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BARNETT

CONSTITUTIONAL LAW
Cases in Context

Wolters Kluwer
Law & Business

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To those whose vision of the Constitution is not limited to that of the Supreme Court

PREFACE

The Supreme Court in Its Own Words

I undertook the daunting task of writing this casebook with one, and only one, pedogogical objective in mind: To provide students with a more accessible and engaging way to learn constitutional law than is now available in existing casebooks. What is lacking in the other casebooks? To begin with, most casebooks are far too complex for students who are unfamiliar with constitutional law. They consist of longer excerpts of major cases, shorter excerpts of minor cases, excerpts from a variety of legal scholarship, and long and complicated "notes" that add additional detail about constitutional doctrine. This is especially true of casebooks with multiple authors that have developed through many editions over a long period of time.

To address this issue, I edited these materials by adhering to a few basic principles that have proven successful in my casebook on contract law[1]: First, and foremost, be realistic about what can actually be learned by students who have no previous familiarity with constitutional law, in a single semester course often taught in the first year of law school, and even in the very first semester. This means sticking to discussions of first principles and method rather then doctrinal details. Second, include as many of the landmark "classic cases" as possible, the cases that provide the basic vocabulary of constitutional law. Third, present these cases at somewhat greater length. To make room for this, while keeping reading assignments short, drop even well-known cases that mainly deal with ancillary technicalities that are so often presented in vexatious and distracting squibs or notes. Fourth, judiciously supplement the cases with other materials, especially in the early classes, to provide a context that draws students further into the subject. Finally, adopt a transparent and straightforward organization, one that is both easy for students to grasp and easy for professors to rearrange to suit their teaching preferences. (These pedagogical principles also make this book more accessible to undergraduates than its rivals.)

It is the organization, above all else, that separates this book from the others. I chose to present the classic cases chronologically rather than doctrine by doctrine. Why? There are a number of advantages to a chronological approach. Most importantly, it conveys the story of constitutional law that every literate lawyer *ought* to know—constitutional law is, after all, a required course for all students—and that every future constitutional litigator or academic *needs* to know. While current constitutional law doctrine can be highly technical and is always changing, the back story of constitutional law that "everyone knows" (but students do not) is the

1. RANDY E. BARNETT, CONTRACTS: CASES AND DOCTRINE (Aspen, 4th ed. 2008).

relatively fixed background against which doctrine is developed and constrained. The pole stars of constitutional law known by a single name—*Marbury*, *McCulloch*, *Gibbons*, *Dred Scott*, *Slaughter-House*, *Plessy*, *Lochner*, *Darby*, *Wickard*, *Youngstown*, *Brown*, *Griswold*, *Roe*, and so many more—were decided in a particular order and were connected temporally by other crucial cases and writings, not to mention by events that impelled and illuminate their outcomes and methods.

We professors take our knowledge of this story for granted, having picked it up along the way, but for most students it is entirely new and more than a little strange. This story is almost impossible to grasp when confronting disparate cases completely divorced from the context in which they were decided. Of course, the story that explains these canonical cases can be learned doctrine by doctrine with the assistance of background notes, but it is just so much easier to appreciate their significance when exposed to them for the first time as they unfolded. *The order itself* enables students to discern and begin to internalize on their own the significance of each of these decisions. This book is no more "historical" than any other; it is simply more *chronological* in presenting the story of constitutional law that every book is trying to teach.

As I edited these materials, I discovered something entirely unexpected. By sticking rigorously to the chronological method (or nearly so, for there are a few, hopefully well-chosen, deviations[2]), it became clear that the cases could be edited to allow the Justices themselves to tell the story of constitutional law in their own words. Because supplementing the cases with other materials became much less necessary, students can read longer opinions in shorter assignments. When combined with the order of presentation, reading fuller debates among the Justices provides a context that takes the place of thousands of words of auxiliary reading. And with less inevitably opinionated supplementation by the casebook author, professors are freer to put their own stamp on the story as it unfolds.

In hindsight, this really should not have been a surprise. Unlike any other course, the case law component of American constitutional law largely involves the decisions of a single court with an evolving membership that has been deliberating the same basic issues for over two centuries. The Justices not only have constantly been debating among themselves in their opinions, they are also constantly debating with their predecessors, choosing which of the previous "precedents" to elevate and which to diminish and even disparage. And they are always justifying what they are doing in the context of a past they seek either to emulate or avoid.

Textual introductions to chapters and sections are kept brief and factual. Because this book is chronological rather than historical, I limited myself to providing just those facts that are essential to understanding the decisions but that students are unlikely to know. My goal was to allow the story to emerge from the materials themselves rather than from me; and I tried very hard to keep these factual interjections as uncontroversial as possible.

2. In addition, depending on the format of the course, I sometimes teach a few units out of the order in which they appear. The modular organization of this book by "assignments" makes this easy to do. But even when reordered, the time period covered by the chapters in which students locate the assignments conveys vital information.

Another feature unique to this book, but borrowed from my contracts casebook, are "study guide" questions *before* each case—questions that are intended to guide the reading and suggest connections between the materials, rather than to confound both students and professors as traditional "notes" tend to do.

Whatever its advantages, no method comes without its costs. The chronological approach is no exception. The most obvious issue is the need to delay the gratification of reading the latest Supreme Court cases. Although some students may become anxious about this, especially if other courses are being taught using the doctrine-by-doctrine method, in my experience surprisingly few students have this problem. Perhaps this is due to my own evident enthusiasm for the method as well as my candor in explaining up front its rationale and benefits.

In class, I also frequently preview how the classic cases we are reading will connect with present controversies. In this way, students get to hear about the latest developments throughout the course. By the time they reach the newer cases themselves, they already pretty much know what to expect. Most importantly, however, they immediately grasp their significance; each modern case provides an "aha" moment. Because they already know the back story, they can readily appreciate the significance of recent cases—just like professors do.

In my experience, learning the material this way is like a guilty pleasure for the students. Whatever concerns some may have about its departure from the other courses, they find it seductively engrossing. All they really need is the reassurance from the professor that they are learning what they truly need to know; an assurance that is easy to make because, well, they are. Indeed, most come to realize that they are learning far more than their classmates who are using the doctrine-by-doctrine method. But this will not be entirely apparent until the end when it all comes together and they "get it." At least, this has been my consistent experience in the classroom.

Another concern some professors may have about this method is whether it is too "case-centric," or Supreme Court oriented. While the book did emerge much more focused on the Supreme Court than I had expected, this is mitigated by the supplemental materials I chose to include. Rival interpretations of the Constitution by founders, Presidents, and other critics of the Court's decisions are better represented here than in many other casebooks.

On the other hand, by no means is the chronological approach particularly flattering to the Court. The story of constitutional law that emerges is often one of its failure, short-sightedness, bigotry, or abdication of responsibility. While the story of constitutional law may indeed be a morality play of sorts with the Justices as major characters, it is more often one of tragedy than of triumph. In this way, a Supreme Court-oriented approach is as likely to undermine as encourage faith in "The Court," but I tried to leave this to the eye of the beholder. Root for or against the Justices and their opinions as you will.

At first blush, some professors may wonder whether their students know history well enough to handle this approach. To the contrary, this method was developed precisely *because* students very often do lack adequate historical knowledge to appreciate the cases when presented out of

order by doctrine. The main reason to read the cases in order—together with the textual introductions and supplemental readings—is to fill this gap in students' knowledge.

There is another advantage of the chronological approach for teachers. Since the beginning of the course will remain relatively fixed as new cases are decided, it becomes easier to organize the material from year to year. Newer cases will always go in the last half of the course. This advantage will also be reflected in future supplements, which will largely take the place of later cases and not require the annoying interspersing of new cases and notes throughout the book and, therefore, throughout the course.

A final advantage of the chronological approach is of personal importance to me. Teaching the materials in order highlights the crucial role in the story of constitutional law played by the institution of slavery and its eventual abolition, followed by the century-long subordination of the freed slaves and their progeny by black codes, Jim Crow, and enforced racial segregation. A candid consideration of slavery and its aftermath is, I believe, crucial to understanding both the form and substance of the Constitution itself, as well as constitutional law as it has evolved since the Founding. Unfortunately, when the cases are organized doctrine by doctrine, the role played by slavery does not seem to fit anywhere very comfortably. As a result, the subject of slavery either gets washed out of the course, buried in notes, or injected in a manner that appears to the students to be gratuitous. Approaching constitutional law chronologically makes the study of slavery well nigh unavoidable and therefore more acceptable to the students.

Of course, time constraints inevitably require sacrifices of coverage. No one can teach an entire casebook in a single course. I certainly do not. For this reason, you will find that each era is organized internally by doctrine and by explicit bite-sized "assignments" to make it easier to omit and reorder topics when planning a syllabus.

In revising my contracts casebook over the years, I learned a great deal from those who use the book, especially when moving from the first to the second edition. I encourage both professors and students to send me their comments and suggestions for revisions. In my view, one writes a casebook to provide an effective teaching tool for others, not to express one's viewpoints (however inevitable this will be). The measure of a casebook's merit is how well it works to convey an understanding of the subject in an efficient and enjoyable way. The more constructive feedback I get from users, the better I can accomplish this in future editions. Of course, you should also praise what you like so it is preserved in the course of revising.

To the professors who have chosen to adopt this book, I thank you. To the students anxiously reading this preface before starting their course on constitutional law, I encourage you to kick back and enjoy one of the most fascinating stories you will ever read!

Randy Barnett
Washington, DC

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A solo casebook author needs all the substantive help he or she can get. This was provided by Aspen's anonymous peer-review system that vetted the original proposal as well as the first and second drafts of the manuscript. The comments of all these reviewers, both supporters and skeptics, were invaluable. The casebook was revised in significant ways, both large and small, to respond to their many insightful suggestions. With their permission, I am listing their names here, though I do not know who of them gave which piece of advice: Michael Kent Curtis, Brannon Denning, Richard Garnett, Lauren Gilbert, Tom Mayo, Glenn Reynolds, Charles W. Rhodes, Kermit Roosevelt, Michael A. Scaperlanda, Eugene Volokh, and Mark S. Weiner.

I am especially appreciative of the help and support I received from my dear friend Larry Solum. Larry even taught from a tentative version of the casebook long before it was completed and his suggestions for its improvement were invariably correct, as they always are. And it was Larry who first urged me years ago to pay close attention to Chisholm v. Georgia, a recommendation I failed to heed until I began writing the casebook chronologically and realized the enormous significance of this, the first great constitutional case.

I am grateful to my students in my Con Law I and II courses at the Georgetown Law Center for patiently enduring instruction from a casebook-in-progress. Their manifest enthusiasm for the chronological method before, during and after the course confirmed my hunch that this was indeed a wonderful way to learn constitutional law. I also thank Georgetown and Dean Alex Aleinikoff, for the research support that made writing this book possible, and my assistant Diane Hedgecock.

I would be remiss if I did not also acknowledge the influence of Sandy Levinson and Paul Brest who innovated the chronological method in their Aspen casebook, *The Processes of Constitutional Law*. Although our casebooks probably only share this characteristic in common, Levinson and Brest were trailblazers in innovating the method to which I have become a devoted convert. I hope they will take imitation as the highest form of flattery.

Finally, I am deeply grateful to my wife Beth who is unfailingly patient and supportive as I bury myself in all too many writing projects—in this case, a project that corresponded with our selling our house in Boston in a difficult market, moving to DC, and starting a new life there while completely rehabbing an historic rowhouse. Although this was a stressful time for both of us, as she always does, Beth gave me the space I needed to get this project done which, as I write these words, it now finally is.

The Constitution of the United States

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.

Article I

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

[Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.]* The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

* Changed by Section 2 of the Fourteenth Amendment.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section 3. The Senate of the United States shall be composed of two Senators from each State, [chosen by the Legislature thereof,]* for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; [and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.]*

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be [on the first Monday in December,]** unless they shall by Law appoint a different Day.

Section 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to

* Changed by the Seventeenth Amendment.

** Changed by Section 2 of the Twentieth Amendment.

day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and

House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

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 the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards and other needful Buildings;—And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a

Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

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 it.

No Bill of Attainder or ex post facto Law shall be passed.

[No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.]*

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Section 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Article II

Section 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no

* See Sixth Amendment.

Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

[The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.]*

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

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; neither shall any person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

[In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.]**

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the

* Changed by the Twelfth Amendment.
** Changed by the Twenty-Fifth Amendment.