

*Commentaries  
on the  
Constitution  
of the  
United States*

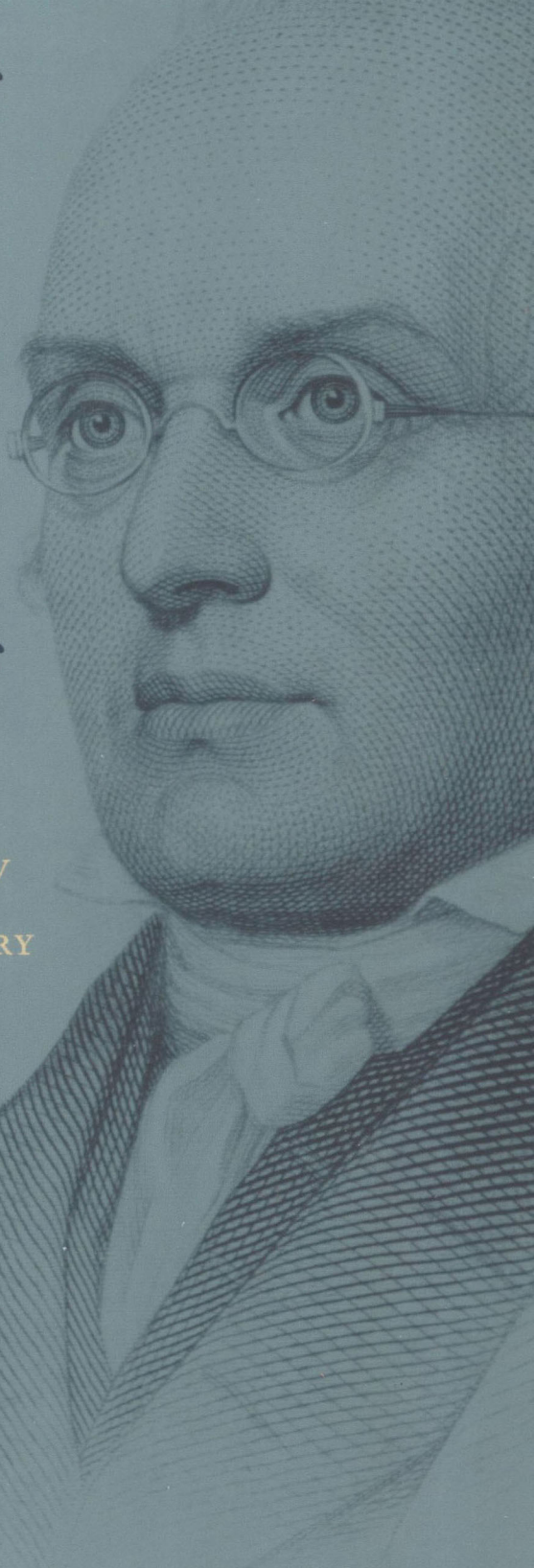
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WITH a PRELIMINARY REVIEW  
of the CONSTITUTIONAL HISTORY  
of the COLONIES and STATES  
BEFORE the ADOPTION  
of the CONSTITUTION

JOSEPH STORY



FOURTH EDITION, with NOTES and ADDITIONS by  
THOMAS M. COOLEY



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BY

JOSEPH STORY, LL. D.

IN TWO VOLUMES.

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quorumque descriptione omnis Reipublicæ moderatio continetur."  
CICERO, DE LEG., lib. 3, cap. 2.

"Government is a contrivance of human wisdom to provide for human wants."  
BURKE.

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TO THE  
  
HONORABLE JOHN MARSHALL, LL.D.,

CHIEF JUSTICE OF THE UNITED STATES OF AMERICA.

SIR,

I ASK the favor of dedicating this work to you. I know not to whom it could with so much propriety be dedicated as to one whose youth was engaged in the arduous enterprises of the Revolution, whose manhood assisted in framing and supporting the national Constitution, and whose maturer years have been devoted to the task of unfolding its powers and illustrating its principles. When, indeed, I look back upon your judicial labors during a period of thirty-two years, it is difficult to suppress astonishment at their extent and variety, and at the exact learning, the profound reasoning, and the solid principles which they everywhere display. Other judges have attained an elevated reputation by similar labors, in a single department of jurisprudence. But in one department, (it need scarcely be said that I allude to that of constitutional law,) the common consent of your countrymen has admitted you to stand without a rival. Posterity will assuredly confirm, by its deliberate award, what the present age has approved as an act of undisputed justice. Your expositions of constitutional law enjoy a rare and extraordinary authority. They constitute a monument of fame far beyond the ordinary memorials of political and military glory. They are destined to enlighten, instruct, and convince future generations, and can scarcely perish but with the memory of the Constitution itself. They are the victories of a mind accustomed to grapple with difficulties, capable of unfolding the most comprehensive truths with masculine simplicity and severe logic, and prompt to dissipate the illusions of ingenious doubt and subtle argument and impassioned eloquence. They remind us of some mighty river of our own country, which, gathering in its course the contributions of many tributary streams, pours at last its own current into the ocean, deep, clear, and irresistible.

But I confess that I dwell with even more pleasure upon the entirety of a life adorned by consistent principles, and filled up in the discharge of virtuous duty; where there is nothing to regret, and nothing to conceal; no friendships broken; no confidence betrayed; no timid surrenders to

popular clamor ; no eager reaches for popular favor. Who does not listen with conscious pride to the truth, that the disciple, the friend, the biographer of Washington still lives, the uncompromising advocate of his principles ?

I am but too sensible that, to some minds, the time may not seem yet to have arrived when language like this, however true, should meet the eyes of the public. May the period be yet far distant when praise shall speak out with that fulness of utterance which belongs to the sanctity of the grave.

But I know not that, in the course of Providence, the privilege will be allowed me hereafter to declare, in any suitable form, my deep sense of the obligations which the jurisprudence of my country owes to your labors, of which I have been for twenty-one years a witness, and in some humble measure a companion. And if any apology should be required for my present freedom, may I not say that, at your age, all reserve may well be spared, since all your labors must soon belong exclusively to history ?

Allow me to add, that I have a desire (will it be deemed presumptuous ?) to record upon these pages the memory of a friendship which has for so many years been to me a source of inexpressible satisfaction ; and which, I indulge the hope, may continue to accompany and cheer me to the close of life.

I am, with the highest respect,

Affectionately your servant,

JOSEPH STORY.

CAMBRIDGE, January, 1833.

## EDITOR'S PREFACE

TO THE FOURTH EDITION.

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IN preparing for the press a fourth edition of Mr. Justice Story's Commentaries on the Constitution, it has been thought proper to preserve the original text without alteration or interpolation, and to put into notes all discussions by the editor, as well as all references to subsequent adjudications, public papers, and events, tending to illustrate, support, or qualify the positions assumed in the text. The new amendments, however, seemed to demand treatment in the body of the work, and additional chapters are given for that purpose. In preparing them, the editor has not been ambitious to enter upon original discussions, or to advance peculiar views; and he has contented himself with a brief commentary on the provisions and purposes of the amendments, aiming, as far as possible, to keep in harmony with the opinions and sentiments under the inspiration of which they were accepted and ratified in the several States. So far as it was possible to derive assistance from adjudicated cases, he has sought to do so, but he has carefully abstained from the expression of partisan views on disputed points, and he has not in general deemed it necessary to anticipate the judgment of the country upon any such decisions of inferior federal



courts as might seem to him chargeable to the disorders and excitements of the times, and to be unwarranted by the Constitution. In the main, therefore, such decisions have been passed over by him without notice.

The liberty has been taken in this edition to retain the benefit of a portion of Judge Bennett's labors upon the last, but credit is in all cases given by adding his initials. Notes by the editors are distinguished from those of the author by being included in brackets.

UNIVERSITY OF MICHIGAN, ANN ARBOR, 1873.

## P R E F A C E .

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I now offer to the public another portion of the labors devolved on me in the execution of the duties of the Dane Professorship of Law in Harvard University. The importance of the subject will hardly be doubted by any persons who have been accustomed to deep reflection upon the nature and value of the Constitution of the United States. I can only regret that it has not fallen into abler hands, with more leisure to prepare, and more various knowledge to bring to such a task.

Imperfect, however, as these Commentaries may seem to those who are accustomed to demand a perfect finish in all elementary works, they have been attended with a degree of uninviting labor and dry research, of which it is scarcely possible for the general reader to form any adequate estimate. Many of the materials lay loose and scattered, and were to be gathered up among pamphlets and discussions of a temporary character; among obscure private and public documents; and from collections which required an exhausting diligence to master their contents, or to select from important masses a few facts or a solitary argument. Indeed, it required no small labor, even after these sources were explored, to bring together the irregular fragments, and to form them into groups in which they might illustrate and support each other.

From two great sources, however, I have drawn by far the greatest part of my most valuable materials. These are, *The Federalist*, an incomparable commentary of three of the greatest statesmen of their age, and the extraordinary Judgments of Mr. Chief Justice Marshall upon constitutional law. The former have discussed the structure and organization of the national government, in all its departments, with admirable fulness and force. The latter has expounded the application and limits of its

powers and functions with unrivalled profoundness and felicity. The Federalist could do little more than state the objects and general bearing of these powers and functions. The masterly reasoning of the Chief Justice has followed them out to their ultimate results and boundaries with a precision and clearness approaching, as near as may be, to mathematical demonstration. The Federalist, being written to meet the most prevalent popular objections at the time of the adoption of the Constitution, has not attempted to pursue any very exact order in its reasonings, but has taken up subjects in such a manner as was best adapted at the time to overcome prejudices and win favor. Topics, therefore, having a natural connection are sometimes separated; and illustrations, appropriate to several important points, are sometimes presented in an incidental discussion. I have transferred into my own pages all which seemed to be of permanent importance in that great work, and have thereby endeavored to make its merits more generally known.

The reader must not expect to find in these pages any novel views and novel constructions of the Constitution. I have not the ambition to be the author of any new plan of interpreting the theory of the Constitution, or of enlarging or narrowing its powers by ingenious subtilties and learned doubts. My object will be sufficiently attained, if I shall have succeeded in bringing before the reader the true view of its powers, maintained by its founders and friends, and confirmed and illustrated by the actual practice of the government. The expositions to be found in the work are less to be regarded as my own opinions than as those of the great minds which framed the Constitution, or which have been from time to time called upon to administer it. Upon subjects of government, it has always appeared to me that metaphysical refinements are out of place. A constitution of government is addressed to the common-sense of the people; and never was designed for trials of logical skill or visionary speculation.

The reader will sometimes find the same train of reasoning brought before him in different parts of these Commentaries. It was indispensable to do so, unless the discussion was left imperfect, or the reader was referred back to other pages, to gather up and combine disjointed portions of reasoning. In cases which have undergone judicial investigation, or which concern the judicial department, I have felt myself restricted to more narrow discussions than in the rest of the work; and have sometimes

contented myself with a mere transcript, from the judgments of the court. It may readily be understood that this course has been adopted from a solicitude not to go incidentally beyond the line pointed out by the authorities.

In dismissing the work, I cannot but solicit the indulgence of the public for its omissions and deficiencies. With more copious materials, it might have been made more exact, as well as more satisfactory. With more leisure and more learning, it might have been wrought up more in the spirit of political philosophy. Such as it is, it may not be wholly useless as a means of stimulating abler minds to a more thorough review of the whole subject, and of impressing upon Americans a reverential attachment to the Constitution, as in the highest sense the palladium of American liberty.

JANUARY, 1833.

CONSTITUTION  
OF  
THE UNITED STATES OF AMERICA.

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WE, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, 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.

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.

1. 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.

2. 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.

3. 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 choose 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.

4. When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

### SECTION 3.

1. 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.

2. 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.

3. 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.

4. The Vice-President of the United States shall be president of the Senate, but shall have no vote unless they be equally divided.

5. The Senate shall choose 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.

6. 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.

7. 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.

1. 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 choosing senators.

2. 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.

1. 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 day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

3. 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.

4. 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.

1. 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.

2. 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 increased 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.

1. 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.

2. 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.

3. 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, —

1. 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 :



2. To borrow money on the credit of the United States :
3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes :
4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies, throughout the United States :
5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures :
6. To provide for the punishment of counterfeiting the securities and current coin of the United States :
7. To establish post-offices and post-roads :
8. 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 :
9. To constitute tribunals inferior to the Supreme Court :
10. To define and punish piracies and felonies committed on the high seas, and offences against the law of nations :
11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water :
12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years :
13. To provide and maintain a navy :
14. To make rules for the government and regulation of the land and naval forces :
15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions :
16. 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 :
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 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
18. 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.