country, and you waive your sovereignty. But, if you pledge allegiance only to YOUR creator, then you are the superior power, and no human government is over you. After the ratification of the U.S. Constitution, American sovereigns acquired citizenship status, called Citizen of the united States of America. Also known as American Citizen, with a capital "C".

**DeLima v. Bidwell 182 U.S. 179 (1900)** *The Constitution is not a physical substance. It is in the nature of a grant or power, or what would be termed in private law a power of attorney. A real constitution is a grant of rights or powers by a sovereign. The sovereign cannot be limited, for he is the source of all law. Yick Wo v. Hopkins 118 U.S. 370*

In another Supreme Court case they ruled:

**Graves v. Schmidlapp 315 U.S. 657-665 (1941)** *The power to tax is an incident of sovereignty and is coextensive with that to which it is an incident. All **subjects over which the sovereign power of a state extends are objects of taxation.***

Are the American people sovereigns OVER the government? Or are they subjects of the government, UNDER the government's jurisdiction and power?

**Important points.** Sovereign Americans are above the governments they delegated management powers to. Governments are artificial persons, legal fictions. Governments, as artificial persons, can own property and incur debts on their own, separate from the sovereign people. The personal fortunes of the sovereign people are not to be used to discharge the government's debts. Governments have complete power over their OWN property and **subjects**. All jurisdiction implies superiority of power. **All subjects UNDER** the jurisdictional power of a government, are objects of taxation. As the Supreme Court stated above, a free man is subject to human laws only because he binds himself. You, as one of the joint owners of this country, have agreed to abide by certain laws, that you have agreed to. These laws are designated in the Constitution. **Remember these concepts. They are critical to the understanding of freedom from taxation.**

The Supreme Court of Colorado has ruled:

**Colorado Anti-Discrimination Commission v. Case 380 P.2d 34 (1962)** *Natural rights - inherent rights and liberties are not the creatures of constitutional provisions either at the national or state level. The inherent human freedoms with which mankind is endowed are "antecedent to all earthly governments; rights that cannot be repealed or restrained by human laws; rights derived from the Great Legislator of the Universe."*

You become subject to the human laws because you bind yourself to them as an artificial person. You waive your sovereign status, to become a subject. How do you do that? By contracting with the government and accepting benefits. **The only way the government will contract with you, is if you waive your inalienable rights and agree to be UNDER their jurisdiction.**

Before the 14th Amendment was ratified in 1868, Americans were called Citizens (with a capital "C") of the United States of America. (American Citizen, or American, for short) If you were born in America, you were born a sovereign with inalienable rights. It was a common understanding among the people. Up until then, slavery was still accepted in America. Slaves were not Citizens, state or national, but were merely considered the personal 'property' of the slave holders. The 13th Amendment was ratified in 1865, just 3 years before the 14th. **The 13th amendment abolished slavery. But that created a new problem.** The newly freed slaves were not citizens of any state or country, because they were just property, and property did not have citizenship. **To solve the problem, the 14th amendment was passed. This amendment created a new class of citizenship.** This new class was legally called: 'United States citizen', (with a small "c"). NOT 'United States of America Citizen', but just 'United States citizen'. Notice that the U.S. citizen is spelled with a lower case 'c'. This is to show a lower class of citizenship. This class of citizen (U.S. citizen) is a privilege granted by the federal government, and not a sovereign inalienable right.

From Black's Law Dictionary 6th Edition:

**Fourteenth Amendment.** *The Fourteenth Amendment of the Constitution of the United States, ratified in 1868, creates or at least recognizes for the first time a citizenship of the United States, as distinct from that of the states;*

The Civil War was fought from 1861-1865. The significance of this will be seen later.

Let's see just what the 14th Amendment really does say.

### **Constitution of the United States of America**

**14th Amendment (1868). Section 1.** *All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any States deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

Notice the wording of this amendment carefully. If they were talking about Citizens of the 50 states, then it would read "*and subject to the jurisdiction(s) thereof*". Jurisdictions would be plural if it applied to more than one entity. But since it applies only to the United States government, singular, is also shows the jurisdiction to be singular. Jurisdiction, not jurisdictions.

Several other things to notice here. This section 1 of the amendment has two parts.

The first part has to do with the citizenship of 'persons', subjects.

The second part has to do with the states being required to protect the privileges and immunities of the United States citizen. We will look at the first part first.

The first part of this amendment says that 'persons' born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the state wherein they reside. We just learned that jurisdiction implies superiority of power, so is a United States citizen superior to the government? NO! The roles are reversed. Notice this does not say they are citizens of the United States 'of America'. Just the 'United States'. Is there a difference? Let's check it out.

First, what is a 'person'? There are legally two kinds of 'persons'. First there is the 'natural person' with inalienable rights. This is a flesh and blood human being, the sovereign individual. Second, there is just the term 'person'. When just the term 'person' is used, and not 'natural person', it means an artificial person, such as a corporation, trust, government, etc. A human being can be both a natural person and an artificial person at the same time. How do you tell the difference? It is as simple as whether you spell your name in all capital letters or not. More on this in a bit. The important thing to remember at this point is that artificial persons are property. **Property in Latin is *res***. Property located in a certain territory, would be its place of *residence*. So property (*res*) belonging to and located in the State of Colorado, would be '*resident*' of the state. Are you a resident of a state or of the United States?

**Important point.** Since a government is an artificial person, according to the Supreme Court, does an artificial person have jurisdiction over the sovereign that created the artificial person? No. Does the artificial person (government) have jurisdiction over any new artificial persons, or property, created by the government? Yes. A government has complete power over its subjects and its own property. Remember, the Constitution is just a power of attorney from the sovereign people to the government. That power of attorney extends to anything the government, as an artificial person, creates or owns.

So a '*resident*' would be an artificial '*person*' (property) located within the jurisdiction of a certain government. Almost all state and federal statutes apply to '*persons*' who are citizens and residents, and are subject to the jurisdiction thereof. They rarely apply to '*natural persons*'.

**Now to the second part of the 14th Amendment.** It applies to all persons "born or naturalized in the United States **and** subject to the jurisdiction thereof." This could only mean the territorial jurisdiction of the federal government. As stated in the Supreme Court case of *Chisholm v. Georgia* quoted earlier, all jurisdiction implies superiority of power. So if you are subject to the jurisdiction of the federal government, that implies their power is superior to your sovereign power, or the sovereign power of your state. In other words, you are not a sovereign, but a subject, if you are a U.S. citizen, name spelled in all caps.

A 'U.S. citizen' is a subject of the federal government, subject to its jurisdiction. An 'American Citizen' is a sovereign individual, and the government is subject to him, and no court has jurisdiction over him, without his permission. When you present yourself to a court, you give them temporary jurisdiction for a certain issue to be settled. Once it is settled, then that jurisdiction ceases. That is why plaintiffs must prove jurisdiction before courts can hear a case.

An important distinction needs to be understood here. The sovereign technically has inalienable rights, NOT constitutional rights. We all call them constitutional rights, but they are not. They are inalienable rights SECURED by constitutions, state and federal. The basis of any inalienable right is established in the Declaration of Independence. This document very clearly states that "*We hold these Truths to be self evident, that all Men are created equal, that they are*

*endowed **by their Creator** with certain unalienable rights.*" Look for the mention of God, or inalienable rights, in the Constitution, and you will not find them.

Many patriots are making constitutional arguments, when they should be making inalienable rights arguments. There is no basis for inalienable rights of property under the constitution, but there IS under the Declaration of Independence! **We are using the wrong document to claim our rights under!**

For example, the way to state a constitutional argument would be to state that you have the inalienable right to bear arms, stated in the Declaration of Independence, and 'secured' by the Bill of Rights, in the 2nd Amendment. You have the inalienable right to not be a witness against yourself, 'secured' by the 5th Amendment. This gives your argument a much stronger legal basis and is much harder to dismiss, if you ever did go to court. The Bill of Rights, means the Bill of Inalienable Rights, based on the Declaration of Independence, and secured by the Constitution!

### **If you are a citizen of the United States, then JUST WHERE and WHAT IS THE 'UNITED STATES'?**

Is there a territorial difference between the United States of America, (the 50 sovereign states) and the United States government (10 miles square, plus possessions)?

What is the legal definition of United States?

#### **Black's Law Dictionary 6th Edition.**

**United States. *This term has several meanings.*** (1) *It may be merely the name of a sovereign occupying the position analogous to that of other sovereigns in the family of nations,* (2) *it may designate territory over which sovereignty of the United states extends,* (3) *or it may be the collective name of the states which are united by and under the Constitution.* from *Hooven & Allison v. Evatt 324 U.S. 652*

The first definition (1) only applies to other countries in their relationship to America. It doesn't apply to us.

The third definition (3) applies only to the 50 states united under the Constitution. That does apply to us.

The second definition (2) is the one we are primarily concerned about. This definition applies to the geographical territory over which the sovereignty and jurisdiction of the **United States** extends, pertaining to the 14th Amendment jurisdiction over citizens. Again, we must go the the Constitution to see where that territory is. The United States has exclusive jurisdiction only over certain areas. Since each of the 50 states were separate sovereign states, the sovereignty of the United States did not extend to these 50 states, unless they incorporated. What's left? The Constitution tells us.

**U.S. Constitution Article 1 Section 8 Clause 17:** *To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of Particular States, and the Acceptance of Congress, become the Seat of Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the States in which the same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards and other needful buildings;*

According to the Constitution, the territory of the United States of America includes the 50 sovereign states, each of which have their own constitution and jurisdiction. **The geographical territory of sovereign jurisdictions do not overlap.**

The territory of the United States 'of America' is different from the territory of the United States 'government'.

The territorial jurisdiction of the United States government only extends to tens miles square, to places purchased, **and to property owned.** This would include territories and possessions, temporarily acquired through treaties, that are not part of the 50 states. Persons who are under this exclusive jurisdiction, are citizens of the United States 'government', and of the state where they reside. This is a little confusing because Washington, D.C. is considered a state, and the possessions, like Puerto Rico, are considered states. They are political states, but are not part of the 50 sovereign states.

What does the Internal Revenue Code (IRC) say? IRC 7701 is a section devoted to definitions. What is their definition of the United States?

**IRC 7701(9) United States.** *The term "United States" when used in a geographical sense includes only the States and the District of Columbia.*

The States? ONLY the States? Does that mean the 50 states, or just U.S.possessions, which are also called states? The use of the word "only" would indicate that this is a restrictive definition. Back to the definitions.

**IRC 7701(10) State.** *The term "State" shall be construed to include the District of Columbia, where such construction is necessary to carry out provisions of this title.*

When definition statutes are issued with the word "includes" it means that only the items or categories listed in the definition are included, everything else is excluded. The District of Columbia is a political state of the United States. It is property of the federal government, just like the U.S. possessions like Guam and the Virgin Islands are. Since the 50 states are not mentioned in the definition of state, they are not included. Why? Because the jurisdiction of the United States government, for income tax purposes, includes only areas under its jurisdiction, as stated in the Constitution. The 50 states are separate sovereign states, according to the state constitutions, and therefore would not come under the geographical jurisdiction of the United States federal government, a corporation. As you saw above, **the 14th amendment created citizens who WERE under the jurisdiction of the federal government!** The IRC defines United States person for us.

**IRC 7701(30) United States person.** *The term "United States person" means - (A) A citizen or resident of the United States.*

So if you were a U.S. citizen, you would be in that jurisdiction **subject to** the federal income tax. And you would be defined as a "Taxpayer".

**IRC 7701(14) Taxpayer.** *The term "taxpayer" means any person subject to any internal revenue tax.*

So if the 50 states were not under the jurisdiction of the United States government, how come they are NOW subject to all the laws handed down by Congress? We know that states can voluntarily give up their sovereignty to the federal government, just the same as we can. They have not done that, have they? Or have they? When the Civil War was fought, all states were



not admitted back into the union until their constitutions were approved by Congress. Why was this approval needed? When the southern states seceded from the union, were they then sovereign states, separate from the United States of America, or U.S. territories? When these states, and all future states, were admitted to the new union, were they conquered states, through an act of war? Were they new territory acquired by the federal government, and now under their jurisdiction? Are the 50 states now just political states of the federal government, just like D.C.?

What about territory, or states, acquired through conquest (war)? This territory is not purchased. Is this territory under the exclusive jurisdiction of the United States government? Yes. Temporarily. Any territory acquired by war, or treaty, is acquired for the sovereign people, and this territory is held, in trust, for the people until they decide to make the territory into sovereign states and add them to the Union.

Let's check with the Supreme Court again.

**Hooven & Allison Co. v Evatt 324 U.S. 675 (1945)** *That our dependencies, (possessions) acquired as the result of our war with Spain, are territories belonging to, but not a part of the Union of states under the Constitution, was long since established by a series of decisions in this court . . . This status has ever since been maintained in the practical construction of the Constitution by all the agencies of our government in dealing with our insular possessions. It is no longer doubted that the United States may acquire territory by conquest or by treaty, and may govern it through the exercise of power of Congress conferred by Sec. 3 of Article IV of the Constitution "to dispose of and make all needful Rules and Regulations respecting the Territory or other property belonging to the United States." In exercising this power, Congress is not subject to the same constitutional limitations as when it is legislating for the United States. (the 50 united States)*

When Congress passes laws for the territories of the United States they are not limited by the Constitution. When they pass laws for the 50 states they must follow the limitations of the Constitution, because the 50 states only delegated certain powers to Congress. Powers not delegated were reserved to the states or to the people. (10th Amendment) The 50 states are superior to the federal government. So how does the federal government get the power to make laws for the 50 states?

**DeLima v. Bidwell 182 U.S. 179 (1900)** *If the law or treaty making power enacts that the territory over which the military arm of the government has extended shall come under the permanent absolute sovereign jurisdiction of the United States, a new and different status arises. The former sovereign then loses all right of reverter, and the territorial limits of the United States are in so far enlarged.*

Ponder this thought. If the federal government acquired ALL the states, after the Civil War, through the military arm of the government, OR, even today just through a declared national emergency by the Commander in Chief, and instituted martial law, would the 50 states lose their sovereign status and come under the sovereign jurisdiction of the federal government, by conquest? Yes they would. Then the President, as commander in chief, would rule the country by presidential order. This is exactly our status today. The government pretends that you still have inalienable rights secured by the constitutional, because if they let on what the truth was, there would be a revolution. As we will see in the next chapter, in 1933, the United States declared a national emergency that is still in force today.

This doesn't sound like what they taught us in school, does it? Maybe we should check out another authority. In 1956 -1957, President Eisenhower commissioned a study of this very issue. There were problems with the jurisdictional status of federal lands located within the 50 states. He wanted to clarify the jurisdictional limits of the federal government.

The study was called:

## **JURISDICTION OVER FEDERAL AREAS WITHIN THE STATES**

It was a 2 part report and I will quote from it below:

### **Part II**

**Letter of Acknowledgement.** *It is my understanding that the report is to be published and distributed, for the purpose of making available to Federal administrators of real property, Federal and States legislators, the legal profession, and others, this text of law of legislative jurisdiction in these areas. The Honorable Herbert Brownwell, Jr. Attorney General, Washington, D.C.*

**Letter of Transmittal.** *Together, the two parts of this Committee's report and the full implementation of its recommendations will provide a basis for reversing in many areas the swing of "the pendulum of power \* \* \* from our states to the central government" to which you referred in your address to the Conference of State Governors on June 25, 1957. Attorney General.*

Pg. 45. *Since Congress has the power to create States out of Territories and to prescribe the boundaries of the new States, the retention of exclusive legislative jurisdiction over a federally owned area within the States at the time the State is admitted into the Union would not appear to pose any serious constitutional difficulties.*

**No Federal legislative jurisdiction without consent, cession, or reservation.** -- *It scarcely needs to be said that unless there has been a transfer of jurisdiction (1) pursuant to clause 17 by a Federal acquisition of land with State consent, or (2) by cession from the State to the Federal government, or unless the Federal Government has reserved jurisdiction upon the admission of the State, the Federal Government possess no legislative jurisdiction over any area within a State, such jurisdiction being for exercise entirely by the States, subject to non-interference by the State with Federal functions, and subject to the free exercise by the Federal Government of rights with respect to the use, protection, and disposition of its property.*

### **Necessity of State Assent to Transfer of Jurisdiction to Federal Government:**

Constitutional consent. -- *The Federal Government cannot, by unilateral action on its part, acquire legislative jurisdiction over any area within the exterior boundaries of a State.*

**Pg. 66 LIMITATIONS ON AREAS OVER WHICH JURISDICTION MAY BE ACQUIRED BY CONSENT OF STATE UNDER CLAUSE 17:** *In general.-- Article I, section 8, clause 17, of the Constitution, provides that Congress shall have the power to exercise exclusive legislation over "Places" which have been "purchased" by the Federal Government, with the consent of the legislature of the States, "for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings." The quoted words serve to limit the scope of clause 17. They exclude from its purview places which were not "purchased" by the Federal Government, . . .*

*Chapter VII (pg 169) Relation of States to Federal Enclaves. Exclusive Federal Jurisdiction: States basically without authority. --When the Federal Government has acquired exclusive legislative jurisdiction over an area, by any of the three methods of acquiring such jurisdiction, it is clear that the State in which the area is located is without authority to legislate for the area or enforce any of its laws within the area. All the powers of government with respect to the area are vested in the United States.*

That is just a small sampling, but as you can see, the exclusive jurisdiction of the Federal government does NOT extend to the geographical territory of the 50 states, except with their consent, **or by conquest (like declaring a national emergency)**. This was a government report done by the Attorney General for the President. But, hey, what does he know? So, for the federal government to have jurisdiction over you, in one of the 50 states, it must own you as property. That property, or artificial person, is called 'U.S. citizen'.

The distinction that I make here, is, either you are a Citizen of the United States of America (American Citizen), or a United States citizen (federal citizen).

An American citizen lives in one of the 50 states and has inalienable rights secured by the state and national constitutions. He spells his name in upper and lower case letters.

A United States citizen may also live in one of the 50 states, as a resident, but has only privileges and immunities, with no constitutional protections. He spells his name with all capital letters.

**Check all your licenses, bills, mortgages, deeds, credit cards, etc and see which one you are claiming to be!**

You will notice that the 14th Amendment says that the States shall uphold the 'privileges and immunities' of United States citizens. What about their 'rights'? United States citizens, subject to the government, do not have a constitution, or inalienable rights. You cannot get that FROM a government. Property (artificial persons) can only have civil rights, privileges and immunities granted by the government. They are people that have been slightly upgraded from property (slaves) to having the privilege of being a citizen/subject of the United States government. It sounds much nicer! Remember that the amendment says U.S. citizens are subject to the exclusive jurisdiction of the government. And you just read how far that exclusive jurisdiction extends.

But don't rely on this Attorney General's report, or the Supreme Court decisions in court. The IRS and the courts consider it a frivolous argument!

The 14th Amendment says "and subject to the jurisdiction thereof".

What does "subject to" mean?

**Black's Law Dictionary 6th Edition** says;

**Subject to. *Liabile, subordinate, subservient, inferior, obedient to; governed or affected by; provided that; provided; answerable for.***"

Part 2 of the 14th amendment also says that the states: *shall not make or enforce any law which shall abridge the privileges and immunities of citizens of the United States;* . Why does it make that statement? Didn't the first ten amendments to the Constitution (the Bill of Rights) already secure the inalienable rights of the American people? They sure did. Then why a second prohibition?

Legal scholars have argued that the Constitution only limited the powers of the federal government, not the state governments, so this was added in the 14th amendment to restrict the power of the states. Sounds good, doesn't it? But don't the constitutions of the 50 states already protect the inalienable rights of the state Citizens? They sure do! Do they need a national constitutional amendment to make them uphold their own state constitutions? Only if the state constitutions were no longer valid. Is your state constitution still valid? Yes. **But, the truth is, state constitutions do NOT apply to federal 'property' (U.S. citizens).**

The governments, state and federal, are not OVER the sovereign people and their sovereign territory. Both governments have been delegated powers to secure the rights of the people, and their jurisdiction in exercising that power, is limited to the property they actually own or control. This property is known as 'persons' or 'residents'.

The United States 'government' has jurisdiction only over areas delegated to it by the states and over property acquired by conquest. The state governments also, only have jurisdiction over the areas delegated to them by the state Citizens. Do the people control the government or does the government control the people? Can the government exercise powers not delegated to them? No. The problem is that you DID give them the power, when you waived your inalienable rights and claimed to be a U.S. citizen, subject to their jurisdiction. They just dangled a few carrots (federal benefits, ie: Social Security) over your nose and you grabbed them and asked to be a subject, so you could get MORE benefits. The states did the same thing, so they could get subsidies also.

**There is an old saying: "If you give the average person a choice between freedom and a free lunch, he will choose the free lunch". Which did you choose?**

So the only logical conclusion is, that the newly created "United States citizens" (former slaves) were no longer the property of individuals, and they were not American Citizens. And they still didn't have a constitution to protect them since the Constitution 'of the United States of America' did not apply to the federal possessions (property) and territories. The U.S. Constitution only applied to the federal government, and delegated and limited its powers. The federal government was created BY the states. And since U.S. citizens were subject to the jurisdiction of the United States, the state constitutions did not cover them. U.S. citizens are just federal property, artificial 'persons' or 'residents', in one of the 50 states. And this also placed them squarely within the legal definition of U.S. jurisdiction.

The states each had their own constitutions. But the jurisdictional powers delegated in these state constitutions also only applied to 'government' property in the states, not to the sovereign 'territory' of the states. So the 'United States citizens' were also citizens of the corporate state governments, (not of the sovereign states themselves) and were not protected by the state constitutions. They technically became dual 'property'. They were property (persons - residents) of the state government and of the federal government. Today, all state governments are corporations, not sovereign states. They are just sub-corporations of the federal government, and therefore are under the jurisdiction of the federal government. They have traded their sovereignty for federal subsidies, just like you have traded your sovereignty for the privileges and immunities of U.S. citizenship under the 14th Amendment!

For proof: If you claim constitutional rights in court, the judge will tell you that if you mention constitutional rights again, he will find you in contempt of court, and throw you in jail. He could do that ONLY if you were resident (property) of the state. Because then you would not

have inalienable rights, secured by the state constitution. To find out if you have rights, look at how your name is spelled in the heading of the court case. By the way, this principle also applies to local property tax and driver's license and registration, but that is 2 other books.

Inalienable rights are flagrantly violated on a daily basis by all levels of government, because most people have waived these rights and traded them for privileges. The problem is that so few people claim their inalienable rights anymore that they are no longer recognized by the government. The people would rather have privileges from the government. You can't claim to be a sovereign over the government, and at the same time claim benefits handed out by the government for their subjects. Does the King or Queen (you) apply for their own government's benefits, thereby becoming subjects of their own government?

Since both the state and federal governments are now just corporations, can you be the citizen of a corporation? Yes. The corporation is an artificial 'person'. But, artificial persons can ONLY create new artificial persons (property) that they control. Remember, the United States federal government is just a corporation! So if you are a U.S. citizen, you are a corporate citizen.

These new United States citizens, created by the 14th Amendment, had no one to protect their new status and rights. Worse yet, they had no rights to protect, just privileges and immunities (civil rights) granted by the federal government. The privilege was, being 'subject' to the federal government, instead of to a foreign nation, and the immunities were to be added later. And they were.

One by one, the courts gradually added, to U.S. citizens, each of the rights that American citizens had under the first 10 amendments. But they were not inalienable rights, they were only civil rights. Civil rights are rights given to you by the government. Governments cannot give you inalienable rights. You already have those. But civil rights can also be taken away by the government. Since the federal possessions and territories (federal states) had their own governments, just like the 50 states, this amendment prevented both the 50 state governments, and the federal states, from making laws that violated the civil rights of these United States citizen subjects.

**And this is where the controversy comes in.** The government wants you to believe that a citizen of the United States, is the same as a Citizen of the United States of America. In a court case, if you make this argument, that you are not a resident of the United States, and therefore not a U.S. citizen, because you live in Colorado, the courts will call this a frivolous argument and fine you. And they are right, if you look at how your name is spelled in the heading of that case.

But think about this. If United States citizens are not protected by the U.S. Constitution, then they also lose the Constitutional limitation that all direct taxes be apportioned. That means that they COULD be taxed on their incomes, from whatever source, directly, without apportionment. United States citizens are not protected by the Constitution. Scary, isn't it?

### **American Sovereign or United States citizen? Which are YOU?**

You have the right to choose your status as a sovereign in America. But, not as a citizen in the United States. The 50 united States of America are republics, guaranteed a republican form of government. The United States government is a democracy. You must learn the difference! If you choose to be an American Citizen with inalienable rights secured by the constitution, then the constitution says that direct taxes must be apportioned among the states.

On the other hand, if you are a United States citizen, then you have no constitution to protect you, only your civil rights. And those civil rights do not prevent the federal government from taxing your income directly, without apportionment. This is possible because states CAN directly tax their citizens property. So if you are a U.S. citizen, you are in effect the citizen of the state of Washington D.C. And that state can tax its citizen's property directly. Remember the definition of "State" above, from the Internal Revenue Code? A state is the District of Columbia. The IRC applies to this state and not to the 50 states.

If you live in one of the 50 sovereign states, then you cannot also live in one of the federal states. Their jurisdictions do not overlap. But, can you create an artificial entity, (like a corporation or trust is an artificial entity) and call yourself a United States citizen? Yes you can. How? You may not be aware of it, but it has already been done for you. The way to tell is to look at your name. When an artificial person is named (such as a corporation), proper English grammar says that the name will be spelled in all capital letters. So if your name is Joseph John Smith, the spelling indicates that you are a real live flesh and blood natural human (natural person). But if you spell your name in all capitals, JOSEPH JOHN SMITH, then that indicates that you are an artificial entity (person). There are really two entities with your name! The real person (you) and the fictional corporate U.S. citizen. The problem arises when the natural person contracts to be an artificial person. Which one are you claiming to be?

The 14th Amendment essentially opened the door to classify everyone as a corporate citizen/employee. Let me ask you this. Since the United States is a corporation, how many employees can there be in a corporation? Would it be possible for every U.S. citizen to be unofficially classified as an employee of this corporation United States, as one of the privileges of U.S. citizenship? And as an employee of the federal government, you would be liable for federal income tax. That is why their name is "Internal" Revenue. It is only collected internally, from its own employees, who are exercising a taxable privilege, government employment! And as a corporate employee, you would be "presumed" to have corporate income!

Since all United States citizens are creations and subjects of the federal government (a public corporation), they are still property. For property (ie: corporations) to have legal existence, with civil rights, it must be done as an artificial entity, just like a corporation is legally considered a person with civil rights, but not inalienable rights. Since the federal government is also an artificial person (a corporation), it can only have jurisdiction over other artificial persons it has created. It has created the artificial person "U.S. citizen", subject to its jurisdiction. You can contract for this corporate privilege and be protected by their corporate laws as one of your privileges as an employee of the corporation United States. And you will probably get lots of other free lunches (benefits) to boot!

Property cannot have inalienable rights. So all United States citizens are property (artificial 'persons'), with their names spelled in all capital letters. These artificial entities are subject to different laws than you, their sovereign representative, and if they mess up, you do the time, or pay the fine, for them! Just like you can't put a corporation in jail, but you can put their representatives, the corporate officers, in jail in their place.

Can you claim that you are NOT a sovereign American, so that you can collect some of the benefits of the subjects of the federal government's U.S. citizens? Yes you can. And you already have.

Now let's see which status you claim. First look at the spelling of your name on your driver's license. Is it spelled in all caps, indicating an artificial corporate person? Then look at your social security card. Then look at your check book. Then look at your credit cards. Then look at the deed to your real estate if you own some. Then look at the title to your vehicle. Then look at your name in the heading of any court case you may have been in. Check the sworn statement you signed with your voter registration, or your gun registration. Look at ANY correspondence from the government. Look at your bills. These documents will tell you for sure who you really are. When you applied for Social Security, this artificial person U.S. citizen was created. Unknowingly, you contracted to be an artificial corporate person, not realizing that you created a new government employee. This is known as voluntary slavery. Involuntary slavery was forbidden by the 13th Amendment, but you agreed, by contract, to give up American Citizenship and inalienable rights, for U.S. citizenship with civil rights. Remember, the income tax is a corporate tax, so if you are a U.S. corporate citizen, then you are subject to a corporate excise tax on your income.

Do you get my point?

Now look at the mailing label for your tax return. Are you the artificial entity, United States citizen? If not, prove it. Make believe you are in court. Where is your identification that you are a sovereign American with inalienable rights? Can you show that you are an American, and not a U.S. citizen? What documents would you use? The only possible one is your birth certificate, and you used that to show that you are the representative/agent of the person on the SS card. But even those are now issued with the name spelled in all caps, indicating an artificial person. In that case, who are you?

Pretty scary, huh?

When you are in court, would any judge tell you that you that you are NOT an 'American' Citizen and that the Constitution is not valid for you? No, they cannot let the truth out. But then they don't have to because you are claiming to be a U.S. citizen. Because the TRUTH is: As a sovereign, you have no legal standing in the corporate courts of this country, so you would not be in court in the first place! Why is that? Because you, as a sovereign, are above the laws issued by the corporate federal government to regulate its own property. ALL courts in this country are statutory non-constitutional courts. ONLY the corporate employee can claim any corporate privileges in these courts. More on this in the "court" chapter.

So now go back to the last chapter and look again at the 16th Amendment. Did they really need to pass a whole amendment, just to clarify the existing Constitution? Or was it really passed to apply to these new United States citizens? Let's let the Treasury regulations tell us.

**26 CFR (Code of Federal Regulations) 1.1-1 "Income tax on individuals. (a) General rule. (1) Section 1 of the Code imposes an income tax on the income of every individual who is a citizen or resident of the United States . . . The tax imposed is upon taxable income . . ."**

This Treasury Regulation explains who the income tax applies to. Does it apply to Citizens of the United States of America? No. Just to U.S. citizens, who are corporate employees, and their property.

## ARE YOU BORN AN AMERICAN, OR A UNITED STATES CITIZEN?

I believe that when you are born, you are born a sovereign American with inalienable rights. A lot of birth certificates have the spelling of your name correct, in upper and lower case, so the birth certificate is NOT the document that creates the U.S. citizen. All the birth certificate does, is provide proof that a real live sovereign was born. A corporation cannot have a live birth. Only a real sovereign can be born live.

So then what does create the U.S. citizen, if it is not the birth certificate? I believe the U.S. citizen is born by commercial contract. And that contract is your Social Security application, among others. You cannot get a social security number without the birth certificate of someone who is contracting, to be this new entity U.S. citizen. The U.S. citizen status is created along with your social security number, and it is this number that identifies the corporate government employee. If the government is the beast that enslaves you, then this truly would be the mark of the beast. You waive your inalienable rights when you contract to have a social security number. When someone asks you for a Social Security number, then are just ,making sure that they are dealing with the U.S. citizen.

The entity you are applying to, for this number, is an artificial person, a government corporation, a fiction. Can a fiction create a real person? No. A fiction can only create another fiction. So when you get your social security number, it is the number of a brand new person, a corporate U.S. citizen. Since a corporation created the number, they can only apply that number to their property. Which they did.

Many birth certificates today have your name in all caps. I believe this is just the government's attempt to usurp your sovereign status, long before you apply for a social security card. Maybe that is why the IRS wants every newborn to be assigned a SS# at birth. So they can attempt to eliminate your presumption of sovereignty right from your birth and start right out as a U.S. citizen.

I have run into attorneys and government officials that say, "It doesn't make any difference if you spell your name in all caps or not. You are not a corporate citizen." Is this true? Is there a difference between an artificial person and a natural person? How can you prove it? For those who need proof, I have compiled some facts that you can use to show the difference. Check it out! [American Citizen , or U.S. citizen?](#)

Another interesting observation is that the 14th Amendment was certified on July 28, 1868. The day *BEFORE*, on July 27, Congress passed an Act called the Right of Expatriation. If Congress was going to create a new corporate citizen, then they also had to create a remedy to get out of it if you didn't want to be a U.S. citizen. This was the way!

### SUMMARY

The 14th Amendment created a new class of citizenship, the United States citizen. This citizenship applies only to '**persons** subject to the jurisdiction' of the federal government. All jurisdiction implies superiority of power. A 'person' is always an artificial corporate entity with it's name spelled in all caps.

YOU are "presumed" to be a U.S. citizen, unless and until you can prove otherwise.

A **Sovereign/Citizen** of the United States of America (American Citizen), lives in one of the 50 sovereign states, and has inalienable rights secured by state and national constitutions.



The **artificial person, U.S. citizen**, is a legal fiction that has been created by the federal government, via the social security application, and is a corporate employee of the United States by virtue of being a U.S. citizen. He is subject to the jurisdiction of the federal government and of the state government and subject to the corporate income tax.

The U.S. citizen is created property, created to raise revenue for the government, your employer. You have essentially contracted to be liable for the debts of your master, the federal government.

## Premise:

Did you know that  
there are **two kinds**  
**of citizens in America?**

So said the Supreme Court  
in 1873 Slaughter-House Cases, 83 U.S. 36 (1873)

and again in 1875, 1879, 1879, 1883,  
1892, 1908, 1910, 1912, 1917, 1918, 1919, 1922, 1928,  
1934, 1940, 1941, 1944, 1947, 1961, 1969, 1970, 1978,

1982, and 1984, a total of **24 times!**

**But, who knows it?**

agreement, an agent of the United States; to which two answers may be made, either of which is sufficient to show that the theory is unfounded and without merit: (1) Because the agreement does not contain any stipulation that the plaintiff should devote his whole time to the business of the agency, nor any other of a character to prohibit him from purchasing cotton from the private owners if the same was not included in the category of the cotton described in the written agreement. (2) Because the written agreement never in fact became operative, as the plaintiff, not finding any such cotton in the district specified, never made any such purchases.

Nothing need be added in respect to the ruling of the court in denying the motion in arrest of judgment, as the motion raises the same questions as those involved in the prayers for instruction presented by the defendant, and which were refused by the court.

Mention has already been made of the fact that the United States intervened in the suit, and the record shows that their claim was subsequently dismissed and that they also sued out a writ of error and removed the whole proceeding into this court, which is number 136 on the calendar.

All that is necessary to add upon the subject is, that the principal suit having been decided in favor of the plaintiff, the proceeding in intervention must necessarily fall with the defense set up by the defendant in that suit.

*Judgment in each case affirmed.*

*Mr. Justice Bradley, dissenting:*

I dissent from the opinion of the court in these cases. Tweed, the defendant in error, repaired to the Red River region to purchase cotton, under a written engagement with a government agent to purchase and pay for the same, and to deliver one fourth part to the Government, upon the express consideration stated in the agreement, that it was well known that a great deal of cotton belonging to the Confederate Government was in that district, but could not be identified, and was kept back by the parties having it in possession for fear of its being seized. Tweed was to have the prestige of government protection; was to purchase any cotton he could find for sale, without any questions; was to send it to the government agent at New Orleans, and there three fourths of it was to be set apart to his use and one fourth to the use of the Government. This was the general purport and effect of the agreement. There cannot be a doubt, from the evidence in the case, that he derived great advantage from his semi-official character. But having made his purchases, he concluded that it would be a better speculation to have all the cotton than only three fourths of it; and, therefore, he sets up the pretense that he did not act under the agreement, but on his own independent account. The cotton, however, went forward, protected by the general policy of insurance taken out by the government agent, and arrived at New Orleans. The government agent, Flanders, took possession of it, and gave up to Tweed his three fourths, according to the agreement. The balance he retained for the Government, against

\$94

Tweed's consent, and was sustained in his action by the Secretary of the Treasury.

Tweed sued out a sequestration (a writ in the nature of the common law replevin) from the United States Circuit Court of Louisiana, and by virtue of that writ one fourth part of the cotton held by Flanders, the government agent, for the Government, was taken out of his possession, and the court held that this was a lawful exercise of the judicial authority.

Now, on the merits of the case, I cannot concur in the opinion that Tweed could, under the circumstances, repudiate his agreement; but I think he was bound by it and by his acts, and was estopped from asserting an independent purchase of the cotton on his own account; and that the charge of the court should have been to that effect, and that the charge given and the refusal to charge as requested were erroneous.

I also hold that this was a suit against the Government itself. Flanders did not hold the cotton on his own account, but on government account; and his acts were sanctioned and adopted by the Treasury Department. He was acting for the Government, and his possession was the Government's possession. Whether he was acting lawfully or unlawfully was a question which the court could not decide by an adverse proceeding in a suit brought for the recovery of the cotton.

This is a very different case from that of a replevin brought by the owner of goods unlawfully taken by a sheriff upon execution against another person. Goods in the custody of the law, seized for the benefit of a private party, in satisfaction of a judgment or to meet an asserted claim, may be replevied by the true owner; but goods claimed by the Government itself, as its own goods, and held by its agents in possession, cannot be reclaimed in this manner. They can only be reclaimed by application to Congress, or, in certain cases, to the Court of Claims.

Nor is the case governed by that class of cases in which a *mandamus* will lie against a government officer to compel him to perform a ministerial duty. Such a writ is issued, or is supposed to be issued, by the Government itself, to compel its officials to do their duty to its citizens.

I am authorized to say that *Mr. Justice Davis* concurs in this opinion.

#### SLAUGHTER-HOUSE CASES.

THE BUTCHERS' BENEVOLENT ASSOCIATION OF NEW ORLEANS, *Pf. in Err.*,

THE CRESCENT CITY LIVE-STOCK LANDING AND SLAUGHTER-HOUSE COMPANY.

PAUL ESTEBEN, L. RUCH, J. P. ROUEDE, W. MAYLIE, S. FIRMBERG, B. BEAUBAY, WILLIAM FAGAN, J. D. BRODERICK, N. SEIBEL, M. LANNES, J. GITZINGER, J. P. AYCOCK, D. VERGHS, AND THE LIVE-STOCK DEALERS' AND BUTCHERS' ASSOCIATION OF NEW

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cut line

izens or subjects of foreign States born within the United States.

The next observation is more important in view of the arguments of counsel in the present case. It is that the distinction between citizenship of the United States and citizenship of a State is clearly recognized and established. Not only may a man be a citizen of the United States without being a citizen of a State, but an important element is necessary to convert the former into the latter. He must reside within the State to make him a citizen of it, but it is only necessary that he should be born or naturalized in the United States to be a citizen of the Union.

It is quite clear, then, that there is a citizenship of the United States and a citizenship of a State, which are distinct from each other and which depend upon different characteristics or circumstances in the individual.

We think this distinction and its explicit recognition in this Amendment of great weight in this argument, because the next paragraph of this same section, which is the one mainly relied on by the plaintiffs in error, speaks only of privileges and immunities of citizens of the United States, and does not speak of those of citizens of the several States. The argument, however, in favor of the plaintiffs, rests wholly on the assumption that the citizenship is the same and the privileges and immunities guaranteed by the clause are the same.

The language is: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." It is a little remarkable, if this clause was intended as a protection to the citizen of a State against the legislative power of his own State, that the words "citizen of the State" should be left out when it is so carefully used, and used in contradistinction to "citizens of the United States" in the very sentence which precedes it. It is too clear for argument that the change in phraseology was adopted understandingly and with a purpose.

Of the privileges and immunities of the citizens of the United States, and of the privileges and immunities of the citizen of the State, and what they respectively are, we will presently consider; but we wish to state here that it is only the former which are placed by this clause under the protection of the Federal Constitution, and that the latter, whatever they may be, are not intended to have any additional protection by this paragraph of the Amendment.

If, then, there is a difference between the privileges and immunities belonging to a citizen of the United States as such, and those belonging to the citizen of the State as such, the latter must rest for their security and protection where they have heretofore rested; for they are not embraced by this paragraph of the Amendment.

The first occurrence of the words "privileges and immunities" in our constitutional history, is to be found in the fourth of the Articles of the old Confederation.

It declares "That, the better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all the privileges and immunities of free citizens in the several States; and the people of each State

shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively."

In the Constitution of the United States, which superseded the Articles of Confederation, the corresponding provision is found in section two of the 4th article, in the following words: The citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States.

There can be but little question that the purpose of both these provisions is the same, and that the privileges and immunities intended are the same in each. In the Article of the Confederation we have some of these specifically mentioned, and enough perhaps to give some general idea of the class of civil rights meant by the phrase.

Fortunately we are not without judicial construction of this clause of the Constitution. The first and the leading case on the subject is that of *Corfield v. Coryell*, decided by Mr. Justice Washington in the Circuit Court for the District of Pennsylvania in 1823. 4 Wash. C. C., 371.

"The inquiry," he says, "is, what are the privileges and immunities of citizens of the several States? We feel no hesitation in confining these expressions to those privileges and immunities which are fundamental; which belong of right to the citizens of all free governments, and which have at all times been enjoyed by citizens of the several States which compose this Union, from the time of their becoming free, independent, and sovereign. What these fundamental principles are, it would be more tedious than difficult to enumerate." "They may all, however, be comprehended under the following general heads: protection by the government, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject, nevertheless, to such restraints as the government may prescribe for the general good of the whole."

This definition of the privileges and immunities of citizens of the States is adopted in the main by this court in the recent case of *Ward v. Ma*, 13 Wall., 430 [79 U. S., XX., 452], while it declines to undertake an authoritative definition beyond what was necessary to that decision. The description, when taken to include others not named, but which are of the same general character, embraces nearly every civil right for the establishment and protection of which organized government is instituted. They are, in the language of Judge Washington, those rights which are fundamental. Throughout his opinion, they are spoken of as rights belonging to the individual as a citizen of a State. They are so spoken of in the constitutional provision which he was construing. And they have always been held to be the class of rights which the state governments were created to establish and secure.

In the case of *Paul v. Va.*, 8 Wall., 180 [75 U. S., XIX., 360], the court, in expounding this clause of the Constitution, says that "the privileges and immunities secured to citizens of each State in the several States, by the provision in question, are those privileges and immunities which are common to the citizens



# Who do you think you are?

Or, Who do you *believe* you are?  
Or, who have you *been lead to believe* you are ?

Subtitle:  
**What is  
a U.S. citizen ?**

## Are **you** a U.S. citizen ?

**Disclaimer:** Nothing in this white paper is to be construed as legal advice. The reader should go to a law library and check every fact and citation for themselves, and form your own conclusions. The reader should get assistance of counsel, if you think you need it.

In today's society,  
you are frequently asked

**Are you a U.S. citizen?**

*(see the following)*

- To vote in elections
  - To get a job
- To open a bank account
- On a Social Security Application
  - To buy insurance
  - To enroll in college

**etc., etc., etc.**



# Election Department

## REGISTERING TO VOTE

Election Department - Clark County, Nevada

Last updated on May 30, 2007

To register to vote, you must be **qualified** and you must submit a properly completed Voter Registration Application to the Election Department by the applicable deadline. Some people may also need to appropriately present their identification. [CLICK HERE TO REQUEST AN APPLICATION.](#)

[Who Should Register to Vote](#)

[Qualifications for Registering to Vote](#)

[How to Register to Vote](#)

[Where You May Register to Vote](#)

[Military Personnel and Overseas Residents](#)

[Deadlines](#)

### Who Should Register to Vote

**Register to Vote If You:**

- Are **not currently registered** to vote in Clark County and wish to vote
  - **Tip:** Quickly check if you are already registered in Clark County at: [www.accessclarkcounty.com/election/lookup.asp](http://www.accessclarkcounty.com/election/lookup.asp)
- OR **changed your place of residence and/or mailing address** since your last registration (or use a "Change of Address Notice" card)
- OR want to **change your political party** affiliation
- OR **changed your name** since your last registration
- AND **meet all of the qualifications** below

### Qualifications for Registering to Vote

**Registration Requirements:**

Before you register to vote in Clark County, you must have the following qualifications:

- U.S. citizenship
- At least 18 years old by Election Day
  - **Tip:** If you are now 17 and will be 18 by the next Election Day, you may register.
- Continuously have resided in Clark County for at least 30 days and in your precinct for at least 10 days before the next election
- Claim no other place as your legal residence
- No felony conviction or other loss of civil rights that would make it unlawful for you to vote
  - **Tip:** Convicted felons who have been honorably discharged from probation or parole, pardoned by the Governor or released from prison may be eligible to vote, depending on various factors, and should call 702-455-0075 for specific information about their individual situation.
- No court of law has determined you are mentally incompetent

### How to Register to Vote

**Submit an Application:**

If you meet all of the [qualifications](#) above, you may submit a Voter Registration Application to the



**Employment Eligibility Verification**

Please read instructions carefully before completing this form. The instructions must be available during completion of this form. **ANTI-DISCRIMINATION NOTICE:** It is illegal to discriminate against work eligible individuals. Employers **CANNOT** specify which document(s) they will accept from an employee. The refusal to hire an individual because of a future expiration date may also constitute illegal discrimination.

**Section 1. Employee Information and Verification.** To be completed and signed by employee at the time employment begins.

Print Name: Last	First	Middle Initial	Maiden Name
Address (Street Name and Number)		Apt. #	Date of Birth (month/day/year)
City	State	Zip Code	Social Security #
<p>I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.</p>		<p>I attest, under penalty of perjury, that I am (check one of the following):</p> <input type="checkbox"/> A citizen or national of the United States <input type="checkbox"/> A Lawful Permanent Resident (Alien #) A _____ <input type="checkbox"/> An alien authorized to work until _____ (Alien # or Admission #) _____	
Employee's Signature			Date (month/day/year)

**Preparer and/or Translator Certification.** (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Preparer's/Translator's Signature	Print Name
Address (Street Name and Number, City, State, Zip Code)	
Date (month/day/year)	

**Section 2. Employer Review and Verification.** To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number and expiration date, if any, of the document(s).

List A	OR	List B	AND	List C
Document title: _____		_____		_____
Issuing authority: _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): _____		_____		_____

**CERTIFICATION** - I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) \_\_\_\_\_ and that to the best of my knowledge the employee is eligible to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative	Print Name	Title
Business or Organization Name		Date (month/day/year)
Address (Street Name and Number, City, State, Zip Code)		

**Section 3. Updating and Reverification.** To be completed and signed by employer.

A. New Name (if applicable)	B. Date of Rehire (month/day/year) (if applicable)
C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment eligibility. Document Title: _____ Document #: _____ Expiration Date (if any): _____	
I attest, under penalty of perjury, that to the best of my knowledge, this employee is eligible to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.	
Signature of Employer or Authorized Representative	Date (month/day/year)

NOTE: This is the 1991 edition of the Form I-9 that has been rebranded with a current printing date to reflect the recent transition from the INS to DHS and its components.



TO OPEN A BANK ACCOUNT

### Takes less than 7 minutes to apply!

#### Steps

1. **Tell us who you are** and how we can contact you.
2. \*Agree to **terms and conditions**
3. **\*\*Make your opening deposit.**

#### What will I need?

- Driver's license or state ID
- Social security or taxpayer ID number
- Routing & Account number if you want to use an external account for your opening deposit

#### Your Account Selection:

**Account Type:** WaMu Free Checking™

**Minimum Opening Deposit:** \$1.00

**Monthly Fee:** \$0

- More details about this account
- Modify account type
- About Overdraft Protection

All required fields are labeled in **bold**.

**Special Online Offer: Include an Online Savings account and earn up to 5.00% APY+**

- Minimum Opening Deposit: \$1.00
- Monthly Fee: \$0

#### Balance Tiers Interest Rate Annual Percentage Yield (APY)

<b>\$0 - \$9,999</b>	<b>4.89%</b>	<b>5.00%</b>
<b>\$10,000+</b>	<b>4.89%</b>	<b>5.00%</b>

#### Special online offer - apply for both accounts now and get:

- a higher savings rate

- no monthly maintenance fee

You must apply for **both accounts** now to take advantage of this offer†.

† The Annual Percentage Yield (APY) is effective as of 10/15/2007. Rates and APYs are variable and may change at Bank's discretion at anytime without notice. Minimum balance to open checking and savings account is \$1 for each account; minimum balance to earn APY on savings is minimum balance stated for applicable tier. Fees may reduce earnings. The above APY and monthly service fee waiver apply to Online Savings only when opened online with WaMu Free Checking™. If your checking account is closed for any reason (by you or us), or transferred to another kind of account, standard APYs/rates and standard monthly fee described in the Statement of Fees applicable to Online Savings will apply.

Do you have an Online ID? •  Yes  
•  No

### More than one applicant?

This is an individual application. Please visit your local Washington Mutual Center to apply for a joint account.

By applying for these accounts online:

- We will automatically issue a Debit MasterCard® to you for your checking account and will link your savings account to the card when we receive the opening deposit to your checking account.
- We will capture your signature from your first check written on the checking account as a sample of your signature for both accounts. You will receive more information upon approval of your application.
- We will send your monthly statements for both accounts to you electronically. If you would also like to receive paper statements for your checking account, you can modify your accounts settings online or by calling (800) 788-7000. The savings account statement can only be delivered to you electronically.

If you do not wish to have these automatic options established for your new accounts, please call (800) 788-7000 or visit your local Washington Mutual Financial Center to open your new account.

In order to establish Washington Mutual account(s) online, you must be a U.S. citizen or U.S. resident with a valid Social Security Number and U.S. residence address. If this does not describe you please call customer service at (800) 788-7000 or visit your local Washington Mutual Financial Center to apply for an account.

\*Any Washington Mutual account(s) opened by you will be subject to the Account Disclosures and Regulations and Privacy Policy, Online Services Agreement, Notice and Consent Regarding Electronic Communications Delivery Service, Statement of Fees, and other disclosures relating to the account, provided to you on this website at the time you complete the account opening

# SOCIAL SECURITY ADMINISTRATION Application for a Social Security Card

Form Approved  
OMB No. 0960-0066

<b>1</b>	<b>NAME</b> TO BE SHOWN ON CARD	First	Full Middle Name	Last			
	<b>FULL NAME AT BIRTH</b> IF OTHER THAN ABOVE	First	Full Middle Name	Last			
	<b>OTHER NAMES USED</b>						
<b>2</b>	<b>MAILING ADDRESS</b> Do Not Abbreviate	Street Address, Apt. No., PO Box, Rural Route No.					
		City	State	ZIP Code			
<b>3</b>	<b>CITIZENSHIP</b> (Check One)	<input type="checkbox"/> U.S. Citizen	<input type="checkbox"/> Legal Alien Allowed To Work	<input type="checkbox"/> Legal Alien <b>Not</b> Allowed To Work (See Instructions On Page 2)	<input type="checkbox"/> Other (See Instructions On Page 2)		
<b>4</b>	<b>SEX</b>	<input type="checkbox"/> Male	<input type="checkbox"/> Female				
<b>5</b>	<b>RACE/ETHNIC DESCRIPTION</b> (Check One Only - Voluntary)	<input type="checkbox"/> Asian, Asian-American or Pacific Islander	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Black (Not Hispanic)	<input type="checkbox"/> North American Indian or Alaskan Native	<input type="checkbox"/> White (Not Hispanic)	
<b>6</b>	<b>DATE OF BIRTH</b> Month, Day, Year	<b>7</b>	<b>PLACE OF BIRTH</b> (Do Not Abbreviate) City	State or Foreign Country	FCI <small>Office Use Only</small>		
<b>8</b>	<b>A. MOTHER'S NAME AT HER BIRTH</b>	First	Full Middle Name	Last Name At Her Birth			
	<b>B. MOTHER'S SOCIAL SECURITY NUMBER</b> (See instructions for 8B on Page 2)	<input type="text"/> <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/>					
<b>9</b>	<b>A. FATHER'S NAME</b>	First	Full Middle Name	Last			
	<b>B. FATHER'S SOCIAL SECURITY NUMBER</b> (See instructions for 9B on Page 2)	<input type="text"/> <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/>					
<b>10</b>	Has the applicant or anyone acting on his/her behalf ever filed for or received a Social Security number card before? <input type="checkbox"/> Yes (If "yes", answer questions 11-13.) <input type="checkbox"/> No (If "no," go on to question 14.) <input type="checkbox"/> Don't Know (If "don't know," go on to question 14.)						
<b>11</b>	Enter the Social Security number previously assigned to the person listed in item 1.	<input type="text"/> <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/>					
<b>12</b>	Enter the name shown on the most recent Social Security card issued for the person listed in item 1.	First	Middle Name	Last			
<b>13</b>	Enter any different date of birth if used on an earlier application for a card.	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>					
<b>14</b>	<b>TODAY'S DATE</b> Month, Day, Year	<b>15</b>	<b>DAYTIME PHONE NUMBER</b> ( ) -	Area Code	Number		
<b>16</b>	I declare under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge.						
	<b>YOUR SIGNATURE</b>	<b>17</b>	<b>YOUR RELATIONSHIP TO THE PERSON IN ITEM 1 IS:</b>				
		<input type="checkbox"/> Self	<input type="checkbox"/> Natural Or Adoptive Parent	<input type="checkbox"/> Legal Guardian	<input type="checkbox"/> Other (Specify)		
DO NOT WRITE BELOW THIS LINE (FOR SSA USE ONLY)							
NPN		DOC	NTI	CAN	ITV		
PBC	EVI	EVA	EVC	PRA	NWR	DNR	UNIT
EVIDENCE SUBMITTED				SIGNATURE AND TITLE OF EMPLOYEE(S) REVIEWING EVIDENCE AND/OR CONDUCTING INTERVIEW			
				DATE			
				DCL			
				DATE			

BY THE WAY, ITS VOLUNTARY

## THE PAPERWORK/PRIVACY ACT AND YOUR APPLICATION

The Privacy Act of 1974 requires us to give each person the following notice when applying for a Social Security number.

Sections 205(c) and 702 of the Social Security Act allow us to collect the facts we ask for on this form.

We use the facts you provide on this form to assign you a Social Security number and to issue you a Social Security card. You do not have to give us these facts, however, without them we cannot issue you a Social Security number or a card. Without a number, you may not be able to get a job and could lose Social Security benefits in the future.

The Social Security number is also used by the Internal Revenue Service for tax administration purposes as an identifier in processing tax returns of persons who have income which is reported to the Internal Revenue Service and by persons who are claimed as dependents on someone's Federal income tax return.

We may disclose information as necessary to administer Social Security programs, including to appropriate law enforcement agencies to investigate alleged violations of Social Security law; to other government agencies for administering entitlement, health, and welfare programs such as Medicaid, Medicare, veterans' benefits, military pension, and civil service annuities, black lung, housing, student loans, railroad retirement benefits, and food stamps; to the Internal Revenue Service for Federal tax administration; and to employers and former employers to properly prepare wage reports. We may also disclose information as required by Federal law, for example, to the Department of Homeland Security, to identify and locate aliens in the U.S.; to the Selective Service System for draft registration; and to the Department of Health and Human Services for child support enforcement purposes. We may verify Social Security numbers for State motor vehicle agencies that use the number in issuing drivers' licenses, as authorized by the Social Security Act. Finally, we may disclose information to your Congressional representative if they request information to answer questions you ask him or her.

We may use the information you give us when we match records by computer. Matching programs compare our records with those of other Federal, State, or local government agencies to determine whether a person qualifies for benefits paid by the Federal government. The law allows us to do this even if you do not agree to it.

Explanations about these and other reasons why information you provide us may be used or given out are available in Social Security offices. If you want to learn more about this, contact any Social Security office.

This information collection meets the requirements of 44 U.S.C. §3507, as amended by Section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget control number. We estimate that it will take about 8.5 to 9.5 minutes to read the instructions, gather the facts, and answer the questions. *You may send comments on our time estimate above to: SSA, 6401 Security Blvd., Baltimore, MD 21235-6401. **Send only comments relating to our time estimate to this address, not the completed form.***

MAIL OR TAKE THE COMPLETED FORM TO A LOCAL SOCIAL SECURITY OFFICE. The office is listed under U.S. Government agencies in your telephone directory or you may call Social Security at 1-800-772-1213. You may also locate the nearest Social Security office on the Internet at <http://www.socialsecurity.gov>.

**APPLICATION FOR SUPPLEMENTAL MEDICAL INSURANCE**

**PART A PERSONAL DATA**

Name of Family Members to be Insured <small>(Print First Name, Middle Initial, Last Name)</small>	Birthdate <small>Mo./Day/Year</small>	Age	Height <small>Ft. In.</small>	Weight <small>Lbs.</small>	Sex	Social Security Number
Proposed Principal Insured (Applicant)						
Spouse						
	<small>Full-time student</small>	<small>Year in School</small>				
Child						
Child						
Child						
<b>Residence Address:</b>						
<small>Street</small>		<small>City</small>		<small>State</small>		<small>ZIP Code</small>
<b>Proposed Principal Insured:</b>				<b>Spouse</b>		
<small>Driver's License Number:</small>		<small>State Issued:</small>		<small>Driver's License Number:</small>		<small>State Issued:</small>
<small>State of Birth:</small>				<small>State of Birth:</small>		
<small>Telephone Number:</small>				<small>Telephone Number:</small>		
<small>Home ( )</small>		<small>Work ( )</small>		<small>Home ( )</small>		<small>Work ( )</small>
<small>Best time to call:</small>				<small>Best time to call:</small>		
<small>Optional:</small>				<small>Optional:</small>		
<small>Cell phone number:</small>		<small>email address:</small>		<small>Cell phone number:</small>		<small>email address:</small>

1. Are you presently employed? .....  Yes  No  
 Occupation \_\_\_\_\_ Duties \_\_\_\_\_ Number of Years Employed \_\_\_\_\_  
 If not, please state reason: \_\_\_\_\_  
 If employed part-time or unemployed, are you currently seeking full-time employment? .....  Yes  No
2. Is your spouse presently employed? .....  Yes  No  
 Occupation \_\_\_\_\_ Duties \_\_\_\_\_ Number of Years Employed \_\_\_\_\_  
 If not, please state reason: \_\_\_\_\_  
 If employed part-time or unemployed, is he/she currently seeking full-time employment? .....  Yes  No
3. Do all applicants live within the same household? If no, please explain .....  Yes  No
4. Are you and all applicants U.S. Citizens, or have permanent residence status and been in the U.S. a minimum of two years? If no, complete the following .....  Yes  No

Name	Details (years in the U.S.)

5. Are you or any proposed insured planning to live, work, or attend school outside the U.S. for more than 60 days? .....  Yes  No

**PART B EXISTING COVERAGE AND REPLACEMENT**

1. Do you, or any proposed insured, currently have a major medical or health benefit plan, or other hospital, medical or surgical coverage in force? If Yes, please give the name of the company, details of the coverage, the type of insurance, the insured's name and policy or identification number or numbers					<input type="checkbox"/> Yes <input type="checkbox"/> No
Name	Insurance Company/Carrier	Insurance Company/Carrier Address/Phone Number	Type of Coverage and Details	Policy or ID Number	Replacing?
					<input type="checkbox"/> Yes <input type="checkbox"/> No
					<input type="checkbox"/> Yes <input type="checkbox"/> No
					<input type="checkbox"/> Yes <input type="checkbox"/> No

I verify that the questions and details on this page were answered or provided by me, the applicant. Applicant's Initials \_\_\_\_\_

# THE COMMON APPLICATION

For Undergraduate College Admission

## 2006-2007 COLLEGE ENROLLMENT FIRST-YEAR APPLICATION

The member colleges and universities fully support the use of this form. No distinction will be made between this form and a college's own. Please type or print in black ink. Be sure to follow the instructions on the cover page of the Common Application booklet to complete, copy, and submit your application to one or more of the member institutions.

### OPTIONAL DECLARATION OF EARLY DECISION/EARLY ACTION/RESTRICTIVE EARLY ACTION

Complete this section **ONLY** if you are applying to one or more colleges under an early plan. It is your responsibility to follow that college's instructions regarding early admission, including obtaining and submitting any ED/EA/REA form provided by that college. **Do NOT complete this ED/EA/REA section on copies of your application submitted to colleges for Regular Decision or Rolling Admission.**

College Name \_\_\_\_\_ Deadline \_\_\_\_\_  Early Decision  Early Action  Restrictive Early Action

### PERSONAL DATA

Legal name \_\_\_\_\_  Male  Female  
*Enter name exactly as it appears on passports or other official documents. Last/Family First Middle (complete) Jr., etc.*

Nickname (choose only one) \_\_\_\_\_ Former last name(s) if any \_\_\_\_\_

I am applying for the term beginning \_\_\_\_\_ Birth date \_\_\_\_\_  
*mm/dd/yyyy*

E-mail address \_\_\_\_\_

Permanent home address \_\_\_\_\_  
*Number and Street Apartment #*

City or Town \_\_\_\_\_ State/Province \_\_\_\_\_ Country \_\_\_\_\_ Zip/Postal Code \_\_\_\_\_

Permanent home phone ( \_\_\_\_\_ ) \_\_\_\_\_ Cell phone ( \_\_\_\_\_ ) \_\_\_\_\_  
*Area Code Area Code*

**If different from above, please give your mailing address for all admission correspondence.**

Mailing address (from \_\_\_\_\_ to \_\_\_\_\_)  
*(mm/yyyy) (mm/yyyy) Number and Street Apartment #*

City or Town \_\_\_\_\_ State/Province \_\_\_\_\_ Country \_\_\_\_\_ Zip/Postal Code \_\_\_\_\_

If your mailing address is a boarding school, include name of school here: \_\_\_\_\_

Phone at mailing address ( \_\_\_\_\_ ) \_\_\_\_\_ E-mail address \_\_\_\_\_  
*Area Code*

Citizenship  US citizen  Dual US citizen; please specify other country of citizenship \_\_\_\_\_

US permanent resident visa; citizen of \_\_\_\_\_ Alien registration number \_\_\_\_\_

Other citizenship \_\_\_\_\_  
*Country(ies) Visa type*

If you are not a US citizen and live in the United States, how long have you been in the country? \_\_\_\_\_

Possible area(s) of academic concentration/major(s) \_\_\_\_\_  Undecided

Possible career or professional plans \_\_\_\_\_  Undecided

Will you be a candidate for financial aid?  Yes  No If yes, the appropriate form(s) (e.g., FAFSA, CSS Profile) was/will be filed on \_\_\_\_\_

**The following items are optional. No information you provide will be used in a discriminatory manner.**

Place of birth \_\_\_\_\_  
*City State/Province Country*

Social Security Number (if any) \_\_\_\_\_

First language, if other than English \_\_\_\_\_

Language spoken at home \_\_\_\_\_

Marital status:  Never married  
 Married  
 Widowed  
 Separated  
 Divorced (date \_\_\_\_\_)  
*mm/dd/yyyy*

**If you wish to be identified with a particular ethnic group, please check all that apply:**

- African American, African, Black
- Native American, Alaska Native (date enrolled \_\_\_\_\_  
Tribal affiliation \_\_\_\_\_)
- Asian American (countries of family's origin \_\_\_\_\_)
- Asian, incl. Indian Subcontinent (countries \_\_\_\_\_)
- Hispanic, Latino (countries \_\_\_\_\_)
- Mexican American, Chicano  Native Hawaiian, Pacific Islander
- Puerto Rican  White or Caucasian
- Other (specify \_\_\_\_\_)

# Part 1

## Summary

- What is the U.S.
- 2 kinds of citizens in America
- 3 definitions of “United States”
- territories (like Puerto Rico, Guam, etc.)
- territories are *not states*
- Constitution has no application in  
the territories
- citizens of the territories are U.S. citizens



So, what is a U.S. Citizen ?

Well, first, and this is important, you must know,

What is the U.S. ?

Most people do *not* know,  
they just *presume*  
that they know . . .

in 1875,  
the Supreme Court said . . .



v. *Eberle*, 3 Serg. & R., 9; *Ret. v. Cooke*, 2 B. & C., 818, and *Whart. Prec.*, 647; *U. S. v. Kelley*, 11 Wheat., 417; *U. S. v. Gooding*, 13 Wheat., 476; *U. S. v. Peterson*, 1 W. & M., 805; *U. S. v. Stowell*, 2 Curt., 158; *Reg. v. Gray*, 9 Cox, Cr. Cas., 417; 2 Bish. Cr. Proc., 1866, sec. 204, tit. "Menace"; 3 Chit. Cr. Pl., 807, 681.

*Messrs. R. H. Marx, John A. Campbell, P. Phillips, David S. Byron, William R. Whitaker, B. John Ellis, Reverdy Johnson and David Dudley Field*, for the defendants.

(The briefs for the defendants were largely devoted to the question of the constitutionality of the Enforcement Act. *Mr. Field's* argument was entirely on that subject.)

*Mr. Chief Justice Waite* delivered the opinion of the court:

This case comes here with a certificate by the Judges of the Circuit Court for the District of Louisiana that they were divided in opinion upon a question which occurred at the hearing. It presents for our consideration an indictment containing sixteen counts, divided into two series of eight counts each, based upon section 6 of the Enforcement Act of May 31, 1870, 16 Stat. at L., 141. That section is as follows:

"That if two or more persons shall band or conspire together, or go in disguise upon the public highway, or upon the premises of another, with intent to violate any provision of this Act, or to injure, oppress, threaten or intimidate any citizen, with intent to prevent or hinder his free exercise and enjoyment of any right or privilege granted or secured to him by the Constitution or laws of the United States, or because of his having exercised the same, such persons shall be held guilty of felony, and, on conviction thereof, shall be fined or imprisoned, or both, at the discretion of the court—the fine not to exceed \$5,000, and the imprisonment not to exceed ten years; and shall, moreover, be thereafter ineligible to and disabled from holding any office or place of honor, profit or trust created by the Constitution or laws of the United States." 16 Stat. at L., 141.

The question certified arose upon a motion in arrest of judgment after a verdict of guilty generally upon the whole sixteen counts, and is stated to be, whether "The said sixteen counts of said indictment are severally good and sufficient in law, and contain charges of criminal matter indictable under the laws of the United States."

The general charge in the first eight counts is that of "banding," and in the second eight, that of "conspiring" together to injure, oppress, threaten and intimidate Levi Nelson and Alexander Tillman, citizens of the United States, of African descent and persons of color, with the intent thereby to hinder and prevent them in their free exercise and enjoyment of rights and privileges "granted and secured" to them "in common with all other good citizens of the United States by the Constitution and laws of the United States."

The offenses provided for by the statute in question do not consist in the mere "banding" or "conspiring" of two or more persons together, but in their banding or conspiring with the intent, or for any of the purposes specified. To bring this case under the operation of the statute, therefore, it must appear that the right,

the enjoyment of which the conspirators intended to hinder or prevent, was one granted or secured by the Constitution or laws of the United States. If it does not so appear, the criminal matter charged has not been made indictable by any Act of Congress.

We have in our political system a Government of the United States and a government of each of the several States. Each one of these governments is distinct from the others, and each has citizens of its own who owe it allegiance, and whose rights, within its jurisdiction, it must protect. The same person may be at the same time a citizen of the United States and a citizen of a State, but his rights of citizenship under one of these governments will be different from those he has under the other. *Slough-ter-House Cases*, 16 Wall., 74 [89 U. S., XXI., 408].

Citizens are the members of the political community to which they belong. They are the people who compose the community, and who, in their associated capacity, have established or submitted themselves to the dominion of a government for the promotion of their general welfare and the protection of their individual as well as their collective rights. In the formation of a government, the people may confer upon it such powers as they choose. The government, when so formed, may, and when called upon should, exercise all the powers it has for the protection of the rights of its citizens and the people within its jurisdiction; but it can exercise no other. The duty of a government to afford protection is limited always by the power it possesses for that purpose.

Experience made the fact known to the people of the United States, that they required a national government for national purposes. The separate governments of the separate States, bound together by the Articles of Confederation alone, were not sufficient for the promotion of the general welfare of the people in respect to foreign nations, or for their complete protection as citizens of the confederated States. For this reason, the people of the United States, "in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare and secure the blessings of liberty" to themselves and their posterity (Const. Preamble), ordained and established the Government of the United States, and defined its powers by a Constitution, which they adopted as its fundamental law, and made its rule of action.

The government thus established and defined is to some extent a government of the States in their political capacity. It is, also, for certain purposes, a government of the people. Its powers are limited in number, but not in degree. Within the scope of its powers, as enumerated and defined, it is supreme and above the States; but beyond, it has no existence. It was erected for special purposes, and endowed with all the powers necessary for its own preservation and the accomplishment of the ends its people had in view. It can neither grant nor secure to its citizens any right or privilege not expressly or by implication placed under its jurisdiction.

The people of the United States resident within any State are subject to two governments: one State and the other National; but there need be no conflict between the two. The

99 U. S.

powers which one possesses, the other does not. They are established for different purposes, and have separate jurisdictions. Together they make one whole, and furnish the people of the United States with a complete government, ample for the protection of all their rights at home and abroad. True, it may sometimes happen that a person is amenable to both jurisdictions for one and the same act. Thus, if a Marshal of the United States is unlawfully resisted while executing the process of the courts within a State, and the resistance is accompanied by an assault on the officer, the sovereignty of the United States is violated by the breach of peace, and that of the State by the breach of peace, in the assault. So, too, if one passes counterfeited coin of the United States within a State, it may be an offense against the United States and the State: the United States, because it discredits the coin; and the State, because of the fraud upon him to whom it is passed. This does not, however, necessarily imply that the two governments possess powers in common, or bring them into conflict with each other. It is the natural consequence of a citizenship which owes allegiance to two sovereignties, and claims protection from both. The citizen cannot complain, because he has voluntarily submitted himself to such a form of government. He owes allegiance to the two departments, so to speak, and within their respective spheres must pay the penalties which each exacts for disobedience to its laws. In return, he can demand protection from each within its own jurisdiction.

The Government of the United States is one of delegated powers alone. Its authority is defined and limited by the Constitution. All powers not granted to it by that instrument are reserved to the States or the people. No rights can be acquired under the Constitution or laws of the United States, except such as the Government of the United States has the authority to grant or secure. All that cannot be so granted or secured are left under the protection of the States.

We now proceed to an examination of the indictment, to ascertain whether the several rights, which it is alleged the defendants intended to interfere with, are such as had been in law and in fact granted or secured by the Constitution or laws of the United States.

The first and ninth counts state the intent of the defendants to have been, to hinder and prevent the citizens named in the free exercise and enjoyment of their "lawful right and privilege to peaceably assemble together with each other and with other citizens of the United States for a peaceful and lawful purpose." The right of the people peaceably to assemble for lawful purposes existed long before the adoption of the Constitution of the United States. In fact, it is and always has been one of the attributes of citizenship under a free government. It "derives its source," to use the language of *Chief Justice Marshall*, in *Gibbons v. Ogden*, 9 Wheat., 211, "from those laws whose authority is acknowledged by civilized man throughout the world." It is found wherever civilization exists. It was not, therefore, a right granted to the people by the Constitution. The Government of the United States, when established, found it in existence, with the obligation on

3 OCTO,

the part of the States to afford it protection. As no direct power over it was granted to Congress, it remains, according to the ruling in *Gibbons v. Ogden*, 9 Wheat., 203, subject to state jurisdiction. Only such existing rights were committed by the people to the protection of Congress as came within the general scope of the authority granted to the National Government.

The First Amendment to the Constitution prohibits Congress from abridging "the right of the people to assemble and to petition the Government for a redress of grievances." This, like the other amendments proposed and adopted at the same time, was not intended to limit the powers of the State Governments in respect to their own citizens, but to operate upon the National Government alone. *Barron v. Baltimore*, 7 Pet., 250; *Livingston v. Moore*, 7 Pet., 531; *Ross v. Ohio*, 5 How., 434; *Smith v. Md.*, 18 How., 76 [59 U. S., XV., 272]; *Withers v. Buckley*, 20 How., 90 [81 U. S., XV., 819]; *Parveer v. Com.*, 6 Wall., 470 [72 U. S., XVIII., 609]; *Twitchell v. Com.*, 7 Wall., 331 [74 U. S., XIX., 228]; *Edwards v. Elliott*, 21 Wall., 557 [88 U. S., XXII., 492]. It is now too late to question the correctness of this construction. As was said by the late *Chief Justice* in *Twitchell v. Com.*, 7 Wall., 325 [74 U. S., XIX., 224], "The scope and application of these amendments are no longer subjects of discussion here." They left the authority of the States just where they found it, and added nothing to the already existing powers of the United States.

The particular Amendment now under consideration assumes the existence of the right of the people to assemble for lawful purposes, and protects it against encroachment by Congress. The right was not created by the Amendment; neither was its continuance guaranteed, except as against congressional interference. For their protection in its enjoyment, therefore, the people must look to the States. The power for that purpose was originally placed there, and it has never been surrendered to the United States.

The right of the people peaceably to assemble for the purpose of petitioning Congress for a redress of grievances, or for anything else connected with the powers or the duties of the National Government, is an attribute of national citizenship and, as such, under the protection of and guaranteed by the United States. The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances. If it had been alleged in these counts that the object of the defendants was to prevent a meeting for such a purpose, the case would have been within the statute, and within the scope of the sovereignty of the United States. Such, however, is not the case. The offense, as stated in the indictment, will be made out, if it be shown that the object of the conspiracy was to prevent a meeting for any lawful purpose whatever.

These second and tenth counts are equally defective. The right there specified is that of "bearing arms for a lawful purpose." This is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence. The Second Amendment

59

So, there are  
**2 kinds of citizens**

1) citizens of the United  
States government

and

2) citizens of each of the  
several States.

(i.e. each of the individual states, e.g. Texas, Nevada; 50 states in all)

These citizenships are  
distinct from one another

And, in 1945  
the Supreme Court  
gave **three definitions**  
of “United States”

324 U.S. 652  
**HOOVEN & ALLISON CO. v. EVATT,**  
Tax Commissioner of Ohio.

No. 38.

Argued Nov. 7-8, 1944.

Decided April 9, 1945.

Rehearing Denied May 7, 1945.

See 325 U.S. 892, 65 S.Ct. 1198.

1. Commerce ⇨77

Constitutional provisions conferring on Congress power to lay and collect import duties and restricting imposition of import duties by states were intended to confer on national government exclusive power to tax importation of goods into the United States. U.S.C.A.Const. art. 1, §§ 8, 10, cl. 2.

2. Commerce ⇨77

The constitutional prohibition against imposition of import duties by states extends to state taxation of things imported, after their arrival in the United States, and so long as they remain imports. U.S.C.A. Const. art. 1, § 10, cl. 2.

3. Commerce ⇨77

Things imported are "imports" entitled to immunity from state taxation and that immunity survives their arrival in the United States and continues until they are sold, removed from the original package, or put to the use for which they were imported. U.S.C.A.Const. art. 1, § 10, cl. 2.

See Words and Phrases, Permanent Edition, for all other definitions of "Imports".

4. Commerce ⇨77

In determining whether manufacturer's relationship to merchandise imported for use in manufacture of products was so altered after importation that immunity from state taxation was destroyed, relationship at time of importation was to be ascertained by reference to all circumstances attending the importation, particularly as shown by long-established course of business by which manufacturer's supply of merchandise was brought into the country. U.S.C.A.Const. art. 1, § 10, cl. 2.

5. Courts ⇨397½

Where existence of an asserted federal right or immunity depends on appraisal of undisputed facts of record, or where reference to facts is necessary to determination of precise meaning of federal right or

immunity, as applied, United States Supreme Court is free to re-examine facts as well as law in order to determine whether the asserted right or immunity is to be sustained.

6. Commerce ⇨77

Where performance of purchase contract resulted in importation of merchandise, in determining whether purchaser was the importer in constitutional sense, it was immaterial whether title to merchandise imported vested in purchaser at time of shipment or only after its arrival in United States. Tariff Act 1930, § 483(1), 19 U.S.C.A. § 1483; U.S.C.A.Const. art. 1, § 10, cl. 2.

7. Commerce ⇨77

In determining meaning and application of constitutional prohibition against levy of import duties by state, Supreme Court was concerned with matters of substance, not of form. U.S.C.A.Const. art. 1, § 10, cl. 2.

8. Commerce ⇨77

Where merchandise is brought from another country to the United States, extent of its constitutional immunity from state taxation turns on essential nature of transaction, considered in light of constitutional purpose, and not on formalities with which importation is conducted or on technical procedures by which it is effected. U.S.C.A.Const. art. 1, § 10, cl. 2.

9. Commerce ⇨77

Where Ohio manufacturer, in regular course of business, contracted for its manufacturing requirements of hemp and other fibers, performance of the purchase contract, which was on credit, resulted in importation of merchandise into the United States, and from moment of shipment merchandise was identified and appropriated to the purchase contract, the manufacturer was the "importer" and constitutional immunity of the merchandise from state taxation survived delivery of merchandise to the manufacturer. U.S.C.A.Const. art. 1, § 10, cl. 2.

See Words and Phrases, Permanent Edition, for all other definitions of "Importer".

10. Commerce ⇨77

For purpose of immunity of import from state taxation, it is immaterial whether the imported merchandise is stored in original package in the importer's ware-

house at port of entry or in an interior state. U.S.C.A.Const. art. 1, § 10, cl. 2.

See Words and Phrases, Permanent Edition, for all other definitions of "United States".

11. Commerce ⇨77

Imported merchandise, when removed from package in which imported, or when used for purpose for which it was imported, ceases to be import and exemption from state taxation is at an end. U.S.C.A.Const. art. 1, § 10, cl. 2.

12. Commerce ⇨77

Imports for manufacture cease to be such and lose their constitutional immunity from state taxation where they are subjected to manufacture for which they were imported or when original packages in which they were imported are broken. U.S.C.A.Const. art. 1, § 10, cl. 2.

13. Commerce ⇨77

Goods imported, while they remain in hands of importer, in form and shape in which they were brought into the country, cannot be regarded as a part of that mass of property in the state usually taxed for the support of state government. U.S.C.A. Const. art. 1, § 10, cl. 2.

14. Commerce ⇨77

Goods imported by Ohio manufacturer remained "imports" constitutionally immune from state taxation while stored in original packages in which they had been imported in manufacturer's warehouse preliminary to their use in manufacture of products. U.S.C.A.Const. art. 1, § 10, cl. 2.

15. Commerce ⇨77

Goods transported from one state to another are not "imports" within constitutional immunity from state taxation. U.S.C.A. Const. art. 1, § 10, cl. 2.

16. Commerce ⇨77

Importations, although not of foreign origin, are within purpose of constitutional prohibition against local taxation of "imports". U.S.C.A.Const. art. 1, § 10, cl. 2.

17. United States ⇨1

The term "United States" may be merely the name of a sovereign occupying the position analogous to that of other sovereigns in family of nations, it may designate territory over which sovereignty of United States extends, or it may be collective name of the states which are united by and under the Constitution.

18. Territories ⇨7

The dependencies, acquired by cession as the result of war with Spain, are territories belonging to, but not a part of, Union of states under the Constitution

19. Territories ⇨4

The United States may acquire territory by conquest or by treaty and may govern it through the exercise of constitutional power to dispose of and make all necessary rules and regulations respecting territories belonging to the United States. U.S.C. Const. art. 4, § 3.

20. Territories ⇨8, 11

In exercising constitutional power to make all needful rules respecting territories belonging to United States, Congress is subject to the same constitutional limitations as when it is legislating for the United States, and, generally, guarantees Constitution, save as they are limited on exercise of executive and legislative power or when exerted for or over insular possessions, extend to them only as Congress, in the exercise of its legislative power over territory belonging to the United States, has made those guarantees applicable. U.S.C.A.Const. art. 4, § 3.

21. Commerce ⇨77

Customs duties ⇨18  
Territories ⇨8

The constitutional restrictions on power of Congress to deal with articles brought into or sent out of the United States do not apply to articles brought into or sent out of the Philippine Islands. U.S.C.A.Const. 1, §§ 8, 9.

22. Commerce ⇨77

Articles brought from the Philippine Islands into the United States are "imports" within constitutional immunity from state taxation, since the place from which they came is not a part of this "country". U.S.C.A.Const. art. 1, § 10, cl. 2.

See Words and Phrases, Permanent Edition, for all other definitions of "Country".

Mr. Justice MURPHY, Mr. Justice REED, and Mr. Justice DOUGLAS, concurring in part; Mr. Justice BLACK, Mr. Justice RUTLEDGE dissenting.

without it, and the purpose of the constitutional prohibition, are alike persuasive that there may be imports in the constitutional sense which do not have a foreign origin.

The fact that the merchandise here in question did not come from a foreign country, if the contention be accepted that the Philippines are not to be regarded as such, is therefore without significance. It is material only whether it came from a place without the "country". Hence, in determining what are imports for constitutional purposes, we must ascertain the territorial limits of the "country" into which they are brought. Obviously, if the Philippines are to be regarded as a part of the United States in this sense, merchandise brought from the Philippines to the United States would not be brought into the United States from a place without, and would not be imports, more than articles transported from one state to another.

United States, taken as the collective name of the states which are united by and under the Constitution, is in many respects different from the status of those areas which, when the Constitution was adopted, were brought under the control of Congress and which were ultimately organized into states of the United States. See *Balzac v. Porto Rico*, 258 U.S. 298, 304, 305, 42 S.Ct. 343, 345, 346, 66 L.Ed. 627, and cases cited. Hence we do not stop to inquire whether articles brought into such territories or brought from such territories into a state, could have been regarded as imports, constitutionally immune from state taxation. We confine the present discussion to the question whether such articles, brought from the Philippines and introduced into the United States, are imports so immune.

We have adverted to the fact that the reasons for protecting from interference, by state taxation, the constitutional

673

power

of the national government to collect customs duties, apply equally whether the merchandise brought into the country is of foreign origin or not. The Constitution has not made the foreign origin of articles imported the test of importation, but only their origin in a place over which the Constitution has not extended its commands with respect to imports and their taxation. Hence our question must be decided, not by determining whether the Philippines are a foreign country, as indeed they have been held not to be within the meaning of the general tariff laws of the United States, *Fourteen Diamond Rings v. United States*, 183 U.S. 176, 22 S.Ct. 59, 46 L.Ed. 138, cf. *De Lima v. Bidwell*, 182 U.S. 1, 21 S.Ct. 743, 45 L.Ed. 1041; *Dooley v. United States*, 182 U.S. 222, 21 S.Ct. 762, 45 L.Ed. 1074, and within the scope of other general laws, *Faber v. United States*, 221 U.S. 649, 31 S.Ct. 659, 55 L.Ed. 897; cf. *Huus v. New York & P. R. Steamship Co.*, 182 U.S. 392, 21 S.Ct. 827, 45 L.Ed. 1146; *Gonzales v. Williams*, 192 U.S. 1, 24 S.Ct. 177, 48 L.Ed. 317; *West India Oil Co. v. Domenech*, 311 U.S. 20, 61 S.Ct. 90, 85 L.Ed. 16, but by determining whether they have been united governmentally with

Page 22 of 122

[17] The term "United States" may be used in any one of several senses. It may be merely the name of a sovereign occupying the position analogous to that of other sovereigns in the family of nations. It may designate the territory over which the sovereignty of the United States extends,

673

or it may be the collective name of the states which are united by and under the Constitution.<sup>6</sup>

When *Brown v. Maryland*, supra, was decided, the United States was without dependencies or territories outside its then territorial boundaries on the North American continent, and the Court had before it only the question whether foreign articles brought into the State of Maryland could be subjected to state taxation. It seems plain that Chief Justice Marshall, in his reference to imports as articles brought into the country, could have had reference only to articles brought into a state which is one of the states united by and under the Constitution, and in which alone the constitutional prohibition here involved is applicable.

The relation of the Philippines to the

<sup>6</sup> See Langdell, "The Status of our New Territories", 12 Harv.L.Rev. 365, 371; see also Thayer, "Our New Possessions", 12 Harv.L.Rev. 464; Thayer, "The

Insular Tariff Cases in the Supreme Court", 15 Harv.L.Rev. 164; Littlefield, "The Insular Cases", 15 Harv.L.Rev. 169, 281.

the United States by and under the Constitution.

[18, 19] That our dependencies, acquired by cession as the result of our war with Spain, are territories belonging to, but not a part of the Union of states under the Constitution, was long since established by a series of decisions in this Court beginning with *The Insular Tax Cases* in 1901; *De Lima v. Bidwell*, supra; *Dooley v. United States*, supra, 182 U.S. 222, 21 S.Ct. 762, 45 L.Ed. 1074; *Downes v. Bidwell*, 182 U.S. 244, 21 S.Ct. 770, 45 L.Ed. 1088; *Dooley v. United States*, 183 U.S. 151, 22 S.Ct. 62, 46 L.Ed. 128; and see also *Public Utility Commissioners v. Ynchausti & Co.*, 251 U.S. 401, 406, 407, 40 S.Ct. 277, 279, 64 L.Ed. 327; *Balzac v. Porto Rico*, supra. This status has ever since been maintained in the practical construction of the Constitution by all the agencies of our government in dealing with our insular possessions. It is no longer doubted that the United States may acquire territory by conquest or by treaty, and may govern it through the exercise of the power of Congress conferred by § 3 of Article IV of the Constitution "to dispose of and make all needful Rules and Regulations

674

respecting the Territory

or other Property belonging to the United States." *Dooley v. United States*, supra, 183 U.S. at page 157, 22 S.Ct. at page 65, 46 L.Ed. 128; *Dorr v. United States*, 195 U.S. 138, 149, 24 S.Ct. 808, 813, 49 L.Ed. 128, 1 Ann.Cas. 697; *Balzac v. Porto Rico*, supra, 258 U.S. 305, 42 S.Ct. 346, 66 L.Ed. 627; *Cincinnati Soap Co. v. United States*, 301 U.S. 308, 323, 57 S.Ct. 764, 771, 81 L.Ed. 1122.

[20, 21] In exercising this power, Congress is not subject to the same constitutional limitations, as when it is legislating for the United States. See *Downes v. Bidwell*, supra; *Territory of Hawaii v. Mankichi*, 190 U.S. 197, 23 S.Ct. 787, 47 L.Ed. 1016; *Dorr v. United States*, supra; *Dowdell v. United States*, 221 U.S. 325, 332, 31 S.Ct. 590, 593, 55 L.Ed. 753; *Ocampo v. United States*, 234 U.S. 91, 98, 34 S.Ct. 712, 715, 58 L.Ed. 1231; *Public Utility Commissioners v. Ynchausti & Co.*, supra, 251 U.S. 406, 407, 40 S.Ct. 279, 64 L.Ed. 327; *Balzac v. Porto Rico*, supra. And in general the guaranties of the Constitution, save as they are limitations upon

the exercise of executive and legislative power when exerted for or over our solar possessions, extend to them only Congress, in the exercise of its legislative power over territory belonging to United States, has made those guaranties applicable. See *Balzac v. Porto Rico*, supra. The constitutional restrictions on power of Congress to deal with articles brought into or sent out of the United States, do not apply to articles brought into or sent out of the Philippines. In spite of the restrictions of §§ 8 and 9 Article I of the Constitution, such articles may be taxed by Congress and with apportionment. *Downes v. Bidwell*, supra. It follows that articles brought from the Philippines into the United States are imports in the sense that they are brought from territory, which is not a part of the United States, into the territory of the United States, organized by and under the Constitution, where alone the imp clause of the Constitution is applicable.

The status of the Philippines as territory belonging to the United States, is not constitutionally united with it, it has been maintained consistently in all the governmental relations between the Philippines and the United

675

States. Following

the conquest of the Philippines, they were governed for a period under the war power. After annexation by the Treaty of Paris of December 10, 1898, military government was succeeded by a form of executive government. By the Spooner Amendment to the Army Appropriation Bill of March 2, 1901, c. 803, 31 Stat. 895, 910, it was provided that "all military, civil, and judicial powers necessary to govern the Philippine Islands \* \* \* shall, until otherwise provided by Congress, be vested in such person and persons and shall be exercised in such manner as the President of the United States shall direct, for the establishment of civil government and for maintaining and protecting the inhabitants of said islands in the free enjoyment of their liberty, property, and religion \* \* \*". On July 1, 1902 Congress provided for a complete system of civil government by the original Philippine Organic Act, c. 1369, 32 Stat. 691. Step by step Congress has conferred greater powers upon the territorial government, and those of the federal government have been diminished correspondingly, although

Don't worry about the 1<sup>st</sup>.

The 2<sup>nd</sup> is obviously different from the 3<sup>rd</sup>.

2) is “territory over which the sovereignty of the

United States extends” (this “territory” includes, among other places, Guam, Puerto Rico, etc. (commonly called “insular possessions”), plus over 11,000 separate properties **within** the several States (see Congressional Report “Jurisdiction over Federal Areas within the States”, June 1957 (you can Google this)), plus places such as Guantanamo Bay),

**known as U.S.**



3) is the States united  
by and under a Constitution,  
**known as U.S.A.**

So here is **THE KEY**  
to our question,  
What is a U.S. citizen?

Let's match up these two  
Supreme Court cases.

definition 3) from 1945,  
“the states . . . united”  
is “the several States”  
described in 1875, i.e. **the  
United States of America**

definition 2) from 1945,  
the territory over which  
sovereignty extends,  
is the “United States”  
described in 1875

Why is this important?

Because these “several States” are **“united by and under the Constitution”**

This other territory is  
**NOT**  
under the Constitution.

**These places are not States!**

THE CONSTITUTION  
of the  
UNITED STATES OF AMERICA

ANALYSIS AND INTERPRETATION

ANNOTATIONS OF CASES DECIDED BY THE  
SUPREME COURT OF THE UNITED STATES  
TO JUNE 29, 1992



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## THE PREAMBLE

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

### PURPOSE AND EFFECT OF THE PREAMBLE

Although the preamble is not a source of power for any department of the Federal Government,<sup>1</sup> the Supreme Court has often referred to it as evidence of the origin, scope, and purpose of the Constitution.<sup>2</sup> "Its true office," wrote Joseph Story in his COMMENTARIES, "is to expound the nature and extent and application of the powers actually conferred by the Constitution, and not substantively to create them. For example, the preamble declares one object to be, 'to provide for the common defense.' No one can doubt that this does not enlarge the powers of Congress to pass any measures which they deem useful for the common defence. But suppose the terms of a given power admit of two constructions, the one more restrictive, the other more liberal, and each of them is consistent with the words, but is, and ought to be, governed by the intent of the power; if one could promote and the other defeat the common defence, ought not the former, upon the soundest principles of interpretation, to be adopted?"<sup>3</sup>

<sup>1</sup> *Jacobson v. Massachusetts*, 197 U.S. 11, 22 (1905).

<sup>2</sup> E.g., the Court has read the preamble as bearing witness to the fact that the Constitution emanated from the people and was not the act of sovereign and independent States, *McCulloch v. Maryland*, 4 Wheat. (17 U.S.) 316, 403 (1819); *Chisholm v. Georgia*, 2 Dall. (2 U.S.) 419, 471 (1793); *Martin v. Hunter's Lessee*, 1 Wheat. (14 U.S.) 304, 324 (1816), and that it was made for, and is binding only in, the United States of America. *Downes v. Bidwell*, 182 U.S. 244, 251 (1901); *In re Ross*, 140 U.S. 453, 464 (1891).

<sup>3</sup> 1 J. STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES (Boston: 1833), 462. For a lengthy exegesis of the preamble phrase by phrase, see M. ADLER & W. GORMAN, THE AMERICAN TESTAMENT (New York: 1975), 63-118.

In 1901,  
the Supreme Court  
made it clear that

“the Constitution has no  
application . . . in the  
territories . . . Congress has  
a power wholly unrestricted  
by it.”

Suppose the political state of the country should be such that there was a difference of opinion as to the policy to be embodied in a tariff law, analogous to that which existed when California was acquired from Mexico, where, in consequence of division on the subject of the slavery question between the different branches of Congress, it was impossible to enact legislation conferring a territorial government upon California, what would be the situation then? Look at it practically from another point of view. Certainly, before revenue laws can be made operative in a district or country it is essential that the situation be taken into account, for the purpose of establishing ports of entry, collection districts, and the necessary machinery to enforce them. Of course, it is patent that such investigations cannot be made prior to acquisition. But, as the laws immediately extend, without action of Congress, as the result of acquisition, it must follow that they extend, although none of the means and instrumentalities for their successful enforcement can possibly be devised until the acquisition is completed. This must be, unless it be held that there is power in the government of the United States to enter a foreign country, examine its situation, and enact legislation for it before it has passed under the sovereignty of the United States. From the point of view of the United States, then, it seems to me that the doctrine of the immediate placing of the tariff laws outside the line of newly acquired territory, however extreme may be the opinion entertained of the doctrine of immediate incorporation, is inadmissible and in conflict with the Constitution.

Let me look at and illustrate it from the point of view of the ceded territory. In doing so let me take for granted the accuracy of suggestions which have been advanced in argument. It is said that the public revenues of the island of Porto Rico, except only such as were raised by a burdensome and complicated excise tax on incomes and business vocations, had always been chiefly obtained by duties on imports and exports; that our internal revenue laws, if applied in the island, would prove oppressive and ruinous to many people and interests; that one of the staple productions of the island—coffee—had always been protected by a tariff duty, whereas under our tariff laws coffee was admitted into the United States free of duty; that there was no system of direct taxation of property in operation when the island was ceded, there was no time to establish one, and such a system, moreover, would have entailed upon the people burdens incapable of being borne. I cannot conceive that under the provisions of the Constitution conferring upon Congress the power to raise revenue, that consequences such as would flow from immediately putting in force in Porto Rico the revenue laws of the United States could constitutionally be brought about without affording to the Congress the opportunity to adjust the revenue laws of the United States to meet the new situation.

\* All these suggestions, however, it is argued, but refer to expediency, and are entitled to no weight as against the theory that, under the Constitution, the tariff laws of the United States took effect of their own force immediately upon the cession. But this is fallacious. For, if it be demonstrated that a particular result cannot be accomplished without destroying the revenue power conferred upon Congress by the Constitution, and without annihilating the conceded authority of the government in other respects, such demonstration shows the unsoundness of the argument which magnifies the results flowing from the exercise by the treaty-making power of its authority to acquire, to the detriment and destruction of that balanced and limited government which the Constitution called into being.

(182 U. S. 244)

SAMUEL DOWNES, Doing Business under the Firm Name of S. B. Downes & Company, *Pf. in Err.*,

v.

GEORGE R. BIDWELL.

*Duties—importation from Porto Rico—territory appurtenant to United States—meaning of "United States" in revenue laws—ceded territory not incorporated into United States—conditions in treaty of cession—power of United States to acquire and hold territory without incorporating it—places subject to the jurisdiction of the United States—intent of Congress as to incorporating new territory—application of United States Constitution to new territory—presumption that Congress will obey Constitution—extension of civil government of United States to conquered territory.*

1. Jurisdiction of an action to recover back duties exacted under the Foraker act of April 12, 1900, and paid under protest, upon goods brought from Porto Rico, is given to a circuit court of the United States by U. S. Rev. Stat. § 629, subd. 4, vesting it with jurisdiction "of all suits at law or equity arising under any act providing for a revenue from imports or tonnage," when construed with § 848, providing for the removal from state courts of suits against a revenue officer "on account of any act done under color of his office, or of any such revenue law, or on account of any right, title, or authority claimed by such officer or other person under any such law."
2. The island of Porto Rico by the treaty of cession became territory appurtenant to the United States, but not a part of the United States, within the revenue clauses of the Constitution, such as art. 1, § 8, requiring duties, imposts, and excises to be uniform "throughout the United States."
3. The imposition of duties upon imports from Porto Rico by the act of Congress known as the Foraker act, approved April 12, 1900 (31 Stat. at L. 77, chap. 101), temporarily providing a civil government and revenues for that island, was a constitutional exercise of the power of Congress.
4. The United States, within the meaning of

the clause of the Constitution (art. 1, § 8) requiring duties to be uniform "throughout the United States," as in the other phrase respecting commerce "among the several states," must be understood to mean the states whose people united to form the Constitution and such as have since been admitted to the Union upon an equality with them. [Per Mr. Justice Brown.]

5. An alien people cannot be incorporated into the United States by the treaty-making power by a mere cession, without the express or implied approval of Congress. [Per Justices White, Shiras, and McKenna.]
6. Conditions which preclude incorporation into the United States, without consent of Congress, of territory acquired by treaty, may be inserted in the treaty of cession by the treaty-making power, and will have the force of the law of the land if the treaty be not repudiated by Congress. [Per Justices White, Shiras, and McKenna.]
7. The government of the United States has the power to acquire and hold territory without immediately incorporating it into the United States. [Per Justices White, Shiras, and McKenna.]
8. Places subject to the jurisdiction of the United States, but which are not incorporated into it, and hence are not within the United States in the complete sense of those words, are recognized by the provision of U. S. Const. 15th Amend., prohibiting slavery within the United States "or any place subject to their jurisdiction." [Per Justices White, Shiras, and McKenna.]
9. Incorporation into the United States of territory acquired by treaty of cession, in which there are conditions against the incorporation of the territory until Congress provides therefor, will not take place until in the wisdom of Congress it is deemed that the acquired territory has reached that state where it is proper that it should enter into and form a part of the American family. [Per Justices White, Shiras, and McKenna.]
10. The treaty with Spain by which Porto Rico and other territory was ceded to the United States, and by article 9 of which it is declared that the civil rights and political status of the native inhabitants therein "shall be determined by the Congress," shows an express purpose, not only to leave the status of the territory to be determined by Congress, but to prevent the treaty from operating to the contrary. [Per Justices White, Shiras, and McKenna.]
11. The intention of Congress that Porto Rico is not to be incorporated into the United States, for the present at least, is shown by the act of April 12, 1900 (31 Stat. at L. 77, chap. 101), for temporarily providing revenue and a civil government for that island and for other purposes. [Per Justices White, Shiras, and McKenna.]
12. Provisions of the Constitution of the United States which are applicable are in force in Porto Rico, whether the island be incorporated into the United States or not. [Per Justices White, Shiras, and McKenna.]
13. Porto Rico, though not a foreign country in an international sense, since it was subject to the sovereignty of and was owned by the United States after the treaty of cession, continued to be foreign to the United States in a domestic sense, because it had not been incorporated into the United States, and was merely appurtenant thereto as a possession. [Per Justices White, Shiras, McKenna, and Gray.]
14. It must be presumed that the legislative department of the government, which within its lawful sphere is but the expression of the political conscience of the people of the United States, will be faithful to its duty under the Constitution, and therefore will terminate the occupation by the United States of territory which has been temporarily acquired, and which is demonstrated to be unfit to be incorporated into the United States, if it would be a violation of duty under the Constitution to hold it permanently. [Per Justices White, Shiras, and McKenna.]
15. The civil government of the United States cannot extend immediately and of its own force over territory acquired by war, even when possession is confirmed by treaty, but such territory must necessarily, in the first instance, be governed by the military power under the control of the President as Commander in Chief, until civil government is put in operation by the action of the appropriate political department, at such time and in such degree as that department may determine. [Per Mr. Justice Gray.]
16. The regulation of the revenue of conquered territory, even after the treaty of cession, remains with the executive and military authority, in the absence of congressional legislation. [Per Mr. Justice Gray.]
17. A temporary government which is not subject to all the restrictions of the Constitution may be established for conquered territory by Congress, if it is not ready to construct a complete government for such territory. [Per Mr. Justice Gray.]

[No. 507.]

Argued January 8, 9, 10, 11, 1901. Decided May 27, 1901.

IN ERROR to the Circuit Court of the United States for the Southern District of New York to review a judgment sustaining a demurrer to a complaint in an action to recover back duties paid under protest upon importations from Porto Rico under the Foraker act. *Affirmed.*

Statement by Mr. Justice Brown:  
\* This was an action begun in the circuit court by Downes, doing business under the firm name of S. B. Downes & Co., against the collector of the port of New York, to recover back duties to the amount of \$659.35 exacted and paid under protest upon certain oranges consigned to the plaintiff at New York, and brought thither from the port of San Juan in the island of Porto Rico during the month of November, 1900, after the passage of the act temporarily providing a civil government and revenues for the island of Porto Rico, known as the Foraker act. The district attorney demurred to the complaint for the want of jurisdiction in the court, and for insufficiency of its averments. The demurrer was sustained, and the complaint dismissed. Whereupon plaintiff sued out this writ of error.  
Messrs. Frederic R. Coudert, Jr., and Paul Fuller for plaintiff in error.  
Solicitor General Richards and Attorney General Griggs for defendant in error.

government, possess a power in this particular which is thus expressly forbidden to the states.

It may be added in this connection, that to put at rest all doubts regarding the applicability of the Constitution to the District of Columbia, Congress by the act of February 21, 1871 (16 Stat. at L. 419, 426, chap. 62, § 34), specifically extended the Constitution and laws of the United States to this District.

The case of *American Ins. Co. v. 356 Bales of Cotton*, 1 Pet. 511, 7 L. ed. 242, originated in a libel filed in the district court for South Carolina, for the possession of 356 bales of cotton which had been wrecked on the coast of Florida, abandoned to the insurance companies, and subsequently brought to Charleston. Canter claimed the cotton as bona fide purchaser at a marshal's sale at Key West, by virtue of a decree of a territorial court consisting of a notary and five jurors, proceeding under an act of the governor and legislative council of Florida. The case turned upon the question whether the sale by that court was effectual to divest the interest of the underwriters. The district judge pronounced the proceedings a nullity, and rendered a decree from which both parties appealed to the circuit court. The circuit court reversed the decree of the district court upon the ground that the proceedings of the court at Key West were legal, and transferred the property to Canter, the alleged purchaser.

The opinion of the circuit court was delivered by Mr. Justice Johnson, of the Supreme Court, and is published in full in a note in Peters's Reports. It was argued that the Constitution vested the admiralty jurisdiction exclusively in the general government; that the legislature of Florida had exercised an illegal power in organizing this court, and that its decrees were void. On the other hand, it was insisted that this was a court of separate and distinct jurisdiction from the courts of the United States, and as such its acts were not to be reviewed in a foreign tribunal, such as was the court of South Carolina; "that the district of Florida was no part of the United States, but only an acquisition or dependency, and as such the Constitution *per se* had no binding effect in or over it." "It becomes," said the court "indispensable to the solution of these difficulties that we should conceive a just idea of the relation in which Florida stands to the United States. . . . And, first, it is obvious that there is a material distinction between the territory now under consideration and that which is acquired from the aborigines (whether by purchase or conquest) *within* the acknowledged limits of the United States, as also that which is acquired by the establishment of a disputed line. As to both these there can be no question that the sovereignty of the state or territory within which it lies, and of the United States, immediately attached, producing a complete subjection to all the laws and institutions of the two governments, local and general, unless modified by treaty. The question

now to be considered relates to territories previously subject to the acknowledged jurisdiction of another sovereign, such as was Florida to the Crown of Spain. And on this subject we have the most explicit proof that the understanding of our public functionaries is that the government and laws of the United States do not extend to such territory by the mere act of cession. For in the act of Congress of March 30, 1822, § 9, we have an enumeration of the acts of Congress which are to be held in force in the territory; and in the 10th section an enumeration, in the nature of a bill of rights, of privileges and immunities which could not be denied to the inhabitants of the territory if they came under the Constitution by the mere act of cession. . . . These states, this territory, and future states to be admitted into the Union are the sole objects of the Constitution; there is no express provision whatever made in the Constitution for the acquisition or government of territories beyond those limits." He further held that the right of acquiring territory was altogether incidental to the treaty-making power; that their government was left to Congress; that the territory of Florida did "not stand in the relation of a state to the United States;" that the acts establishing a territorial government were the Constitution of Florida; that while, under these acts, the territorial legislature could enact nothing inconsistent with what Congress had made inherent and permanent in the territorial government, it had not done so in organizing the court at Key West.

From the decree of the circuit court the underwriters appealed to this court, and the question was argued whether the circuit court was correct in drawing a distinction between territories existing at the date of the Constitution and territories subsequently acquired. The main contention of the appellants was that the superior courts of Florida had been vested by Congress with exclusive jurisdiction in all admiralty and maritime cases; that salvage was such a case, and therefore any law of Florida giving jurisdiction in salvage cases to any other court was unconstitutional. On behalf of the purchaser it was argued that the Constitution and laws of the United States were not *per se* in force in Florida, nor the inhabitants citizens of the United States; that the Constitution was established by the people of the United States for the United States; that if the Constitution were in force in Florida it was unnecessary to pass an act extending the laws of the United States to Florida. "What is Florida?" said Mr. Webster. "It is no part of the United States. How can it be? How is it represented? Do the laws of the United States reach Florida? Not unless by particular provisions."

The opinion of Mr. Chief Justice Marshall in this case should be read in connection with art. 3, §§ 1 and 2, of the Constitution, vesting "the judicial power of the United States" in "one Supreme Court and in such inferior courts as the Congress may from

time to time ordain and establish. The judges both of the Supreme and inferior courts shall hold their offices during good behavior," etc. He held that the court "should take into view the relation in which Florida stands to the United States;" that territory ceded by treaty "becomes a part of the nation to which it is annexed, either on the terms stipulated in the treaty of cession, or on such as its new master shall impose." That Florida, upon the conclusion of the treaty, became a territory of the United States and subject to the power of Congress under the territorial clause of the Constitution. The acts providing a territorial government for Florida were examined in detail. He held that the judicial clause of the Constitution, above quoted, did not apply to Florida; that the judges of the superior courts of Florida held their office for four years; that "these courts are not, then, constitutional courts in which the judicial power conferred by the Constitution on the general government can be deposited;" that "they are legislative courts, created in virtue of the general right of sovereignty which exists in the government," or in virtue of the territorial clause of the Constitution; that the jurisdiction with which they are invested is not a part of judicial power of the Constitution, but is conferred by Congress in the exercise of those general powers which that body possesses over the territories of the United States; and that in legislating for them Congress exercises the combined powers of the general and of a state government. The act of the territorial legislature creating the court in question was held not to be "inconsistent with the laws and Constitution of the United States," and the decree of the circuit court was affirmed.

As the only judicial power vested in Congress is to create courts whose judges shall hold their offices during good behavior, it necessarily follows that, if Congress authorizes the creation of courts and the appointment of judges for a limited time, it must act independently of the Constitution and upon territory which is not part of the United States within the meaning of the Constitution. In delivering his opinion in this case Mr. Chief Justice Marshall made no reference whatever to the prior case of *Loughborough v. Blake*, 5 Wheat. 317, 5 L. ed. 98, in which he had intimated that the territories were part of the United States. But if they be a part of the United States, it is difficult to see how Congress could create courts in such territories, except under the judicial clause of the Constitution. The power to make needful rules and regulations would certainly not authorize anything inconsistent with the Constitution if it applied to the territories. Certainly no such court could be created within a state, except under the restrictions of the judicial clause. It is sufficient to say that this case has ever since been accepted as authority for the proposition that the judicial clause of the Constitution has no application to courts created in the territories, and that with respect to them Congress has a power wholly

unrestricted by it. We must assume as a logical inference from this case that the other powers vested in Congress by the Constitution have no application to these territories, or that the judicial clause is exceptional in that particular.

This case was followed in *Benner v. Porter*, 9 How. 235, 13 L. ed. 119, in which it was held that the jurisdiction of these territorial courts ceased upon the admission of Florida into the Union, Mr. Justice Nelson remarking of them (p. 242, L. ed. p. 122), that "they are not organized under the Constitution, nor subject to its complex distribution of the powers of government, as the organic law; but are the creations, exclusively, of the legislative department, and subject to its supervision and control. Whether or not there are provisions in that instrument which extend to and act upon these territorial governments, it is not now material to examine. We are speaking here of those provisions that refer particularly to the distinction between Federal and state jurisdiction. . . . (p. 244, L. ed. p. 123). Neither were they organized by Congress under the Constitution, as they were invested with powers and jurisdiction which that body were incapable of conferring upon a court within the limits of a state." To the same effect are *Clinton v. Englebrecht*, 13 Wall. 434, 20 L. ed. 659; *Good v. Martin*, 95 U. S. 90, 98, 24 L. ed. 341, 344; and *McAllister v. United States*, 141 U. S. 174, 35 L. ed. 693, 11 Sup. Ct. Rep. 949.

That the power over the territories is vested in Congress without limitation, and that this power has been considered the foundation upon which the territorial governments rest, was also asserted by Chief Justice Marshall in *M'Culloch v. Maryland*, 4 Wheat. 316, 422, 4 L. ed. 579, 605, and in *United States v. Gratiot*, 14 Pet. 526, 10 L. ed. 573. So, too, in *Church of Jesus Christ of L. D. S. v. United States*, 136 U. S. 1, 34 L. ed. 478, 10 Sup. Ct. Rep. 792, in holding that Congress had power to repeal the charter of the church, Mr. Justice Bradley used the following forceful language: "The power of Congress over the territories of the United States is general and plenary, arising from and incidental to the right to acquire the territory itself, and from the power given by the Constitution to make all needful rules and regulations respecting the territory or other property belonging to the United States. It would be absurd to hold that the United States has power to acquire territory, and no power to govern it when acquired. The power to acquire territory, other than the territory northwest of the Ohio river (which belonged to the United States at the adoption of the Constitution), is derived from the treaty-making power and the power to declare and carry on war. The incidents of these powers are those of national sovereignty and belong to all independent governments. The power to make acquisitions of territory by conquest, by treaty, and by cession is an incident of national sovereignty. The territory of Louisiana, when acquired from France, and the ter-



In 1994,  
in a United Nations  
Covenant, the United States  
said about the territories,  
called “insular areas”

“persons born in these areas  
are U.S. citizens”

UNITED  
NATIONS

CCPR



**International Covenant  
on Civil and  
Political Rights**

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CCPR/C/81/Add.4. (State Party Report)***

Convention Abbreviation: CCPR  
HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 40 OF THE COVENANT

Initial reports of States parties due in 1993

Addendum

UNITED STATES OF AMERICA\*

\* The information submitted by the United States of America in accordance with the consolidated guidelines concerning the initial part of reports of States parties is contained in the core document HRI/CORE/1/Add.49.

[29 July 1994]

CONTENTS

Paragraphs

Introduction 1 - 8

IMPLEMENTATION OF SPECIFIC PROVISIONS OF THE COVENANT 9 - 849

Article 1 - Self determination 9 - 76

of freedom of speech and association which are very broadly construed, as discussed below in connection with Articles 18, 19, 21 and 22.

### The Insular Areas

12. The United States includes a number of Insular Areas, each of which is unique and constitutes an integral part of the U.S. political family. Persons born in these areas are U.S. citizens (U.S. nationals in the case of American Samoa). Local residents, including U.S. citizens born elsewhere who have moved to these areas, elect their own local governments and make and are ruled by their own local laws. They are free to move to other parts of the United States and enjoy the protections for individual liberty that the Bill of Rights guarantees to all Americans. Guam, the Virgin Islands, American Samoa and Puerto Rico each are represented in the U.S. House of Representatives by an elected delegate. Other than the right to vote on the final passage of a bill or resolution, the delegate from each Insular Area enjoys the same privileges and exercises the same powers as a member of Congress from one of the states.

13. The United States considers Guam, the U.S. Virgin Islands, and American Samoa as still "non-self-governing" for purposes of Article 73 of the Charter of the United Nations. Although these areas are in fact self-governing at the local level, as described below, they have not yet completed the process of achieving self-determination. By contrast, the States of Alaska and Hawaii, as well as the Commonwealth of Puerto Rico, all of which used to be "non-self-governing" for purposes of Article 73, have completed acts of self-determination through which they have resolved the terms of their respective relationships with the rest of the United States. Similarly, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia and the Republic of the Marshall Islands, all of which were once part of the Trust Territory of the Pacific Islands, have completed the process of self-determination.

14. The Commonwealth of Puerto Rico. The largest and most populous of the U.S. Insular Areas, Puerto Rico was acquired by the United States in 1899 after the Spanish-American War. Between 1900 and 1950, Congress provided for the governance of Puerto Rico through Organic Acts. In 1950, Congress enacted legislation which authorized Puerto Rico to organize its own government and adopt a constitution. Puerto Rico did so, and its constitution became effective on 25 July 1952, at which time Puerto Rico achieved the status of a Commonwealth of the United States. Since then, the question of Puerto Rico's relationship to the United States has continued to be a matter of public debate and discussion. Most recently, the people of Puerto Rico expressed their views in a public referendum in November 1993; continuation of the current commonwealth arrangement received the greatest support, although nearly as many votes were cast in favour of statehood. By contrast, a small minority of some 5 per cent chose independence.

15. Guam. Guam was acquired by the United States in 1899 after the Spanish-American War and, with the exception of the period of occupation during the Second World War, was administered by the Navy until 1950. In 1950, Congress enacted the Guam Organic Act, providing for the civil government of Guam. 48 U.S.C. sections 1421-1425. It includes a Bill of Rights that parallels the guarantees of individual liberty in the Constitution and it grants U.S. citizenship to the people of Guam. Since 1968, the executive branch of Guam's Government, consisting of the Governor and the Lieutenant Governor, have been popularly elected. Legislative authority is exercised by a unicameral legislature of 21 members elected every two years. Judicial power is vested in local Guamanian courts and in the U.S. District Court for Guam.

The 1898 treaty, taking  
Puerto Rico, says:

“The civil rights and  
political status [*i.e. citizen-  
ship*] of the native  
inhabitants . . . shall be  
determined by the  
Congress.”

1898.

TREATY OF PEACE.<sup>o</sup>

*Concluded at Paris December 10, 1898; ratification advised by the Senate February 6, 1899; ratified by the President February 6, 1899; ratifications exchanged April 11, 1899; proclaimed April 11, 1899.*

## ARTICLES.

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| <p>I. Relinquishment of Cuba.<br/>         II. Cession of Porto Rico, Guam, etc.<br/>         III. Cession of Philippine Islands.<br/>         IV. Spanish trade with the Philippines.<br/>         V. Return of Spanish soldiers from Manila; evacuation of Philippines and Guam.<br/>         VI. Release of prisoners.<br/>         VII. Relinquishment of claims.<br/>         VIII. Property relinquished and ceded.<br/>         IX. Property and civil rights of persons in ceded territory.</p> | <p>X. Religious freedom.<br/>         XI. Legal rights in ceded or relinquished territory.<br/>         XII. Determination of pending judicial proceedings.<br/>         XIII. Privileges of copyrights and patents preserved in ceded territories.<br/>         XIV. Consular privileges.<br/>         XV. Mutual privileges of shipping charges.<br/>         XVI. Obligations of Cuba.<br/>         XVII. Ratification.</p> |
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The United States of America and Her Majesty the Queen Regent of Spain, in the name of her august son Don Alfonso XIII, desiring to end the state of war now existing between the two countries, have for that purpose appointed as plenipotentiaries:

The President of the United States,

William R. Day, Cushman K. Davis, William P. Frye, George Gray, and Whitelaw Reid, citizens of the United States;

And Her Majesty the Queen Regent of Spain,

Don Eugenio Montero Ríos, president of the senate, Don Buena-ventura de Abarzuza, senator of the Kingdom and ex-minister of the Crown; Don José de Garnica, deputy to the Cortes and associate justice of the supreme court; Don Wenceslao Ramirez de Villaurrutia, envoy extraordinary and minister plenipotentiary at Brussels, and Don Rafael Cerero, general of division;

Who, having assembled in Paris, and having exchanged their full powers, which were found to be in due and proper form, have, after discussion of the matters before them, agreed upon the following articles:

<sup>o</sup> Federal cases: *Oteiza v. Jacobus* (136 U. S., 330), *Duly v. U. S.* (182 U. S., 222; 183 U. S., 151), *Delima v. Bidwell* (182 U. S., 1), *Goetze v. U. S.* (182 U. S., 221; 103 Fed. Rep., 72), *Armstrong v. U. S.* (182 U. S., 243), *Downes v. Bidwell* (182 U. S., 244), *Hauns v. New York and Porto Rico Company* (182 U. S., 392), *Crossman v. U. S.* (182 U. S., 221), *Pepke v. U. S.* (183 U. S., 176), *J. Ribas Hijo v. U. S.* (194 U. S. 315), *Derr v. U. S.* (195 U. S., 138), *Bosque v. U. S.* (209 U. S. 91), *Ponce v. Roman Catholic Church* (210 U. S., 296), *Valdes v. Munich* (212 U. S., 568), *Caballos v. U. S.* (214 U. S., 47), *Castro v. Uriarte* (12 Fed. Rep., 250; 16 Fed. Rep., 93), *In re Cortes* (42 Fed. Rep., 47), *Ex parte Ortiz* (100 Fed. Rep., 955), *Armstrong v. Bidwell* (124 Fed. Rep., 690), *De Pass v. Bidwell* (124 Fed. Rep., 618), *Sugar Company v. Bidwell* (124 Fed. Rep., 677 [683]), *Howell v. Bidwell* (124 Fed. Rep., 688), *De Canevara v. Brooke* (135 Fed. Rep., 144).

structures, public highways and other immovable property which, in conformity with law, belong to the public domain, and as such belong to the Crown of Spain.

And it is hereby declared that the relinquishment or cession, as the case may be, to which the preceding paragraph refers, cannot in any respect impair the property rights which by law belong to the peaceful possession of property of all kinds, of provinces, municipalities, public or private establishments, ecclesiastical or civic bodies, or any other associations having legal capacity to acquire and possess property in the aforesaid territories renounced or ceded, or of private individuals, of whatsoever nationality such individuals may be.

The aforesaid relinquishment or cession, as the case may be, includes all documents exclusively referring to the sovereignty relinquished or ceded that may exist in the archives of the Peninsula. Where any document in such archives only in part relates to said sovereignty, a copy of such part will be furnished whenever it shall be requested. Like rules shall be reciprocally observed in favor of Spain in respect of documents in the archives of the islands above referred to.

In the aforesaid relinquishment or cession, as the case may be, are also included such rights as the Crown of Spain and its authorities possess in respect of the official archives and records, executive as well as judicial, in the islands above referred to, which relate to said islands or the rights and property of their inhabitants. Such archives and records shall be carefully preserved, and private persons shall without distinction have the right to require, in accordance with law, authenticated copies of the contracts, wills and other instruments forming part of notarial protocols or files, or which may be contained in the executive or judicial archives, be the latter in Spain or in the islands aforesaid.

#### ARTICLE IX.

Spanish subjects, natives of the Peninsula, residing in the territory over which Spain by the present treaty relinquishes or cedes her sovereignty, may remain in such territory or may remove therefrom, retaining in either event all their rights of property, including the right to sell or dispose of such property or of its proceeds; and they shall also have the right to carry on their industry, commerce and professions, being subject in respect thereof to such laws as are applicable to other foreigners. In case they remain in the territory they may preserve their allegiance to the Crown of Spain by making, before a court of record, within a year from the date of the exchange of ratifications of this treaty, a declaration of their decision to preserve such allegiance; in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they may reside.

The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress.

#### ARTICLE X.

The inhabitants of the territories over which Spain relinquishes or cedes her sovereignty shall be secured in the free exercise of their religion.

So, when you are asked  
“Are you a U.S. citizen?”

- you are **NOT** being asked,  
“Are you a Citizen of an  
American State?”

- you are **NOT** being asked,  
“Are you a Citizen of the  
United States of America?”  
(where the Constitution  
applies)

You are being asked,

- “Are you a citizen of a territory where Congress has power wholly unrestricted by the Constitution?”

- “Are you a citizen where your ‘civil rights and political status [your citizenship]. . . shall be determined by the Congress.’?”



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A little hard  
to carry  
around

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upper estate

1576

**upper estate.** See *dominant estate* under ESTATE (4).

**upper management.** See *top management* under MANAGEMENT.

**UPREIT** (əp-rit). See *umbrella-partnership real-estate investment trust* under REAL-ESTATE INVESTMENT TRUST.

**upset bid.** See BID (1).

**upset price.** See PRICE.

**upside.** *Securities.* 1. An upward movement in stock prices. 2. The potential of an upward movement in stock prices. Cf. DOWNSIDE.

**upstreaming.** A parent corporation's use of a subsidiary's cash flow or assets for purposes unrelated to the subsidiary. [Cases: Corporations ⇨1.5(3). C.J.S. Corporations § 15.]

**upstream merger.** See MERGER.

**UPUFA.** *abbr.* UNIFORM PUTATIVE AND UNKNOWN FATHERS ACT.

**upward departure.** See DEPARTURE.

*u.r.* *abbr.* UTI ROGAS.

**urban, adj.** Of or relating to a city or town; not rural.

**urban-fear syndrome.** See URBAN-SURVIVAL SYNDROME.

**Urban Mass Transit Administration.** A unit in the U.S. Department of Transportation responsible for making grants to help states, regional and local governmental bodies, and public agencies to acquire or improve capital equipment and facilities for urban mass-transit systems; for providing technical assistance and funds for demonstration projects; for making educational grants for urban mass-transit research and training; and for making training grants to mass-transit systems for training. • The agency also awards grants for transit operations in nonurban areas. — *Abbr.* UMTA.

**urban planning.** See LAND-USE PLANNING.

**urban prefect, n.** *Roman law.* See PRAEFECTUS URBI.

**urban-psychosis defense.** See URBAN-SURVIVAL SYNDROME.

**urban renewal.** The process of redeveloping urban areas by demolishing or repairing existing structures or by building new facilities on areas that have been cleared in accordance with an overall plan. [Cases: Municipal Corporations ⇨267. C.J.S. Municipal Corporations § 957.]

**urban servitude.** See SERVITUDE (2).

**urban-survival syndrome.** A self-defense theory holding that a defendant who uses unreasonable force may be acquitted if the defendant lives in a dangerous environment that heightens the defendant's fears of injury to life or limb so much that the force used seemed reasonable and necessary to the defendant. — Also termed *urban-survival defense*; *urban-fear syndrome*; *urban-psychosis defense*; *inner-city post-traumatic-stress defense*.

**urb̄s** (ərbz), *n.* [Latin] *Roman law.* 1. A city or town. 2. The city of Rome.

**ure** (yoor). [fr. Old French *oeuvre*] Custom; practice; exercise.

**URESA** (yə-ree-sə). *abbr.* UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT.

**urgent deficiency bill.** See *deficiency bill* under BILL (3).

**Urheberrecht** (oo-re-bair-rekt), *n.* [German] AUTHOR'S RIGHT.

**Uruguay Round.** The 1994 negotiations of the General Agreement on Tariffs and Trade. • The negotiations resulted in the TRIPs Agreement that established the World Trade Organization and made member nations' patent laws more uniform. See TRIPs.

**U.S.** *abbr.* 1. United States. 2. UNITED STATES REPORTS.

**USA.** *abbr.* 1. UNITED STATES OF AMERICA. 2. UNITED STATES ARMY. 3. UNITED STATES ATTORNEY.

**USAA.** *abbr.* United States Arbitration Act. See FEDERAL ARBITRATION ACT.

**USAF.** *abbr.* UNITED STATES AIR FORCE.

**usage.** 1. A well-known, customary, and uniform practice, usu. in a specific profession or business. See CUSTOM (1). Cf. CONVENTION (6). [Cases: Customs and Usages ⇨1-22. C.J.S. Customs and Usages §§ 1-48.]

"A 'usage' is merely a customary or habitual practice; a 'convention' is a practice that is established by general tacit consent. 'Usage' denotes something that people are accustomed to do; 'convention' indicates that they are accustomed to do it because of a general agreement that it is the proper thing to do." Herbert W. Horwill. *The Usages of the American Constitution* 22 (1925).

"Although rules of law are often founded on usage, usage is not in itself a legal rule but merely habit or practice in fact. A particular usage may be more or less widespread. It may prevail throughout an area, and the area may be small or large — a city, a state or a larger region. A usage may prevail among all people in the area, or only in a special trade or other group. Usages change over time, and persons in close association often develop temporary usages peculiar to themselves." *Restatement (Second) of Contracts* § 219 cmt. a (1979).

**custom and usage.** See CUSTOM AND USAGE.

**general usage.** A usage that prevails throughout a country or particular trade or profession; a usage that is not restricted to a local area. [Cases: Customs and Usages ⇨1. C.J.S. Customs and Usages § 1.]

**immemorial usage.** A usage that has existed for a very long time; long-standing custom. See TIME IMMEMORIAL. [Cases: Customs and Usages ⇨1. C.J.S. Customs and Usages § 1.]

**local usage.** A practice or method regularly observed in a particular place, sometimes considered by a court in interpreting a document. UCC § 1-205(2). See CUSTOM AND USAGE. [Cases: Customs and Usages ⇨9. C.J.S. Customs and Usages § 15.]

**trade usage.** A practice or method of dealing having such regularity of observance in a region, vocation, or trade that it justifies an expectation that it will be observed in a given transaction; a customary practice or set of practices relied on by persons conversant in, or connected with, a trade or business. • While a course of performance or a course of dealing can be established by the parties' testimony, a trade usage is usu. established by expert testimony. — Also termed *usage of trade*; *course of trade*. Cf. COURSE OF DEALING; COURSE OF PER-

since there are two  
definitions, we know  
the U.S. is different from  
U.S.A.

but these definitions  
don't tell us what  
these phrases mean

Let's look further . . .

**United States Foreign Intelligence Surveillance Court.** An 11-judge court that hears requests from the Attorney General for surveillance warrants under the Foreign Intelligence Surveillance Act. • The Court's proceedings and records are normally closed to the public. Its rulings may be reviewed by the Foreign Intelligence Surveillance Court of Review. — Abbr. FISC.

**United States Foreign Intelligence Surveillance Court of Review.** A panel comprising three federal judges appointed by the Chief Justice to review decisions of the United States Foreign Intelligence Surveillance Court. • The Court was established in 1978 by the Foreign Intelligence Surveillance Act.

**United States Geological Survey.** A unit in the U.S. Department of the Interior responsible for preparing and publishing maps, technical reports, and fact sheets, and for compiling information about energy and mineral resources and the use and quality of the nation's water resources. — Abbr. USGS.

**United States Institute of Peace.** An independent federal institution created to develop and disseminate knowledge about international peace and conflict resolution. • The Institute was established in 1984.

**United States International Trade Commission.** An independent federal agency that compiles information on international trade and tariffs; reports its findings and recommendations to the President, the U.S. Trade Representative, and Congressional Committees; and conducts investigations into international-trade relief. — Abbr. USITC.

**United States Magistrate Judge.** A federal judicial officer who hears civil and criminal pretrial matters and who may conduct civil trials or criminal misdemeanor trials. 28 USCA §§ 631–639. — Also termed *federal magistrate*; (before 1990) *United States Magistrate*. — Sometimes also termed *parajudge*. [Cases: United States Magistrates ⇨11–12. C.J.S. *United States Commissioners* §§ 2–7, 13–15.]

**United States Marine Corps.** The military service within the United States Navy whose forces are trained for land, sea, and air combat. • The United States Marine Corps is a separate service within the United States Navy under the authority of the U.S. Department of the Navy. — Abbr. USMC.

**United States Marshal.** See MARSHAL.

**United States Marshals Service.** The unit in the U.S. Department of Justice responsible for protecting federal courts and ensuring effective operation of the judicial system. • U.S. marshals make arrests, serve court papers, and enforce court orders.

**United States Military Academy.** An institution of higher learning in the U.S. Department of the Army responsible for educating and training officers for service in the U.S. Army. • The academy is located on the Hudson River in West Point, New York. — Abbr. USMA. — Often termed *West Point*.

**United States Mint.** A unit in the U.S. Department of the Treasury responsible for producing coins to be used in trade and commerce, numismatic coins, gold and silver coins, and national medals. • It also operates the gold-storage facility at Fort Knox, Ken-

tucky. It was formerly termed the Bureau of the Mint.

**United States Navy.** The naval-operations branch of the United States armed forces, including naval aviation and the United States Marine Corps, and the United States Coast Guard when operating as a service in the Navy. • The United States Navy is under the authority of the U.S. Department of the Navy. — Abbr. USN.

**United States of America.** A federal republic formed after the War of Independence and made up of 48 conterminous states, plus the state of Alaska and the District of Columbia in North America, plus the state of Hawaii in the Pacific. — Abbr. USA. [Cases: United States ⇨1. C.J.S. *United States* §§ 2–3.]

**United States officer.** See OFFICER (1).

**United States Patent and Trademark Office.** The Department of Commerce agency that examines patent and trademark applications, issues patents, registers trademarks, and furnishes patent and trademark information and services to the public. — Abbr. PTO. — Often shortened to *Patent Office*; *Trademark Office*. [Cases: Patents ⇨97. C.J.S. *Patents* §§ 135–138, 145, 178.]

**United States person.** A U.S. resident or national (with the exception of one living outside the United States who is employed by someone who is not a United States person), a domestic American concern, and any foreign subsidiary or affiliate of a domestic concern with operations controlled by the domestic concern. • Under antiboycott regulatory controls, no United States person may participate in a secondary boycott or discrimination against Jews and others by members of the League of Arab States. 50 USCA app. § 2415(2).

**United States Postal Service.** An independent establishment in the executive branch responsible for operating post offices, safeguarding and delivering mail, and enforcing the laws affecting the integrity and security of the mail. • It was created by the Postal Reorganization Act of 1970. 39 USCA §§ 101 et seq. — Abbr. USPS.

**United States Reports.** The official printed record of U.S. Supreme Court cases. • In a citation, it is abbreviated as U.S., as in 388 U.S. 14 (1967). [Cases: Reports ⇨3. C.J.S. *Reports* §§ 10–13.]

**United States Secret Service.** A law-enforcement agency in the U.S. Department of Homeland Security responsible for providing security for the President, Vice President, certain other government officials, and visiting foreign diplomats, and for protecting U.S. currency by enforcing the laws relating to counterfeiting, forgery, and credit-card fraud. • The Service was transferred from the Department of the Treasury in 2003. — Often shortened to *Secret Service*. [Cases: United States ⇨34. C.J.S. *United States* §§ 162–163.]

**United States Sentencing Commission.** An independent commission in the judicial branch of the federal government responsible for setting and regulating guidelines for criminal sentencing in federal courts and for issuing policy statements about their application. • The President appoints its members with the

*(notice that the  
“United States of America”  
is a “republic”,  
**NOT** a democracy)*

**United States of America**  
is defined as  
“made up of . . . states”

**This is definition #3**  
given by the Supreme Court  
in 1945

**BUT “United States”  
is NOT DEFINED in the  
8<sup>th</sup> Edition law dictionary !**

however,  
it IS defined  
in the 4<sup>th</sup> Edition



# BLACK'S LAW DICTIONARY

Definitions of the Terms and Phrases of  
American and English Jurisprudence,  
Ancient and Modern

By

HENRY CAMPBELL BLACK, M. A.

Author of Treatises on Judgments, Tax Titles, Intoxicating Liquors,  
Bankruptcy, Mortgages, Constitutional Law, Interpretation  
of Laws, Rescission and Cancellation of Contracts, Etc.

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## UNITAS — UNITY

come or profit in the oil or gas business is accomplished by a system of accounting by which is ascertained, as nearly as science will permit, the total amount of recoverable oil in the property, and to each barrel of this oil is assigned its part of the capital investment, and from the sale price of each barrel produced and sold there is deducted the expenses of producing it, and its proportion of the capital investment, leaving the balance as profit, and thus, when the property is exhausted, the operator has received back his capital and expenses, and accounted for his net income or loss. *Carter v. Phillips*, 88 Okl. 202, 212 P. 747, 750.

**UNITAS PERSONARUM.** Lat. The unity of persons, as that between husband and wife, or ancestor and heir.

**UNITE.** To join in an act, to concur, to act in concert. *Bowling v. Wilkerson*, D.C.Ky., 19 F. Supp. 584, 587.

**UNITED GREEK CATHOLIC CHURCH.** All the churches of the Byzantine Rite in communion with the See of Rome. The term is synonymous with "Uniate Greek Catholic Church" or "Uniat Greek Catholic Church," and signifies an ecclesiastical body in union with the Roman Catholic Church and acknowledging the primacy and supremacy of the pope. *Morris v. Featro*, 340 Pa. 354, 17 A.2d 403, 405.

**UNITED IN INTEREST.** A statutory term applicable to codefendants only when they are similarly interested in and will be similarly affected by the determination of the issues involved in the action; *McCord v. McCord*, 104 Ohio St. 274, 135 N.E. 548, 549; *e. g.*, joint obligors upon a guaranty; *Columbia Graphophone Co. v. Slawson*, 100 Ohio St. 473, 126 N.E. 890, 891.

**UNITED KINGDOM OF GREAT BRITAIN AND IRELAND.** The official title of the kingdom composed of England, Scotland, Ireland, and Wales, and including the colonies and possessions beyond the seas, under the act of January 1, 1801, effecting the union between Ireland and Great Britain.

**UNITED NATIONS.** An organization started by the allied powers in World War II for the stated purposes of preventing war, providing justice and promoting welfare and human rights of peoples. It consists of a Security Council and a General Assembly and subordinate agencies.

**UNITED STATES.** This term has several meanings. It may be merely the name of a sovereign occupying the position analogous to that of other sovereigns in family of nations, it may designate territory over which sovereignty of United States extends, or it may be collective name of the states which are united by and under the Constitution. *Hooven & Allison Co. v. Evatt*, U. S. Ohio, 65 S.Ct. 870, 880, 324 U.S. 652, 89 L.Ed. 1252.

**UNITED STATES BONDS.** Obligations for payment of money which have been at various times issued by the government of the United States.

**UNITED STATES COMMISSIONER.** Whose powers in federal matters, are in most respects the same as those of justices of the peace in felony offenses against laws of state, is not a judge or court, and does not hold court, but is an adjunct of court, possessing independent, though subordinate, judicial powers of his own. *U. S. v. Napela*, D.C.N.Y., 28 F.2d 898, 899.

**UNITED STATES COURTS.** Except in the case of impeachments the judicial power of the United States is vested by the Constitution in a supreme court and such other inferior courts as may be from time to time established by congress. All the judges are appointed by the president, with the advice and consent of the senate, to hold office during good behavior, and their compensation cannot be diminished during their terms of office. The judges, other than those of the supreme court, are circuit judges and district judges. The circuit judges compose the courts of appeals and the district judges hold the district courts, and also at times sit in the circuit courts of appeal. For a detailed statement of the territorial boundaries of the several districts and divisions of districts, see 28 U.S.C.A. § 81 et seq. and various special acts.

It shall be the duty of the district court of each judicial district to appoint such number of persons, to be known as United States commissioners, at such places in the district as may be designated by the district court. *Rev.St.U.S. § 627 (28 USCA § 631)*. *Austill v. United States*, 58 Ct.Cl. 232; *United States v. Maresca*, D.C.N.Y., 266 F. 713.

In statutes, the words "court of the district", *Prieto v. U. S. Shipping Board Emergency Fleet Corporation*, 117 Misc. 703, 193 N.Y.S. 342, and "courts of the United States," are commonly deemed to refer to federal courts and not to state courts. *General Inv. Co. v. Lake Shore & M. S. Ry. Co.*, C.C.A.Ohio, 269 F. 235, 237.

**UNITED STATES CURRENCY.** Commonly understood to include every form of currency authorized by the United States government, whether issued directly by it or under its authority. *Appel v. State*, 28 Ariz. 416, 237 P. 190, 191.

**UNITED STATES NOTES.** Promissory notes, resembling bank-notes, issued by the government of the United States.

**UNITED STATES OFFICER.** Usually and strictly, in United States statutes, a person appointed in the manner declared under Const. art. 2, § 2, *McGrath v. U. S.*, C.C.A.N.Y., 275 F. 294, 300, providing for the appointment of officers, either by the President and the Senate, the President alone, the courts of law, or the heads of departments, *Steele v. U. S.*, 45 S.Ct. 417, 418, 267 U.S. 505, 69 L.Ed. 761. *Dropps v. U. S.*, C.C.A.Minn., 34 F.2d 15, 17.

Postmaster is an officer under the United States. *State ex rel. Wimberly v. Barham*, 173 La. 488, 137 So. 862, 864.

Also post office clerk who took oath and gave bond before taking up duties. *Foshay v. U. S.*, D.C.N.Y., 54 F.2d 668, 669. A receiver appointed by a federal court may be an "officer of the United States," within the meaning of Criminal Code, § 97, and Act March 4, 1911, 18 U.S.C.A. §§ 654, 2073. *Weitzel v. U. S.*, C.C.A.Ky., 274 F. 101, 102.

**UNITY.** In the law of estates. The peculiar characteristic of an estate held by several in joint

this is exactly the  
definition given in 1945  
by the Supreme Court

So, we've looked up  
“United States” twice,  
once in Supreme Court  
cases, and again in  
law dictionaries.

**By definition, we have . . .**

The term “United States”  
means:

2) territory over which the  
United States is sovereign  
(circular definition, at best)

*and*

3) states...united...under  
the Constitution  
(i.e, the  
**United States of America**)

So, when someone uses the term “United States”, how do you know which meaning above? Well, unfortunately, you don't, unless 1) you have the knowledge, and 2) you demand an answer from the speaker.

# Part 2

## Summary

- federal citizen
- citizen of the United States in the  
Fourteenth Amendment
- subject to the jurisdiction of Congress
- *lots* of ways to become a U.S. citizen

so, let's go back  
to the question

**What is a U.S. citizen?**

a citizen of the U.S.A.  
would be a citizen of  
one of the states united.

a U.S. citizen,  
in Black's 8<sup>th</sup> Edition is:

FORMANCE. [Cases: Customs and Usages ⇨1. C.J.S. *Customs and Usages* § 1.]

"The existence and scope of a usage of trade are to be determined as questions of fact. If a usage is embodied in a written trade code or similar writing the interpretation of the writing is to be determined by the court as a question of law. Unless otherwise agreed, a usage of trade in the vocation or trade in which the parties are engaged or a usage of trade of which they know or have reason to know gives meaning to or supplements or qualifies their agreement." *Restatement (Second) of Contracts* § 222 (1979).

2. See *conventional custom* under CUSTOM.

**USAID.** *abbr.* UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT.

**usance** (yoō-zənts). The time allowed for the payment of a foreign bill of exchange, sometimes set by custom but now usu. by law.

**usance credit.** See *time letter of credit* under LETTER OF CREDIT.

**USA Patriot Act.** A statute enacted in response to the terrorist attacks of September 11, 2001, giving law-enforcement agencies broader authority to collect information on suspected terrorists, to share that information among domestic and foreign intelligence agencies, to make the country's borders more secure, to detain suspects on new types of criminal charges using new criminal procedures, and to give the Treasury Department more authority to investigate and regulate financial institutions that participate in foreign money-laundering. • The title is an acronym of *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism*. — Often shortened to *Patriot Act*.

**USC.** *abbr.* UNITED STATES CODE.

**JSCA.** *abbr.* UNITED STATES CODE ANNOTATED.

**USCG.** *abbr.* UNITED STATES COAST GUARD.

**USCIS.** *abbr.* U.S. CITIZENSHIP AND IMMIGRATION SERVICE.

**U.S. citizen.** See *national of the United States* under NATIONAL.

**U.S. Citizenship and Immigration Service.** A unit in the U.S. Department of Homeland Security responsible for enforcing the nation's immigration laws. • Its functions were transferred from the former Immigration and Naturalization Service of the U.S. Department of Justice in 2003. — *Abbr.* USCIS.

**USDA.** *abbr.* DEPARTMENT OF AGRICULTURE.

**U.S.D.C.** *abbr.* UNITED STATES DISTRICT COURT.

**use** (yoos), *n.* 1. The application or employment of something; esp., a long-continued possession and employment of a thing for the purpose for which it is adapted, as distinguished from a possession and employment that is merely temporary or occasional <the neighbors complained to the city about the owner's use of the building as a dance club>.

**accessory use. Zoning.** A use that is dependent on or pertains to a main use. [Cases: *Zoning and Planning* ⇨301-308. C.J.S. *Zoning and Land Planning* §§ 148-153.]

**adverse use.** A use without license or permission. Cf. ADVERSE POSSESSION.

**beneficial use. Property.** The right to use property and all that makes that property desirable or habitable, such as light, air, and access, even if someone else owns the legal title to the property.

**collateral use. Intellectual property.** The legal use of a trademark by someone other than the trademark owner, whereby the other party must clearly identify itself, the use of the trademark, and the absence of affiliation with the trademark owner.

**conditional use. Zoning.** A use of property subject to special controls and conditions. • A conditional use is one that is suitable to a zoning district, but not necessarily to every location within that district. — Also termed *special exception*. [Cases: *Zoning and Planning* ⇨382. C.J.S. *Zoning and Land Planning* §§ 195-197.]

**conforming use. Zoning.** The use of a structure or of the land in conformity with the uses permitted under the zoning classifications of a particular area, such as the building of a single-family dwelling in a residential zone. [Cases: *Zoning and Planning* ⇨271. C.J.S. *Zoning and Land Planning* § 122.]

**double use. Patents.** An application of a known principle or process to a new use without leading to a new result or product. [Cases: *Patents* ⇨27. C.J.S. *Patents* § 82.]

**exclusive use.** 1. *Trademarks.* The right to use a specific mark without exception, and to prevent another from using a confusingly similar mark. [Cases: *Trade Regulation* ⇨61, 331. C.J.S. *Trade-Marks, Trade-Names, and Unfair Competition* §§ 28, 36, 71, 119.] 2. *Property.* The right of an adverse user to a property, exercised independently of any similar rights held by others; one of the elements of a prescriptive easement. See USER. [Cases: *Adverse Possession* ⇨36-37; *Easements* ⇨8(4). C.J.S. *Adverse Possession* §§ 27, 55, 57; *Easements* §§ 38, 44.]

**experimental use. Patents.** 1. The use or sale of an invention by the inventor for experimental purposes. 2. A defense to liability for patent infringement when the infringement took place only to satisfy curiosity or to complete an experiment, rather than for profit. [Cases: *Patents* ⇨260. C.J.S. *Patents* § 406.]

**highest and best use. Real estate.** In valuing property, the use that will generate the most profit. • This standard is used esp. to determine the fair market value of property subject to eminent domain. — Often shortened to *best use*. — Also termed *most suitable use*. [Cases: *Taxation* ⇨348(3).]

**incidental use. Zoning.** Land use that is dependent on or affiliated with the land's primary use. [Cases: *Zoning and Planning* ⇨301-308. C.J.S. *Zoning and Land Planning* §§ 148-153.]

**most suitable use.** See *highest and best use*.

**nonconforming use. Zoning.** Land use that is impermissible under current zoning restrictions but that is allowed because the use existed lawfully before the restrictions took effect. [Cases: *Zoning and*

**narrowly tailored**

as near to the fairway wall on the vessel's starboard side as is safe and practicable. 33 USCA § 2009(a)(i). [Cases: Collision ⊕90. C.J.S. *Collision* §§ 160, 162, 165-174, 177, 180.]

**narrowly tailored**, *adj.* (Of a content-neutral restriction on the time, place, or manner of speech in a designated public forum) being only as broad as is reasonably necessary to promote a substantial governmental interest that would be achieved less effectively without the restriction; no broader than absolutely necessary. See *designated public forum* under PUBLIC FORUM. [Cases: Constitutional Law ⊕90.1(4). C.J.S. *Constitutional Law* §§ 556-557, 559-561, 568, 570-572, 580, 608.]

**narrow sea**. (*often pl.*) A sea running between two coasts that are close to each another. • The English Channel, for example, is a narrow sea.

**NASA**. *abbr.* NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.

**nasciturus** (nas-ə-t[y]oor-əs or -t[y]ər-əs), *n.* [fr. Latin *nascor* "to be born"] *Roman law*. An unborn child.

**NASD**. *abbr.* NATIONAL ASSOCIATION OF SECURITIES DEALERS.

**NASDAQ** (naz-dak). *abbr.* NATIONAL ASSOCIATION OF SECURITIES DEALERS AUTOMATED QUOTATION SYSTEM.

**NASS**. *abbr.* NATIONAL AGRICULTURAL STATISTICS SERVICE.

**natale** (nə-tay-lee), *n.* [Latin "of or belonging to birth"] *Hist.* The status a person acquires by birth. • For example, if one or both parents of a child were serfs, the child was generally regarded as a serf, and a child born free rarely became a serf. See NATIVUS.

**nati et nascituri** (nay-ti et nas-ə-t[y]oor-i or -t[y]ər-i), *n. pl.* [Latin "born and to be born"] *Hist.* A person's heirs, near and remote.

**natio** (nay-shee-oh), *n.* [Latin] *Hist.* 1. A nation. 2. A group of students. 3. A native place.

**nation**, *n.* 1. A large group of people having a common origin, language, and tradition and usu. constituting a political entity. • When a nation is coincident with a state, the term *nation-state* is often used. — Also termed *nationality*.

"The nearest we can get to a definition is to say that a nation is a group of people bound together by common history, common sentiment and traditions, and, usually (though not always, as, for example, Belgium or Switzerland) by common heritage. A state, on the other hand, is a society of men united under one government. These two forms of society are not necessarily coincident. A single nation may be divided into several states, and conversely a single state may comprise several nations or parts of nations." John Salmond, *Jurisprudence* 136 (Glanville L. Williams ed., 10th ed. 1947).

2. A community of people inhabiting a defined territory and organized under an independent government; a sovereign political state. Cf. STATE.

**national**, *adj.* 1. Of or relating to a nation <national anthem>. 2. Nationwide in scope <national emergency>.

**national**, *n.* 1. A member of a nation. 2. A person owing permanent allegiance to and under the protection of a state. 8 USCA § 1101(a)(21).

**national of the United States**. A citizen of the United States or a noncitizen who owes permanent allegiance to the United States. 8 USCA § 1101(a)(22). — Also termed *U.S. national*; *U.S. citizen*. [Cases: Citizens ⊕1. C.J.S. *Citizens* §§ 7, 12.]

**National Aeronautics and Space Act**. A 1958 federal statute that created the National Aeronautics and Space Administration (NASA), a civilian agency of the federal government whose functions include conducting space research, improving aeronautical travel, building manned and unmanned space vehicles, developing operational space programs, and engaging in other space activities devoted to peaceful purposes for the benefit of all humankind. 42 USCA §§ 2451-2484.

**National Aeronautics and Space Administration**. The independent federal agency that conducts research into space flight and that builds and flies space vehicles. • NASA was created by the National Aeronautics and Space Act of 1958. 42 USCA §§ 2451 et seq. — Abbr. NASA.

**National Agricultural Statistics Service**. An agency in the U.S. Department of Agriculture responsible for compiling statistical information and estimating agricultural production, supply, price, chemical use, and other statistics. — Abbr. NASS.

**national airspace**. See AIRSPACE.

**National Archives and Records Administration**. An independent federal agency that sets procedures for managing governmental records; helps federal agencies manage their records; provides record-storage access; and manages the Presidential Libraries system. • The agency is run by the Archivist of the United States. It publishes the *United States Statutes at Large*, the *Federal Register*, the *Code of Federal Regulations*, the weekly *Compilation of Presidential Documents*, the annual *Public Papers of the President*, and the *United States Government Manual*. It is a successor to the National Archives Establishment, created in 1934, that was made a unit of the General Services Administration in 1949. It became an independent agency in 1984. — Abbr. NARA. See FEDERAL REGISTER.

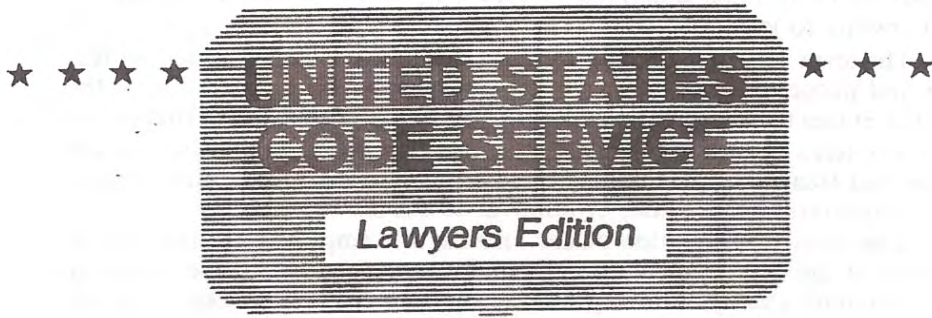
**National Asian Pacific American Bar Association**. A professional association of Asian Pacific American attorneys, judges, law professors, and law students, emphasizing civil rights and immigration issues. — Abbr. NAPABA.

**national association**. See *national bank* under BANK.

**National Association of Realtors**. An association of real-estate brokers and agents promoting education, professional standards, and modernization in areas of real estate such as brokerage, appraisal, and property management. — Abbr. NAR. [Cases: Brokers ⊕3. C.J.S. *Brokers* §§ 14-24.]

**National Association of Securities Dealers**. A group of brokers and dealers empowered by the SEC to regulate the over-the-counter securities market. Abbr. NASD. [Cases: Exchanges ⊕11; Securities Regulation ⊕40.15. C.J.S. *Exchanges* §§ 4, 25; *Securities Regulation* §§ 166-167.]





All federal laws of a general and permanent nature arranged in accordance with the section numbering of the United States Code and the supplements thereto.

**8 USCS**  
**Aliens and Nationality**  
**§§ 1- 1200**  
**1997**

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(IV) is eligible to receive a reward under section 36(a) of the State Department Basic Authorities Act of 1956 [22 USCS § 2708(a)], and, if the Attorney General (or with respect to clause (ii), the Secretary of State and the Attorney General jointly) considers it to be appropriate, the spouse, married and unmarried sons and daughters, and parents of an alien described in clause (i) or (ii) if accompanying, or following to join, the alien.

(16) The term "immigrant visa" means an immigrant visa required by this Act and properly issued by a consular officer at his office outside of the United States to an eligible immigrant under the provisions of this Act.

(17) The term "immigration laws" includes this Act and all laws, conventions, and treaties of the United States relating to the immigration, exclusion, deportation, expulsion, or removal of aliens.

(18) The term "immigration officer" means any employee or class of employees of the Service or of the United States designated by the Attorney General, individually or by regulation, to perform the functions of an immigration officer specified by this Act or any section thereof.

(19) The term "ineligible to citizenship," when used in reference to any individual, means, notwithstanding the provisions of any treaty relating to military service, an individual who is, or was at any time, permanently debarred from becoming a citizen of the United States under section 3(a) of the Selective Training and Service Act of 1940, as amended (54 Stat. 885; 55 Stat. 844), or under section 4(a) of the Selective Service Act of 1948, as amended (62 Stat. 605; 65 Stat. 76) [50 USCS Appx. § 454(a)], or under any section of this Act, or any other Act, or under any law amendatory of, supplementary to, or in substitution for, any of such sections or Acts.

(20) The term "lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

(21) The term "national" means a person owing permanent allegiance to a state.

(22) The term "national of the United States" means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

(23) The term "naturalization" means the conferring of nationality of a state upon a person after birth, by any means whatsoever.

(24) [Repealed]

(25) The term "noncombatant service" shall not include service in which the individual is not subject to military discipline, court martial, or does not wear the uniform of any branch of the armed forces.

(26) The term "nonimmigrant visa" means a visa properly issued to an alien as an eligible nonimmigrant by a competent officer as provided in this Act.

(27) The term "special immigrant" means—

BUT  
“citizen of the  
United States”  
is **NOT** in the dictionary !

however,  
“*federal citizen*” is

**citation order.** The appropriate ranking of the various authorities marshaled in support of a legal proposition.

**Citations, Law of. Roman law.** An A.D. 426 decree of Emperor Valentinian III listing Papinian, Paul, Gaius, Ulpian, and Modestinus as juristic writers who could be cited authoritatively in court. • If a majority of the writers agreed on an issue, the judge was bound to follow the majority view. The Law of Citations allowed the judge to use discretion only if the writers were equally divided and Papinian (whose view prevailed in a tie) was silent on the issue.

"In 426 came the famous *lex de responsis prudentium* — the Law of Citations. . . . This law lessened the difficulties of the courts in dealing with juristic literature. It excluded a huge mass of conflicting doctrine, the relative value of which had not been determined, and which yet had to be used by the judges as a source of principle on which to base their decisions." W.W. Buckland, *A Text-Book of Roman Law from Augustus to Justinian* 33 (Peter Stein ed., 3d ed. 1963).

**citation signal.** See SIGNAL (2).

**citator** (si-tay-tər). A catalogued list of cases, statutes, and other legal sources showing the subsequent history and current precedential value of those sources. • Citators allow researchers to verify the authority of a precedent and to find additional sources relating to a given subject. Citators were originally printed on gummed paper and pasted next to the report of a cited case. Today, citators are published in volumes and are also available online; the two most popular are Shepard's and KeyCite.

"A citator is a compilation showing where certain cases have been cited in other cases, and whether the provisions of constitutions and statutes have been repealed, amended, or otherwise affected, or have been judicially construed, or have been cited." Frank Hall Childs, *Where and How to Find the Law* 61 (1922).

**citatory** (si-tə-tor-ee), *adj.* Of, relating to, or having the power of a citation or summons <letters citatory>.

**cite, n.** See CITATION (3).

**cite, vb.** 1. To summon before a court of law <the witness was cited for contempt>. 2. To refer to or adduce as precedent or authority <counsel then cited the appropriate statutory provision>. 3. To commend or honor <the soldier was cited for bravery>.

**citeable.** See CITABLE.

**citizen, n.** 1. A person who, by either birth or naturalization, is a member of a political community, owing allegiance to the community and being entitled to enjoy all its civil rights and protections; a member of the civil state, entitled to all its privileges. Cf. RESIDENT; DOMICILIARY. [Cases: Citizens ⇨1. C.J.S. *Citizens* §§ 7, 12.]

**citizen by naturalization.** See *naturalized citizen*.

**federal citizen.** A citizen of the United States.

**natural-born citizen.** A person born within the jurisdiction of a national government.

**naturalized citizen.** A foreign-born person who attains citizenship by law. — Also termed *citizen by*

*naturalization*. [Cases: Aliens ⇨60–70. C.J.S. *Aliens* §§ 276–315, 326.]

2. For diversity-jurisdiction purposes, a corporation that was incorporated within a state or has its principal place of business there. 28 USCA § 1332(c)(1). [Cases: Federal Courts ⇨297.]

**citizen-informant.** See INFORMANT.

**citizen's arrest.** See ARREST.

**citizenship, n.** 1. The status of being a citizen. 2. The quality of a person's conduct as a member of a community.

**corporate citizenship.** See CORPORATE CITIZENSHIP.

**dual citizenship.** See DUAL CITIZENSHIP.

**Citizenship Clause.** The clause of the U.S. Constitution providing that all persons born or naturalized in the United States are citizens of the United States and the state they reside in. U.S. Const. amend. XIV, § 1, cl. 1. [Cases: Citizens ⇨1–11. C.J.S. *Aliens* § 281; *Citizens* §§ 2–13, 19, 21–22, 24–29.]

**citizen suit.** An action under a statute giving citizens the right to sue violators of the law (esp. environmental law) and to seek injunctive relief and penalties. • In the 1970s, during the heyday of antipollution statutes such as the Clean Water Act and the Clean Air Act, legislators believed that regulators sometimes become too close to the industries they oversee and, as a result, lack the aggressiveness that individual citizens bring to litigation. The statutes therefore authorize, among other things, "private attorneys general" (citizens) to protect the environment. This includes not only injunctions to stop pollution but also penalties to be paid to the U.S. Treasury. A federal plaintiff must sue under a statutory citizen-suit provision and also satisfy constitutional-standing requirements. See STANDING. [Cases: Environmental Law ⇨20.]

**citology.** See LEGAL CITOLOGY.

**citra causae cognitionem** (sit-rə kaw-zee kog-nish-eh-nəm). [Latin] *Hist.* Without investigating the cause; absent a judicial investigation.

"Citra causae cognitionem. . . . Formerly all interdiction was judicial, and proceeded upon an investigation of the facts and on its necessity or expediency being made out to the satisfaction of the Court. No other kind of interdiction was allowed, but voluntary interdiction, without such investigation, was afterwards admitted." John Trayner, *Trayner's Latin Maxims* 78 (4th ed. 1894).

**city, I.** A municipal corporation, usu. headed by a mayor and governed by a city council. [Cases: Municipal Corporations ⇨1.1. C.J.S. *Municipal Corporations* §§ 2–7.] 2. The territory within a city's corporate limits. 3. Collectively, the people who live within this territory. Cf. TOWN.

**city attorney.** An attorney employed by a city to advise it and represent it in legal matters. — Also termed *municipal attorney*; *city counsel*; *corporation counsel*; *city solicitor*. [Cases: Municipal Corporations ⇨214(3).]

"There may have been a time in this country when the function of the City Attorney of the average city consisted mainly of advising the Council, preparing an occasional ordinance or handling an infrequent lawsuit. The legal business of the average city is no longer so simple, so infrequent and so nonconsuming of the time of the City Attorney. Every action of the City must be justified by its legal

so, are you  
*a federal citizen ?*

This makes sense.  
A federal citizen would  
be a citizen of the U.S.  
government (see 1875)  
or a citizen of an insular  
area, a territory  
(see U.N. Covenant)

**the only definition of  
“citizen of the United  
States”**

that exists for  
the United States  
is in the 14<sup>th</sup> Amendment

THE CONSTITUTION  
of the  
UNITED STATES OF AMERICA

ANALYSIS AND INTERPRETATION

ANNOTATIONS OF CASES DECIDED BY THE  
SUPREME COURT OF THE UNITED STATES  
TO JUNE 29, 1992



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RIGHTS GUARANTEED  
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PROCESS AND EQUAL PROTECTION

FOURTEENTH AMENDMENT

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CITIZENS OF THE UNITED STATES

In the *Dred Scott Case*,<sup>1</sup> Chief Justice Taney for the Court ruled that United States citizenship was enjoyed by two classes of individuals: (1) white persons born in the United States as descendants of "persons, who were at the time of the adoption of the Constitution recognized as citizens in the several States and [who] became also citizens of this new political body," the United States of America, and (2) those who, having been "born outside the dominions of the United States," had migrated thereto and been naturalized therein. The States were competent, he continued, to confer state citizenship upon anyone in their midst, but they could not make the recipient of such status a citizen of the United States. The "Negro," or "African race," according to the Chief Justice, was ineligible to attain United States citizenship, either from a State or by virtue of birth in the United States, even as a free man descended from a Negro residing as a free man in one of the States at the date of ratification of the Constitution.<sup>2</sup> Congress, first in § 1 of the Civil Rights Act of 1866<sup>3</sup> and then in the first sentence

<sup>1</sup> *Scott v. Sandford*, 60 U.S. (19 How.) 393, 404-06, 417-18, 419-20 (1857).

<sup>2</sup> The controversy, political as well as constitutional, which this case stirred and still stirs, is exemplified and analyzed in the material collected in S. KUTLER, *THE DRED SCOTT DECISION: LAW OR POLITICS?* (1967).

<sup>3</sup> "That all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous



but this preserves  
the distinction  
between national and state  
citizenship

of §1 of the Fourteenth Amendment,<sup>4</sup> set aside the *Dred Scott* holding in a sentence “declaratory of existing rights, and affirmative of existing law. . . .”<sup>5</sup>

While clearly establishing a national rule on national citizenship and settling a controversy of long standing with regard to the derivation of national citizenship, the Fourteenth Amendment did not obliterate the distinction between national and state citizenship, but rather preserved it.<sup>6</sup> The Court has accorded the first sentence of §1 a construction in accordance with the congressional intentions, holding that a child born in the United States of Chinese parents who themselves were ineligible to be naturalized is nevertheless a citizen of the United States entitled to all the rights and privileges of citizenship.<sup>7</sup> Congress’ intent in including the qualifying phrase “and subject to the jurisdiction thereof,” was apparently to exclude from the reach of the language children born of diplomatic representatives of a foreign state and children born of alien enemies in hostile occupation, both recognized exceptions to the common-law rule of acquired citizenship by birth,<sup>8</sup> as well as children of members of Indian tribes subject to tribal laws.<sup>9</sup> The lower courts have generally held that the citizenship of the parents determines the citizenship of children born on vessels in United States territorial waters or on the high seas.<sup>10</sup>

In *Afroyim v. Rusk*,<sup>11</sup> a divided Court extended the force of this first sentence beyond prior holdings, ruling that it withdrew

condition of slavery or involuntary servitude . . . shall have the same right[s]. . . .” Ch. 31, 14 Stat. 27.

<sup>4</sup> The proposed amendment as it passed the House contained no such provision, and it was decided in the Senate to include language like that finally adopted. CONG. GLOBE, 39th Cong., 1st Sess. 2560, 2768–69, 2869 (1866). The sponsor of the language said: “This amendment which I have offered is simply declaratory of what I regard as the law of the land already, that every person born within the limits of the United States, and subject to their jurisdiction, is . . . a citizen of the United States.” *Id.* at 2890. The legislative history is discussed at some length in *Afroyim v. Rusk*, 387 U.S. 253, 282–86 (1967) (Justice Harlan dissenting).

<sup>5</sup> *United States v. Wong Kim Ark*, 169 U.S. 649, 688 (1898).

<sup>6</sup> *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36, 74 (1873).

<sup>7</sup> *United States v. Wong Kim Ark*, 169 U.S. 649 (1898).

<sup>8</sup> *Id.* at 682.

<sup>9</sup> *Id.* at 680–82; *Elk v. Wilkins*, 112 U.S. 94, 99 (1884).

<sup>10</sup> *United States v. Gordon*, 25 Fed. Cas. 1364 (C.C.S.D.N.Y. 1861) (No. 15,231); *In re Look Tin Sing*, 21 F. 905 (C.C.Cal. 1884); *Lam Mow v. Nagle*, 24 F.2d 316 (9th Cir. 1928).

<sup>11</sup> 387 U.S. 253 (1967). Though the Court upheld the involuntary expatriation of a woman citizen of the United States during her marriage to a foreign citizen in *Mackenzie v. Hare*, 239 U.S. 299 (1915), the subject first received extended judicial treatment in *Perez v. Brownell*, 356 U.S. 44 (1958), in which by a five-to-four decision the Court upheld a statute denaturalizing a native-born citizen for having voted in a foreign election. For the Court, Justice Frankfurter reasoned that Congress’ power to regulate foreign affairs carried with it the authority to sever the relationship of this country with one of its citizens to avoid national implication in

And,  
what does it mean,  
“and subject to the  
jurisdiction thereof”

maker, without the consent of the previous signers, is not a material alteration; and especially is this so if, with the added name, there are but two signers.

2 Dan. Neg. Inst., sec. 1389; *Bronnell v. Winona*, 29 N. Y., 400; *Montgomery R. R. Co. v. Hurst*, 9 Ala., 515; *Miller v. Finlay*, 26 Mich., 240; *Ward v. Hackitt*, 80 Minn., 160; *Snyder v. Van Doren*, 49 Wis., 803; *Critton v. Simpson*, 8 Ad. & El., 136; Iowa Code, sec. 2204.

*Mr. Galusha Parsons*, for appellees: The appellees, as to the paper in the form in question, are accommodation makers, with all the rights of sureties as to any question here.

Any alteration of a written instrument will discharge a surety.

*Mackich v. Webb*, 6 How., 208; *Smith v. U. S.*, 2 Wall., 219 (69 U. S., XVII., 788); *Martin v. Thomas*, 24 How., 816 (65 U. S., XVI., 890); *Miller v. Stewart*, 9 Wheat., 681; *Leppett v. Humphreys*, 21 How., 71 (62 U. S., XVI., 52); *Wood v. Steele*, 6 Wall., 80 (79 U. S., XVII., 725); *Adams v. Frye*, 8 Met., 103; *Wallace v. Jewell*, 21 Ohio St., 174; *Woodworth v. Elk of America*, 19 Johns., 808; *Sharpe v. Bagwell*, 1 Dev. Eq., 115; *Davidson v. Cooper*, 18 Mees. & W., 852; *Hall v. McHenry*, 19 Iowa, 525; *Murray v. Graham*, 29 Iowa, 320.

The addition of another name would discharge the original sureties, regardless of the fact of benefit or injury.

*Dickerman v. Almer*, 43 Iowa, 506; see, also, *Chappell v. Spencer*, 28 Barb., 535.

In *Draper v. Wood*, 112 Mass., 815, an alteration was made by one of the makers before delivery, not only without the knowledge of the payee, but without any fraudulent intent; the court held that it destroyed the identity of the note, and that there could be no recovery, either upon the note as it was or by restoring it to the condition in which it was before the alteration.

See, also, *Robinson v. Reed*, 46 Iowa, 219; *Greenfield Sav. Bank v. Stowell*, 123 Mass., 199; *Waterman v. Pess*, 43 Me., 510; *Liste v. Rogers*, 18 B. Mon., 529; *Stephens v. Graham*, 7 S. & R., 505; *Aldrich v. Smith*, 37 Mich., 468.

That a bill or note will be rendered void by an alteration made by one having its custody, see, *Alma Nat. Bank v. Winchester*, 43 Conn., 391; *Balknap v. National Bank*, 100 Mass., 876.

The cases are well digested in Bigelow, Bills and Notes, 274-580.

*Mr. Justice Gray* delivered the opinion of the court:

This is a bill in equity, filed in the Circuit Court of the United States for the District of Iowa by Joseph J. Meraman, a citizen of Missouri, against Caspar A. Werges and wife, citizens of Iowa, to foreclose a mortgage of her land in Iowa, executed on September 1, 1870, by the husband and wife to E. H. Krueger, likewise a citizen of Iowa, "To be void upon condition that the said Caspar A. Werges shall pay to the said E. H. Krueger the sum of \$6,000 as follows, viz.: one year from date, with ten per cent interest thereon, according to the tenor and effect of his promissory note of even date herewith."

The bill originally set forth the note as signed by both husband and wife, but, after the coming in of the answer, was amended by leave of court so as to allege it to be the note of the hus-

band only. The case was heard upon pleadings and proofs, by which it appeared to be as follows:

The husband and Krueger were members of a partnership engaged in carrying on a mill, Krueger being the active partner, and Werges and his wife living on a farm which belonged to her. The plaintiff agreed with Krueger to lend to the husband, for the benefit of the partnership, \$6,000 on the security of the farm; and the wife agreed, for the accommodation of the partnership, to execute a mortgage of the farm. The husband signed a note, payable to Krueger or order, and corresponding in terms with the mortgage; and the husband and wife executed the mortgage and delivered the note and mortgage to Krueger. While they were in Krueger's hands, the name of the wife was subscribed to the note, under that of the husband, by Krueger or by his procurement, without the knowledge or consent of either husband or wife. Krueger indorsed the note and delivered the note and mortgage to the plaintiff, who, thereupon, not knowing that the wife had not herself signed the note, advanced the money to him for the partnership.

The circuit court held that the addition of the wife's name to the husband's note was a material alteration of the note and made void the mortgage and dismissed the bill. See, *McCrory*, 522. The plaintiff appealed.

This court is of opinion that the decree of the circuit court cannot be sustained. The difference of opinion is not upon the facts of the case, but upon their legal effect.

A material alteration of a written contract by a party to it discharges a party who does not authorize or consent to the alteration, because it destroys the identity of the contract and substitutes a different agreement for that into which he entered. In the application of this rule, it is not only well settled that a material alteration of a promissory note by the payee or holder discharges the maker, even as against a subsequent innocent indorsee for value; but it has been adjudged by this court that a material alteration of a note, before its delivery to the payee, by one of two joint makers, without the consent of the other, makes it void as to him; and that any change which alters the defendant's contract, whether increasing or diminishing his liability, is material and, therefore, the substitution of a later date, delaying the time of payment, is a material alteration. *Wood v. Steele*, 6 Wall., 80 (79 U. S., XVII., 725). See, also, *Anglo v. Ins. Co.*, 23 U. S., 880 (XXIII., 500); *Bank v. Stowell*, 123 Mass., 198, and cases there cited.

The present case is not one of a change in the terms of the contract, as to amount or time of payment, but simply of the effect of adding another signature, without otherwise altering or defacing the note. An erasure of the name of one of several obligors is a material alteration of the contract of the others, because it increases the amount which each of them may be held to contribute. *Martin v. Thomas*, 24 How., 815 (65 U. S., XVI., 699); *Smith v. U. S.*, 2 Wall., 219 (69 U. S., XVII., 788). And the addition of a new person as a principal maker of a promissory note, rendering all the promisors apparently jointly and equally liable, not only to the holder but also as between themselves, and no far tending to lessen the ultimate liability

[140]

[143]

[142]

ity of the original maker or makers, has been held in the courts of some of the States to be a material alteration. *Shipp v. Suggs*, 9 B. Mon., 5; *Henry v. Coats*, 17 Ind., 161; *Wallace v. Jewell*, 21 Ohio St., 138; *Hamilton v. Hooper*, 46 Ia., 515. However that may be, yet where the signature added, although in form that of a joint promisor, is in fact that of a surety or guarantor only, the original maker is, as between himself and the surety, exclusively liable for the whole amount, and his ultimate liability to pay that amount is neither increased nor diminished; and, according to the general current of the American authorities, the addition of the name of a surety, whether before or after the first negotiation of the note, is not such an alteration as discharges the maker. *R. R. Co. v. Hurst*, 9 Ala., 515, 518; *Stone v. White*, 8 Gray, 589; *McCaughey v. Smith*, 27 N. Y., 89; *Bronnell v. Winona*, 29 N. Y., 400; *Wallace v. Jewell*, 21 Ohio St., 172; *Miller v. Finlay*, 26 Mich., 240.

The English cases afford no sufficient ground for a different conclusion. In the latest decision at law, indeed, *Lord Campbell and Justices Erle, Wightman and Crompton* held that the signing of a note by an additional surety, without the consent of the original makers, prevented the maintenance of an action on the note against them. *Gardner v. Walsh*, 5 El. & Bl., 88. But in an earlier decision, of perhaps equal weight, *Lord Donnan and Justices Littledale, Paterson and Coleridge* held that in such a case the addition did not void the note or prevent the original surety, on paying the note, from recovering of the principal maker the amount paid. *Cotton v. Simpson*, 5 Ad. & E., 136; *S. C.*, 3 Nev. & Per. 248. See, also, *Gilb. Ev.*, 109. And in a later case, in the court of chancery, upon an appeal in bankruptcy, *Lords Justices Knight, Bruce and Turner* held that the addition of a surety was not a material alteration of the original contract. *Ex parte Fales*, 3 DeG. & J., 191; *S. C.*, 27 L. J. Eq. (N. S.), Bankr., 9.

The case at bar, being on the equity side of the court, is to be dealt with according to the actual relation of the parties to the transaction, which was as follows: the note, though in form made by the husband to his partner, Krueger, and indorsed by Krueger, was without consideration as between them, and was in fact signed by both of them for the benefit of the partnership. The mortgage of the wife's land was executed and delivered by her and her husband to Krueger for the same purpose. The name of the wife was signed to the note by Krueger, or by his procurement, before it was negotiated for value. The plaintiff received the note and mortgage from Krueger, and advanced his money upon the security thereof, in good faith and in ignorance that the note had been altered. If the wife had herself signed the note, she would have been an accommodation maker and, in equity at least, a surety for the other signers; and neither the liability of the husband as maker of the note, nor the effect of the mortgage executed by the wife, as well as by the husband, to secure the payment of that note, would have been materially altered by the addition of her signature. There appears to us, therefore, to be no reason why the plaintiff, as indorsee of the note, seeking no decree against the wife personally, should not enforce the note against the 119 U. S.

husband and the mortgage against the land of the wife.

This suit, being between citizens of different States, and founded on a negotiable promissory note, the indorsement of which to the plaintiff carried with it as an incident, in equity, the mortgage made to secure its payment, was within the jurisdiction of the Circuit Court, under the Act of March 3, 1875, ch. 137, although Krueger, the payee and mortgagee, could not have maintained a suit in that court. 18 Stat. at L., 470; *Sheldon v. Sill*, 8 How., 441, 450; *Tredway v. Sanger*, 107 U. S., 833 (XXVII., 522).

Devised reversed, True copy, Test: James E. McKenney, Clerk, Sup. Court, U. S.

JOHN ELK, Pfy. in Err.,

CHARLES WILKINS,

(See S. C., Reporter's ed., 94-123.)

Indian not a citizen of United States—14th constitutional Amendment.

1. An Indian, born a member of one of the Indian Tribes within the United States, which still exists and is recognized as a Tribe by the Government of the United States, who has voluntarily separated himself from his Tribe, and taken up his residence among the white citizens of a State, but who has not been naturalized or taxed or recognized as a citizen, either by the United States or by the State, is not a citizen of the United States, within the meaning of the last section of the 14th Article of Amendment of the Constitution.

2. A petition alleging that the plaintiff is an Indian and was born within the United States and has severed his tribal relation to the Indian Tribes and fully and completely surrendered himself to the jurisdiction of the United States and still so continues subject to the jurisdiction of the United States and is a bona fide resident of the State of Nebraska and City of Omaha, does not show that he is a citizen of the United States under the 14th Article of Amendment of the Constitution.

[No. 27.] Submitted Apr. 3, 1884. Decided Nov. 3, 1884.

IN ERROR to the Circuit Court of the United States for the District of Nebraska.

The history and facts of the case appear in the opinion of the court.

Messrs. A. J. Foppiston and Jno. L. Webster, for plaintiff in error.

Mr. G. M. Lambertson, for defendant in error.

Mr. Justice Gray delivered the opinion of the court:

This is an action brought by an Indian, in the Circuit Court of the United States for the District of Nebraska, against the registrar of one of the wards of the City of Omaha, for refusing to register him as a qualified voter thereat. The petition was as follows:

"John Elk, plaintiff, complains of Charles Wilkins, defendant, and avers that the matter in

\*Head notes by Mr. Justice GRAY.

NOTE.—Indians; status of; amenable to what laws; rights of; what courts have jurisdiction over; power of Congress over. See note to Worcester v. Georgia, 21 U. S. (6 Pet.), 516.

did not affirm or imply that either the Indian Tribes, or individual members of those Tribes, had the right, beyond other foreigners, to become citizens of their own will, without being naturalized by the United States. His words were: "They" the Indian Tribes "may, without doubt, like the subjects of any foreign government, be naturalized by the authority of Congress and become citizens of a State and of the United States; and if an individual should leave his Nation or Tribe and take up his abode among the white population, he would be entitled to all the rights and privileges which would belong to an emigrant from any other foreign people." But an emigrant from any foreign State cannot become a citizen of the United States without a formal renunciation of his old allegiance and an acceptance, by the United States, of that renunciation through such form of naturalization as may be required by law.

The distinction between citizenship by birth and citizenship by naturalization is clearly marked in the provisions of the Constitution, by which "No person, except a natural born citizen or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President;" and "The Congress shall have power to establish a uniform rule of naturalization." Const., art. 2, sec. 1; art. 1, sec. 8.

By the 18th Amendment of the Constitution, slavery was prohibited. The main object of the opening sentence of the 14th Amendment was to settle the question, upon which there had been a difference of opinion throughout the country and in this court, as to the citizenship of free negroes; *Scott v. Sandford* [supra]; and to put it beyond doubt that all persons, white or black, and whether formerly slaves or not, born or naturalized in the United States, and owing no allegiance to any alien power, should be citizens of the United States and of the State in which they reside. *Stuyvesant - Horne Cases*, 16 Wall., 86, 78 [88 U. S., XXI., 304, 406]; *Strader v. W. Va.*, 100 U. S., 808, 808 [XXV., 684, 686].

This section contemplates two sources of citizenship and two sources only: birth and naturalization. The persons declared to be citizens are "All persons born or naturalized in the United States and subject to the jurisdiction thereof." The evident meaning of these last words is, not merely subject in some respect or degree to the jurisdiction of the United States, but completely subject to their political jurisdiction and owing them direct and immediate allegiance. And the words relate to the time of birth in the one case, as they do to the time of naturalization in the other. Persons not thus subject to the jurisdiction of the United States at the time of birth cannot become so afterwards, except by being naturalized, either individually, as by proceedings under the naturalization Acts, or collectively, as by the force of a treaty by which foreign territory is acquired.

Indians, born within the territorial limits of the United States, members of and owing immediate allegiance to one of the Indian Tribes, an alien though dependent power, although in a geographical sense born in the United States, are no more "born in the United States and

subject to the jurisdiction thereof," within the meaning of the 1st section of the 14th Amendment, than the children of subjects of any foreign government born within the domain of that government; or the children, born within the United States, of ambassadors or other public ministers of foreign Nations.

This view is confirmed by the 2d section of the 14th Amendment, which provides that "Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed." Slavery having been abolished and the persons formerly held as slaves made citizens, this clause fixing the apportionment of representatives has abrogated so much of the corresponding clause of the original Constitution as counted only three fifths of such persons. But Indians not taxed are still excluded from the count, for the reason that they are not citizens. Their absolute exclusion from the basis of representation, in which all other persons are now included, is wholly inconsistent with their being considered citizens.

So the further provision of the 2d section for a proportionate reduction of the basis of the representation of any State in which the right to vote for presidential electors, representatives in Congress, or executive or judicial officers or members of the Legislature of a State, is denied, except for participation in rebellion or other crime, to any of the male inhabitants of such State, being twenty-one years of age and citizens of the United States, cannot apply to a denial of the elective franchise to Indians not taxed, who form no part of the people entitled to representation.

It is also worthy of remark, that the language used, about the same time, by the very Congress which framed the 14th Amendment, in the 1st section of the Civil Rights Act of April 9, 1868, declaring who shall be citizens of the United States, is "All persons born in the United States, and not subject to any foreign power, excluding Indians not taxed." 14 Stat. at L., 27; R. S., sec. 1992.

Such Indians, then, not being citizens by birth, can only become citizens in the second way mentioned in the 14th Amendment, by being "naturalized in the United States," by or under some treaty or statute.

The action of the political departments of the government, not only after the proposal of the Amendment by Congress to the States in June, 1866, but since the Proclamation in July, 1868 [15 Stat. at L., 703], of its ratification by the requisite number of States, accords with this construction.

While the Amendment was pending before the Legislatures of the several States, Treaties containing provisions for the naturalization of members of Indian Tribes as citizens of the United States were made on July 4, 1866, with the Delawares, in 1867 with various Tribes in Kansas and with the Pottawatomies and, in April, 1868, with the Sioux. 14 Stat. at L., 794, 798; 15 Stat. at L., 513, 523, 536, 537.

The Treaty of 1867 with the Kansas Indians strikingly illustrates the principle that no one can become a citizen of a Nation without its consent, and directly contradicts the supposition

112 U. S.

that a member of an Indian Tribe can at will be alternately a citizen of the United States and a member of the Tribe.

[104]

That Treaty not only provided for the naturalization of members of the Ottawa, Miami, Peoria and other Tribes and their families, upon their making declaration, before the District Court of the United States, of their intention to become citizens, 15 Stat. at L., 517, 520, 521, but after reciting that some of the Wyandotts, who had become citizens under the treaty of 1855, were unfitted for the responsibilities of citizenship, and enacting that a register of the whole people of this Tribe, resident in Kansas or elsewhere, should be taken, under the direction of the Secretary of the Interior, showing the names of all who declare their desire to be and remain Indians and in a tribal condition, and of incompetents and orphans as described in the Treaty of 1855, and that such persons and those only should thereafter constitute the Tribe, it provided that "No one who has heretofore consented to become a citizen, nor the wife or children of any such person, shall be allowed to become members of the Tribe, except by the free consent of the Tribe after its new organization, and unless the agent shall certify that such party is through poverty or incapacity, unfit to continue in the exercise of the responsibilities of citizenship of the United States, and likely to become a public charge." 15 Stat. at L., 514, 516.

Since the ratification of the 14th Amendment, Congress has passed several Acts for naturalizing Indians of certain Tribes, which would have been superfluous if they were or might become, without any action of the government, citizens of the United States.

By the Act of July 15, 1870, ch. 396, sec. 10, for instance, it was provided that if at any time thereafter any of the Winnebago Indians in the State of Minnesota should desire to become citizens of the United States, they should make application to the District Court of the United States for the District of Minnesota and in open court make the same proof and take the same oath of allegiance as is provided by law for the naturalization of aliens and should also make proof, to the satisfaction of the court, that they were sufficiently intelligent and prudent to control their affairs and interests; that they had adopted the habits of civilized life and had, for at least five years before, been able to support themselves and their families; and thereupon they should be declared by the court to be citizens of the United States, the declaration entered of record and a certificate thereof given to the applicant; and the Secretary of the Interior, upon presentation of that certificate, might issue to them patents in fee simple, with power of alienation, of the lands already held by them in severalty and might cause to be paid to them their proportion of the money and effects of the Tribe held in trust under any treaty or law of the United States; and thereupon such persons should cease to be members of the Tribe, and the lands so patented to them should be subject to levy, taxation and sale, in like manner with the property of other citizens. 15 Stat. at L., 381. By the Act of March 3, 1873, ch. 332, sec. 2, similar provision was made for the naturalization of any adult members of the Miami Tribe in Kansas, and of their minor children. 17 Stat.

[105]

113 U. S.

at L., 683. And the Act of March 3, 1875, ch. 127 [18 Stat. at L., 568], before referring to making corresponding provision for the naturalization of any of the chiefs, warriors, or families of the Stockbridge Indians, enacted in section 2812 of the Revised Statutes.

The Act of January 24, 1831, ch. 8, in relief of the Stockbridge Indians, provided that the purpose of determining the persons and members of said Tribes and the future rolls of each to the Government of the United States should be prepared under the direction of the Commissioner of Indian Affairs, by the sachem and councilors of the Tribe, and by the person selected by the commission to superintend the same, and returned to the commissioner; the one, to be designated as citizen roll, of the names of all such persons of full age and their families. "As signifying their desire to separate their relations with said Tribe and to become citizens of the United States, and the other, to be designated as Indian roll, of the names of all such persons who retain their tribal character and continue in the care and guardianship of the United States, and that those rolls, so made and returned should be held as a full and true record and a full and true evidence of the rights and claims, of all claims to be known or claimed as members of the Tribe, or to be intended as members of the Tribe, or to be intended as any provision made or to be made by the United States for its benefit." And they and their descendants shall thereafter be admitted to the rights and privileges of citizens of the United States." 18 Stat. at L., 410.

The Pension Act exempts Indian claimants of pensions for services in the array of the Constitution of the United States. Act of March 3, 1878, ch. 284, sec. 38; 17 Stat. at L., 574; R. S., sec. 4721.

The recent statutes concerning homesteads are quite inconsistent with the theory that Indians do or can make themselves independent citizens by living apart from their Tribes. Act of March 3, 1875, ch. 131, sec. 15, which provides that "Any Indian, born in the United States, is the head of a family or who has attained the age of twenty-one years and who has done or may hereafter abandon his tribal relations," the benefit of the homestead Act is only upon condition of his making satisfactory proof of such abandonment, under the conditions prescribed by the Secretary of the Interior. It further provided that his title in such homestead should be absolutely inalienable for five years from the date of the patent, and that he should be entitled to share in all annuities, funds, lands and other property, as he maintained his tribal relations. 15 Stat. at L., 420. And the Act of March 3, 1874, ch. 127, sec. 1, which it allows Indians located on the public lands to avail themselves of the homestead laws as fully and to the same extent as now done by citizens of the United States, provides that the form and the legal effect of the patents shall be that the United States and will hold the land for twenty-five years, and will hold the land for the Indian making the entry, and widow and heirs and will then convey it to him or them. 23 Stat. at L., 61.

The national legislator has tendered

So, does

- federal citizenship, or
- Title 8 on Aliens, or
- the 14<sup>th</sup> Amendment

have anything to do  
with YOU ?

- 27 Patuxent Institution records of Samuel Daniels.
- 28 Interrogatories of Karl G. Feissner to Dr. Harold M. Boslow, March, 1964.
- 29 Request of petitioner Samuel Daniels for admission of facts, August 3, 1965.
- 30 "Verdict Guilty—Now What?" by Dr. Karl Menninger. Harpers Magazine, August, 1959, pp. 60-64.
- 31 Case of Herman Webb Duker. Opinion and sentence by Joseph N. Ulman, Judge in the Criminal Court of Baltimore City on October 3, 1931. The Statement by Governor Albert C. Ritchie commuting the sentence of Duker to life imprisonment.
- 32 Interrogatories and answer to No. 13 dated September 8, 1965 filed. Document entitled "Correctional Officer Distribution, 1960-1965."
- 33 "Diagnostic and Statistical Manual, Mental Disorders" published by The American Psychiatric Association, 1952.
- 34 Patuxent Institution record of George Aravanis.
- 35 Patuxent Institution record of John Sas.
- 36 List of patients at Patuxent for two years or more who are not in group therapy.
- 37 Handwritten list of patients at Patuxent receiving no therapy whatsoever.
- 38 Patuxent Institution record of William Capparella.
- 39 Information and Department of Correction statistics sent to Robert C. Murphy, Deputy Attorney General of Maryland by Commissioner Vernon L. Pepersack, Department of Correction, August 18, 1964.
- 40 Letter from Loyal B. Calkins, Chief Psychologist, Maryland Department of Correction, to Commissioner Vernon L. Pepersack stating percentage of inmates within Maryland Penitentiary, Maryland House of Correction and Maryland Correctional Institution at Hagerstown who have below average intelligence. September 3, 1965.
- 41 Patuxent Institution records of Elwood Towers.
- 42 Patuxent Institution records of John Bressler, Jr.
- 43 "Standards for Hospitals and Clinics" published by American Psychiatric Association, June, 1958.
- 44 Department of Mental Hygiene chart, hospital capacities and patient population and ratios of budgeted professional staff to in-patient population, July 31, 1965.
- 45 Patuxent Institution records of Charles Tippett.
- 46 Patuxent Institution records of Albert P. Murel.
- 47 Patuxent Institution records of Albert E. Hawkins.
- 48 Patuxent Institution records of Edward Moulslale.
- 49 Patuxent Institution records of William McDonough.
- 50 Patuxent Institution records of Charles Crause.
- 51 Sample of a Patuxent Institution Board of Review—Progress Note.
- 52 Statistics from R. N. Michael, Classification Supervisor to H. M. Boslow, Director, as to patients who were committed as defective delinquents, later released at re-hearings, and who were subsequently convicted of another offense. August 31, 1965.
- 53 Statistics from R. N. Michael, Classification Supervisor to H. M. Boslow, Director, as to patients who were recommended for commitment, but were not committed by the courts, and who

- were subsequently convicted of a new offense.
- 54A Report of National Conference of State Trial Judges Committee on "The Sociopathic Offender and the Courts" The Honorable William K. Thomas, Chairman, 1964.
- 54B National Conference of State Trial Judges, Digest of the report of the committee on "The Sociopathic Offender and the Courts" 1964, The Honorable William K. Thomas, Chairman.
- 55 Report of Committee on "The Sociopathic Offender and the Courts," presented August 8, 1965, to National Conference of State Trial Judges. The Honorable William K. Thomas, Chairman.
- 56 Release record statistics as to patients committed to Patuxent from January, 1955 to June 30, 1965.
- 57A Excerpt from the second report of Maryland Self-Survey Commission—relating to Department of Correction, 1958, by Sanford Bates.
- 57B "Reports of Surveys, Maryland Department of Correction and Patuxent Institution," by Sanford Bates, October 30, 1959.
- 58A-L Photographs of Patuxent Institution.
- 59 Address on Defective Delinquency; delivered by Honorable Jerome Robinson, Maryland House of Delegates at the General Assembly of the States Council of State Governments. December 5, 1958.
- 60 Address by The Honorable Reuben Oppenheimer, "Criminal Defectives and The Maryland Law" Mid-Winter Meeting of the Maryland State Bar Association, 1949.
- 61A Statistics as to comparable average salaries of the Patuxent Institution personnel February 18, 1965.
- 61B Statistics comparing Maryland salaries of Patuxent professional staff with those of other states prepared by Robin J. Zee, Director, Classification and Compensation, September 20, 1965.
- 62 Patuxent Institution record of James Craig.
- 63 Parole experience of 135 paroled from opening of Patuxent through October 26, 1965.
- 64 Deposition of John Sas given August 16, 1965, and a certified copy of the court proceedings held in Baltimore City on Monday, November 8, 1965, wherein John Sas was released from Patuxent following a determination he was no longer a Defective Delinquent.

For the reasons given in this opinion and the opinion of the trial court just reproduced, the order releasing Daniels and the orders holding and declaring the Act constitutional on its face and in operation will be affirmed.

Order releasing Daniels and orders holding and declaring the Act constitutional on its face and in operation affirmed, the costs to be paid by Prince George's County.



248 Md. 555

St. George I. B. GROSSE, III

v.

BOARD OF SUPERVISORS OF ELECTIONS OF BALTIMORE CITY.

No. 223-Adv.

Court of Appeals of Maryland.

Order July 1, 1966.

Opinion July 21, 1966.

Mandamus action to compel board of supervisors of elections to accept and certify candidate's candidacy for sheriff. The

Superior Court of Baltimore City, Anselm Sodaro, J., denied the petition for writ of mandamus. The candidate appealed. The Court of Appeals held that candidate who had been resident of state for five years prior to date fixed for election was citizen of state within constitutional requirement that sheriff be citizen for five years and candidate was eligible to seek office of sheriff even though he had been naturalized as United States citizen only one month prior to filing his candidacy.

Order denying mandate reversed with directions.

#### 1. Citizens ⇨11

It is not necessary for a person to be a citizen of the United States in order to be a citizen of his state. U.S.C.A.Const. Amend. 14.

#### 2. Citizens ⇨11

Requirements for citizenship of a state depend upon context in which "citizen" is used in statute or constitution where United States citizenship has no reasonable relationship to the subject matter and purpose of the legislation in question. U.S.C.A. Const. Amend. 14.

#### 3. Citizens ⇨2

A person does not have to be a voter to be a citizen of the United States or of the state. U.S.C.A.Const. Amend. 14.

#### 4. Attorney General ⇨1

Judges ⇨4

States ⇨47

Only citizens of the United States may hold offices of governor, judge, and attorney general. Const. art. 2, § 5; art. 4, § 2; art. 5, § 4.

#### 5. Sheriffs and Constables ⇨3

Constitutional qualification for office of sheriff that person elected shall have

been citizen of the state for five years prior to his election is requirement that he should be domiciled within state and not that he be United States citizen. Const. art. 4, § 44.

#### 6. Sheriffs and Constables ⇨1

Office of sheriff is ministerial in nature.

#### 7. Sheriffs and Constables ⇨77

Sheriff's function and province is to execute duties prescribed by law.

#### 8. Citizens ⇨11

That state cannot confer diversity jurisdiction on United States court by granting state citizenship to an unnaturalized alien does not mean that it cannot make an alien a state citizen for other purposes. U.S.C.A.Const. Amend. 14; art. 3, § 2.

#### 9. States ⇨47

State has right to extend qualifications for state office to its citizens, even though they are not citizens of the United States. U.S.C.A.Const. Amend. 14.

#### 10. Sheriffs and Constables ⇨3

Candidate who had been resident of state for five years prior to date fixed for election was citizen of state within constitutional requirement that sheriff be citizen for five years and candidate was eligible to seek office of sheriff even though he had been naturalized as United States citizen only one month prior to filing his candidacy. Const. art. 4, § 44.

St. George I. B. Crosse, III, in pro. per.

Edward L. Blanton, Jr., Asst. Atty. Gen. (Thomas B. Finan, Atty. Gen., Baltimore, on the brief), for appellee.

Before HAMMOND, HORNEY, MARBURY, OPPENHEIMER, and BARNES, JJ.

#### ORDER

#### PER CURIAM.

For reasons to be stated in an opinion to be hereafter filed, it is *ordered* by the Court of Appeals of Maryland this 1st day of July, 1966, that the order appealed from be, and it is hereby, reversed, with costs; and it is further

*Ordered* that the mandate, directing the granting of the writ of mandamus prayed for below be issued forthwith.

OPPENHEIMER, Judge.

After argument, by per curiam order, we reversed the order of the Superior Court of Baltimore City which denied the appellant's petition for a writ of mandamus to compel the Board of Supervisors of Elections of Baltimore City to accept and certify his candidacy for Sheriff of Baltimore City, and ordered that the mandate directing the writ of mandamus prayed for below be issued forthwith. The reasons for our order follow.

The question involved is whether the appellant is qualified to become a candidate under the provisions of Article IV Section 44 of the Maryland Constitution. The material provisions of that Section are as follows:

"There shall be elected in each county and in Baltimore City \* \* \* one person, resident in said county, or City, above the age of twenty-five years and at least five years preceding his election, a citizen of the State, to the office of Sheriff."

The facts are not in dispute. The appellant was born in the West Indies and immigrated to the United States in June of 1957. He and his family established their residence in Crisfield, Maryland. Upon reaching his eighteenth birthday, and upon signing his Declaration of Intention to become a citizen of the United States under the federal Naturalization law, he enlisted in the United States Army, served for ap-

proximately three years and was given an honorable discharge in 1960. He established his residence in Salisbury, Maryland, and matriculated at the Maryland State College from which he was graduated in 1964. He then entered the University of Maryland Law School and has successfully completed his first year. In May of 1964 he established his home in Baltimore City, where he has since resided. On April 29, 1966, he became a naturalized citizen of the United States and a registered voter of the State of Maryland. On May 26, 1966, the appellant filed his candidacy for the office of Sheriff of Baltimore City with the Board of Supervisors of Elections of Baltimore City. His Certificate of Nomination was notarized and accepted, as was his filing fee of \$150. He received the usual material given to all candidates who file for public office. On June 4, 1966, he received a letter from the Board advising him that he did not qualify as a candidate for the office of Sheriff because he did not become a citizen of the United States until April 29, 1966, and that under the Fourteenth Amendment of the United States Constitution he did not become a citizen of the State of Maryland until that date. The Board acted on the advice of its counsel, the Attorney General of Maryland, and returned the application to the appellant together with the filing fee.

The court below held and the Board contends that the appellant did not become a citizen of Maryland, under the provisions of the Maryland Constitution, until he became a citizen of the United States, and is therefore ineligible to be Sheriff of Baltimore City because he was not a United States citizen at least five years preceding the election. We disagree.

[1, 2] Both before and after the Fourteenth Amendment to the federal Constitution, it has not been necessary for a person to be a citizen of the United States in order to be a citizen of his state. United States v. Cruikshank, 92 U.S. 542, 549, 23 L.Ed. 588 (1875); Slaughter-House Cases,



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**to be**  
a U.S. citizen ?

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24 August 1994

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***Initial reports of States parties due in 1993 : United States of America. 24/08/94.  
CCPR/C/81/Add.4. (State Party Report)***

Convention Abbreviation: CCPR  
HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 40 OF THE COVENANT

Initial reports of States parties due in 1993

Addendum

UNITED STATES OF AMERICA\*

\* The information submitted by the United States of America in accordance with the consolidated guidelines concerning the initial part of reports of States parties is contained in the core document HRI/CORE/1/Add.49.

[29 July 1994]

CONTENTS

Paragraphs

Introduction 1 - 8

IMPLEMENTATION OF SPECIFIC PROVISIONS OF THE COVENANT 9 - 849

Article 1 - Self determination 9 - 76

of freedom of speech and association which are very broadly construed, as discussed below in connection with Articles 18, 19, 21 and 22.

### The Insular Areas

12. The United States includes a number of Insular Areas, each of which is unique and constitutes an integral part of the U.S. political family. Persons born in these areas are U.S. citizens (U.S. nationals in the case of American Samoa). Local residents, including U.S. citizens born elsewhere who have moved to these areas, elect their own local governments and make and are ruled by their own local laws. They are free to move to other parts of the United States and enjoy the protections for individual liberty that the Bill of Rights guarantees to all Americans. Guam, the Virgin Islands, American Samoa and Puerto Rico each are represented in the U.S. House of Representatives by an elected delegate. Other than the right to vote on the final passage of a bill or resolution, the delegate from each Insular Area enjoys the same privileges and exercises the same powers as a member of Congress from one of the states.

13. The United States considers Guam, the U.S. Virgin Islands, and American Samoa as still "non-self-governing" for purposes of Article 73 of the Charter of the United Nations. Although these areas are in fact self-governing at the local level, as described below, they have not yet completed the process of achieving self-determination. By contrast, the States of Alaska and Hawaii, as well as the Commonwealth of Puerto Rico, all of which used to be "non-self-governing" for purposes of Article 73, have completed acts of self-determination through which they have resolved the terms of their respective relationships with the rest of the United States. Similarly, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia and the Republic of the Marshall Islands, all of which were once part of the Trust Territory of the Pacific Islands, have completed the process of self-determination.

14. The Commonwealth of Puerto Rico. The largest and most populous of the U.S. Insular Areas, Puerto Rico was acquired by the United States in 1899 after the Spanish-American War. Between 1900 and 1950, Congress provided for the governance of Puerto Rico through Organic Acts. In 1950, Congress enacted legislation which authorized Puerto Rico to organize its own government and adopt a constitution. Puerto Rico did so, and its constitution became effective on 25 July 1952, at which time Puerto Rico achieved the status of a Commonwealth of the United States. Since then, the question of Puerto Rico's relationship to the United States has continued to be a matter of public debate and discussion. Most recently, the people of Puerto Rico expressed their views in a public referendum in November 1993; continuation of the current commonwealth arrangement received the greatest support, although nearly as many votes were cast in favour of statehood. By contrast, a small minority of some 5 per cent chose independence.

15. Guam. Guam was acquired by the United States in 1899 after the Spanish-American War and, with the exception of the period of occupation during the Second World War, was administered by the Navy until 1950. In 1950, Congress enacted the Guam Organic Act, providing for the civil government of Guam. 48 U.S.C. sections 1421-1425. It includes a Bill of Rights that parallels the guarantees of individual liberty in the Constitution and it grants U.S. citizenship to the people of Guam. Since 1968, the executive branch of Guam's Government, consisting of the Governor and the Lieutenant Governor, have been popularly elected. Legislative authority is exercised by a unicameral legislature of 21 members elected every two years. Judicial power is vested in local Guamanian courts and in the U.S. District Court for Guam.

You could be  
in the class of  
“Federal personnel”

Public Law 296

CHAPTER 656

AN ACT

August 9, 1955  
[H. R. 4048]

Making recommendations to the States for the enactment of legislation to permit and assist Federal personnel, including members of the Armed Forces, and their families, to exercise their voting franchise, and for other purposes.

The Federal Voting Assistance Act of 1955.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Federal Voting Assistance Act of 1955".

TITLE I

RECOMMENDATIONS OF THE CONGRESS TO THE SEVERAL STATES

Absentee ballot.

SEC. 101. The Congress hereby expresses itself as favoring, and recommends that the several States take, immediate legislative or administrative action to enable every person in any of the following categories who is absent from the place of his voting residence to vote by absentee ballot in any primary, special, or general election held in his election district or precinct, if he is otherwise eligible to vote in that election:



- (1) Members of the Armed Forces while in the active service, and their spouses and dependents.
- (2) Members of the merchant marine of the United States, and their spouses and dependents.
- (3) Civilian employees of the United States in all categories serving outside the territorial limits of the several States of the United States and the District of Columbia and their spouses and dependents when residing with or accompanying them, whether or not the employee is subject to the civil-service laws and the Classification Act of 1949, and whether or not paid from funds appropriated by the Congress.

63 Stat. 954.  
5 USC 1071 note.



- (4) Members of religious groups or welfare agencies assisting members of the Armed Forces, who are officially attached to and serving with the Armed Forces, and their spouses and dependents.

Procedures.

SEC. 102. To afford ample opportunity for persons covered by section 101 of this Act to vote for Federal, State, and local officials and to use the absentee balloting procedures to the greatest extent possible, it is recommended that each of the several States—

- (1) accept as applications for absentee ballots under such States' absentee balloting laws, as applications for registration under such States' election laws, and as sources of information to implement State absentee balloting laws, the form of post card (when duly executed by a person covered by section 101 of this Act) provided pursuant to this Act;
- (2) waive registration of persons covered by section 101 of this Act, who, by reason of their service, have been deprived of an opportunity to register;
- (3) accept the post card application provided pursuant to this Act as a simultaneous application for registration and for ballot;
- (4) if a special application is required for registration by mail, provide that the necessary forms will be sent with the absentee ballot and may be returned with it;
- (5) make provision for persons eligible to register and qualified to vote, who have been honorably discharged from the Armed Forces, or have terminated their service or employment, too late to register at the time when, and at the place where, registration is required, to vote at the election next ensuing after such discharge or termination.

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FILL OUT BOTH SIDES OF CARD  
POST CARD APPLICATION FOR ABSENTEE BALLOT

State or Commonwealth of \_\_\_\_\_  
(Fill in name of State or Commonwealth)

(1) I hereby request an absentee ballot to vote in the coming election:  
(GENERAL) (PRIMARY)\* (SPECIAL) ELECTION  
(Strike out inapplicable words)

(2) \* If a ballot is requested for a primary election, print your political party affiliation or preference in this box: \_\_\_\_\_  
(If primary election is secret in your State, do not answer)

(3) I am a citizen of the United States, eligible to vote in above State, and am:

a. A member of the Armed Forces of the United States \_\_\_\_\_

b. A member of the merchant marine of the United States \_\_\_\_\_

c. A member of a religious or welfare organization assisting servicemen \_\_\_\_\_

d. A civilian employed by the United States Government outside the United States (continental) \_\_\_\_\_

e. A spouse or dependent of a person listed in (a), (b), or (c) above \_\_\_\_\_

f. A spouse or dependent residing with a person described in (d) above \_\_\_\_\_

(4) I was born on \_\_\_\_\_ (Day) \_\_\_\_\_ (Month) \_\_\_\_\_ (Year)

(5) For \_\_\_\_\_ years preceding the above election my home (not military) residence in the above State has been \_\_\_\_\_  
(Street and number or rural route, etc.)

The voting precinct or election district for this residence is \_\_\_\_\_  
(Enter if known)

(6) Remarks: \_\_\_\_\_

(7) Mail my ballot to the following official address:

(Unit (Co., Sq., Trp., Bn., Etc.), Governmental Agency, or Office)

(Military Base, Station, Camp, Fort, Ship, Airfield, etc.)

(Street No., APO, or FPO No.)

(City, Postal Zone, and State)

(8) I am NOT requesting a ballot from any other State and am not voting in any other manner in this election, except by absentee process, and have not voted and do not intend to vote in this election at any other address.

(9) \_\_\_\_\_  
(Signature of person requesting ballot)

(10) \_\_\_\_\_  
(Full name, typed or printed, with rank or grade, and service number)

(11) Subscribed and sworn to before me on \_\_\_\_\_  
(Day, month, and year)

\_\_\_\_\_  
(Signature of official administering oath) (Typed or printed name of official administering oath)

\_\_\_\_\_  
(Title or rank, service number, and organization of administering official)

INSTRUCTIONS

- A. Before filling out this form see your voting officer in regard to the voting laws of your State and absentee registration and voting procedure.
- B. Type or print all entries except signatures. FILL OUT BOTH SIDES OF CARD.
- C. Address card to proper State official. Your voting officer or commanding officer will furnish you his title and address.
- D. Mail card as soon as your State will accept your application.
- E. NO postage is required for the card.

- OR -

# UNITED STATES CODE ANNOTATED

## TITLE 5

### Government Organization and Employees

#### §§ 552a to 701

Comprising All Laws of a General and Permanent Nature Under Arrangement of the Official Code of the Laws of the United States with Annotations from Federal and State Courts

WEST PUBLISHING CO.  
ST. PAUL, MINN.

## Ch. 5 ADMINISTRATIVE PROCEDURE

5 § 552a

(vi) matches performed for foreign counterintelligence purposes or to produce background checks for security clearances of Federal personnel or Federal contractor personnel; or

(vii) matches performed pursuant to section 6103(l)(12) of the Internal Revenue Code of 1986 and section 1144 of the Social Security Act;

(9) the term "recipient agency" means any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a matching program;

(10) the term "non-Federal agency" means any State or local government, or agency thereof, which receives records contained in a system of records from a source agency for use in a matching program;

(11) the term "source agency" means any agency which discloses records contained in a system of records to be used in a matching program, or any State or local government, or agency thereof, which discloses records to be used in a matching program;

(12) the term "Federal benefit program" means any program administered or funded by the Federal Government, or by any agent or State on behalf of the Federal Government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals; and

(13) the term "Federal personnel" means officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals<sup>2</sup> entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

(b) Conditions of disclosure.—No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title;

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;



you could be  
“made a citizen of the  
United States”

*(these would be people  
who did not otherwise  
have citizenship)*

maker, without the consent of the previous signers, is not a material alteration; and especially is this so if, with the added name, there are but two signers.

3 Dan. Neg. Inst., sec. 1339; *Brownell v. Win-  
cise*, 29 N. Y., 400; *Montgomery R. R. Co. v.  
Huret*, 9 Ala., 515; *Miller v. Finley*, 28 Mich.,  
249; *Ward v. Hackett*, 80 Minn., 150; *Snyder v.  
Van Doren*, 46 Vin., 503; *Cotton v. Simpson*, 8  
Ad. & El., 189; Iowa Code, sec. 2204.

*Mr. Galusha Parsons*, for appellees:

The appellees, as to the paper in the form in question, are accommodation makers, with all the rights of sureties as to any question here.

Any alteration of a written instrument will discharge a surety.

*McIntosh v. Webb*, 6 How., 296; *Smith v. U.  
S.*, 2 Wall., 219 (69 U. S., XVII., 793); *Martin v.  
Thomas*, 24 How., 816 (65 U. S., XVI., 690);  
*Miller v. Stewart*, 9 Wheat., 681; *Lippett v.  
Humphreys*, 21 How., 71 (62 U. S., XVI., 52);  
*Wood v. Steele*, 6 Wall., 80 (73 U. S., XVIII., 725);  
*Adams v. Frye*, 3 Met., 108; *Wallace v. Jewell*,  
21 Ohio St., 174; *Woodnorth v. Bk. of America*,  
19 Johns., 393; *Sharpe v. Bagwell*, 1 Dev. Eq.,  
115; *Davidson v. Cooper*, 18 Mees. & W., 652;  
*Hall v. McHenry*, 19 Iowa, 525; *Murray v. Gra-  
ham*, 29 Iowa, 520.

The addition of another name would discharge the original sureties, regardless of the fact of benefit or injury.

*Dickerman v. Miner*, 48 Iowa, 508; see, also,  
*Chappell v. Spencer*, 23 Barb., 535.

In *Draper v. Wood*, 119 Mass., 315, an alteration was made by one of the makers before delivery, not only without the knowledge of the payee, but without any fraudulent intent; the court held that it destroyed the identity of the note, and that there could be no recovery, either upon the note as it was or by restoring it to the condition in which it was before the alteration.

See, also, *Robinson v. Reed*, 46 Iowa, 219; *Greenfield Sav. Bank v. Stowell*, 123 Mass., 198; *Waterman v. Voss*, 43 Me., 510; *Lisle v. Rogers*, 18 B. Mon., 529; *Stephens v. Graham*, 7 S. & R., 505; *Aldrich v. Smith*, 87 Mich., 468.

That a bill or note will be rendered void by an alteration made by one having its custody, see, *Elna Nat. Bank v. Winchester*, 43 Conn., 391; *Belknap v. National Bank*, 100 Mass., 378.

The cases are well digested in *Bigelow, Bills and Notes*, 274-580.

*Mr. Justice Gray* delivered the opinion of the court:

This is a bill in equity, filed in the Circuit Court of the United States for the District of Iowa by Joseph J. Meraman, a citizen of Missouri, against Caspar A. Werges and wife, citizens of Iowa, to foreclose a mortgage of her land in Iowa, executed on September 1, 1870, by the husband and wife to E. H. Krueger, likewise a citizen of Iowa, "To be void upon condition that the said Caspar A. Werges shall pay to the said E. H. Krueger the sum of \$6,000 as follows, viz.: one year from date, with ten per cent interest thereon, according to the tenor and effect of his promissory note of even date herewith."

The bill originally set forth the note as signed by both husband and wife, but, after the coming in of the answer, was amended by leave of court so as to allege it to be the note of the hus-

band only. The case was heard upon pleadings and proofs, by which it appeared to be as follows:

The husband and Krueger were members of a partnership engaged in carrying on a mill, Krueger being the active partner, and Werges and his wife living on a farm which belonged to her. The plaintiff agreed with Krueger to lend to the husband, for the benefit of the partnership, \$6,000 on the security of the farm; and the wife agreed, for the accommodation of the partnership, to execute a mortgage of the farm. The husband signed a note, payable to Krueger or order, and corresponding in terms with the mortgage; and the husband and wife executed the mortgage and delivered the note and mortgage to Krueger. While they were in Krueger's hands, the name of the wife was subscribed to the note, under that of the husband, by Krueger or by his procurement, without the knowledge or consent of either husband or wife. Krueger indorsed the note and delivered the note and mortgage to the plaintiff, who, thereupon, not knowing that the wife had not herself signed the note, advanced the money to him for the partnership.

The circuit court held that the addition of the wife's name to the husband's note was a material alteration of the note and made void the mortgage and dismissed the bill. See, *1 McCreary, 528*. The plaintiff appealed.

This court is of opinion that the decree of the circuit court cannot be sustained. The difference of opinion is not upon the facts of the case, but upon their legal effect.

A material alteration of a written contract by a party to it discharges a party who does not authorize or consent to the alteration, because it destroys the identity of the contract and substitutes a different agreement for that into which he entered. In the application of this rule, it is not only well settled that a material alteration of a promissory note by the payee or holder discharges the maker, even as against a subsequent innocent indorsee for value; but it has been adjudged by this court that a material alteration of a note, before its delivery to the payee, by one of two joint makers, without the consent of the other, makes it void as to him; and that any change which alters the defendant's contract, whether increasing or diminishing his liability, is material and, therefore, the substitution of a later date, delaying the time of payment, is a material alteration. *Wood v. Steele*, 6 Wall., 80 (73 U. S., XVIII., 725). See, also, *Angie v. Ins. Co.*, 22 U. S., 380 (XXIII., 556); *Bank v. Stowell*, 123 Mass., 198, and cases there cited.

The present case is not one of a change in the terms of the contract, as to amount or time of payment, but simply of the effect of adding another signature, without otherwise altering or defacing the note. An erasure of the name of one of several obligors is a material alteration of the contract of the others, because it increases the amount which each of them may be held to contribute. *Martin v. Thomas*, 24 How., 815 (65 U. S., XVI., 689); *Smith v. U. S.*, 2 Wall., 219 (69 U. S., XVII., 793). And the addition of a new person as a principal maker of a promissory note, rendering all the promisors apparently jointly and equally liable, not only to the holder but also as between themselves, and so far tending to lessen the ultimate liabil-

[140]

ity of the original maker or makers, has been held in the courts of some of the States to be a material alteration. *Shipp v. Suggett*, 9 B. Mon., 5; *Henry v. Coats*, 17 Ind., 161; *Wallace v. Jewell*, 21 Ohio St., 188; *Hamilton v. Hooper*, 46 Ia., 515. However that may be, yet where the signature added, although in form that of a joint promisor, is in fact that of a surety or guarantor only, the original maker is, as between himself and the surety, exclusively liable for the whole amount, and his ultimate liability to pay that amount is neither increased nor diminished; and, according to the general current of the American authorities, the addition of the name of a surety, whether before or after the first negotiation of the note, is not such an alteration as discharges the maker. *R. R. Co. v. Ebert*, 9 Ala., 518, 519; *Stone v. White*, 8 Gray, 589; *McCaughy v. Smith*, 27 N. Y., 89; *Brownell v. Winnie*, 29 N. Y., 400; *Wallace v. Jewell*, 21 Ohio St., 172; *Miller v. Finley*, 28 Mich., 249.

The English cases afford no sufficient ground for a different conclusion. In the latest decision at law, indeed, *Lord Campbell and Justices Erie, Wightman and Crompton* held that the signing of a note by an additional surety, without the consent of the original makers, prevented the maintenance of an action on the note against them. *Gardner v. Walsh*, 5 El. & Bl., 88. But in an earlier decision, of perhaps equal weight, *Lord Denman and Justices Littledale, Patteson and Coleridge* held that in such a case the addition did not void the note or prevent the original surety, on paying the note, from recovering of the principal maker the amount paid. *Cotton v. Simpson*, 3 Ad. & E., 186; *S. C.*, 3 Nev. & Per. 245. See, also, *Gill, Jr.*, 109. And in a later case, in the court of chancery, upon an appeal in bankruptcy, *Lords Justices Knight, Bruce and Turner* held that the addition of a surety was not a material alteration of the original contract. *Es parte Fates*, 3 DeG. & J., 191; *S. C.*, 27 L. J. Eq. (N. S.), Bankr., 9.

The cases at bar, being on the equity side of the court, is to be dealt with according to the actual relation of the parties to the transaction, which was as follows: the note, though in form made by the husband to his partner, Krueger, and indorsed by Krueger, was without consideration as between them, and was in fact signed by both of them for the benefit of the partnership. The mortgage of the wife's land was executed and delivered by her and her husband to Krueger for the same purpose. The name of the wife was signed to the note by Krueger, or by his procurement, before it was negotiated for value. The plaintiff received the note and mortgage from Krueger, and advanced his money upon the security thereof, in good faith and in ignorance that the note had been altered. If the wife had herself signed the note, she would have been an accommodation maker and, in equity at least, a surety for the other signers; and neither the liability of the husband as maker of the note, nor the effect of the mortgage executed by the wife, as well as by the husband, to secure the payment of that note, would have been materially altered by the addition of her signature. There appears to us, therefore, to be no reason why the plaintiff, as indorsee of the note, seeking no decree against the wife personally, should not enforce the note against the

[142]

husband and the mortgage against the land of the wife.

This suit, being between citizens of different States, and founded on a negotiable promissory note, the indorsement of which to the plaintiff carried with it as an incident, in equity, the mortgage made to secure its payment, was within the jurisdiction of the Circuit Court, under the Act of March 3, 1875, ch. 187, although Krueger, the payee and mortgagee, could not have maintained a suit in that court, 18 Stat. at L., 470; *Sheldon v. Sill*, 8 How., 441, 450, *Tredway v. Sanger*, 107 U. S., 323 [XXVII., 582].

Deceit reversed.

Truecopy, Test.

James E. McKenney, Clerk, Sup. Court, U. S.

JOHN ELK, *Pf. in Err.*,

CHARLES WILKINS,

(See S. C. Reporter's ed., 94-123.)

*Indian not a citizen of United States—14th constitutional Amendment.*

"1. An Indian, born a member of one of the Indian Tribes within the United States, which still exists and is recognized as a Tribe by the Government of the United States, who has voluntarily separated himself from his Tribe, and taken up his residence among the white citizens of a State, but who has not been naturalized or taxed or recognized as a citizen, either by the United States or by the State, is not a citizen of the United States, within the meaning of the last section of the 14th Article of Amendment of the Constitution.

2. A petition alleging that the plaintiff is an Indian and was born within the United States and has severed his tribal relation to the Indian Tribes and fully and completely surrendered himself to the jurisdiction of the United States and still so continues subject to the jurisdiction of the United States and is a bona fide resident of the State of Nebraska and City of Omaha, does not show that he is a citizen of the United States under the 14th Article of Amendment of the Constitution.

[No. 27.]  
Submitted Apr. 2, 1884. Decided Nov. 3, 1884.

IN ERROR to the Circuit Court of the United States for the District of Nebraska.

The history and facts of the case appear in the opinion of the court.

*Messrs. A. J. Foppleton and Jas. L. Webster*, for plaintiff in error.

*Mr. G. M. Lambertson*, for defendant in error.

*Mr. Justice Gray* delivered the opinion of the court:

This is an action brought by an Indian, in the Circuit Court of the United States for the District of Nebraska, against the registrar of one of the wards of the City of Omaha, for refusing to register him as a qualified voter therein. The petition was as follows:

"John Elk, plaintiff, complains of Charles Wilkins, defendant, and avers that the matter in

\*Head notes by *Mr. Justice GRAY*.

NOTE.—Indians; status of; amenable to what laws; rights of; what courts have jurisdiction over; power of Congress over. See note to *Worcester v. Georgia*, 21 U. S. (6 Pet.), 56.

as we are aware, is the first general enactment making persons of the Indian race citizens of the United States. Numerous statutes and treaties previously provided for all the individual members of particular Indian Tribes, becoming, in certain contingencies, citizens of the United States. But the Act of 1866 reached Indians not in tribal relations. Beyond question, by that Act, national citizenship was conferred directly upon all persons in this country, of whatever race, excluding only "Indians not taxed," who were born within the territorial limits of the United States and were not subject to any foreign power. Surely, everyone must admit that an Indian, residing in one of the States and subject to taxation there, became, by force alone of the Act of 1866, a citizen of the United States, although he may have been, when born, a member of a Tribe. The exclusion of Indians not taxed evinced a purpose to include those subject to taxation in the State of their residence. Language could not express that purpose with more distinctness than does the Act of 1866. Any doubt upon the subject, in respect to persons of the Indian race residing in the United States or Territories, and not members of a Tribe, will be removed by an examination of the debates, in which many distinguished statesmen and lawyers participated in the Senate of the United States when the Act of 1866 was under consideration.

In the bill as originally reported from the Judiciary Committee there were no words excluding "Indians not taxed" from the citizenship proposed to be granted. Attention being called to this fact, the friends of the measure disclaimed any purpose to make citizens of those who were in tribal relations, with governments of their own. In order to meet that objection, while conforming to the wishes of those desiring to invest with citizenship all Indians permanently separated from their Tribes and who, by reason of their residence away from their Tribes, constituted a part of the people under the jurisdiction of the United States, Mr. Trumbull, who reported the bill, modified it by inserting the words "excluding Indians not taxed." What was intended by that modification appears from the following language used by him in debate:

"Of course we cannot declare the wild Indians, who do not recognize the Government of the United States, who are not subject to our laws, with whom we make treaties, who have their own laws, who have their own regulations, whom we do not intend to interfere with or punish for the commission of crimes one upon the other, to be the subjects of the United States in the sense of being citizens. They must be excepted. The Constitution of the United States excludes them from the enumeration of the population of the United States when it says that Indians not taxed are to be excluded. It has occurred to me that, perhaps, the Amendment would meet the views of all gentlemen, which used these constitutional words and said that all persons born in the United States, excluding Indians not taxed and not subject to any foreign power, shall be deemed citizens of the United States." Cong. Globe, 1st Sess., 39th Congress, p. 527.

In replying to the objections urged by Mr.

Hendricks to the bill even as amended, Senator Trumbull said:

"Does the Senator from Indiana want the wild roaming Indians, not taxed, not subject to our authority, to be citizens of the United States, persons that are not to be counted in our government? If he does not, let him not object to this Amendment that brings in *even (only) the Indian when he shall have cast off his wild habits and submitted to the laws of organized society and become a citizen.*" *Ibid.*, 528.

The entire debate shows, with singular clearness indeed, with absolute certainty, that no Senator who participated in it whether in favor of or in opposition to the measure, doubted that the bill, as passed, admitted and was intended to admit to national citizenship, Indians who abandoned their tribal relations, and became residents of one of the States or Territories within the full jurisdiction of the United States. It was so interpreted by President Johnson who, in his veto message, said:

"By the 1st section of the bill, all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are declared to be citizens of the United States. This provision comprehends the Chinese of the Pacific States, *Indians subject to taxation*, the people called Gypsies, as well as the entire race designated as blacks, persons of color, negroes, mulattoes and persons of African blood. Every individual of those races, born in the United States, is, by the bill, made a citizen of the United States."

It would seem manifest, from this brief review of the history of the Act of 1866, that one purpose of that legislation was to confer national citizenship upon a part of the Indian race in this country; such of them, at least, as resided in one of the States or Territories and were subject to taxation and other public burdens. And it is to be observed, that whoever was included within the terms of the grant contained in that Act became citizens of the United States without any record of their names being made. The citizenship so conferred was made to depend wholly upon the existence of the facts which the statute declared to be a condition precedent to the grant taking effect.

At the same session of the Congress which passed the Act of 1866, the 14th Amendment was approved and submitted to the States for adoption. Those who sustained the former urged the adoption of the latter. An examination of the debates in Congress, pending the consideration of that Amendment, will show that there was no purpose, on the part of those who framed it or of those who sustained it by their votes, to abandon the policy inaugurated by the Act of 1866, of admitting to national citizenship such Indians as were separated from their Tribes, and were residents of one of the States or of one of the Territories, outside of any reservation or Territory set apart for the exclusive use and occupancy of Indian Tribes.

Prior to the adoption of the 14th Amendment numerous statutes were passed with reference to particular bodies of Indians, under which all of the individual members of such bodies, upon the dissolution of their tribal relations or upon the division of their lands derived from the Government, became or were entitled to become

112 U. S.

citizens of the United States by force alone of the statute, without observing any of the forms required by the naturalization laws in the case of a foreigner becoming a citizen of the United States. Such was the Statute of March 8, 1839, 5 Stat. at L., 849, relating to the Brothertown Indians, in the then Territory of Wisconsin. Congress consented that the lands reserved for their use might be partitioned among the individuals composing that Tribe. The Act required the partition to be evidenced by a report and map to be filed with the Secretary of the Interior, by whom it should be transmitted to the President; whereupon the Act proceeded, "The said Brothertown Indians and each and every of them shall then be deemed to be and, from that time forth, are hereby declared to be, citizens of the United States to all intents and purposes, and shall be entitled to all the rights, privileges and immunities of such citizens," etc.

Similar legislation was enacted with reference to the Stockbridge Indians, 5 Stat. at L., 846-7. Legislation of this character has an important bearing upon the present question, for it shows that, prior to the adoption of the 14th Amendment, it had often been the policy of Congress to admit persons of the Indian race to citizenship, upon their ceasing to have tribal relations and without the slightest reference to the fact that they were born in tribal relations. It shows also that the citizenship thus granted was not, in every instance, required to be evidenced by the record of a court. If it be said that the statutes, prior to 1866, providing for the admission of Indians to citizenship required, in their execution, that a record be made of the names of those who thus acquired citizenship, our answer is, that it was entirely competent for Congress to dispense, as it did in the Act of 1866, with any such record being made in a court or in any department of the government. And certainly it must be conceded that, except in cases of persons "naturalized in the United States," which phrase refers only to those who are embraced by the naturalization laws and not to Indians, the 14th Amendment does not require the citizenship granted by it to be evidenced by the record of any court, nor of any department of the government. Such citizenship passes to the person, of whatever race, who is embraced by its provisions, leaving the fact of citizenship to be determined, when it shall become necessary to do so in the course of legal inquiry, in the same way that questions as to one's nativity, domicile or residence are determined.

If it be also said that, since the adoption of the 14th Amendment, Congress has enacted statutes providing for the citizenship of Indians, our answer is, that those statutes had reference to Tribes, the members of which could not, while they continued in tribal relations, acquire the citizenship granted by the Amendment. Those statutes did not deal with individual Indians who had severed their tribal connections and were residents within the States of the Union, under the complete jurisdiction of the United States.

There is nothing in the history of the adoption of the 14th Amendment which, in our opinion, justifies the conclusion that only those Indians are included in its grant of national citizenship who were, at the time of their birth,

[117]

112 U. S.

subject to the complete jurisdiction of the United States. As already stated, according to the doctrines of the court, in this case—if we do not wholly misapprehend the effect of its decision—the plaintiff, if born while his parents were members of an Indian Tribe, would not be embraced by the Amendment even had he been, at the time it was adopted, a permanent resident of one of the States, subject to taxation and, in fact, paying property and personal taxes to the full extent required of the white race in the same State.

When the 14th Amendment was pending in the Senate of the United States, Mr. Doolittle moved to insert after the words "subject to the jurisdiction thereof," the words "excluding Indians not taxed." His avowed object in so amending the measure was to exclude, beyond all question, from the proposed grant of citizenship, tribal Indians who—since they were, in a sense, subject to the jurisdiction of the United States—might be regarded as embraced in the grant. The proposition was opposed by Mr. Trumbull and other friends of the proposed constitutional Amendment upon the ground that the words "Indians not taxed" might be misconstrued and, also, because those words were unnecessary, in that the phrases "subject to the jurisdiction thereof" embraced only those who were subject to the complete jurisdiction of the United States, which could not be properly said of Indians in tribal relations. But it was distinctly announced by the friends of the measure, that they intended to include in the grant of national citizenship Indians who were within the jurisdiction of the States and subject to their laws, because such Indians would be completely under the jurisdiction of the United States. Said Mr. Trumbull: "It is only those who come completely within our jurisdiction, who are subject to our laws, that we think of making citizens; and there can be no objection to the proposition that such persons should be citizens." Cong. Globe, pt. 4, 1st Sess., 39th Cong., pp. 2896-2898. Alluding to the phrase "Indians not taxed," he remarked that the language of the proposed constitutional Amendment was better than that of the Act of 1866 passed at the same session. He observed:

"There is a difficulty about the words 'Indians not taxed.' Perhaps one of the reasons why I think so is because of the persistency with which the Senator from Indiana himself insisted that the phrase 'Indians not taxed,' the very words which the Senator from Wisconsin wishes to insert here, would exclude everybody that did not pay a tax; that that was the meaning of it; we must take it literally. The Senator from Maryland did not agree to that nor did I; but if the Senator from Indiana was right, it would receive a construction which, I am sure, the Senator from Wisconsin would not be for, for if these Indians come within our limits and within our jurisdiction and are civilized, he would just as soon make a citizen of a poor Indian as of the rich Indian." *Ibid.*, 2894.

A careful examination of all that was said by Senators and Representatives, pending the consideration by Congress of the 14th Amendment, justifies us in saying that everyone who participated in the debates, whether for or against the Amendment, believed that in the

or, you could  
**MAKE AN ELECTION**  
(i.e., you could *volunteer*)  
to be **TREATED**  
as a U.S. citizen

You could declare & sign  
*under penalty of perjury*  
that you **are** a U.S. citizen

# SOCIAL SECURITY ADMINISTRATION Application for a Social Security Card

Form Approved  
OMB No. 0960-0066

<b>1</b>	<b>NAME</b> <span style="float: right;">TO BE SHOWN ON CARD</span>			First	Full Middle Name	Last
	<b>FULL NAME AT BIRTH IF OTHER THAN ABOVE</b>			First	Full Middle Name	Last
	<b>OTHER NAMES USED</b>					
<b>2</b>	<b>MAILING ADDRESS</b> <span style="float: right;">Do Not Abbreviate</span>					
	Street Address, Apt. No., PO Box, Rural Route No.					
<b>3</b>	<b>CITIZENSHIP</b> <span style="float: right;">(Check One)</span>					
	<input type="checkbox"/> U.S. Citizen <input type="checkbox"/> Legal Alien Allowed To Work <input type="checkbox"/> Legal Alien <b>Not</b> Allowed To Work (See Instructions On Page 2) <input type="checkbox"/> Other (See Instructions On Page 2)					
<b>4</b>	<b>SEX</b>					
	<input type="checkbox"/> Male <input type="checkbox"/> Female					
<b>5</b>	<b>RACE/ETHNIC DESCRIPTION</b> <span style="float: right;">(Check One Only - Voluntary)</span>					
	<input type="checkbox"/> Asian, Asian-American or Pacific Islander <input type="checkbox"/> Hispanic <input type="checkbox"/> Black (Not Hispanic) <input type="checkbox"/> North American Indian or Alaskan Native <input type="checkbox"/> White (Not Hispanic)					
<b>6</b>	<b>DATE OF BIRTH</b> <span style="float: right;">Month, Day, Year</span>			<b>7</b>	<b>PLACE OF BIRTH</b> <span style="float: right;">(Do Not Abbreviate) City State or Foreign Country FCI</span>	
<b>8</b>	<b>A. MOTHER'S NAME AT HER BIRTH</b>			First	Full Middle Name	Last Name At Her Birth
	<b>B. MOTHER'S SOCIAL SECURITY NUMBER</b> <span style="float: right;">(See instructions for 8B on Page 2)</span>			<div style="border-bottom: 1px solid black; width: 100%; text-align: center;">             _____ - _____ - _____           </div>		
<b>9</b>	<b>A. FATHER'S NAME</b>			First	Full Middle Name	Last
	<b>B. FATHER'S SOCIAL SECURITY NUMBER</b> <span style="float: right;">(See instructions for 9B on Page 2)</span>			<div style="border-bottom: 1px solid black; width: 100%; text-align: center;">             _____ - _____ - _____           </div>		
<b>10</b>	Has the applicant or anyone acting on his/her behalf ever filed for or received a Social Security number card before?					
	<input type="checkbox"/> Yes (If "yes", answer questions 11-13.) <input type="checkbox"/> No (If "no," go on to question 14.) <input type="checkbox"/> Don't Know (If "don't know," go on to question 14.)					
<b>11</b>	Enter the Social Security number previously assigned to the person listed in item 1.			<div style="border-bottom: 1px solid black; width: 100%; text-align: center;">             _____ - _____ - _____           </div>		
	Enter the name shown on the most recent Social Security card issued for the person listed in item 1.			First	Middle Name	Last
<b>12</b>	Enter any different date of birth if used on an earlier application for a card.					
	<div style="border-bottom: 1px solid black; width: 100%; text-align: center;">             _____ Month, Day, Year           </div>					
<b>14</b>	<b>TODAY'S DATE</b> <span style="float: right;">Month, Day, Year</span>			<b>15</b>	<b>DAYTIME PHONE NUMBER</b> <span style="float: right;">( ) - _____</span>	
					Area Code      Number	
<b>16</b>	I declare under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge.					
	<b>YOUR SIGNATURE</b>			<b>YOUR RELATIONSHIP TO THE PERSON IN ITEM 1 IS:</b>		
			<input type="checkbox"/> Self <input type="checkbox"/> Natural Or Adoptive Parent <input type="checkbox"/> Legal Guardian <input type="checkbox"/> Other (Specify)			
<b>DO NOT WRITE BELOW THIS LINE (FOR SSA USE ONLY)</b>						
NPN		DOC		NTI		ITV
PBC	EVI	EVA	EVC	PRA	NWR	DNR
UNIT						
EVIDENCE SUBMITTED				SIGNATURE AND TITLE OF EMPLOYEE(S) REVIEWING EVIDENCE AND/OR CONDUCTING INTERVIEW		
				DATE		
				DATE		
				DCL		
				DATE		

## THE PAPERWORK/PRIVACY ACT AND YOUR APPLICATION

The Privacy Act of 1974 requires us to give each person the following notice when applying for a Social Security number.

Sections 205(c) and 702 of the Social Security Act allow us to collect the facts we ask for on this form.

We use the facts you provide on this form to assign you a Social Security number and to issue you a Social Security card. You do not have to give us these facts, however, without them we cannot issue you a Social Security number or a card. Without a number, you may not be able to get a job and could lose Social Security benefits in the future.

The Social Security number is also used by the Internal Revenue Service for tax administration purposes as an identifier in processing tax returns of persons who have income which is reported to the Internal Revenue Service and by persons who are claimed as dependents on someone's Federal income tax return.

We may disclose information as necessary to administer Social Security programs, including to appropriate law enforcement agencies to investigate alleged violations of Social Security law; to other government agencies for administering entitlement, health, and welfare programs such as Medicaid, Medicare, veterans' benefits, military pension, and civil service annuities, black lung, housing, student loans, railroad retirement benefits, and food stamps; to the Internal Revenue Service for Federal tax administration; and to employers and former employers to properly prepare wage reports. We may also disclose information as required by Federal law, for example, to the Department of Homeland Security, to identify and locate aliens in the U.S.; to the Selective Service System for draft registration; and to the Department of Health and Human Services for child support enforcement purposes. We may verify Social Security numbers for State motor vehicle agencies that use the number in issuing drivers' licenses, as authorized by the Social Security Act. Finally, we may disclose information to your Congressional representative if they request information to answer questions you ask him or her.

We may use the information you give us when we match records by computer. Matching programs compare our records with those of other Federal, State, or local government agencies to determine whether a person qualifies for benefits paid by the Federal government. The law allows us to do this even if you do not agree to it.

Explanations about these and other reasons why information you provide us may be used or given out are available in Social Security offices. If you want to learn more about this, contact any Social Security office.

This information collection meets the requirements of 44 U.S.C. §3507, as amended by Section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget control number. We estimate that it will take about 8.5 to 9.5 minutes to read the instructions, gather the facts, and answer the questions. *You may send comments on our time estimate above to: SSA, 6401 Security Blvd., Baltimore, MD 21235-6401. **Send only comments relating to our time estimate to this address, not the completed form.***

MAIL OR TAKE THE COMPLETED FORM TO A LOCAL SOCIAL SECURITY OFFICE. The office is listed under U.S. Government agencies in your telephone directory or you may call Social Security at 1-800-772-1213. You may also locate the nearest Social Security office on the Internet at <http://www.socialsecurity.gov>.

or, your parents  
could sign you up

before you even  
leave the hospital  
at birth !

## HOSPITAL INSTRUCTIONS

### BIRTH CERTIFICATE & SOCIAL SECURITY INFORMATION

1. All new moms **MUST** fill out the yellow worksheet found in the yellow folder that each new mom receives from her nurse. **We MUST** receive this worksheet before they are discharged. If we are not in our office, please slide it under our door. If no worksheet is received, a birth certificate will be done in 10 days with no name.
2. If the parents are not married and they wish for the father's name to appear on the birth certificate, then they **MUST** file an Affidavit of Paternity with the notary. This requires an ID. If she is not present, they need to make an appointment with her within 10 days (731-8751) **OR** they can do the affidavit on their own at another notary and send it off to the State up until the baby is 21. If the father is not 18, then his parent must sign with the notary an Addendum to the Affidavit of Paternity for Minor Father.
3. To receive the original birth certificate, the parents need to send the white birth certificate application found in the yellow folder to the address at the top of the form. Cost is \$20.00. This process takes 3 weeks. They take this birth certificate to their insurance within 30 days. Registration cards are a souvenir and **NOT** legal.
4. The social security card is ordered through the top question on the back of the yellow worksheet. This card will come from the government in 17 weeks. If the parent does not receive the card or they move, then they must go in person to the social security office to apply for the card. They will need the original birth certificate and another ID with the baby's name on it. **Do not call the birth certificate office if the card is not received.** We only start the process here. After it leaves our office, the county receives their information. Then the county sends their information off to the state. The state then sends their information to the government. Then the government mails them the card. If they call the social security office and they tell them that the hospital has done nothing, refer to the above information. **Please note that just because they mark "YES", this does not mean they will receive a SS card. Social Security has edit checks and if something does not match or something is left blank on the worksheet or unverifiable, the government will not issue the SS card. 1-800-772-1213**



Interoffice Use Only: \_\_\_\_\_ Paternity Processed \_\_\_\_\_ Conf. Mail out Needed \_\_\_\_\_ Baby Name Updated in Meditech \_\_\_\_\_ AOD Logged \_\_\_\_\_

Circle what type of insurance do you have for your baby? Medicaid (State Aid) Culinary Military Other: \_\_\_\_\_  
 Would you like a birth announcement published in the Review Journal newspaper (at no cost)? Yes or No  
 Your telephone number is: Home \_\_\_\_\_ Work \_\_\_\_\_ Cell \_\_\_\_\_



Please use an ink pen to complete this worksheet.

**Birth Certificate Worksheet**

Directions: Please complete both sides of the worksheet. Print clearly to ensure the accuracy of the legal birth certificate (all correction costs from errors made as a result of illegible handwriting will default to the parents). Do not use capital letters unless it is your intention to have something capitalized. Please return this worksheet to the Birth Certificate Office prior to being discharged home.

**Child's Information**

First Name	Middle Name	Last Name
Date of Birth: / /		Time of Birth: : AM / PM
		Sex: Male or Female
Name of Physician delivering child:		

**Mother's Information**

First Name	Middle Name	Last Name
Maiden Name (Last name before marriage):		
Age:	Date of Birth: / /	Place of Birth (State in U.S. or Foreign Country):
Current Address:	Apt #	City State Zip County
Mailing Address (If Different From Above):	Apt #	City State Zip County

Are you legally married to the father of the child? (Circle) Yes or No Is his name to be listed on the birth certificate? (Circle) Yes or No  
 Circle mother's marital status: Never Married Legally Married Legally Separated Legally Divorced Widow

\*\*\*Please note that if you are not legally married to the father of the child and wish to have his name listed on the birth certificate both parents will be required, by law, to complete an Affidavit of Paternity to have his name added. (NRS 440.280(6) Please schedule an appointment with the Birth Certificate Tech to have the Affidavit of Paternity processed and notarized at Sunrise Hospital & Medical Center and bring proper ID within 10 days of the child's birth. You may also process the Affidavit of Paternity by having it notarized outside the facility and follow the mailing instructions located on the back of the affidavit to have his name added. You have 21 years from the child's date of birth to add the father's name to the birth certificate by Nevada law.

**Father's Information**

First Name	Middle Name	Last Name
Age:		Date of Birth: / /
Place of Birth (State in U.S. or Foreign Country):		

Is the MOTHER of Hispanic origin? If YES, specify (circle your selection): Central/South American Cuban Mexican  
 (Select your primary race designation.) Puerto Rican Spanish (Spain) Other: \_\_\_\_\_  
 If you are of Hispanic origin would you prefer your secondary race identifier to be (circle your selection): White Black Indian Asian  
 If NO, specify (Circle): Native American Indian Asian Indian (India) Black Chinese Filipino Guamanian Hawaiian  
 Japanese Korean Samoan Vietnamese White Other origin: \_\_\_\_\_

Mother's Social Security Number:	Highest Level of Education (Including College): 1st 2nd 3rd 4th 5th 6th 7th 8th 9th 10th 11th 12th grade
Mother's Occupation/Title:	1st 2nd 3rd 4th 5+ years of college (circle your selection)
	Employment Industry (circle your selection): Construction Retail Gaming Hotel Restaurant Education Health Care Government Entertainment Domestic Other: _____

Is the FATHER of Hispanic origin? If YES, specify (circle your selection): Central/South American Cuban Mexican  
 (Select your primary race designation.) Puerto Rican Spanish (Spain) Other: \_\_\_\_\_  
 If he is of Hispanic origin would he prefer his secondary race identifier to be (circle your selection): White Black Indian Asian  
 If NO, specify (Circle): Native American Indian Asian Indian (India) Black Chinese Filipino Guamanian Hawaiian  
 Japanese Korean Samoan Vietnamese White Other origin: \_\_\_\_\_

Father's Social Security Number:	Highest Level of Education (Including College): 1st 2nd 3rd 4th 5th 6th 7th 8th 9th 10th 11th 12th grade
Father's Occupation/Title:	1st 2nd 3rd 4th 5+ years of college (circle your selection)
	Employment Industry (circle your selection): Landscaping Construction Retail Gaming Hotel Restaurant

Permission is given to provide the Social Security Administration with the data for the issuance of a social security number for the above child?  Yes  No \*\*\*Please note that the Social Security Administration will mail the card in approximately 17 weeks.

Last Menstrual Period Before Pregnancy: / / Number of Weeks in Pregnancy Completed: \_\_\_\_\_  
 Baby's Birth Weight: \_\_\_\_\_ Lbs \_\_\_\_\_ Oz. Or Estimated Due Date: / /

Number of Other Living Children: \_\_\_\_\_ Number of Deceased Children: \_\_\_\_\_  
 Date of Last Birth, Not Including This One: / /  
 Number of Miscarriages/Abortions: \_\_\_\_\_ Date of Last Miscarriage/Abortion: / /

Pregnancy Month Prenatal Care Began (Please Circle): 1st 2nd 3rd 4th 5th 6th 7th 8th 9th or No Prenatal Care  
 Number of Doctor Visits Per Trimester: \_\_\_\_\_ 1st (1st-3rd month) \_\_\_\_\_ 2nd (4th-6th month) \_\_\_\_\_ 3rd (7th-9th month)

Were you transferred from another hospital to Sunrise before the baby was born:  Yes  No  
 If yes, from which hospital: \_\_\_\_\_

Drug use during pregnancy:  Yes  No Circle Type: Prescription Over the Counter Other  
 Tobacco use during pregnancy:  Yes  No Average cigarettes per day: \_\_\_\_\_  
 Alcohol use during pregnancy:  Yes  No Average drinks per day: \_\_\_\_\_

How much weight did you gain during this pregnancy? \_\_\_\_\_ Lbs.

Circle any risk factors for this pregnancy: Anemia, Hypertension, RH Sensitization, Heart Disease, Diabetes, Gest. Diabetes, Renal Disease, Bleeding, Lung Disorder, Herpes, Low Fluid, Eclampsia, Incompetent Cervix, Cerclage, Pre-Term Labor Other: \_\_\_\_\_

**Obstetric Procedures-Check all that apply**

1)  Amniocentesis 2)  Electronic Fetal Monitoring 3)  Induction of Labor 4)  Stimulation of Labor  
 5)  Tocolysis 6)  Ultrasound 7)  Other: \_\_\_\_\_

Circle any complications during labor or delivery: Breech, Cord Prolapse, Fetal Distress, Placenta Previa, Premature Rupture of Membranes, Maternal Temperature, Meconium, Abruption, Seizures, Precipitous Labor, Dysfunctional Labor, Shoulder Dystocia, Anesthetic Complications, Cephalopelvic Disproportion, Other: \_\_\_\_\_

**Method of Delivery-Check all that apply**

1)  Vaginal 2)  Vaginal Birth After Previous C-Section 3)  Primary C-Section 4)  Repeat C-Section  
 5)  Forceps 6)  Vacuum

Which nursery was your baby admitted to? \_\_\_\_\_ Regular Nursery \_\_\_\_\_ NICU Unit

Circle any abnormal conditions of the newborn: Assisted Ventilation, Sepsis, Significant Birth Injury, Anemia, Meconium Aspiration, Seizures, Drug Withdrawal, Respiratory Distress, Premature Other: \_\_\_\_\_ NONE

Circle any congenital anomalies of the child: Anencephaly, Spina Bifida, Cleft Lip/Palate, Down's Syndrome, Congenital Heart Disease, Gastroschisis, Club Foot, Polydactyly, Other: \_\_\_\_\_ NONE

I certify that the above information is a true and correct representation of the facts, to the best of my knowledge. I understand that according to NRS 440.770, any person who furnishes false information for the purpose of making incorrect certification of birth, shall be punished with a fine not to exceed \$250.

Signature of Parent \_\_\_\_\_ Date \_\_\_\_\_

Please verify the information on your baby's **Certified Birth Certificate** is correct, immediately upon receipt. The hospital can only assume the responsibility to correct the information that is a result of entry error by the Birth Registrar, for a maximum of 3 years after the birth of your child. After 3 years this worksheet will no longer be accessible and all correction fees will default to your responsibility.


Social Security Online  
Publications Home



## Electronic Leaflet

### Social Security Numbers For Children

SSA Publication No. 05-10023, December 2005, *(Recycle prior editions)*,

ICN 454925 [View .pdf]  (En Español)

When you have a baby, one of the things that should be on your "to do" list is getting a Social Security number for your baby. The easiest time to do this is when you give information for your child's birth certificate. If you wait to apply for a number at a Social Security office, there may be delays while we verify your child's birth certificate.

#### Contents

[Why should I get a number for my child?](#)

[Must my child have a Social Security number?](#)

[How do I apply?](#)

[What if my child is adopted?](#)

[What does it cost?](#)

[What if I lose the card?](#)

[Social Security number misuse](#)

[Your privacy](#)

[Contacting Social Security](#)

#### Why Should I Get A Number For My Baby?

If your child is born in the United States or is a U.S. citizen born abroad, you need a Social Security number to claim your child as a dependent on your income tax return. Your child may also need a number if you plan to:

- Open a bank account for the child;
- Buy savings bonds for the child; Obtain medical coverage for the child; or
- Apply for government services for the child.

[\[Back to top\]](#)

#### Must my child have a Social Security number?

No. Getting a Social Security number for your newborn

is voluntary. But, it is a good idea to get a number when your child is born. You can apply for a Social Security number for your baby when you apply for your baby's birth certificate. The state agency that issues birth certificates will share your child's information with us and we will mail the Social Security card to you.

If you wait to apply at a Social Security office, you must show us proof of your child's U.S. citizenship, age and identity, as well as proof of your own identity. We must verify your child's birth record, which can add up to 12 weeks to the time it takes to issue a card. To verify a birth certificate, Social Security will contact the office that issued it. We do this verification to prevent people from using fraudulent birth records to obtain Social Security numbers to establish false identities.

[Back to top]

## How do I apply?

At the hospital: When you give information for your baby's birth certificate, you will be asked whether you want to apply for a Social Security number for your baby. If you say "yes," you need to provide both parents' Social Security numbers if you can. Even if you do not know both parents' Social Security numbers, you can still apply for a number for your child.

At a Social Security office: If you wait to apply for your child's number, you must:

- Complete an *Application For A Social Security Card* (Form SS-5); and
- Show us original documents proving your child's:
  - U.S. citizenship;
  - Age; and
  - Identity.
- Show us documents proving your identity.

Children age 12 or older: Anyone age 12 or older requesting an original Social Security number must appear for an interview at a Social Security office, even if a parent or guardian will sign the application on the child's behalf.

### Citizenship

We can accept only certain documents as proof of U.S. citizenship. These include a U.S. birth certificate, U.S. consular report of birth, U.S. passport, Certificate of Naturalization or Certificate of Citizenship. Noncitizens should see *Social Security Numbers For Noncitizens*

# Part 3

# Conclusion

A Citizen of a State of the Union, **IS** a Citizen of “the United States of America”, where “the Constitution of the United States of America” applies.

A person born in an insular area, a territory, is a U.S. citizen.

(U.N. Covenant, 1994)

A U.S. citizen is NOT a Citizen of a State, (Downes v. Bidwell, 1901) but is a citizen of the United States government.

(U.S. v. Cruikshank, 1875)

The Constitution applies only in a State. (Downes v. Bidwell, 1901)

# If you are a U.S. citizen:

- you are NOT a member of the People of a State
- you are NOT a member of “We the People” that created the Constitution
- the Constitution of the United States of America does not apply to you



- the Bill of Rights does not apply to you
  - the Constitution of the State where you merely “reside” does not apply to you, except as granted.
- **Congress** shall determine your civil rights and your political status [your citizenship] (Treaty of Peace, 1898)

If you are a U.S. citizen

**you have no rights  
but what Congress  
grants you.**

*(see the very limited  
bundle of rights  
that follows)*

er periods of time than men convicted of identical offenses.

The petitioner was convicted on September 22, 1964 of violating a Bridgeport City ordinance against loitering and was sentenced to an indefinite term in the State Farm. She was released on parole and was thereafter arrested on a charge of aggravated assault; Conn. Gen.Stat. (Rev.1958) § 53-16. After having pleaded not guilty to this charge in the Superior Court for Fairfield County, a substituted information was filed charging her with breach of peace, Conn.Gen.Stat. (Rev.1958) § 53-174, an offense punishable by not more than one year in jail, a fine of up to five hundred dollars, or both. She pleaded guilty to this latter charge and was sentenced to the State Farm for an indefinite term to run concurrently with the prior term. It is this sentence which is the basis of her present incarceration and gives rise to this petition.

#### I. EXHAUSTION:

Respondent claims that this Court is without jurisdiction, because the petitioner has failed to exhaust her state remedies. She is represented by an attorney associated with the Bridgeport Legal Services Committee, Inc., an office sponsored by the Federal Office of Economic Opportunity. On May 23, 1968, this same attorney attempted to file separate petitions for a writ of habeas corpus in the Court of Common Pleas and Superior Court for New London County. These were both rejected by the clerks of the respective courts, because they were not accompanied by the required entry fees. While affidavits establishing the petitioner's indigency were filed with said petitions, under the rule of the state courts the entry fee can be waived only where the individual is represented by the Public Defender or a Special Public Defender appointed by the Court. (Petitioner's Exhibit C).

[1] It is the rule in this District that when an indigent state prisoner tenders a petition for a writ of habeas

corpus which is rejected, because of her inability to pay the entry fee, the exhaustion requirement of 28 U.S.C. § 2254(b) has been satisfied. United States ex rel. Robinson v. York, 281 F. Supp. 8 (D.Conn. Feb. 28, 1968); United States ex rel. Rush v. York, 281 F. Supp. 779 (D.Conn. Nov. 28, 1967), 42 Conn.B.J. 74. That rule is adhered to.

#### II. DENIAL OF EQUAL PROTECTION:

In United States ex rel. Robinson v. York, supra, the Court held that it is constitutionally impermissible for the state to imprison adult women for longer terms than adult men under similar circumstances, who are convicted of the same substantive offense. That case differs from the case at bar in two respects: the petitioner in that case was more than twenty-one years of age when sentenced, and her commitment was ordered by the State Circuit Court. These differences are relevant in that they require a consideration of statutes other than those involved in *Robinson*. Section 17-389 of the Connecticut General Statutes (Rev.1958, 1966 Supp.) provides for the commitment of males between the ages of sixteen and twenty-one years of age to the reformatory under certain conditions. Section 17-390 provides in pertinent part:

"An offender sentenced to the reformatory for an offense for which the maximum punishment is a sentence to a jail, with or without a fine, may be retained in the reformatory not more than two years."

It appears from a reading of this section that a minor male who is convicted in the Superior Court of a breach of the peace, an offense for which the maximum punishment is a sentence in jail and a fine, may be committed to the reformatory for a maximum of two years. Under § 17-360, a minor female convicted of the same offense must be sentenced for an indefinite period of up to three years. The state has pointed to no rational basis for this difference in treatment between minor males and mi-

nor females, either with respect to the rehabilitative or the deterrent aspects of incarceration.

"A classification by sex alone would not, per se, offend the Equal Protection Clause of the United States Constitution. For example, there are undoubtedly significant biological, natural and practical differences between men and women which would justify, under certain circumstances, the establishment of different employment qualification standards. \* \* \* We are convinced, however, that the considerations and factors which would justify a difference between men and women in matters of employment, as well as in a number of other matters, do not govern or justify the imposition of a longer or greater sentence on women than is imposed upon men for the commission of the same crime." *Commonwealth v. Daniels*, (Penn.Sup. Ct.), 243 A.2d 400 (7/30/68).

[2] The Court holds, therefore, that the imposition of an indefinite sentence on this petitioner pursuant to the provisions of § 17-360 constitutes the type of arbitrary and invidious discrimination which the Equal Protection Clause of the XIV Amendment to the Federal Constitution is designed to guard against. United States ex rel. Robinson v. York, supra.

The state claims that under § 17-389 males can be sentenced to the reformatory for up to five years for the commission of a misdemeanor and thus females receive more favorable treatment. This section, when read in conjunction with § 17-390, must be reconciled with the over-all statutory scheme, and is not to be read as giving the Court such authority. Its purpose is only to specify those persons eligible for commitment to the reformatory, the types of sentences which may be imposed, and the maximum and minimum thereof in general.

Since the petitioner has served more than two years of the sentence for breach of the peace, (said two year term having been completed June 3, 1968) the

maximum which might be constitutionally imposed.

It is ordered, that the respondent shall absolutely discharge the petitioner from custody as promptly as possible consistent with administrative regulations at the State Farm for Women. A copy of this memorandum and order shall be forwarded forthwith by the Clerk of this Court, not only to counsel of record but also to the respondent herein.

This opinion constitutes the Court's findings of fact and conclusions of law.

If an appeal from the foregoing order is desired, this will constitute a certificate of probable cause under 28 U.S.C. § 2253.



UNITED STATES of America,  
Plaintiff,

v.

Manuel Amedee Amy VALENTINE, Felix Juan Feliciano Rosario, Hernando Delgado Acevedo, Digno Rafael Ortiz Rivera, Miguel Quiliones Mendoza, Jose Del Carmen Garcia Miranda, Juan M. Rivera Negron, Ricardo Ivan Zengotita Ramos, Florencio Merced Rosa, Ruben Arcelay Medina and Edwin Feliciano Grafals, Defendants.

Crim. Nos. 6-67, 8-67, 15-67, 16-67, 67-67, 73-67, 74-67, 75-67, 77-67, 80-67, 81-67.

United States District Court  
D. Puerto Rico.  
Aug. 20, 1968.

Prosecutions for refusing to submit into induction into the Armed Forces of the United States. The defendants moved to dismiss indictments. The District Court, Cancio, J., held, inter alia, that the exclusion from jury service in the United States District Court for Puerto Rico of persons not literate in English, in accordance with statute, an exclusion which was necessary if proceedings were,

process only through the states. Art. I, §§ 2, 3, & 4, cl. 1; Art. II, § 1, cls. 2 & 3; Twelfth Amendment; Seventeenth Amendment. These constitutional provisions cannot be said, in contemplation of law, to diminish the national citizenship status of citizens of the Commonwealth, the District of Columbia, or the territories. The Constitution recognizes no "second-class citizenship." *Schneider v. Rusk*, 377 U.S. 163, 169, 84 S.Ct. 1187, 12 L.Ed.2d 218.

[26] Defendants' error lies in assuming that the right to vote is an essential right of citizenship. The proposition is beguiling, but it will not stand analysis. The only absolute and unqualified right of citizenship is to residence within the territorial boundaries of the United States; a citizen cannot be either deported or denied reentry. The Supreme Court explained in *Balzac v. People of Porto Rico*, 258 U.S. 298, 42 S.Ct. 348, 66 L.Ed. 627, that the major advantage (aside from "more certain protection against the world," *id.* at 311, 42 S.Ct. at 348) which Puerto Ricans acquired when they were made United States citizens while Filipinos were not was that they, as individuals, obtained the absolute right to enter continental United States and become citizens of any state while Filipinos could do so only by going through the process of naturalization. See *id.* at 308, 42 S.Ct. 343. The right to vote is not in terms granted to citizens by the Constitution; to the contrary, the matter is left to the states. Art. I, § 2; Seventeenth Amendment. Citizenship may be made a qualification for voting, as it is, e. g., for holding office or being a juror (but not necessarily so, since the Constitution does not enjoin the states to limit the franchise to citizens). Citizens who are otherwise qualified cannot be discriminatorily denied the franchise because of race, sex, or ability to pay a fee.

23. Defendants argue that the principle of "no taxation without representation" implies as well as no military service without representation. They cite only a slogan, however, and not a constitutional

Fifteenth Amendment; Nineteenth Amendment; Twenty-fourth Amendment; *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169. The reapportionment cases have established that the Constitution forbids a state to "debase" either the national or the local vote of a portion of its qualified citizenry by malapportionment. See, e. g., *Wesberry v. Sanders*, 376 U.S. 1, 5-6, 84 S.Ct. 526, 11 L.Ed.2d 481. But the Constitution does not make the franchise *per se* a right of citizenship. *Minor v. Happersett*, 21 Wall. 162, 22 L.Ed. 627. If it did, minors, Americans residing abroad (who may vote only if the state of which they are concurrently citizens permits absentee ballots) and, as in *Minor*, women prior to the adoption of the Nineteenth Amendment could not be considered citizens, and those who have changed their residence would have to be deemed to have lost their citizenship until such time as they acquired the requisite residence tenure in their new place of domicile.

Since the franchise is not *per se* a right of citizenship, it follows that it is not a precondition to imposition of duties of citizenship. It has, in fact, been specifically held that the denial to minors of the franchise does not free them of their obligation for military service or bar their prosecution when they refuse to serve. *George v. United States*, 196 F.2d 445, 446, 454-455 (C.A.9, 1952), certiorari denied, 344 U.S. 843, 73 S.Ct. 58, 97 L.Ed. 656. If minors, who cannot vote at all (except in certain states), are constitutionally subject to military service, it follows even more clearly that the Constitution is no bar to imposing military service upon Puerto Ricans, who have full local self-governing and lack national political participation only because the Constitution makes no provision for them to have it<sup>23</sup> unless they move to the Mainland and establish residence there.

principle. Citizens of some territories and the District of Columbia are taxed federally without representation, and at the present moment citizens of the District are taxed locally without representa-

Apparently misunderstanding the relationship of the compact to the Selective Service Act's applicability to Puerto Rico, defendants argue that there is no compact; that if the compact exists it has no relevance to selective service; and that applying selective service to Puerto Rico violates the compact, if it exists. Even if they were correct in their initial assertion, their argument against the indictments would not be advanced. The liability of Puerto Ricans for military service arises not from the compact but from their United States citizenship, which antedates the compact (although it was specifically reaffirmed and made unilaterally irrevocable by that document). If defendants were correct and there were no compact, which is not true, Puerto Ricans would nevertheless remain American citizens and hence subject to military service.

It is clear, however, that the compact does exist as a binding agreement, irrevocable unilaterally between the people of Puerto Rico and the Congress of the United States, transforming Puerto Rico's status from territory to commonwealth, or *Estado Libre Asociado*.<sup>24</sup> The best evidence that this is so lies in the Commonwealth Constitution. Territories are governed by organic acts, enacted by Congress, unilaterally amendable by Congress, unilaterally revocable by Congress. Puerto Rico, however, is governed by a constitution adopted by the vote of its people. While the constitution was submitted initially to Congress for approv-

tion as well. Puerto Rico's freedom from federal taxation is not constitutionally derived, but arises from the compact agreement that the Commonwealth shall have fiscal autonomy.

24. To say that the compact is irrevocable unilaterally is not to say that all of its detailed provisions are. It is only the essential provisions which cannot be revoked by one party acting alone: i. e., the provisions which establish Puerto Rico's status as a commonwealth with plenary domestic authority, its association with the United States, the United States citizenship of its people, and such favorable concessions as its fiscal autonomy. There are peripheral provisions,

al (as in the case of the initial constitutions of new states) a proposal that subsequent amendments thereto must be approved by Congress was deleted from the enabling resolution (S. J. Res. 151) at the insistence of the government of Puerto Rico. 98 Cong.Rec. 7840 et seq., 8306-07, 8618-19. A proposal that the enabling resolution state that Congress retained its powers over Puerto Rico under the Territorial Clause of the Constitution was also rejected. *Id.* at 6183 et seq. In short, in respect to domestic authority, the status of the Commonwealth essentially parallels that of the states. It is only in regard to national political participation, voluntarily waived by the Puerto Rican people, that the status is different.

Since the people of Puerto Rico, in accepting the compact, rejected both independence and statehood (and reaffirmed their choice in the 1967 plebiscite, where the independence and statehood alternatives, being specifically presented, were specifically rejected), it cannot be said that the imposition of military service without national political participation comprises an invidious discrimination forbidden by the Fifth Amendment. By rejecting independence and accepting a free association with the United States and the United States citizenship, the people of Puerto Rico accepted the duties of citizenship, including liability for military service. By rejecting statehood and accepting the commonwealth status, they disclaimed any counterdemand for par-

however, which were retained in the Federal Relations Act because there was no place else to put them: e. g., the provisions governing procedures in this court. In regard to the Court, the only essential element of the Compact is that the agreement to associate with the United States provides the present basis for its existence. But since the Court is a federal one, it is properly governed by rules established by Congress alone. Hence, the fact that Congress has repealed 48 U.S.C. § 867 (§ 44 of the Federal Relations Act) in favor of uniform rules for jury selection throughout the federal judicial system does not affect the inviolability of the compact.

Opinion of the Court—Rhodes, C. J.

concurrence of the act of leaving the premises vacant, so that they may be appropriated by the next comer, and the intention of not returning. "His not using the land or appropriating it to any suitable use" would not tend in the slightest degree to show an intention to abandon it. The intention to relinquish the possession may have been entertained, not only for a moment, but during the whole period of his possession; but if the intention was not manifested by leaving the possession vacant, without the intention of returning, there was no abandonment.

The twenty-fourth instruction given at the request of defendants, Southworth and Green, and the charge given by the Court on the return of the jury for instructions, are faulty in this respect: The jury were charged that if the plaintiffs, and those under whom they claim, had left the premises vacant, unimproved, and without attention for more than five years before the commencement of the action, they were authorized to find therefrom the fact of abandonment. They should have been instructed that such fact must be taken into consideration in deciding the question of abandonment. The essential fact of intention to abandon, is not necessarily inferable from the fact stated.

By the judgment it is ordered and adjudged that the plaintiffs take nothing by this proceeding as against certain defendants; and it is also adjudged that those defendants severally recover from the plaintiffs the possession of portions of the premises specifically described. Those tracts were in the possession of the respective defendants, and there is nothing in the pleadings to warrant a judgment, that they recover from the plaintiffs the possession of those several portions of the premises.

The index to the voluminous transcript in this case is a sham. The statement on motion for a new trial comprises about seven eighths of the transcript, and upon it all the questions in the case arise, but it has no index.

Judgment and order reversed, and cause remanded for a new trial, without costs.

SPRAGUE, J., expressed no opinion.

Argument for Appellant.

No. 2,372.

THE PEOPLE OF THE STATE OF CALIFORNIA, *ex. rel.* M. M. KIMBERLY, APPELLANT, v. PABLO DE LA GUERRA, RESPONDENT.

TREATY OF GUADALUPE HIDALGO.—INHABITANTS OF CEDED TERRITORY.—CITIZENSHIP.—The treaty of Guadalupe Hidalgo had the effect directly and of itself to fix the status of the inhabitants of the ceded territories, in their relation as citizens to the respective Governments of Mexico and the United States.

IDEM.—ARTICLE IX.—The only way in which it was possible for Congress to admit the Mexicans in the territory ceded by the treaty of Guadalupe Hidalgo to the enjoyment of all the rights of citizens of the United States, was by incorporating the ceded territory into the Union as States.

IDEM.—ADMISSION OF A STATE.—After admission into the Union, no Act of Congress was necessary to define the rights of the inhabitants who were recognized as members of the community organized into a State. CITIZENSHIP.—The possession of all political rights is not essential to citizenship.

CALIFORNIA.—ADMISSION OF, AS A STATE.—QUALIFICATION OF ELECTORS.—When Congress admitted California as a State, the constituent members of the State, in their aggregate capacity, became vested with the sovereign powers of government "according to the principles of the Constitution," and had the right to prescribe the qualifications of electors.

IDEM.—TREATY OF GUADALUPE HIDALGO.—It was no violation of the ninth article of the Treaty of Guadalupe Hidalgo that the qualifications of electors, as prescribed in the Constitution of California, were such as to exclude some of the inhabitants from certain political rights.

APPEAL from the County Court of Santa Barbara County.

Judgment was for defendant; and plaintiff appealed.

The other facts are stated in the opinion.

A. Packard, for Appellant.  
Eugene Lies, of Counsel.

If the judicial election had taken place under the Act of 1851, (p. 287) or that of 1853, (p. 333), neither of which prescribes any qualifications, the relator might need to rely entirely upon the principle discussed in the case of *Walther v. Rabolt* (30 Cal. 185). But, at the time of this election, the Act of April 20, 1863, was in force; and its 19th Section declares that "no person shall be eligible to the

Opinion of the Court—Temple, J.

protection guaranteed to citizens of the United States in the Constitution, and to the shield of nationality abroad; but it is evident that they have not the political rights which are vested in citizens of the States. They are not constituents of any community in which is vested any sovereign power of government. Their position partakes more of the character of subjects than of citizens. They are subject to the laws of the United States, but have no voice in its management. If they are allowed to make laws, the validity of these laws is derived from the sanction of a Government in which they are not represented. Mere citizenship they may have, but the political rights of citizens they cannot enjoy until they are organized into a State, and admitted into the Union.

But the United States cannot acquire territory to hold and rule permanently in full government. Such acquisitions are in pursuance of its power to admit new States, and every Territory thus acquired must be held to have been acquired for the purpose of being erected into a State. Indeed that may be considered as the last act in the acquisition of the Territory, for it is then for the first time incorporated into the Union. Once admitted into the Union it requires no Act of Congress to define the rights of the inhabitants who were recognized as members of the community organized into a State, "because the Constitution itself defines the relative rights, powers and duties of the State, and the citizens of the State, and the General Government." (*Scott v. Sandford*, 19 How. 446.)

Having admitted into the Union a State, of which these inhabitants were constituent members, Congress could do no more. It has conferred upon them all the rights of citizens, or rather it has recognized these rights in the only mode provided by the Constitution which was applicable to them.

The question involved in this case seems to have been decided in the case of the *American Insurance Company v. Canter*, (1 Peters, 511.) This case involved the validity of a territorial law of Florida, establishing a certain Court.

Opinion of the Court—Temple, J.

Chief Justice Marshall, in pronouncing the opinion of the Court, says: "On the 2d of February, 1819, Spain ceded Florida to the United States. The sixth article of the treaty of cession contains the following provision: 'The inhabitants of the Territories which His Catholic Majesty cedes to the United States by this treaty shall be incorporated in the Union of the United States as soon as may be consistent with the principles of the Federal Constitution; and admitted to the enjoyment of the privileges, rights and immunities of the citizens of the United States.'"

"This treaty is the law of the land, and admits the inhabitants of Florida to the enjoyment of the privileges, rights and immunities of the citizens of the United States. It is unnecessary to inquire whether this is not their condition independent of stipulation. They do not, however, participate in political power; they do not share in the Government till Florida shall become a State. In the meantime, Florida continues to be a Territory of the United States, governed by virtue of that clause in the Constitution which empowers Congress 'to make all needful rules and regulations respecting the territory or other property belonging to the United States.'"

But it is suggested by counsel for relator, that if this construction be correct, then the Constitution of California is in conflict with the ninth article of the treaty, for that article provides that all Mexican citizens who elect to become citizens of the United States, shall be admitted to all the rights of citizens, while the Constitution discriminates. It declares that white male citizens of Mexico, who have elected to become citizens of the United States, shall be electors, while all, without distinction of color, including Indians, were Mexican citizens, and entitled to vote by the laws of Mexico.

If this be so, it does not follow that the respondent is not a citizen of the United States, but that the elective franchise is denied to certain persons who had been entitled to its exercise under the laws of Mexico. The possession of all political rights is not essential to citizenship. When Con-

And so, if you were asked,  
“Are you a U.S. citizen?”,  
what might you say?

You might say, “My  
nationality and political  
status was determined by  
my birth. I was born in one  
of the several States. **My  
nationality is shown by the  
U.S. government on the  
next page, section 5.23:”**

# Style Manual

An official guide to the form and style of Federal Government printing

2008

Page 122 of 122



### Geographic names

- 5.20. The spelling of geographic names must conform to the decisions of the U.S. Board on Geographic Names (BGN) (<http://geonames.usgs.gov>). In the absence of such a decision, the U.S. Directory of Post Offices is to be used.
- 5.21. If the decisions or the rules of the BGN permit the use of either the local official form or the conventional English form, it is the prerogative of the originating office to select the form which is most suitable for the matter in hand; therefore, in marking copy or reading proof, it is required only to verify the spelling of the particular form used. GPO's preference is for the conventional English form. Copy will be followed as to accents, but these should be consistent throughout the entire job.

### Nationalities, etc.

- 5.22. The table on Demonyms in Chapter 17 "Useful Tables" shows forms to be used for nouns and adjectives denoting nationality.
- 5.23. In designating the natives of the States, the following forms will be used.

Alabamian	Louisianian	Ohioan
Alaskan	Mainer	Oklahoman
Arizonan	Marylander	Oregonian
Arkansan	Massachusettsan	Pennsylvanian
Californian	Michigianian	Rhode Islander
Coloradan	Minnesotan	South Carolinian
Connecticuter	Mississippian	South Dakotan
Delawarean	Missourian	Tennessean
Floridian	Montanan	Texan
Georgian	Nebraskan	Utahn
Hawaiian	Nevadan	Vermonteer
Idahoan	New Hampshireite	Virginian
Illinoisan	New Jerseyan	Washingtonian
Indianian	New Mexican	West Virginian
Iowan	New Yorker	Wisconsinite
Kansan	North Carolinian	Wyomingite
Kentuckian	North Dakotan	