

Constitutional Law I
Fall 2007
Professor Bryant

Handout #2 – Concerning the Ratification of the Constitution
and the Call for a Bill of Rights

for 8/24/07 class session
(please see course syllabus for additional assignment)

New York Ratification of Constitution

26 July 1788; *Elliot 1:327--31*

We, the delegates of the people of the state of New York, duly elected and met in Convention, having maturely considered the Constitution for the United States of America, agreed to on the 17th day of September, in the year 1787, by the Convention then assembled at Philadelphia, in the commonwealth of Pennsylvania, (a copy whereof precedes these presents,) and having also seriously and deliberately considered the present situation of the United States,-- Do declare and make known,--

That all power is originally vested in, and consequently derived from, the people, and that government is instituted by them for their common interest, protection, and security.

That the enjoyment of life, liberty, and the pursuit of happiness, are essential rights, which every government ought to respect and preserve.

That the powers of government may be reassumed by the people whensoever it shall become necessary to their happiness; that every power, jurisdiction, and right, which is not by the said Constitution clearly delegated to the Congress of the United States, or the departments of the government thereof, remains to the people of the several states, or to their respective state governments, to whom they may have granted the same; and that those clauses in the said Constitution, which declare that Congress shall not have or exercise certain powers, do not imply that Congress is entitled to any powers not given by the said Constitution; but such clauses are to be construed either as exceptions to certain specified powers, or as inserted merely for greater caution.

[I have mercifully omitted the entire list of declarations, at the end of which, the Delegates continue]

Under these impressions, and declaring that the rights aforesaid cannot be abridged or violated, and that the explanations aforesaid are consistent with the said Constitution, and in confidence that the amendments which shall have been proposed to the said Constitution will receive an early and mature consideration,--We, the said delegates, in the name and in the behalf of the people of the state of New York, do, by these presents, assent to and ratify the said Constitution. In full confidence, nevertheless, that, until a convention shall be called and convened for proposing amendments to the said Constitution, the militia of this state will not be continued in service out of this state for a longer term than six weeks, without the consent of the legislature thereof; that the Congress will not make or alter any regulation in this state, respecting the times, places, and manner, of holding elections for senators or representatives, unless the legislature of this state shall neglect or refuse to make laws or regulations for the purpose, or from any circumstance be incapable of making the same; and that, in those cases, such power will only be exercised until the legislature of this state shall make provision in the premises; that no excise will be imposed on any article of the growth, production, or manufacture of the United States, or any of them, within this state, ardent spirits excepted; and the Congress will not lay direct taxes within this state, but when the moneys arising from the impost and

excise shall be insufficient for the public exigencies, nor then, until Congress shall first have made a requisition upon this state to assess, levy, and pay, the amount of such requisition, made agreeably to the census fixed in the said Constitution, in such way and manner as the legislature of this state shall judge best; but that in such case, if the state shall neglect or refuse to pay its proportion, pursuant to such requisition, then the Congress may assess and levy this state's proportion, together with interest, at the rate of six per centum per annum, from the time at which the same was required to be paid.

Done in Convention, at Poughkeepsie, in the county of Dutchess, in the state of New York, the 26th day of July, in the year of our Lord 1788.

By order of the Convention. GEO. CLINTON,

President.

Attested. John M'Kesson, A. B. Banker, *Secretaries.*

And the Convention do, in the name and behalf of the people of the state of New York, enjoin it upon their representatives in Congress to exert all their influence, and use all reasonable means, to obtain a ratification of the following amendments to the said Constitution, in the manner prescribed therein; and in all laws to be passed by the Congress, in the mean time, to conform to the spirit of the said amendments, as far as the Constitution will admit.

That there shall be one representative for every thirty thousand inhabitants, according to the enumeration or census mentioned in the Constitution, until the whole number of representatives amounts to two hundred, after which that number shall be continued or increased, but not diminished, as the Congress shall direct, and according to such ratio as the Congress shall fix, in conformity to the rule prescribed for the apportionment of representatives and direct taxes.

That the Congress do not impose any excise on any article (ardent spirits excepted) of the growth, production, or manufacture of the United States, or any of them.

That Congress do not lay direct taxes but when the moneys arising from the impost and excise shall be insufficient for the public exigencies, nor then, until Congress shall first have made a requisition upon the states to assess, levy, and pay, their respective proportions of such requisition, agreeably to the census fixed in the said Constitution, in such way and manner as the legislatures of the respective states shall judge best; and in such case, if any state shall neglect or refuse to pay its proportion, pursuant to such requisition, then Congress may assess and levy such state's proportion, together with interest at the rate of six per centum per annum, from the time of payment prescribed in such requisition.

That the Congress shall not make or alter any regulation, in any state, respecting the times, places, and manner, of holding elections for senators and representatives, unless the legislature of such state shall neglect or refuse to make laws or regulations for the purpose, or from any circumstance be incapable of making the same, and then only until the legislature of

such state shall make provision in the premises; provided, that Congress may prescribe the time for the election of representatives.

That no persons, except natural-born citizens, or such as were citizens on or before the 4th day of July, 1776, or such as held commissions under the United States during the war, and have at any time since the 4th day of July, 1776, become citizens of one or other of the United States, and who shall be freeholders, shall be eligible to the places of President, Vice-President, or members of either house of the Congress of the United States.

That the Congress do not grant monopolies, or erect any company with exclusive advantages of commerce.

That no standing army or regular troops shall be raised, or kept up, in time of peace, without the consent of two thirds of the senators and representatives present in each house.

That no money be borrowed on the credit of the United States without the assent of two thirds of the senators and representatives present in each house.

That the Congress shall not declare war without the concurrence of two thirds of the senators and representatives present in each house.

That the privilege of the *habeas corpus* shall not, by any law, be suspended for a longer term than six months, or until twenty days after the meeting of the Congress next following the passing the act for such suspension.

That the right of Congress to exercise exclusive legislation over such district, not exceeding ten miles square, as may, by cession of a particular state, and the acceptance of Congress, become the seat of government of the United States, shall not be so exercised as to exempt the inhabitants of such district from paying the like taxes, imposts, duties, and excises, as shall be imposed on the other inhabitants of the state in which such district may be; and that no person shall be privileged within the said district from arrest for crimes committed, or debts contracted, out of the said district.

That the right of exclusive legislation, with respect to such places as may be purchased for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings, shall not authorize the Congress to make any law to prevent the laws of the states, respectively, in which they may be, from extending to such places in all civil and criminal matters, except as to such persons as shall be in the service of the United States; nor to them with respect to crimes committed without such places.

That the compensation for the senators and representatives be ascertained by standing laws; and that no alteration of the existing rate of compensation shall operate for the benefit of the representatives until after a subsequent election shall have been had.

That the Journals of the Congress shall be published at least once a year, with the exception of such parts, relating to treaties or military operations, as, in the judgment of either house, shall require secrecy; and that both houses of Congress shall always keep their doors open

during their sessions, unless the business may, in their opinion, require secrecy. That the yeas and nays shall be entered on the Journals whenever two members in either house may require it.

That no capitation tax shall ever be laid by Congress.

That no person be eligible as a senator for more than six years in any term of twelve years; and that the legislatures of the respective states may recall their senators, or either of them, and elect others in their stead, to serve the remainder of the time for which the senators so recalled were appointed.

That no senator or representative shall, during the time for which he was elected, be appointed to any office under the authority of the United States.

That the authority given to the executives of the states to fill up the vacancies of senators be abolished, and that such vacancies be filled by the respective legislatures.

That the power of Congress to pass uniform laws concerning bankruptcy shall only extend to merchants and other traders; and the states, respectively, may pass laws for the relief of other insolvent debtors.

That no person shall be eligible to the office of President of the United States a third time.

That the executive shall not grant pardons for treason, unless with the consent of the Congress; but may, at his discretion, grant reprieves to persons convicted of treason, until their cases can be laid before the Congress.

That the President, or person exercising his powers for the time being, shall not command an army in the field in person, without the previous desire of the Congress.

That all letters patent, commissions, pardons, writs, and processes of the United States, shall run in the name of *the people of the United States*, and be tested in the name of the President of the United States, or the person exercising his powers for the time being, or the first judge of the court out of which the same shall issue, as the case may be.

That the Congress shall not constitute, ordain, or establish, any tribunals of inferior courts, with any other than appellate jurisdiction, except such as may be necessary for the trial of cases of admiralty and maritime jurisdiction, and for the trial of piracies and felonies committed on the high seas; and in all other cases to which the judicial power of the United States extends, and in which the Supreme Court of the United States has not original jurisdiction, the causes shall be heard, tried, and determined, in some one of the state courts, with the right of appeal to the Supreme Court of the United States, or other proper tribunal, to be established for that purpose by the Congress, with such exceptions, and under such regulations, as the Congress shall make.

That the court for the trial of impeachments shall consist of the Senate, the judges of the Supreme Court of the United States, and the first or senior judge, for the time being, of the highest court of general and ordinary common-law jurisdiction in each state; that the Congress

shall, by standing laws, designate the courts in the respective states answering this description, and, in states having no courts exactly answering this description, shall designate some other court, preferring such, if any there be, whose judge or judges may hold their places during good behavior; provided, that no more than one judge, other than judges of the Supreme Court of the United States, shall come from one state.

That the Congress be authorized to pass laws for compensating the judges for such services, and for compelling their attendance; and that a majority, at least, of the said judges shall be requisite to constitute the said court. That no person impeached shall sit as a member thereof; that each member shall, previous to the entering upon any trial, take an oath or affirmation honestly and impartially to hear and determine the cause; and that a majority of the members present shall be necessary to a conviction.

That persons aggrieved by any judgment, sentence, or decree, of the Supreme Court of the United States, in any cause in which that court has original jurisdiction, with such exceptions, and under such regulations, as the Congress shall make concerning the same, shall, upon application, have a commission, to be issued by the President of the United States to such men learned in the law as he shall nominate, and by and with the advice and consent of the Senate appoint, not less than seven, authorizing such commissioners, or any seven or more of them, to correct the errors in such judgment, or to review such sentence and decree, as the case may be, and to do justice to the parties in the premises.

That no judge of the Supreme Court of the United States shall hold any other office under the United States, or any of them.

That the judicial power of the United States shall extend to no controversies respecting land, unless it relate to claims of territory or jurisdiction between states, and individuals under the grants of different states.

That the militia of any state shall not be compelled to serve without the limits of the state, for a longer term than six weeks, without the consent of the legislature thereof.

That the words *without the consent of the Congress*, in the seventh clause of the ninth section of the first article of the Constitution, be expunged.

That the senators and representatives, and all executive and judicial officers of the United States, shall be bound by oath or affirmation not to infringe or violate the constitutions or rights of the respective states.

That the legislatures of the respective states may make provision, by law, that the electors of the election districts, to be by them appointed, shall choose a citizen of the United States, who shall have been an inhabitant of such district for the term of one year immediately preceding the time of his election, for one of the representatives of such state.

[Also from **The Founders' Constitution**

Volume 5, Bill of Rights, Doc. 8 http://press-pubs.uchicago.edu/founders/documents/bill_of_rightss8.html
The University of Chicago Press]

Virginia Ratifying Convention, Proposed Amendments to the Constitution

27 June 1788; *Elliot 3:657--61*

Mr. Wythe reported, from the committee appointed, such *amendments* to the proposed Constitution of government for the United States as were by them deemed necessary to be recommended to the consideration of the Congress which shall first assemble under the said Constitution, to be acted upon according to the mode prescribed in the 5th article thereof; and he read the same in his place, and afterwards delivered them in at the clerk's table, where the same were again read, and are as follows:--

That there be a declaration or bill of rights asserting, and securing from encroachment, the essential and unalienable rights of the people, in some such manner as the following:--

[mercifully omitted]

Amendments to the Constitution.

1st. That each state in the Union shall respectively retain every power, jurisdiction, and right, which is not by this Constitution delegated to the Congress of the United States, or to the departments of the federal government.

2d. That there shall be one representative for every thirty thousand, according to the enumeration or census mentioned in the Constitution, until the whole number of representatives amounts to two hundred; after which, that number shall be continued or increased, as Congress shall direct, upon the principles fixed in the Constitution, by apportioning the representatives of each state to some greater number of people, from time to time, as population increases.

3d. When the Congress shall lay direct taxes or excises, they shall immediately inform the executive power of each state, of the quota of such state, according to the census herein directed, which is proposed to be thereby raised; and if the legislature of any state shall pass a law which shall be effectual for raising such quota at the time required by Congress, the taxes and excises laid by Congress shall not be collected in such state.

4th. That the members of the Senate and House of Representatives shall be ineligible to, and incapable of holding, any civil office under the authority of the United States, during the time for which they shall respectively be elected.

5th. That the journals of the proceedings of the Senate and House of Representatives shall be published at least once in every year. except such parts thereof, relating to treaties, alliances, or military operations, as, in their judgment, require secrecy.

6th. That a regular statement and account of the receipts and expenditures of public money shall be published at least once a year.

7th. That no commercial treaty shall be ratified without the concurrence of two thirds of the whole number of the members of the Senate; and no treaty ceding, contracting, restraining, or suspending, the territorial rights or claims of the United States, or any of them, or their, or any of their rights or claims to fishing in the American seas, or navigating the American rivers, shall be made, but in cases of the most urgent and extreme necessity; nor shall any such treaty be ratified without the concurrence of three fourths of the whole number of the members of both houses respectively.

8th. That no navigation law, or law regulating commerce, shall be passed without the consent of two thirds of the members present, in both houses.

9th. That no standing army, or regular troops, shall be raised, or kept up, in time of peace, without the consent of two thirds of the members present, in both houses.

10th. That no soldier shall be enlisted for any longer term than four years, except in time of war, and then for no longer term than the continuance of the war.

11th. That each state respectively shall have the power to provide for organizing, arming, and disciplining its own militia, whensoever Congress shall omit or neglect to provide for the same. That the militia shall not be subject to martial law, except when in actual service, in time of war, invasion, or rebellion; and when not in the actual service of the United States, shall be subject only to such fines, penalties, and punishments, as shall be directed or inflicted by the laws of its own state.

12th. That the exclusive power of legislation given to Congress over the federal town and its adjacent district, and other places, purchased or to be purchased by Congress of any of the states, shall extend only to such regulations as respect the police and good government thereof.

13th. That no person shall be capable of being President of the United States for more than eight years in any term of sixteen years.

14th. That the judicial power of the United States shall be vested in one Supreme Court, and in such courts of admiralty as Congress may from time to time ordain and establish in any of the different states. The judicial power shall extend to all cases in law and equity arising under treaties made, or which shall be made, under the authority of the United States; to all cases affecting ambassadors, other foreign ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, and between parties claiming lands under the grants of different states. In all cases affecting ambassadors, other foreign ministers, and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction; in all other cases before mentioned, the Supreme Court shall have appellate jurisdiction, as to matters of law only, except in cases of equity, and of admiralty, and maritime jurisdiction, in which the Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as the Congress shall make: but the judicial power of the United States shall extend to no case where the cause of action shall have originated before the ratification of

the Constitution, except in disputes between states about their territory, disputes between persons claiming lands under the grants of different states, and suits for debts due to the United States.

15th. That, in criminal prosecutions, no man shall be restrained in the exercise of the usual and accustomed right of challenging or excepting to the jury.

16th. That Congress shall not alter, modify, or interfere in the times, places, or manner of holding elections for senators and representatives, or either of them, except when the legislature of any state shall neglect, refuse, or be disabled, by invasion or rebellion, to prescribe the same.

17th. That those clauses which declare that Congress shall not exercise certain powers, be not interpreted, in any manner whatsoever, to extend the powers of Congress; but that they be construed either as making exceptions to the specified powers where this shall be the case, or otherwise, as inserted merely for greater caution.

18th. That the laws ascertaining the compensation of senators and representatives for their services, be postponed, in their operation, until after the election of representatives immediately succeeding the passing thereof; that excepted which shall first be passed on the subject.

19th. That some tribunal other than the Senate be provided for trying impeachments of senators.

20th. That the salary of a judge shall not be increased or diminished during his continuance in office, otherwise than by general regulations of salary, which may take place on a revision of the subject at stated periods of not less than seven years, to commence from the time such salaries shall be first ascertained by Congress."

The Founders' Constitution

Volume 5, Bill of Rights, Document 9

http://press-pubs.uchicago.edu/founders/documents/bill_of_rightss9.html

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Elliot, Jonathan, ed. *The Debates in the Several State Conventions on the Adoption of the Federal Constitution as Recommended by the General Convention at Philadelphia in 1787*. . . . 5 vols. 2d ed. 1888. Reprint. New York: Burt Franklin, n.d.

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