THE LAW, RIGHTS AND CONSTITUTIONS

SUPPLEMENTAL READINGS

Class 02

Professor Robert T. Farley, JD/LLM

Declaration of Independence

In Congress, July 4, 1776

Philadelphia

Declaration of Independence

In Congress, July 4, 1776.

The unanimous Declaration of the thirteen united States of America,

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

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, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, --That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.--Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harrass our people, and eat out their substance.

He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures.

He has affected to render the Military independent of and superior to the Civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation:

For Quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

For imposing Taxes on us without our Consent:

For depriving us in many cases, of the benefits of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offences

For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments:

For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large Armies of foreign Mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.

Nor have We been wanting in attentions to our Brittish brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the United States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and

Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

[Signed by:]

Georgia
Button Gwinnett
Lyman Hall
George Walton

North Carolina
William Hooper
Joseph Hewes
John Penn

South Carolina
Edward Rutledge
Thomas Heyward, Jr.
Thomas Lynch, Jr.
Arthur Middleton

Massachusetts
John Hancock

Maryland
Samuel Chase
William Paca
Thomas Stone
Charles Carroll of Carrollton

Virginia
George Wythe
Richard Henry Lee
Thomas Jefferson
Benjamin Harrison
Thomas Nelson, Jr.
Francis Lightfoot Lee
Carter Braxton

Pennsylvania
Robert Morris
Benjamin Rush
Benjamin Franklin
John Morton
George Clymer
James Smith
George Taylor
James Wilson
George Ross

Delaware
Caesar Rodney
George Read
Thomas McKean

New York
William Floyd
Philip Livingston
Francis Lewis
Lewis Morris

New Jersey
Richard Stockton
John Witherspoon
Francis Hopkinson
John Hart
Abraham Clark

New Hampshire
Josiah Bartlett
William Whipple

Massachusetts
Samuel Adams
John Adams
Robert Treat Paine
Elbridge Gerry

Rhode Island
Stephen Hopkins
William Ellery

Connecticut
Roger Sherman
Samuel Huntington
William Williams
Oliver Wolcott

New Hampshire
Matthew Thornton

United States Constitution

In Convention, September 17, 1787

Philadelphia

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. - The Legislative Branch

Section 1 - The Legislature

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

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 previous sentence in parentheses was modified by the 14th Amendment, section 2.)** 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.

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

The Senate of the United States shall be composed of two Senators from each State, *(chosen by the Legislature thereof,)* **(The preceding words in parentheses superseded by 17th Amendment, section 1.)** 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.)* **(The preceding words in parentheses were superseded by the 17th Amendment, section 2.)**

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 - Elections, Meetings

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 Place of Chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall *(be on the first Monday in December,)* **(The preceding words in parentheses were superseded by the 20th Amendment, section 2.)** unless they shall by Law appoint a different Day.

Section 5 - Membership, Rules, Journals, Adjournment

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.

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.

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 - Compensation

(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.) **(The preceding words in parentheses were modified by the 27th Amendment.)** 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 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 - Revenue Bills, Legislative Process, Presidential Veto

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 - Powers of Congress

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 - Limits on Congress

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.) **(Section in parentheses clarified by the 16th Amendment.)**

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 - Powers prohibited of States

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 it's 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. - The Executive Branch

Section 1 - The President

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 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 lie 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.) **(This clause in parentheses was superseded by the 12th Amendment.)**

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.) **(This clause in parentheses has been modified by the 20th and 25th Amendments.)**

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 best of my Ability, preserve, protect and defend the Constitution of the United States."

Section 2 - Civilian Power over Military, Cabinet, Pardon Power, Appointments

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any subject relating to the Duties of their respective Offices, and he shall have Power to Grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section 3 - State of the Union, Convening Congress

He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section 4 - Disqualification

The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Article III. - The Judicial Branch

Section 1 - Judicial powers

The judicial Power of the United States, shall be vested 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, and shall, at stated Times, receive for their Services a Compensation which shall not be diminished during their Continuance in Office.

Section 2 - Trial by Jury, Original Jurisdiction, Jury Trials

(The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; to all Cases affecting Ambassadors, other public 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; between a State and Citizens of another State; between Citizens of different States; between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.) **(This section in parentheses is modified by the 11th Amendment.)**

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, 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.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section 3 - Treason

Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Article. IV. - The States

Section 1 - Each State to Honor all others

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section 2 - State citizens, Extradition

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

(No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, But shall be delivered up on Claim of the Party to whom such Service or Labour may be due.) **(This clause in parentheses is superseded by the 13th Amendment.)**

Section 3 - New States

New States may be admitted by the Congress into this Union; but no new States shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section 4 - Republican government

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Article. V. - Amendment

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Article. VI. - Debts, Supremacy, Oaths

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

Article. VII. - Ratification

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth. In Witness whereof We have hereunto subscribed our Names.

Go Washington - President and deputy from Virginia

New Hampshire - John Langdon, Nicholas Gilman

Massachusetts - Nathaniel Gorham, Rufus King

Connecticut - Wm Saml Johnson, Roger Sherman

New York - Alexander Hamilton

New Jersey - Wil Livingston, David Brearley, Wm Paterson, Jona. Dayton

Pensylvania - B Franklin, Thomas Mifflin, Robt Morris, Geo. Clymer, Thos FitzSimons, Jared Ingersoll, James Wilson, Gouv Morris

Delaware - Geo. Read, Gunning Bedford jun, John Dickinson, Richard Bassett, Jaco. Broom

Maryland - James McHenry, Dan of St Tho Jenifer, Danl Carroll

Virginia - John Blair, James Madison Jr.

North Carolina - Wm Blount, Richd Dobbs Spaight, Hu Williamson

South Carolina - J. Rutledge, Charles Cotesworth Pinckney, Charles Pinckney, Pierce Butler

Georgia - William Few, Abr Baldwin

Attest: William Jackson, Secretary

The Amendments

The following are the Amendments to the Constitution. The first ten Amendments collectively are commonly known as the Bill of Rights.

Amendment 1 - Freedom of Religion, Press, Expression. Ratified 12/15/1791.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment 2 - Right to Bear Arms. Ratified 12/15/1791.

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment 3 - Quartering of Soldiers. Ratified 12/15/1791.

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment 4 - Search and Seizure. Ratified 12/15/1791.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment 5 - Trial and Punishment, Compensation for Takings. Ratified 12/15/1791.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall 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.

Amendment 6 - Right to Speedy Trial, Confrontation of Witnesses. Ratified 12/15/1791.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses

against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment 7 - Trial by Jury in Civil Cases. Ratified 12/15/1791.

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment 8 - Cruel and Unusual Punishment. Ratified 12/15/1791.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment 9 - Construction of Constitution. Ratified 12/15/1791.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment 10 - Powers of the States and People. Ratified 12/15/1791.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Amendment 11 - Judicial Limits. Ratified 2/7/1795.

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Amendment 12 - Choosing the President, Vice-President. Ratified 6/15/1804.

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President and of the number of votes for each, which lists 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 for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing 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. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.

The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Amendment 13 - Slavery Abolished. Ratified 12/6/1865.

1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

2. Congress shall have power to enforce this article by appropriate legislation.

Amendment 14 - Citizenship Rights. Ratified 7/9/1868.

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 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.

2. 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. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Amendment 15 - Race No Bar to Vote. Ratified 2/3/1870.

1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment 16 - Status of Income Tax Clarified. Ratified 2/3/1913.

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

Amendment 17 - Senators Elected by Popular Vote. Ratified 4/8/1913.

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Amendment 18 - Liquor Abolished. Ratified 1/16/1919. Repealed by Amendment 21, 12/5/1933.

1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Amendment 19 - Women's Suffrage. Ratified 8/18/1920.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

Amendment 20 - Presidential, Congressional Terms. Ratified 1/23/1933.

1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

Amendment 21 - Amendment 18 Repealed. Ratified 12/5/1933.

1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

3. The article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Amendment 22 - Presidential Term Limits. Ratified 2/27/1951.

1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the office of President, when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

Amendment 23 - Presidential Vote for District of Columbia. Ratified 3/29/1961.

1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct: A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment 24 - Poll Tax Barred. Ratified 1/23/1964.

1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or

Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment 25 - Presidential Disability and Succession. Ratified 2/10/1967.

1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty eight hours for that purpose if not in session. If the Congress, within twenty one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty one days after Congress is required to assemble, determines by two thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

Amendment 26 - Voting Age Set to 18 Years. Ratified 7/1/1971.

1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment 27 - Limiting Congressional Pay Increases. Ratified 5/7/1992.

No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

New York State
Constitution

As revised, including amendments effective January 1, 2018

ANDREW M. CUOMO
Governor

ROSSANA ROSADO
Secretary of State

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THE CONSTITUTION OF THE STATE OF NEW YORK

As Revised, with Amendments adopted by the Constitutional Convention of 1938 and Approved by Vote of the People on November 8, 1938
and
Amendments subsequently adopted by the Legislature and Approved by Vote of the People.

As Amended and in Force January 1, 2018

ARTICLE VI
JUDICIARY

ARTICLE VII
STATE FINANCES

ARTICLE VIII
LOCAL FINANCES

ARTICLE IX
LOCAL GOVERNMENTS

ARTICLE X
CORPORATIONS

THE CONSTITUTION

[1][Preamble] WE THE PEOPLE of the State of New York, grateful to Almighty God for our Freedom, in order to secure its blessings, DO ESTABLISH THIS CONSTITUTION.

ARTICLE I
BILL OF RIGHTS

[Rights, privileges and franchise secured; power of legislature to dispense with primary elections in certain cases]
Section 1. No member of this state shall be disfranchised[2], or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his or her peers, except that the legislature may provide that there shall be no primary election held to nominate candidates for public office or to elect persons to party positions for any political party or parties in any unit of representation of the state from which such candidates or persons are nominated or elected whenever there is no contest or contests for such nominations or election as may be prescribed by general law. (Amended by vote of the people November 3, 1959; November 6, 2001.)[3]

[Trial by jury; how waived]
§2. Trial by jury in all cases in which it has heretofore been guaranteed by constitutional provision shall 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. The legislature may provide, however, by law, that a verdict may be rendered by not less than five-sixths of the jury in any civil case. A jury trial may be waived by the defendant in all criminal cases, except those in which the crime charged may be punishable by death, by a written instrument signed by the defendant in person in open court before and with the approval of a judge or justice of a court having jurisdiction to try the offense. The legislature may enact laws, not inconsistent herewith, governing the form, content, manner and time of presentation of the instrument effectuating such waiver. (Amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Freedom of worship; religious liberty]
§3. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all humankind; and no person shall be rendered incompetent to be a witness on account of his or her 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. (Amended by vote of the people November 6, 2001.)

[Habeas corpus]
§4. The privilege of a writ or order of habeas corpus shall not be suspended, unless, in case of rebellion or invasion, the public safety requires it. (Amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Bail; fines; punishments; detention of witnesses]
§5. Excessive bail shall not be required nor excessive fines imposed, nor shall cruel and unusual punishments be inflicted, nor shall witnesses be unreasonably detained.

[Grand jury; protection of certain enumerated rights; duty of public officers to sign waiver of immunity and give testimony; penalty for refusal]
§6. 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, air 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 indictment of a grand jury, except that a person held for the action of a grand jury upon a charge for such an offense, other than one punishable by death or life imprisonment, with the consent of the district attorney, may waive indictment by a grand jury and consent to be prosecuted on an information filed by the district attorney; such waiver shall be evidenced by written instrument signed by the defendant in open court in the presence of his or her counsel. 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 and shall be informed of the nature and cause of the accusation and be confronted with the witnesses against him or her. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he or she be compelled in any criminal case to be a witness against himself or herself, providing, that any public officer who, upon being called before a grand jury to testify concerning the conduct of his or her present office or of any public office held by him or her within five years prior to such grand jury call to testify, or the performance of his or her official duties in any such present or prior offices, refuses to sign a waiver of immunity against subsequent criminal prosecution, or to answer any relevant question concerning such matters before such grand jury, shall by virtue of such refusal, be disqualified from holding any other public office or public employment for a period of five years from the date of such refusal to sign a waiver of immunity against subsequent prosecution, or to answer any relevant question concerning such matters before such grand jury, and shall be removed from his or her present office by the appropriate authority or shall forfeit his or her present office at the suit of the attorney-general.

The power of grand juries to inquire into the wilful misconduct in office of public officers, and to find indictments or to direct the filing of informations in connection with such inquiries, shall never be suspended or impaired by law. No person shall be deprived of life, liberty or property without due process of law. (Amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 8, 1949; November 3, 1959; November 6, 1973; November 6, 2001.)

[Compensation for taking private property; private roads; drainage of agricultural lands]
§7. (a) Private property shall not be taken for public use without just compensation.

(c) Private roads may be opened in the manner to be prescribed by law; but in every case the necessity of the road and the amount of all damage to be sustained by the opening thereof shall be first determined by a jury of freeholders, and such amount, together with the expenses of the proceedings, shall be paid by the person to be benefitted.

(d) The use of property for the drainage of swamp or agricultural lands is declared to be a public use, and general laws may be passed permitting the owners or occupants of swamp or agricultural lands to construct and maintain for the drainage thereof, necessary drains, ditches and dykes upon the lands of others, under proper restrictions, on making just compensation, and such compensation together with the cost of such drainage may be assessed, wholly or partly, against any property benefitted thereby; but no special laws shall be enacted for such purposes. (Amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938. Subdivision (e) repealed by vote of the people November 5, 1963. Subdivision (b) repealed by vote of the people November 3, 1964.)

[Freedom of speech and press; criminal prosecutions for libel]
§8. Every citizen may freely speak, write and publish his or her 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

[1] Section headings and annotations [enclosed in brackets], and footnotes throughout this document are not a part of the official text.

[2] As so in original.

[3] Except where otherwise indicated, each section hereafter was re-enacted without change by the Constitutional Convention of 1938 and re-adopted by vote of the people November 8, 1938.

criminal prosecutions or 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. (Amended by vote of the people November 6, 2001.)

[Right to assemble and petition; divorce; lotteries; pool-selling and gambling; laws to prevent; pari-mutuel betting on horse races per- mitted; games of chance, bingo or lotto authorized under certain restrictions]

§9. 1. No law shall be passed abridging the rights of the people peaceably to assemble and to petition the government, or any department thereof; nor shall any divorce be granted otherwise than by due judicial proceedings; except as hereinafter provided, no lottery or the sale of lottery tickets, pool-selling, bookmaking, or any other kind of gambling, except lotteries operated by the state and the sale of lottery tickets in connection therewith as may be authorized and prescribed by the legislature, the net proceeds of which shall be applied exclusively to or in aid or support of education in this state as the legislature may prescribe, except pari-mutuel betting on horse races as may be prescribed by the legislature and from which the state shall derive a reasonable revenue for the support of government, and except casino gambling at no more than seven facilities as authorized and prescribed by the legislature shall hereafter be authorized or allowed within this state; and the legislature shall pass appropriate laws to prevent offenses against any of the provisions of this section. (Amendment approved by vote of the people November 5, 2013.)

2. Notwithstanding the foregoing provisions of this section, any city, town or village within the state may by an approving vote of the majority of the qualified electors in such municipality voting on a proposition therefor submitted at a general or special election authorize, subject to state legislative supervision and control, the conduct of one or both of the following categories of games of chance commonly known as: (a) bingo or lotto, in which prizes are awarded on the basis of designated numbers or symbols on a card conforming to numbers or symbols selected at random; (b) games in which prizes are awarded on the basis of a winning number or numbers, color or colors, or symbol or symbols determined by chance from among those previously selected or played, whether determined as the result of the spinning of a wheel, a drawing or otherwise by chance. If authorized, such games shall be subject to the following restrictions, among others which may be prescribed by the legislature: (1) only bona fide religious, charitable or non-profit organizations of veterans, volunteer firefighter and similar non-profit organizations shall be permitted to conduct such games; (2) the entire net proceeds of any game shall be exclusively devoted to the lawful purposes of such organizations; (3) no person except a bona fide member of any such organization shall participate in the management or operation of such game; and (4) no person shall receive any remuneration for participating in the management or operation of any such game. Unless otherwise provided by law, no single prize shall exceed two hundred fifty dollars, nor shall any series of prizes on one occasion aggregate more than one thousand dollars. The legislature shall pass appropriate laws to effectuate the purposes of this subdivision, ensure that such games are rigidly regulated to prevent commercialized gambling, prevent participation by criminal and other undesirable elements and the diversion of funds from the purposes authorized hereunder and establish a method by which a municipality which has authorized such games may rescind or revoke such authorization. Unless permitted by the legislature, no municipality shall have the power to pass local laws or ordinances relating to such games. Nothing in this section shall prevent the legislature from passing laws more restrictive than any of the provisions of this section. (Amendment approved by vote of the people November 7, 1939; further amended by vote of the people November 5, 1957; November 8, 1966; November 4, 1975; November 6, 1984; November 6, 2001.)

[Section 10, which dealt with ownership of lands, allodial tenures and escheats, was repealed by amendment approved by vote of the people November 6, 1962.]

[Equal protection of laws; discrimination in civil rights prohibited]

§11. No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his or her civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state. (New. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; amended by vote of the people November 6, 2001.)

[Security against unreasonable searches, seizures and interceptions]

§12. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The right of the people to be secure against unreasonable interception of telephone and telegraph communications shall not be violated, and ex parte orders or warrants shall issue only upon oath or affirmation that there is reasonable ground to believe that evidence of crime may be thus obtained, and identifying the particular means of communication, and particularly describing the person or persons whose communications are to be intercepted and the purpose thereof. (New. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Section 13, which dealt with purchase of lands of Indians, was repealed by amendment approved by vote of the people November 6, 1962.]

[Common law and acts of the colonial and state legislatures]

§14. Such parts of the common law, and of the acts of the legislature of the colony of New York, as together did form the law of the said colony, on the nineteenth day of April, one thousand seven hundred seventy-five, and the resolutions of the congress of the said colony, and of the convention of the State of New York, in force on the twentieth day of April, one thousand seven hundred seventy-seven, which have not since expired, or been repealed or altered; and such acts of the legislature of this state as are now in force, shall be and continue the law of this state, subject to such alterations as the legislature shall make concerning the same. But all such parts of the common law, and such of the said acts, or parts thereof, as are repugnant to this constitution, are hereby abrogated. (Formerly §16. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Section 15, which dealt with certain grants of lands and of charters made by the king of Great Britain and the state and obligations and contracts not to be impaired, was repealed by amendment approved by vote of the people November 6, 1962.]

[Damages for injuries causing death]

§16. The right of action now existing to recover damages for injuries resulting in death, shall never be abrogated; and the amount recoverable shall not be subject to any statutory limitation. (Formerly §18. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Labor not a commodity; hours and wages in public work; right to organize and bargain collectively]

§17. Labor of human beings is not a commodity nor an article of commerce and shall never be so considered or construed.

No laborer, worker or mechanic, in the employ of a contractor or sub-contractor engaged in the performance of any public work, shall be permitted to work more than eight hours in any day or more than five days in any week, except in cases of extraordinary emergency; nor shall he or she be paid less than the rate of wages prevailing in the same trade or occupation in the locality within the state where such public work is to be situated, erected or used.

Employees shall have the right to organize and to bargain collectively through representatives of their own choosing. (New. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; amended by vote of the people November 6, 2001.)

[Workers' compensation]

§18. Nothing contained in this constitution shall be construed to limit the power of the legislature to enact laws for the protection of the lives, health, or

safety of employees; or for the payment, either by employers, or by employers and employees or otherwise, either directly or through a state or other system of insurance or otherwise, of compensation for injuries to employees or for death of employees resulting from such injuries without regard to fault as a cause thereof, except where the injury is occasioned by the wilful intention of the injured employee to bring about the injury or death of himself or herself or of another, or where the injury results solely from the intoxication of the injured employee while on duty; or for the adjustment, determination and settlement, with or without trial by jury, of issues which may arise under such legislation; or to provide that the right of such compensation, and the remedy therefor shall be exclusive of all other rights and remedies for injuries to employees or for death resulting from such injuries; or to provide that the amount of such compensation for death shall not exceed a fixed or determinable sum; provided that all moneys paid by an employer to his or her employees or their legal representatives, by reason of the enactment of any of the laws herein authorized, shall be held to be a proper charge in the cost of operating the business of the employer. (Formerly §19. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; amended by vote of the people November 6, 2001.)

ARTICLE II
SUFFRAGE

[Qualifications of voters]
Section 1. Every citizen shall be entitled to vote at every election for all officers elected by the people and upon all questions submitted to the vote of the people provided that such citizen is eighteen years of age or over and shall have been a resident of this state, and of the county, city, or village for thirty days next preceding an election. (Amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 2, 1943; November 6, 1945; November 6, 1961; November 8, 1966; November 7, 1995.)

[Absentee voting]
§2. The legislature may, by general law, provide a manner in which, and the time and place at which, qualified voters who, on the occurrence of any election, may be absent from the county of their residence or, if residents of the city of New York, from the city, and qualified voters who, on the occurrence of any election, may be unable to appear personally at the polling place because of illness or physical disability, may vote and for the return and canvass of their votes. (Formerly §1-a. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; amended by vote of the people November 4, 1947; November 8, 1955; November 5, 1963.)

[Persons excluded from the right of suffrage]
§3. No person who shall receive, accept, or offer to receive, or pay, offer or promise to pay, contribute, offer or promise to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding a vote at an election, or who shall make any promise to influence the giving or withholding any such vote, or who shall make or become directly or indirectly interested in any bet or wager depending upon the result of any election, shall vote at such election; and upon challenge for such cause, the person so challenged, before the officers authorized for that purpose shall receive his or her vote, shall swear or affirm before such officers that he or she has not received or offered, does not expect to receive, has not paid, offered or promised to pay, contributed, offered or promised to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding a vote at such election, and has not made any promise to influence the giving or withholding of any such vote, nor made or become directly or indirectly interested in any bet or wager depending upon the result of such election. The legislature shall enact laws excluding from the right of suffrage all persons convicted of bribery or of any infamous crime. (Formerly §2. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; amended by vote of the people November 6, 2001.)

[Certain occupations and conditions not to affect residence]
§4. For the purpose of voting, no person shall be deemed to have gained or lost a residence, by reason of his or her presence or absence, while employed in the service of the United States; nor while engaged in the navigation of the waters of this state, or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse, or other asylum, or institution wholly or partly supported at public expense or by charity; nor while confined in any public prison. (Formerly §3. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; amended by vote of the people November 6, 2001.)

[Registration and election laws to be passed]
§5. Laws shall be made for ascertaining, by proper proofs, the citizens who shall be entitled to the right of suffrage hereby established, and for the registration of voters; which registration shall be completed at least ten days before each election. Such registration shall not be required for town and village elections except by express provision of law. (Formerly §4. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; amended by vote of the people November 6, 1951; further amended by vote of the people November 8, 1955; November 8, 1966; November 7, 1995.)

[Permanent registration]
§6. The legislature may provide by law for a system or systems of registration whereby upon personal application a voter may be regis- tered and his or her registration continued so long as he or she shall remain qualified to vote from an address within the jurisdiction of the board with which such voter is registered. (New. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; amended by vote of the people November 7, 1995; November 6, 2001.)

[Manner of voting; identification of voters]
§7. All elections by the citizens, except for such town officers as may by law be directed to be otherwise chosen, shall be by ballot, or by such other method as may be prescribed by law, provided that secrecy in voting be preserved. The legislature shall provide for identification of voters through their signatures in all cases where personal registration is required and shall also provide for the signatures, at the time of voting, of all persons voting in person by ballot or voting machine, whether or not they have registered in person, save only in cases of illiteracy or physical disability. (Formerly §5. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Bi-partisan registration and election boards]
§8. All laws creating, regulating or affecting boards or officers charged with the duty of qualifying voters, or of distributing ballots to voters, or of receiving, recording or counting votes at elections, shall secure equal representation of the two political parties which, at the general election next preceding that for which such boards or officers are to serve, cast the highest and the next highest number of votes. All such boards and officers shall be appointed or elected in such manner, and upon the nomination of such representatives of said parties respectively, as the legislature may direct. Existing laws on this subject shall continue until the legislature shall otherwise provide. This section shall not apply to town, or village elections. (Formerly §6. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 7, 1995.)

[Presidential elections; special voting procedures authorized]
§9. Notwithstanding the residence requirements imposed by section one of this article, the legislature may, by general law, provide special procedures whereby every person who shall have moved from another state to this state or from one county, city or village within this state to another county, city or village within this state and who shall have been an inhabitant of this state in any event for ninety days next preceding an election at which electors are to be chosen for the office of president and vice president of the United States shall be entitled to vote in this state solely for such electors, provided such person is otherwise qualified to vote in this state and is not able to qualify to vote for such electors in any other state. The legislature may also, by general law,

prescribe special procedures whereby every person who is registered and would be qualified to vote in this state but for his or her removal from this state to another state within one year next preceding such election shall be entitled to vote in this state solely for such electors, provided such person is not able to qualify to vote for such electors in any other state. (New. Added by vote of the people November 5, 1963; amended by vote of the people November 6, 2001.)

ARTICLE III
LEGISLATURE

[Legislative power]
Section 1. The legislative power of this state shall be vested in the senate and assembly.

[Number and terms of senators and assemblymen]
§2. The senate shall consist of fifty members[4], except as hereinafter provided. The senators elected in the year one thousand eight hundred and ninety-five shall hold their offices for three years, and their successors shall be chosen for two years. The assembly shall consist of one hundred and fifty members. The assembly members elected in the year one thousand nine hundred and thirty-eight, and their successors, shall be chosen for two years. (Amended by vote of the people November 2, 1937; November 6, 2001.)

[Senate districts]
§3. The senate districts[5], described in section three of article three of this constitution as adopted by the people on November sixth, eighteen hundred ninety-four are hereby continued for all of the purposes of future reapportionments of senate districts pursuant to section four of this article. (Formerly §3. Repealed and replaced by new §3 amended by vote of the people November 6, 1962.)

[Readjustments and reapportionments; when federal census to control]
§4. (a) Except as herein otherwise provided, the federal census taken in the year nineteen hundred thirty and each federal census taken decennially thereafter shall be controlling as to the number of inhabitants in the state or any part thereof for the purposes of the apportionment of members of assembly and readjustment or alteration of senate and assembly districts next occurring, in so far as such census and the tabulation thereof purport to give the information necessary therefor. The legislature, by law, shall provide for the making and tabulation by state authorities of an enumeration of the inhabitants of the entire state to be used for such purposes, instead of a federal census, if the taking of a federal census in any tenth year from the year nineteen hundred thirty be omitted or if the federal census fails to show the number of aliens or Indians not taxed. If a federal census, though giving the requisite information as to the state at large, fails to give the information as to any civil or territorial divisions which is required to be known for such purposes, the legislature, by law, shall provide for such an enumeration of the inhabitants of such parts of the state only as may be necessary, which shall supersede in part the federal census and be used in connection therewith for such purposes. The legislature, by law, may provide in its discretion for an enumeration by state authorities of the inhabitants of the state, to be used for such purposes, in place of a federal census, when the return of a decennial federal census is delayed so that it is not available at the beginning of the regular session of the legislature in the second year after the year nineteen hundred thirty or after any tenth year therefrom, or if an apportionment of members of assembly and readjustment or alteration of senate districts is not made at or before such a session. At the regular session in the year nineteen hundred thirty-two, and at the first regular session after the year nineteen hundred forty and after each tenth year therefrom the senate districts shall be readjusted or altered, but if, in any decade, counting from and including that which begins with the year nineteen hundred thirty-one, such a readjustment or alteration is not made at the time above prescribed, it shall be made at a subsequent session occurring not later than the sixth year of such decade, meaning not later than nineteen hundred thirty-six, nineteen hundred forty-six, nineteen hundred fifty-six, and so on; provided, however, that if such districts shall have been readjusted or altered by law in either of the years nineteen hundred thirty or nineteen hundred thirty-one, they shall remain unaltered until the first regular session after the year nineteen hundred forty. No town, except a town having more than a full ratio of apportionment, and no block in a city inclosed by streets or public ways, shall be divided in the formation of senate districts. In the reapportionment of senate districts, no district shall contain a greater excess in population over an adjoining district in the same county, than the population of a town or block therein adjoining such district. Counties, towns or blocks which, from their location, may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants, excluding aliens.

No county shall have four or more senators unless it shall have a full ratio for each senator. No county shall have more than one-third of all the senators; and no two counties or the territory thereof as now organized, which are adjoining counties, or which are separated only by public waters, shall have more than one-half of all the senators.

(b) The independent redistricting commission established pursuant to section five-b of this article shall prepare a redistricting plan to establish senate, assembly, and congressional districts every ten years commencing in two thousand twenty-one, and shall submit to the legislature such plan and the implementing legislation therefor on or before January first or as soon as practicable thereafter but no later than January fifteenth in the year ending in two beginning in two thousand twenty-two. The redistricting plans for the assembly and the senate shall be contained in and voted upon by the legislature in a single bill, and the congressional district plan may be included in the same bill if the legislature chooses to do so. The implementing legislation shall be voted upon, without amendment, by the senate or the assembly and if approved by the first house voting upon it, such legislation shall be delivered to the other house immediately to be voted upon without amendment. If approved by both houses, such legislation shall be presented to the governor for action.

If either house shall fail to approve the legislation implementing the first redistricting plan, or the governor shall veto such legislation and the legislature shall fail to override such veto, each house or the governor if he or she vetoes it, shall notify the commission that such legislation has been disapproved. Within fifteen days of such notification and in no case later than February twenty-eighth, the redistricting commission shall prepare and submit to the legislature a second redistricting plan and the necessary implementing legislation for such plan. Such legislation shall be voted upon, without amendment, by the senate or the assembly and, if approved by the first house voting upon it, such legislation shall be delivered to the other house immediately to be voted upon without amendment. If approved by both houses, such legislation shall be presented to the governor for action.

If either house shall fail to approve the legislation implementing the second redistricting plan, or the governor shall veto such legislation and the legislature shall fail to override such veto, each house shall introduce such implementing legislation with any amendments each house of the legislature deems necessary. All such amendments shall comply with the provisions of this article. If approved by both houses, such legislation shall be presented to the governor for action.

All votes by the senate or assembly on any redistricting plan legislation pursuant to this article shall be conducted in accordance with the following rules:

(1) In the event that the speaker of the assembly and the temporary president of the senate are members of two different political parties, approval of legislation submitted by the independent redistricting commission pursuant to subdivision (f) of section five-b of this article shall require the vote in support of its passage by at least a majority of the members elected to each house.

(2) In the event that the speaker of the assembly and the temporary president of the senate are members of two different political parties, approval of legislation submitted by the independent redistricting commission pursuant

[4] State Law §123 sets forth current number of senators.

[5] State Law §124 currently sets forth 63 senate districts.

to subdivision (g) of section five-b of this article shall require the vote in support of its passage by at least sixty percent of the members elected to each house.

(3) In the event that the speaker of the assembly and the temporary president of the senate are members of the same political party, approval of legislation submitted by the independent redistricting commission pursuant to subdivision (f) or (g) of section five-b of this article shall require the vote in support of its passage by at least two-thirds of the members elected to each house.

(c) Subject to the requirements of the federal constitution and statutes and in compliance with state constitutional requirements, the following principles shall be used in the creation of state senate and state assembly districts and congressional districts:

(1) When drawing district lines, the commission shall consider whether such lines would result in the denial or abridgement of racial or language minority voting rights, and districts shall not be drawn to have the purpose of, nor shall they result in, the denial or abridgement of such rights. Districts shall be drawn so that, based on the totality of the circumstances, racial or minority language groups do not have less opportunity to participate in the political process than other members of the electorate and to elect representatives of their choice.

(2) To the extent practicable, districts shall contain as nearly as may be an equal number of inhabitants. For each district that deviates from this requirement, the commission shall provide a specific public explanation as to why such deviation exists.

(3) Each district shall consist of contiguous territory.

(4) Each district shall be as compact in form as practicable.

(5) Districts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties. The commission shall consider the maintenance of cores of existing districts, of pre-existing political subdivisions, including counties, cities, and towns, and of communities of interest.

(6) In drawing senate districts, towns or blocks which, from their location may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants. The requirements that senate districts not divide counties or towns, as well as the 'block-on-border' and 'town-on-border' rules, shall remain in effect.

During the preparation of the redistricting plan, the independent redistricting commission shall conduct not less than one public hearing on proposals for the redistricting of congressional and state legislative districts in each of the following (i) cities: Albany, Buffalo, Syracuse, Rochester, and White Plains; and (ii) counties: Bronx, Kings, New York, Queens, Richmond, Nassau, and Suffolk. Notice of all such hearings shall be widely published using the best available means and media a reasonable time before every hearing. At least thirty days prior to the first public hearing and in any event no later than September fifteenth of the year ending in one or as soon as practicable thereafter, the independent redistricting commission shall make widely available to the public, in print form and using the best available technology, its draft redistricting plans, relevant data, and related information. Such plans, data, and information shall be in a form that allows and facilitates their use by the public to review, analyze, and comment upon such plans and to develop alternative redistricting plans for presentation to the commission at the public hearings. The independent redistricting commission shall report the findings of all such hearings to the legislature upon submission of a redistricting plan.

(d) The ratio for apportioning senators shall always be obtained by dividing the number of inhabitants, excluding aliens, by fifty, and the senate shall always be composed of fifty members, except that if any county having three or more senators at the time of any apportionment shall be entitled on such ratio to an additional senator or senators, such additional senator or senators shall be given to such county in addition to the fifty senators, and the whole number of senators shall be increased to that extent.

The senate districts, including the present ones, as existing immediately before the enactment of a law readjusting or altering the senate districts, shall continue to be the senate districts of the state until the expirations of the terms of the senators then in office, except for the purpose of an election of senators for full terms beginning at such expirations, and for the formation of assembly districts.

(e) The process for redistricting congressional and state legislative districts established by this section and sections five and five-b of this article shall govern redistricting in this state except to the extent that a court is required to order the adoption of, or changes to, a redistricting plan as a remedy for a violation of law.

A reapportionment plan and the districts contained in such plan shall be in force until the effective date of a plan based upon the subsequent federal decennial census taken in a year ending in zero unless modified pursuant to court order. (Amended by vote of the people November 6, 1945; further amended by vote of the people November 4, 2014.)

[Apportionment of assemblymen; creation of assembly districts]

§5. The members of the assembly shall be chosen by single districts and shall be apportioned pursuant to this section and sections four and five-b of this article at each regular session at which the senate districts are readjusted or altered, and by the same law, among the several counties of the state, as nearly as may be according to the number of their respective inhabitants, excluding aliens. Every county heretofore established and separately organized, except the county of Hamilton, shall always be entitled to one member of assembly, and no county shall hereafter be erected unless its population shall entitle it to a member. The county of Hamilton shall elect with the county of Fulton, until the population of the county of Hamilton shall, according to the ratio, entitle it to a member. But the legislature may abolish the said county of Hamilton and annex the territory thereof to some other county or counties.

The quotient obtained by dividing the whole number of inhabitants of the state, excluding aliens, by the number of members of assembly, shall be the ratio for apportionment, which shall be made as follows: One member of assembly shall be apportioned to every county, including Fulton and Hamilton as one county, containing less than the ratio and one-half over. Two members shall be apportioned to every other county. The remaining members of assembly shall be apportioned to the counties having more than two ratios according to the number of inhabitants, excluding aliens. Members apportioned on remainders shall be apportioned to the counties having the highest remainders in the order thereof respectively. No county shall have more members of assembly than a county having a greater number of inhabitants, excluding aliens.

The assembly districts[6], including the present ones, as existing immediately before the enactment of a law making an apportionment of members of assembly among the counties, shall continue to be the assembly districts of the state until the expiration of the terms of members then in office, except for the purpose of an election of members of assembly for full terms beginning at such expirations.

In any county entitled to more than one member, the board of supervisors, and in any city embracing an entire county and having no board of supervisors, the common council, or if there be none, the body exercising the powers of a common council, shall assemble at such times as the legislature making an apportionment shall prescribe, and divide such counties into assembly districts as nearly equal in number of inhabitants, excluding aliens, as may be, of convenient and contiguous territory in as compact form as practicable, each of which shall be wholly within a senate district formed under the same apportionment, equal to the number of members of assembly to which such county shall be entitled, and shall cause to be filed in the office of the secretary of state and of the clerk of such county, a description of such districts, specifying the number of each district and of the inhabitants thereof, excluding aliens, according to the census or enumeration used as the population basis for the formation of such districts; and such apportionment and districts shall remain unaltered until after the next reapportionment of members of assembly, except that the board of supervisors of any county containing a town having more than a ratio of apportionment and one-half over may alter the assembly districts in a senate district containing such town at any time on or before March first, nineteen hundred forty-six. In counties having more than one senate district, the same number of assembly districts shall be put in each senate district, unless the assembly districts cannot be

[6] State Law §121 sets forth 150 assembly districts.

evenly divided among the senate districts of any county, in which case one more assembly district shall be put in the senate district in such county having the largest, or one less assembly district shall be put in the senate district in such county having the smallest number of inhabitants, excluding aliens, as the case may require. Nothing in this section shall prevent the division, at any time, of counties and towns and the erection of new towns by the legislature.

An apportionment by the legislature, or other body, shall be subject to review by the supreme court, at the suit of any citizen, under such reasonable regulations as the legislature may prescribe; and any court before which a cause may be pending involving an apportionment, shall give precedence thereto over all other causes and proceedings, and if said court be not in session it shall convene promptly for the disposition of the same. The court shall render its decision within sixty days after a petition is filed. In any judicial proceeding relating to redistricting of congressional or state legislative districts, any law establishing congressional or state legislative districts found to violate the provisions of this article shall be invalid in whole or in part. In the event that a court finds such a violation, the legislature shall have a full and reasonable opportunity to correct the law's legal infirmities. (Amended by vote of the people November 6, 1945; further amended by vote of the people November 4, 2014.)

[Definition of inhabitants]

§5-a. For the purpose of apportioning senate and assembly districts pursuant to the foregoing provisions of this article, the term "inhabitants, excluding aliens" shall mean the whole number of persons. (New. Added by vote of the people November 4, 1969.)

[Independent redistricting commission]

§5-b. (a) On or before February first of each year ending with a zero and at any other time a court orders that congressional or state legislative districts be amended, an independent redistricting commission shall be established to determine the district lines for congressional and state legislative offices. The independent redistricting commission shall be composed of ten members, appointed as follows:

(1) two members shall be appointed by the temporary president of the senate;

(2) two members shall be appointed by the speaker of the assembly;

(3) two members shall be appointed by the minority leader of the senate;

(4) two members shall be appointed by the minority leader of the assembly;

(5) two members shall be appointed by the eight members appointed pursuant to paragraphs (1) through (4) of this subdivision by a vote of not less than five members in favor of such appointment, and these two members shall not have been enrolled in the preceding five years in either of the two political parties that contain the largest or second largest number of enrolled voters within the state;

(6) one member shall be designated chair of the commission by a majority of the members appointed pursuant to paragraphs (1) through (5) of this subdivision to convene and preside over each meeting of the commission.

(b) The members of the independent redistricting commission shall be registered voters in this state. No member shall within the last three years:

(1) be or have been a member of the New York state legislature or United States Congress or a statewide elected official;

(2) be or have been a state officer or employee or legislative employee as defined in section seventy-three of the public officers law;

(3) be or have been a registered lobbyist in New York state;

(4) be or have been a political party chairman, as defined in paragraph (k) of subdivision one of section seventy-three of the public officers law;

(5) be the spouse of a statewide elected official or of any member of the United States Congress, or of the state legislature.

(c) To the extent practicable, the members of the independent redistricting commission shall reflect the diversity of the residents of this state with regard to race, ethnicity, gender, language, and geographic residence and to the extent practicable the appointing authorities shall consult with organizations devoted to protecting the voting rights of minority and other voters concerning potential appointees to the commission.

(d) Vacancies in the membership of the commission shall be filled within thirty days in the manner provided for in the original appointments.

(e) The legislature shall provide by law for the compensation of the members of the independent redistricting commission, including compensation for actual and necessary expenses incurred in the performance of their duties.

(f) A minimum of five members of the independent redistricting commission shall constitute a quorum for the transaction of any business or the exercise of any power of such commission prior to the appointment of the two commission members appointed pursuant to paragraph (5) of subdivision (a) of this section, and a minimum of seven members shall constitute a quorum after such members have been appointed, and no exercise of any power of the independent redistricting commission shall occur without the affirmative vote of at least a majority of the members, provided that, in order to approve any redistricting plan and implementing legislation, the following rules shall apply:

(1) In the event that the speaker of the assembly and the temporary president of the senate are members of the same political party, approval of a redistricting plan and implementing legislation by the commission for submission to the legislature shall require the vote in support of its approval by at least seven members including at least one member appointed by each of the legislative leaders.

(2) In the event that the speaker of the assembly and the temporary president of the senate are members of two different political parties, approval of a redistricting plan by the commission for submission to the legislature shall require the vote in support of its approval by at least seven members including at least one member appointed by the speaker of the assembly and one member appointed by the temporary president of the senate.

(g) In the event that the commission is unable to obtain seven votes to approve a redistricting plan on or before January first in the year ending in two or as soon as practicable thereafter, the commission shall submit to the legislature that redistricting plan and implementing legislation that garnered the highest number of votes in support of its approval by the commission with a record of the votes taken. In the event that more than one plan received the same number of votes for approval, and such number was higher than that for any other plan, then the commission shall submit all plans that obtained such number of votes. The legislature shall consider and vote upon such implementing legislation in accordance with the voting rules set forth in subdivision (b) of section four of this article.

(h) (1) The independent redistricting commission shall appoint two co-executive directors by a majority vote of the commission in accordance with the following procedure:

(i) In the event that the speaker of the assembly and the temporary president of the senate are members of two different political parties, the co-executive directors shall be approved by a majority of the commission that includes at least one appointee by the speaker of the assembly and at least one appointee by the temporary president of the senate.

(ii) In the event that the speaker of the assembly and the temporary president of the senate are members of the same political party, the co-executive directors shall be approved by a majority of the commission that includes at least one appointee by each of the legislative leaders.

(2) One of the co-executive directors shall be enrolled in the political party with the highest number of enrolled members in the state and one shall be enrolled in the political party with the second highest number of enrolled members in the state. The co-executive directors shall appoint such staff as are necessary to perform the commission's duties, except that the commission shall review a staffing plan prepared and provided by the co-executive directors which shall contain a list of the various positions and the duties, qualifications, and salaries associated with each position.

(3) In the event that the commission is unable to appoint one or both of the co-executive directors within forty-five days of the establishment of a quorum of seven commissioners, the following procedure shall be followed:

(i) In the event that the speaker of the assembly and the temporary president of the senate are members of two different political parties, within ten days

the speaker's appointees on the commission shall appoint one co-executive director, and the temporary president's appointees on the commission shall appoint the other co-executive director. Also within ten days the minority leader of the assembly shall select a co-deputy executive director, and the minority leader of the senate shall select the other co-deputy executive director.

(ii) In the event that the speaker of the assembly and the temporary president of the senate are members of the same political party, within ten days the speaker's and temporary president's appointees on the commission shall together appoint one co-executive director, and the two minority leaders' appointees on the commission shall together appoint the other co-executive director.

(4) In the event of a vacancy in the offices of co-executive director or co-deputy executive director, the position shall be filled within ten days of its occurrence by the same appointing authority or authorities that appointed his or her predecessor.

(i) The state budget shall include necessary appropriations for the expenses of the independent redistricting commission, provide for compensation and reimbursement of expenses for the members and staff of the commission, assign to the commission any additional duties that the legislature may deem necessary to the performance of the duties stipulated in this article, and require other agencies and officials of the state of New York and its political subdivisions to provide such information and assistance as the commission may require to perform its duties. (New. Added by vote of the people November 4, 2014.)

[Compensation, allowances and traveling expenses of members]

§6. Each member of the legislature shall receive for his or her services a like annual salary, to be fixed by law. He or she shall also be reimbursed for his or her actual traveling expenses in going to and returning from the place in which the legislature meets, not more than once each week while the legislature is in session. Senators, when the senate alone is convened in extraordinary session, or when serving as members of the court for the trial of impeachments, and such members of the assembly, not exceeding nine in number, as shall be appointed managers of an impeachment, shall receive an additional per diem allowance, to be fixed by law. Any member, while serving as an officer of his or her house or in any other special capacity therein or directly connected therewith not hereinbefore in this section specified, may also be paid and receive, in addition, any allowance which may be fixed by law for the particular and additional services appertaining to or entailed by such office or special capacity. Neither the salary of any member nor any other allowance so fixed may be increased or diminished during, and with respect to, the term for which he or she shall have been elected, nor shall he or she be paid or receive any other extra compensation. The provisions of this section and laws enacted in compliance therewith shall govern and be exclusively controlling, according to their terms. Members shall continue to receive such salary and additional allowance as heretofore fixed and provided in this section, until changed by law pursuant to this section. (Amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 4, 1947; November 3, 1964; November 6, 2001.)

[Qualifications of members; prohibitions on certain civil appointments; acceptance to vacate seat]

§7. No person shall serve as a member of the legislature unless he or she is a citizen of the United States and has been a resident of the state of New York for five years, and, except as hereinafter otherwise prescribed, of the assembly or senate district for the twelve months immediately preceding his or her election; if elected a senator or member of assembly at the first election next ensuing after a readjustment or alteration of the senate or assembly districts becomes effective, a person, to be eligible to serve as such, must have been a resident of the county in which the senate or assembly district is contained for the twelve months immediately preceding his or her election. No member of the legislature shall, during the time for which he or she was elected, receive any civil appointment from the governor, the governor and the senate, the legislature or from any city government, to an office which shall have been created, or the emoluments whereof shall have been increased during such time. If a member of the legislature be elected to congress, or appointed to any office, civil or military, under the government of the United States, the state of New York, or under any city government except as a member of the national guard or naval militia of the state, or of the reserve forces of the United States, his or her acceptance thereof shall vacate his or her seat in the legislature, providing, however, that a member of the legislature may be appointed commissioner of deeds or to any office in which he or she shall receive no compensation. (New. Derived in part from former §§7 and 8. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; amended by vote of the people November 2, 1943.)

[Time of elections of members]

§8. The elections of senators and members of assembly, pursuant to the provisions of this constitution, shall be held on the Tuesday succeeding the first Monday of November, unless otherwise directed by the legislature. (Formerly §9. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Powers of each house]

§9. A majority of each house shall constitute a quorum to do business. Each house shall determine the rules of its own proceedings, and be the judge of the elections, returns and qualifications of its own members; shall choose its own officers; and the senate shall choose a temporary president and the assembly shall choose a speaker. (Formerly §10. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938. Amended by vote of the people November 5, 1963.)

[Journals; open sessions; adjournments]

§10. Each house of the legislature shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days. (Formerly §11. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Members not to be questioned for speeches]

§11. For any speech or debate in either house of the legislature, the members shall not be questioned in any other place. (Formerly §12. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Bills may originate in either house; may be amended by the other]

§12. Any bill may originate in either house of the legislature, and all bills passed by one house may be amended by the other. (Formerly §13. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Enacting clause of bills; no law to be enacted except by bill]

§13. The enacting clause of all bills shall be “The People of the State of New York, represented in Senate and Assembly, do enact as follows,” and no law shall be enacted except by bill. (Formerly §14. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Manner of passing bills; message of necessity for immediate vote]

§14. No bill shall be passed or become a law unless it shall have been printed and upon the desks of the members, in its final form, at least three calendar legislative days prior to its final passage, unless the governor, or the acting governor, shall have certified, under his or her hand and the seal of the state, the facts which in his or her opinion necessitate an immediate vote thereon, in which case it must nevertheless be upon the desks of the members in final form, not necessarily printed, before its final passage; nor shall any bill be passed or become a law, except by the assent of a majority of the members elected to each branch of the legislature; and upon the last reading of a bill, no

amendment thereof shall be allowed, and the question upon its final passage shall be taken immediately thereafter, and the ayes and nays entered on the journal.

For purposes of this section, a bill shall be deemed to be printed and upon the desks of the members if: it is set forth in a legible electronic format by electronic means, and it is available for review in such format at the desks of the members. For purposes of this section "electronic means" means any method of transmission of information between computers or other machines designed for the purpose of sending and receiving such transmissions and which: allows the recipient to reproduce the information transmitted in a tangible medium of expression; and does not permit additions, deletions or other changes to be made without leaving an adequate record thereof. (Formerly §15. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people: November 6, 2001; November 4, 2014.)

[Private or local bills to embrace only one subject, expressed in title]

§15. No private or local bill, which may be passed by the legislature, shall embrace more than one subject, and that shall be expressed in the title. (Formerly §16. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Existing law not to be made applicable by reference]

§16. No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of said act, or which shall enact that any existing law, or part thereof, shall be applicable, except by inserting it in such act. (Formerly §17. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Cases in which private or local bills shall not be passed]

§17. The legislature shall not pass a private or local bill in any of the following cases:

Changing the names of persons.

Laying out, opening, altering, working or discontinuing roads, highways or alleys, or for draining swamps or other low lands. Locating or changing county seats.

Providing for changes of venue in civil or criminal cases.

Incorporating villages.

Providing for election of members of boards of supervisors.

Selecting, drawing, summoning or empaneling grand or petit jurors.

Regulating the rate of interest on money.

The opening and conducting of elections or designating places of voting.

Creating, increasing or decreasing fees, percentages or allowances of public officers, during the term for which said officers are elected or appointed.

Granting to any corporation, association or individual the right to lay down railroad tracks.

Granting to any private corporation, association or individual any exclusive privilege, immunity or franchise whatever.

Granting to any person, association, firm or corporation, an exemption from taxation on real or personal property.

Providing for the building of bridges, except over the waters forming a part of the boundaries of the state, by other than a municipal or other public corporation or a public agency of the state. (Formerly §18. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 3, 1964.)

[Extraordinary sessions of the legislature; power to convene on legislative initiative]

§18. The members of the legislature shall be empowered, upon the presentation to the temporary president of the senate and the speaker of the assembly of a petition signed by two-thirds of the members elected to each house of the legislature, to convene the legislature on extraordinary occasions to act upon the subjects enumerated in such petition. (New. Added by vote of the people November 4, 1975.)

[Private claims not to be audited by legislature; claims barred by lapse of time]

§19. The legislature shall neither audit nor allow any private claim or account against the state, but may appropriate money to pay such claims as shall have been audited and allowed according to law.

No claim against the state shall be audited, allowed or paid which, as between citizens of the state, would be barred by lapse of time. But if the claimant shall be under legal disability, the claim may be presented within two years after such disability is removed. (Derived in part from former §6 of Art. 7. Amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 3, 1964.)

[Two-thirds bills]

§20. The assent of two-thirds of the members elected to each branch of the legislature shall be requisite to every bill appropriating the public moneys or property for local or private purposes.

[Certain sections not to apply to bills recommended by certain commissioners or public agencies]

§21. Sections 15, 16 and 17 of this article shall not apply to any bill, or the amendments to any bill, which shall be recommended to the legislature by commissioners or any public agency appointed or directed pursuant to law to prepare revisions, consolidations or compilations of statutes. But a bill amending an existing law shall not be excepted from the provisions of sections 15, 16 and 17 of this article unless such amending bill shall itself be recommended to the legislature by such commissioners or public agency. (Formerly §23. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Tax laws to state tax and object distinctly; definition of income for income tax purposes by reference to federal laws authorized]

§22. Every law which imposes, continues or revives a tax shall distinctly state the tax and the object to which it is to be applied, and it shall not be sufficient to refer to any other law to fix such tax or object.

Notwithstanding the foregoing or any other provision of this constitution, the legislature, in any law imposing a tax or taxes on, in respect to or measured by income, may define the income on, in respect to or by which such tax or taxes are imposed or measured, by reference to any provision of the laws of the United States as the same may be or become effective at any time or from time to time, and may prescribe exceptions or modifications to any such provision. (Formerly §24. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; amended by vote of the people November 3, 1959.)

[When yeas and nays necessary; three-fifths to constitute quorum]

§23. On the final passage, in either house of the legislature, of any act which imposes, continues or revives a tax, or creates a debt or charge, or makes, continues or revives any appropriation of public or trust money or property, or releases, discharges or commutes any claim or demand of the state, the question shall be taken by yeas and nays, which shall be duly entered upon the journals, and three-fifths of all the members elected to either house shall, in all such cases, be necessary to constitute a quorum therein. (Formerly §25. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Prison labor; contract system abolished]

§24. The legislature shall, by law, provide for the occupation and employment of prisoners sentenced to the several state prisons, penitentiaries, jails and reformatories in the state; and no person in any such prison, penitentiary, jail or reformatory, shall be required or allowed to work, while under sentence thereto, at any trade, industry or occupation, wherein or whereby his or her work, or the product or profit of his or her work, shall be farmed out, contracted, given or sold to any person, firm, association or corporation, provided that the legislature may provide by law that such prisoners may voluntarily perform work for nonprofit organizations. As used in this section, the term “nonprofit organization” means an organization operated exclusively for religious,

charitable, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual. This section shall not be construed to prevent the legislature from providing that convicts may work for, and that the products of their labor may be disposed of to, the state or any political division thereof, or for or to any public institution owned or managed and controlled by the state, or any political division thereof. (Formerly §29. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 6, 2001; November 3, 2009.)

[Emergency governmental operations; legislature to provide for]
§25. Notwithstanding any other provision of this constitution, the legislature, in order to insure continuity of state and local governmental operations in periods of emergency caused by enemy attack or by disasters (natural or otherwise), shall have the power and the immediate duty (1) to provide for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices, and (2) to adopt such other measures as may be necessary and proper for insuring the continuity of governmental operations.

Nothing in this article shall be construed to limit in any way the power of the state to deal with emergencies arising from any cause. (New. Added by vote of the people November 5, 1963.)

ARTICLE IV
EXECUTIVE

[Executive power; election and terms of governor and lieutenant-governor]
Section 1. The executive power shall be vested in the governor, who shall hold office for four years; the lieutenant-governor shall be chosen at the same time, and for the same term. The governor and lieutenant-governor shall be chosen at the general election held in the year nineteen hundred thirty-eight, and each fourth year thereafter. They shall be chosen jointly, by the casting by each voter of a single vote applicable to both offices, and the legislature by law shall provide for making such choice in such manner. The respective persons having the highest number of votes cast jointly for them for governor and lieutenant-governor respectively shall be elected. (Amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 3, 1953; November 6, 2001.)

[Qualifications of governor and lieutenant-governor]
§2. No person shall be eligible to the office of governor or lieutenant-governor, except a citizen of the United States, of the age of not less than thirty years, and who shall have been five years next preceding the election a resident of this state. (Amended by vote of the people November 6, 2001.)

[Powers and duties of governor; compensation]
§3. The governor shall be commander-in-chief of the military and naval forces of the state. The governor shall have power to convene the legislature, or the senate only, on extraordinary occasions. At extraordinary sessions convened pursuant to the provisions of this section no subject shall be acted upon, except such as the governor may recommend for consideration. The governor shall communicate by message to the legislature at every session the condition of the state, and recommend such matters to it as he or she shall judge expedient. The governor shall expedite all such measures as may be resolved upon by the legislature, and shall take care that the laws are faithfully executed. The governor shall receive for his or her services an annual salary to be fixed by joint resolution of the senate and assembly, and there shall be provided for his or her use a suitable and furnished executive residence. (Formerly §4. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 3, 1953; November 5, 1963; November 6, 2001.)

[Reprieves, commutations and pardons; powers and duties of governor relating to grants of]
§4. The governor shall have the power to grant reprieves, commutations and pardons after conviction, for all offenses except treason and cases of impeachment, upon such conditions and with such restrictions and limitations, as he or she may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, the governor shall have power to suspend the execution of the sentence, until the case shall be reported to the legislature at its next meeting, when the legislature shall either pardon, or commute the sentence, direct the execution of the sentence, or grant a further reprieve. The governor shall annually communicate to the legislature each case of reprieve, commutation or pardon granted, stating the name of the convict, the crime of which the convict was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve. (Formerly §5. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 6, 2001.)

[When lieutenant-governor to act as governor]
§5. In case of the removal of the governor from office or of his or her death or resignation, the lieutenant-governor shall become governor for the remainder of the term.

In case the governor-elect shall decline to serve or shall die, the lieutenant-governor-elect shall become governor for the full term.

In case the governor is impeached, is absent from the state or is otherwise unable to discharge the powers and duties of the office of governor, the lieutenant-governor shall act as governor until the inability shall cease or until the term of the governor shall expire.

In case of the failure of the governor-elect to take the oath of office at the commencement of his or her term, the lieutenant-governor-elect shall act as governor until the governor shall take the oath. (Formerly §6. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 8, 1949; November 5, 1963; November 6, 2001.)

[Duties and compensation of lieutenant-governor; succession to the governorship]
§6. The lieutenant-governor shall possess the same qualifications of eligibility for office as the governor. The lieutenant-governor shall be the president of the senate but shall have only a casting vote therein.
The lieutenant-governor shall receive for his or her services an annual salary to be fixed by joint resolution of the senate and assembly.

In case of vacancy in the offices of both governor and lieutenant- governor, a governor and lieutenant-governor shall be elected for the remainder of the term at the next general election happening not less than three months after both offices shall have become vacant. No election of a lieutenant-governor shall be had in any event except at the time of electing a governor.

In case of vacancy in the offices of both governor and lieutenant- governor or if both of them shall be impeached, absent from the state or otherwise unable to discharge the powers and duties of the office of governor, the temporary president of the senate shall act as governor until the inability shall cease or until a governor shall be elected.

In case of vacancy in the office of lieutenant-governor alone, or if the lieutenant-governor shall be impeached, absent from the state or otherwise unable to discharge the duties of office, the temporary president of the senate shall perform all the duties of lieutenant-governor during such vacancy or inability.

If, when the duty of acting as governor devolves upon the temporary president of the senate, there be a vacancy in such office or the temporary president of the senate shall be absent from the state or otherwise unable to discharge the duties of governor, the speaker of the assembly shall act as governor during such vacancy or inability.

The legislature may provide for the devolution of the duty of acting as governor in any case not provided for in this article. (Formerly §§7 and 8. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people

November 6, 1945; November 3, 1953; November 5, 1963; November 6, 2001.)

[Action by governor on legislative bills; reconsideration after veto]
§7. Every bill which shall have passed the senate and assembly shall, before it becomes a law, be presented to the governor; if the governor approve, he or she shall sign it; but if not, he or she shall return it with his or her objections to the house in which it shall have originated, which shall enter the objections at large on the journal, and proceed to reconsider it. If after such reconsideration, two-thirds of the members elected to 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 the members elected to that house, it shall become a law notwithstanding the objections of the governor. In all such cases the votes in both houses shall be determined by yeas and nays, and the names of the members voting shall be entered by yeas and nays, and the names of the members voting shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him or her, the same shall be a law in like manner as if he or she had signed it, unless the legislature shall, by their adjournment, prevent its return, in which case it shall not become a law without the approval of the governor. No bill shall become a law after the final adjournment of the legislature, unless approved by the governor within thirty days after such adjournment. If any bill presented to the governor contain several items of appropriation of money, the governor may object to one or more of such items while approving of the other portion of the bill. In such case the governor shall append to the bill, at the time of signing it, a statement of the items to which he or she objects; and the appropriation so objected to shall not take effect. If the legislature be in session, he or she shall transmit to the house in which the bill originated a copy of such statement, and the items objected to shall be separately reconsidered. If on reconsideration one or more of such items be approved by two-thirds of the members elected to each house, the same shall be part of the law, notwithstanding the objections of the governor. All the provisions of this section, in relation to bills not approved by the governor, shall apply in cases in which he or she shall withhold approval from any item or items contained in a bill appropriating money. (Formerly §9. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 6, 2001.)

[Departmental rules and regulations; filing; publication]
§8. No rule or regulation made by any state department, board, bureau, officer, authority or commission, except such as relates to the organization or internal management of a state department, board, bureau, authority or commission shall be effective until it is filed in the office of the department of state. The legislature shall provide for the speedy publication of such rules and regulations, by appropriate laws. (New. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

ARTICLE V
OFFICERS AND CIVIL DEPARTMENTS

[Comptroller and attorney-general; payment of state moneys without audit void]
Section 1. The comptroller and attorney-general shall be chosen at the same general election as the governor and hold office for the same term, and shall possess the qualifications provided in section 2 of article IV. The legislature shall provide for filling vacancies in the office of comptroller and of attorney-general. No election of a comptroller or an attorney-general shall be had except at the time of electing a governor. The comptroller shall be required: (1) To audit all vouchers before payment and all official accounts; (2) to audit the accrual and collection of all revenues and receipts; and (3) to prescribe such methods of accounting as are necessary for the performance of the foregoing duties. The payment of any money of the state, or of any money under its control, or the refund of any money paid to the state, except upon audit by the comptroller, shall be void, and may be restrained upon the suit of any taxpayer with the consent of the supreme court in appellate division on notice to the attorney-general. In such respect the legislature shall define the powers and duties and may also assign to him or her: (1) supervision of the accounts of any political subdivision of the state; and (2) powers and duties pertaining to or connected with the assessment and taxation of real estate, including determination of ratios which the assessed valuation of taxable real property bears to the full valuation thereof, but not including any of those powers and duties reserved to officers of a county, city, town or village by virtue of sections seven and eight of article nine of this constitution. The legislature shall assign to him or her no administrative duties, excepting such as may be incidental to the performance of these functions, any other provision of this constitution to the contrary notwithstanding. (Amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 3, 1953; November 8, 1955; November 6, 2001.)

[Civil departments in the state government]
§2. There shall be not more than twenty civil departments in the state government, including those referred to in this constitution. The legislature may by law change the names of the departments referred to in this constitution. (Amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 2, 1943; November 3, 1959; November 7, 1961.)

[Assignment of functions]
§3. Subject to the limitations contained in this constitution, the legislature may from time to time assign by law new powers and functions to departments, officers, boards, commissions or executive offices of the governor, and increase, modify or diminish their powers and functions. Nothing contained in this article shall prevent the legislature from creating temporary commissions for special purposes or executive offices of the governor and from reducing the number of departments as provided for in this article, by consolidation or otherwise. (Amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 7, 1961.)

[Department heads]
§4. The head of the department of audit and control shall be the comptroller and of the department of law, the attorney-general. The head of the department of education shall be The Regents of the University of the State of New York, who shall appoint and at pleasure remove a commissioner of education to be the chief administrative officer of the department. The head of the department of agriculture and markets shall be appointed in a manner to be prescribed by law. Except as otherwise provided in this constitution, the heads of all other departments and the members of all boards and commissions, excepting temporary commissions for special purposes, shall be appointed by the governor by and with the advice and consent of the senate and may be removed by the governor, in a manner to be prescribed by law. (Amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 7, 1961.)

[Section 5, which abolished certain offices, was repealed by amendment approved by vote of the people November 6, 1962.]

[Civil service appointments and promotions; veterans' credits]
§6. Appointments and promotions in the civil service of the state and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive; provided, however, that any member of the armed forces of the United States who served therein in time of war, and who, at the time of such member's appointment or promotion, is a citizen or an alien lawfully admitted for permanent residence in the United States and a resident of this state and is honorably discharged or released under honorable circumstances from such service, shall be entitled to receive five points additional credit in a competitive examination for original appointment and two and one-half points additional credit in an examination for promotion or, if such member was disabled in the actual performance of duty in any war and his or her disability is certified by the United States department of veterans affairs to be in existence at the time of application for appointment or promotion, he or she shall be entitled to receive

ten points additional credit in a competitive examination for original appointment and five points additional credit in an examination for promotion. Such additional credit shall be added to the final earned rating of such member after he or she has qualified in an examination and shall be granted only at the time of establishment of an eligible list. No such member shall receive the additional credit granted by this section after he or she has received one appointment, either original entrance or promotion, from an eligible list on which he or she was allowed the additional credit granted by this section, except where a member has been appointed or promoted from an eligible list on which he or she was allowed additional credit for military service and subsequent to such appointment he or she is disabled as provided in this section, such member shall be entitled to ten points additional credit less the number of points of additional credit allowed for the prior appointment. (Formerly §6. Repealed and new section approved by vote of the people November 8, 1949; further amended by vote of the people November 3, 1964; November 3, 1987; November 4, 1997; November 6, 2001; November 4, 2008; November 5, 2013.)

[Membership in retirement systems; benefits not to be diminished nor impaired]

§7. (a) After July first, nineteen hundred forty, membership in any pension or retirement system of the state or of a civil division thereof shall be a contractual relationship, the benefits of which shall not be diminished or impaired.

(b) Notwithstanding subdivision (a) of this section, the public pension of a public officer, as defined in paragraph (c) of this section, who stands convicted of a felony for which such felony has a direct and actual relationship to the performance of the public officer's existing duties, may be reduced or revoked, following notice and a hearing by an appropriate court, as provided by law. The court determination whether to reduce or revoke such pension shall be based on the consideration of factors including the severity of the crime and the proportionality of a reduction or revocation of such pension to such crime. When a court issues an order to reduce or revoke such pension, the court shall consider and determine specific findings as to the amount of such forfeiture, if any, and whether forfeiture, in whole or in part, would result in undue hardship or other inequity upon any dependent children, spouse or other dependents; and other factors as provided by law. The legislature shall enact legislation to implement this amendment taking into account interests of justice.

(c) For the purposes of paragraph (b) of this section, the term "public officer" shall mean: (i) an official filling an elected office within the state; (ii) a holder of office filled by direct appointment by the governor of this state, either upon or without senate confirmation; (iii) a county, city, town or village administrator, manager or equivalent position; (iv) the head or heads of any state or local government department, division, board, commission, bureau, public benefit corporation, or public authority of this state who are vested with authority, direction and control over such department, division, board, commission, bureau, public benefit corporation or public authority; (v) the chief fiscal officer or treasurer of any municipal corporation or political subdivision of the state; (vi) a judge or justice of the unified court system; and (vii) a legislative, executive, or judicial employee of this state who directly assists in the formulation of legislation, rules, regulations, policy, or judicial decision-making and who is designated as a policymaker as set forth in statute.

(d) Paragraph (b) of this section shall only apply to crimes committed on or after the first of January next succeeding the date upon which the people shall approve and ratify the amendment to the constitution that added this paragraph. (New. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 6, 2001; subdivision b, c and d added by vote of the people November 7, 2017.)

ARTICLE VI[7]

JUDICIARY

[Unified court system; organization; process]

Section 1. a. There shall be a unified court system for the state. The statewide courts shall consist of the court of appeals, the supreme court including the appellate divisions thereof, the court of claims, the county court, the surrogate's court and the family court, as hereinafter provided. The legislature shall establish in and for the city of New York, as part of the unified court system for the state, a single, city-wide court of civil jurisdiction and a single, city-wide court of criminal jurisdiction, as hereinafter provided, and may upon the request of the mayor and the local legislative body of the city of New York, merge the two courts into one city-wide court of both civil and criminal jurisdiction. The unified court system for the state shall also include the district, town, city and village courts outside the city of New York, as hereinafter provided.

b. The court of appeals, the supreme court including the appellate divisions thereof, the court of claims, the county court, the surrogate's court, the family court, the courts or court of civil and criminal jurisdiction of the city of New York, and such other courts as the legislature may determine shall be courts of record.

c. All processes, warrants and other mandates of the court of appeals, the supreme court including the appellate divisions thereof, the court of claims, the county court, the surrogate's court and the family court may be served and executed in any part of the state. All processes, warrants and other mandates of the courts or court of civil and criminal jurisdiction of the city of New York may, subject to such limitation as may be prescribed by the legislature, be served and executed in any part of the state. The legislature may provide that processes, warrants and other mandates of the district court may be served and executed in any part of the state and that processes, warrants and other mandates of town, village and city courts outside the city of New York may be served and executed in any part of the county in which such courts are located or in any part of any adjoining county.

[Court of appeals; organization; designations; vacancies, how filled; commission on judicial nomination]

§2. a. The court of appeals is continued. It shall consist of the chief judge and the six elected associate judges now in office, who shall hold their offices until the expiration of their respective terms, and their successors, and such justices of the supreme court as may be designated for service in said court as hereinafter provided. The official terms of the chief judge and the six associate judges shall be fourteen years.

Five members of the court shall constitute a quorum, and the concurrence of four shall be necessary to a decision; but no more than seven judges shall sit in any case. In case of the temporary absence or inability to act of any judge of the court of appeals, the court may designate any justice of the supreme court to serve as associate judge of the court during such absence or inability to act. The court shall have power to appoint and to remove its clerk. The powers and jurisdiction of the court shall not be suspended for want of appointment when the number of judges is sufficient to constitute a quorum.

b. Whenever and as often as the court of appeals shall certify to the governor that the court is unable, by reason of the accumulation of causes pending therein, to hear and dispose of the same with reasonable speed, the governor shall designate such number of justices of the supreme court as may be so certified to be necessary, but not more than four, to serve as associate judges of the court of appeals. The justices so designated shall be relieved, while so serving, from their duties as justices of the supreme court, and shall serve as associate judges of the court of appeals until the court shall certify that the need for the services of any such justices no longer exists, whereupon they shall return to the supreme court. The governor may fill vacancies among such designated judges. No such justices shall serve as associate judge of the court of appeals except while holding the office of justice of the supreme court. The designation of a justice of the supreme court as an associate judge of the court

[7] New article, adopted by vote of the people November 7, 1961; repealed and replaced former article adopted November 3, 1925, as amended.

of appeals shall not be deemed to affect his or her existing office any longer than until the expiration of his or her designation as such associate judge, nor to create a vacancy.

c. There shall be a commission on judicial nomination to evaluate the qualifications of candidates for appointment to the court of appeals and to prepare a written report and recommend to the governor those persons who by their character, temperament, professional aptitude and experience are well qualified to hold such judicial office. The legislature shall provide by law for the organization and procedure of the judicial nominating commission.

d. (l) The commission on judicial nomination shall consist of twelve members of whom four shall be appointed by the governor, four by the chief judge of the court of appeals, and one each by the speaker of the assembly, the temporary president of the senate, the minority leader of the senate, and the minority leader of the assembly. Of the four members appointed by the governor, no more than two shall be enrolled in the same political party, two shall be members of the bar of the state, and two shall not be members of the bar of the state. Of the four members appointed by the chief judge of the court of appeals, no more than two shall be enrolled in the same political party, two shall be members of the bar of the state, and two shall not be members of the bar of the state. No member of the commission shall hold or have held any judicial office or hold any elected public office for which he or she receives compensation during his or her period of service, except that the governor and the chief judge may each appoint no more than one former judge or justice of the unified court system to such commission. No member of the commission shall hold any office in any political party. No member of the judicial nominating commission shall be eligible for appointment to judicial office in any court of the state during the member's period of service or within one year thereafter.

(2) The members first appointed by the governor shall have respectively one, two, three and four year terms as the governor shall designate. The members first appointed by the chief judge of the court of appeals shall have respectively one, two, three and four year terms as the chief judge shall designate. The member first appointed by the temporary president of the senate shall have a one-year term. The member first appointed by the minority leader of the senate shall have a two-year term. The member first appointed by the speaker of the assembly shall have a four-year term. The member first appointed by the minority leader of the assembly shall have a three-year term. Each subsequent appointment shall be for a term of four years.

(3) The commission shall designate one of their number to serve as chairperson.

(4) The commission shall consider the qualifications of candidates for appointment to the offices of judge and chief judge of the court of appeals and, whenever a vacancy in those offices occurs, shall prepare a written report and recommend to the governor persons who are well qualified for those judicial offices.

e. The governor shall appoint, with the advice and consent of the senate, from among those recommended by the judicial nominating commission, a person to fill the office of chief judge or associate judge, as the case may be, whenever a vacancy occurs in the court of appeals; provided, however, that no person may be appointed a judge of the court of appeals unless such person is a resident of the state and has been admitted to the practice of law in this state for at least ten years. The governor shall transmit to the senate the written report of the commission on judicial nomination relating to the nominee.

f. When a vacancy occurs in the office of chief judge or associate judge of the court of appeals and the senate is not in session to give its advice and consent to an appointment to fill the vacancy, the governor shall fill the vacancy by interim appointment upon the recommendation of a commission on judicial nomination as provided in this section. An interim appointment shall continue until the senate shall pass upon the governor's selection. If the senate confirms an appointment, the judge shall serve a term as provided in subdivision a of this section commencing from the date of his or her interim appointment. If the senate rejects an appointment, a vacancy in the office shall occur sixty days after such rejection. If an interim appointment to the court of appeals be made from among the justices of the supreme court or the appellate divisions thereof, that appointment shall not affect the justice's existing office, nor create a vacancy in the supreme court, or the appellate division thereof, unless such appointment is confirmed by the senate and the appointee shall assume such office. If an interim appointment of chief judge of the court of appeals be made from among the associate judges, an interim appointment of associate judge shall be made in like manner; in such case, the appointment as chief judge shall not affect the existing office of associate judge, unless such appointment as chief judge is confirmed by the senate and the appointee shall assume such office.

g. The provisions of subdivisions c, d, e and f of this section shall not apply to temporary designations or assignments of judges or justices. (Subdivision a amended, subdivision c repealed and new subdivisions c through g added by vote of the people November 8, 1977; further amended by vote of the people November 6, 2001.)

[Court of appeals; jurisdiction]

§3. a. The jurisdiction of the court of appeals shall be limited to the review of questions of law except where the judgment is of death, or where the appellate division, on reversing or modifying a final or interlocutory judgment in an action or a final or interlocutory order in a special proceeding, finds new facts and a final judgment or a final order pursuant thereto is entered; but the right to appeal shall not depend upon the amount involved.

b. Appeals to the court of appeals may be taken in the classes of cases hereafter enumerated in this section;

In criminal cases, directly from a court of original jurisdiction where the judgment is of death, and in other criminal cases from an appellate division or otherwise as the legislature may from time to time provide.

In civil cases and proceedings as follows:

(1) As of right, from a judgment or order entered upon the decision of an appellate division of the supreme court which finally determines an action or special proceeding wherein is directly involved the construction of the constitution of the state or of the United States, or where one or more of the justices of the appellate division dissents from the decision of the court, or where the judgment or order is one of reversal or modification.

(2) As of right, from a judgment or order of a court of record of original jurisdiction which finally determines an action or special proceeding where the only question involved on the appeal is the validity of a statutory provision of the state or of the United States under the constitution of the state or of the United States; and on any such appeal only the constitutional question shall be considered and determined by the court.

(3) As of right, from an order of the appellate division granting a new trial in an action or a new hearing in a special proceeding where the appellant stipulates that, upon affirmance, judgment absolute or final order shall be rendered against him or her.

(4) From a determination of the appellate division of the supreme court in any department, other than a judgment or order which finally determines an action or special proceeding, where the appellate division allows the same and certifies that one or more questions of law have arisen which, in its opinion, ought to be reviewed by the court of appeals, but in such case the appeal shall bring up for review only the question or questions so certified; and the court of appeals shall certify to the appellate division its determination upon such question or questions.

(5) From an order of the appellate division of the supreme court in any department, in a proceeding instituted by or against one or more public officers or a board, commission or other body of public officers or a court or tribunal, other than an order which finally determines such proceeding, where the court of appeals shall allow the same upon the ground that, in its opinion, a question of law is involved which ought to be reviewed by it, and without regard to the availability of appeal by stipulation for final order absolute.

(6) From a judgment or order entered upon the decision of an appellate division of the supreme court which finally determines an action or special proceeding but which is not appealable under paragraph (1) of this subdivision where the appellate division or the court of appeals shall certify that in its opinion a question of law is involved which ought to be reviewed by the court of appeals. Such an appeal may be allowed upon application (a) to the appellate division, and in case of refusal, to the court of appeals, or (b) directly to the court of appeals. Such an appeal shall be allowed when required in the interest of substantial justice.

(7) No appeal shall be taken to the court of appeals from a judgment or order entered upon the decision of an appellate division of the supreme court in any civil case or proceeding where the appeal to the appellate division was from a judgment or order entered in an appeal from another court, including an

appellate or special term of the supreme court, unless the construction of the constitution of the state or of the United States is directly involved therein, or unless the appellate division of the supreme court shall certify that in its opinion a question of law is involved which ought to be reviewed by the court of appeals.

(8) The legislature may abolish an appeal to the court of appeals as of right in any or all of the cases or classes of cases specified in paragraph (1) of this subdivision wherein no question involving the construction of the constitution of the state or of the United States is directly involved, provided, however, that appeals in any such case or class of cases shall thereupon be governed by paragraph (6) of this subdivision.

(9) The court of appeals shall adopt and from time to time may amend a rule to permit the court to answer questions of New York law certified to it by the Supreme Court of the United States, a court of appeals of the United States or an appellate court of last resort of another state, which may be determinative of the cause then pending in the certifying court and which in the opinion of the certifying court are not controlled by precedent in the decisions of the courts of New York. (Paragraph (9) added by vote of the people November 5, 1985; further amended by vote of the people November 6, 2001.)

[Judicial departments; appellate divisions, how constituted; governor to designate justices; temporary assignments; jurisdiction]

§4. a. The state shall be divided into four judicial departments. The first department shall consist of the counties within the first judicial district of the state. The second department shall consist of the counties within the second, ninth, tenth and eleventh judicial districts of the state. The third department shall consist of the counties within the third, fourth and sixth judicial districts of the state. The fourth department shall consist of the counties within the fifth, seventh and eighth judicial districts of the state. Each department shall be bounded by the lines of judicial districts. Once every ten years the legislature may alter the boundaries of the judicial departments, but without changing the number thereof.

b. The appellate divisions of the supreme court are continued, and shall consist of seven justices of the supreme court in each of the first and second departments, and five justices in each of the other departments. In each appellate division, four justices shall constitute a quorum, and the concurrence of three shall be necessary to a decision. No more than five justices shall sit in any case.

c. The governor shall designate the presiding justice of each appellate division, who shall act as such during his or her term of office and shall be a resident of the department. The other justices of the appellate divisions shall be designated by the governor, from all the justices elected to the supreme court, for terms of five years or the unexpired portions of their respective terms of office, if less than five years.

d. The justices heretofore designated shall continue to sit in the appellate divisions until the terms of their respective designations shall expire. From time to time as the terms of the designations expire, or vacancies occur, the governor shall make new designations. The governor may also, on request of any appellate division, make temporary designations in case of the absence or inability to act of any justice in such appellate division, for service only during such absence or inability to act.

e. In case any appellate division shall certify to the governor that one or more additional justices are needed for the speedy disposition of the business before it, the governor may designate an additional justice or additional justices; but when the need for such additional justice or justices shall no longer exist, the appellate division shall so certify to the governor, and thereupon service under such designation or designations shall cease.

f. A majority of the justices designated to sit in any appellate division shall at all times be residents of the department.

g. Whenever the appellate division in any department shall be unable to dispose of its business within a reasonable time, a majority of the presiding justices of the several departments, at a meeting called by the presiding justice of the department in arrears, may transfer any pending appeals from such department to any other department for hearing and determination.

h. A justice of the appellate division of the supreme court in any department may be temporarily designated by the presiding justice of his or her department to the appellate division in another judicial department upon agreement by the presiding justices of the appellate division of the departments concerned.

i. In the event that the disqualification, absence or inability to act of justices in any appellate division prevents there being a quorum of justices qualified to hear an appeal, the justices qualified to hear the appeal may transfer it to the appellate division in another department for hearing and determination. In the event that the justices in any appellate division qualified to hear an appeal are equally divided, said justices may transfer the appeal to the appellate division in another department for hearing and determination. Each appellate division shall have power to appoint and remove its clerk.

j. No justice of the appellate division shall, within the department to which he or she may be designated to perform the duties of an appellate justice, exercise any of the powers of a justice of the supreme court, other than those of a justice out of court, and those pertaining to the appellate division, except that the justice may decide causes or proceedings theretofore submitted, or hear and decide motions submitted by consent of counsel, but any such justice, when not actually engaged in performing the duties of such appellate justice in the department to which he or she is designated, may hold any term of the supreme court and exercise any of the powers of a justice of the supreme court in any judicial district in any other department of the state.

k. The appellate divisions of the supreme court shall have all the jurisdiction possessed by them on the effective date of this article and such additional jurisdiction as may be prescribed by law, provided, however, that the right to appeal to the appellate divisions from a judgment or order which does not finally determine an action or special proceeding may be limited or conditioned by law. (Subdivision e amended by vote of the people November 8, 1977; further amended by vote of the people November 6, 2001.)

[Appeals from judgment or order; new trial]

§5. a. Upon an appeal from a judgment or an order, any appellate court to which the appeal is taken which is authorized to review such judgment or order may reverse or affirm, wholly or in part, or may modify the judgment or order appealed from, and each interlocutory judgment or intermediate or other order which it is authorized to review, and as to any or all of the parties. It shall thereupon render judgment of affirmance, judgment of reversal and final judgment upon the right of any or all of the parties, or judgment of modification thereon according to law, except where it may be necessary or proper to grant a new trial or hearing, when it may grant a new trial or hearing.

b. If any appeal is taken to an appellate court which is not authorized to review such judgment or order, the court shall transfer the appeal to an appellate court which is authorized to review such judgment or order.

[Judicial districts; how constituted; supreme court][8]

§6. a. The state shall be divided into eleven judicial districts. The first judicial district shall consist of the counties of Bronx and New York. The second judicial district shall consist of the counties of Kings and Richmond. The third judicial district shall consist of the counties of Albany, Columbia, Greene, Rensselaer, Schoharie, Sullivan, and Ulster. The fourth judicial district shall consist of the counties of Clinton, Essex, Franklin, Fulton, Hamilton, Montgomery, St. Lawrence, Saratoga, Schenectady, Warren and Washington. The fifth judicial district shall consist of the counties of Herkimer, Jefferson, Lewis, Oneida, Onondaga, and Oswego. The sixth judicial district shall consist of the counties of Broome, Chemung, Chenango, Cortland, Delaware, Madison, Otsego, Schuyler, Tioga and Tompkins. The seventh judicial district shall consist of the counties of Cayuga, Livingston, Monroe, Ontario, Seneca, Steuben, Wayne and Yates. The eighth judicial district shall consist of the counties of Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans and Wyoming. The ninth judicial district shall consist of the counties of Dutchess, Orange, Putnam, Rockland and Westchester. The tenth judicial district shall consist of the counties of Nassau and Suffolk. The

[8] Judiciary Law §140 currently sets forth 13 judicial districts.

eleventh judicial district shall consist of the county of Queens.

b. Once every ten years the legislature may increase or decrease the number of judicial districts or alter the composition of judicial districts and thereupon re-apportion the justices to be thereafter elected in the judicial districts so altered. Each judicial district shall be bounded by county lines.

c. The justices of the supreme court shall be chosen by the electors of the judicial district in which they are to serve. The terms of justices of the supreme court shall be fourteen years from and including the first day of January next after their election.

d. The supreme court is continued. It shall consist of the number of justices of the supreme court including the justices designated to the appellate divisions of the supreme court, judges of the county court of the counties of Bronx, Kings, Queens and Richmond and judges of the court of general sessions of the county of New York authorized by law on the thirty-first day of August next after the approval and ratification of this amendment by the people, all of whom shall be justices of the supreme court for the remainder of their terms. The legislature may increase the number of justices of the supreme court in any judicial district, except that the number in any district shall not be increased to exceed one justice for fifty thousand, or fraction over thirty thousand, of the population thereof as shown by the last federal census or state enumeration. The legislature may decrease the number of justices of the supreme court in any judicial district, except that the number in any district shall not be less than the number of justices of the supreme court authorized by law on the effective date of this article.

e. The clerks of the several counties shall be clerks of the supreme court, with such powers and duties as shall be prescribed by law.

[Supreme court; jurisdiction]

§7. a. The supreme court shall have general original jurisdiction in law and equity and the appellate jurisdiction herein provided. In the city of New York, it shall have exclusive jurisdiction over crimes prosecuted by indictment, provided, however, that the legislature may grant to the city-wide court of criminal jurisdiction of the city of New York jurisdiction over misdemeanors prosecuted by indictment and to the family court in the city of New York jurisdiction over crimes and offenses by or against minors or between spouses or between parent and child or between members of the same family or household.

b. If the legislature shall create new classes of actions and proceedings, the supreme court shall have jurisdiction over such classes of actions and proceedings, but the legislature may provide that another court or other courts shall also have jurisdiction and that actions and proceedings of such classes may be originated in such other court or courts. (Subdivision b repealed and subdivision c relettered b by vote of the people November 8, 1977.)

[Appellate terms; composition; jurisdiction]

§8. a. The appellate division of the supreme court in each judicial department may establish an appellate term in and for such department or in and for a judicial district or districts or in and for a county or counties within such department. Such an appellate term shall be composed of not less than three nor more than five justices of the supreme court who shall be designated from time to time by the chief administrator of the courts with the approval of the presiding justice of the appropriate appellate division, and who shall be residents of the department or of the judicial district or districts as the case may be and the chief administrator of the courts shall designate the place or places where such appellate terms shall be held.

b. Any such appellate term may be discontinued and re-established as the appellate division of the supreme court in each department shall determine from time to time and any designation to service therein may be revoked by the chief administrator of the courts with the approval of the presiding justice of the appropriate appellate division.

c. In each appellate term no more than three justices assigned thereto shall sit in any action or proceeding. Two of such justices shall constitute a quorum and the concurrence of two shall be necessary to a decision.

d. If so directed by the appellate division of the supreme court establishing an appellate term, an appellate term shall have jurisdiction to hear and determine appeals now or hereafter authorized by law to be taken to the supreme court or to the appellate division other than appeals from the supreme court, a surrogate's court, the family court or appeals in criminal cases prosecuted by indictment or by information as provided in section six of article one.

e. As may be provided by law, an appellate term shall have jurisdiction to hear and determine appeals from the district court or a town, village or city court outside the city of New York. (Subdivisions a, b and d amended by vote of the people November 8, 1977.)

[Court of claims; jurisdiction]

§9. The court of claims is continued. It shall consist of the eight judges now authorized by law, but the legislature may increase such number and may reduce such number to six or seven. The judges shall be appointed by the governor by and with the advice and consent of the senate and their terms of office shall be nine years. The court shall have jurisdiction to hear and determine claims against the state or by the state against the claimant or between conflicting claimants as the legislature may provide.

[County courts; judges]

§10. a. The county court is continued in each county outside the city of New York. There shall be at least one judge of the county court in each county and such number of additional judges in each county as may be provided by law. The judges shall be residents of the county and shall be chosen by the electors of the county.

b. The terms of the judges of the county court shall be ten years from and including the first day of January next after their election.

[County court; jurisdiction]

§11. a. The county court shall have jurisdiction over the following classes of actions and proceedings which shall be originated in such county court in the manner provided by law, except that actions and proceedings within the jurisdiction of the district court or a town, village or city court outside the city of New York may, as provided by law, be originated therein: actions and proceedings for the recovery of money, actions and proceedings for the recovery of chattels and actions and proceedings for the foreclosure of mechanics liens and liens on personal property where the amount sought to be recovered or the value of the property does not exceed twenty-five thousand dollars exclusive of interest and costs; over all crimes and other violations of law; over summary proceedings to recover possession of real property and to remove tenants therefrom; and over such other actions and proceedings, not within the exclusive jurisdiction of the supreme court, as may be provided by law.

b. The county court shall exercise such equity jurisdiction as may be provided by law and its jurisdiction to enter judgment upon a counterclaim for the recovery of money only shall be unlimited.

c. The county court shall have jurisdiction to hear and determine all appeals arising in the county in the following actions and proceedings: as of right, from a judgment or order of the district court or a town, village or city court which finally determines an action or proceeding and, as may be provided by law, from a judgment or order of any such court which does not finally determine an action or proceeding. The legislature may provide, in accordance with the provisions of section eight of this article, that any or all of such appeals be taken to an appellate term of the supreme court instead of the county court.

d. The provisions of this section shall in no way limit or impair the jurisdiction of the supreme court as set forth in section seven of this article. (Subdivision b repealed and subdivisions c, d and e relettered b, c and d by vote of the people November 8, 1977; subdivision a amended by vote of the people November 8, 1983.)

[Surrogate's courts; judges; jurisdiction]

§12. a. The surrogate's court is continued in each county in the state. There shall be at least one judge of the surrogate's court in each county and such number of additional judges of the surrogate's court as may be provided by law.

b. The judges of the surrogate's court shall be residents of the county and shall be chosen by the electors of the county.

c. The terms of the judges of the surrogate's court in the city of New York shall be fourteen years, and in other counties ten years, from and including the

first day of January next after their election.

d. The surrogate's court shall have jurisdiction over all actions and proceedings relating to the affairs of decedents, probate of wills, administration of estates and actions and proceedings arising thereunder or pertaining thereto, guardianship of the property of minors, and such other actions and proceedings, not within the exclusive jurisdiction of the supreme court, as may be provided by law.

e. The surrogate's court shall exercise such equity jurisdiction as may be provided by law.

f. The provisions of this section shall in no way limit or impair the jurisdiction of the supreme court as set forth in section seven of this article.

[Family court; organization; jurisdiction]

§13. a. The family court of the state of New York is hereby established. It shall consist of at least one judge in each county outside the city of New York and such number of additional judges for such counties as may be provided by law. Within the city of New York it shall consist of such number of judges as may be provided by law. The judges of the family court within the city of New York shall be residents of such city and shall be appointed by the mayor of the city of New York for terms of ten years. The judges of the family court outside the city of New York, shall be chosen by the electors of the counties wherein they reside for terms of ten years.

b. The family court shall have jurisdiction over the following classes of actions and proceedings which shall be originated in such family court in the manner provided by law: (1) the protection, treatment, correction and commitment of those minors who are in need of the exercise of the authority of the court because of circumstances of neglect, delinquency or dependency, as the legislature may determine; (2) the custody of minors except for custody incidental to actions and proceedings for marital separation, divorce, annulment of marriage and dissolution of marriage; (3) the adoption of persons; (4) the support of dependents except for support incidental to actions and proceedings in this state for marital separation, divorce, annulment of marriage or dissolution of marriage; (5) the establishment of paternity; (6) proceedings for conciliation of spouses; and (7) as may be provided by law: the guardianship of the person of minors and, in conformity with the provisions of section seven of this article, crimes and offenses by or against minors or between spouses or between parent and child or between members of the same family or household. Nothing in this section shall be construed to abridge the authority or jurisdiction of courts to appoint guardians in cases originating in those courts.

c. The family court shall also have jurisdiction to determine, with the same powers possessed by the supreme court, the following matters when referred to the family court from the supreme court: habeas corpus proceedings for the determination of the custody of minors; and in actions and proceedings for marital separation, divorce, annulment of marriage and dissolution of marriage, applications to fix temporary or permanent support and custody, or applications to enforce judgments and orders of support and of custody, or applications to modify judgments and orders of support and of custody which may be granted only upon the showing to the family court that there has been a subsequent change of circumstances and that modification is required.

d. The provisions of this section shall in no way limit or impair the jurisdiction of the supreme court as set forth in section seven of this article. (Amended by vote of the people November 6, 1973.)

[Discharge of duties of more than one judicial office by same judicial officer]

§14. The legislature may at any time provide that outside the city of New York the same person may act and discharge the duties of county judge and surrogate or of judge of the family court and surrogate, or of county judge and judge of the family court, or of all three positions in any county.

[New York city; city-wide courts; jurisdiction]

§15. a. The legislature shall by law establish a single court of city-wide civil jurisdiction and a single court of city-wide criminal jurisdiction in and for the city of New York and the legislature may, upon the request of the mayor and the local legislative body of the city of New York, merge the two courts into one city-wide court of both civil and criminal jurisdiction. The said city-wide courts shall consist of such number of judges as may be provided by law. The judges of the court of city-wide civil jurisdiction shall be residents of such city and shall be chosen for terms of ten years by the electors of the counties included within the city of New York from districts within such counties established by law. The judges of the court of city-wide criminal jurisdiction shall be residents of such city and shall be appointed for terms of ten years by the mayor of the city of New York.

b. The court of city-wide civil jurisdiction of the city of New York shall have jurisdiction over the following classes of actions and proceedings which shall be originated in such court in the manner provided by law: actions and proceedings for the recovery of money, actions and proceedings for the recovery of chattels and actions and proceedings for the foreclosure of mechanics liens and liens on personal property where the amount sought to be recovered or the value of the property does not exceed twenty-five thousand dollars exclusive of interest and costs, or such smaller amount as may be fixed by law; over summary proceedings to recover possession of real property and to remove tenants therefrom and over such other actions and proceedings, not within the exclusive jurisdiction of the supreme court, as may be provided by law. The court of city-wide civil jurisdiction shall further exercise such equity jurisdiction as may be provided by law and its jurisdiction to enter judgment upon a counterclaim for the recovery of money only shall be unlimited.

c. The court of city-wide criminal jurisdiction of the city of New York shall have jurisdiction over crimes and other violations of law, other than those prosecuted by indictment, provided, however, that the legislature may grant to said court jurisdiction over misdemeanors prosecuted by indictment; and over such other actions and proceedings, not within the exclusive jurisdiction of the supreme court, as may be provided by law.

d. The provisions of this section shall in no way limit or impair the jurisdiction of the supreme court as set forth in section seven of this article. (Subdivision b amended by vote of the people November 8, 1983; further amended by vote of the people November 7, 1995.)

[District courts; jurisdiction; judges]

§16. a. The district court of Nassau county may be continued under existing law and the legislature may, at the request of the board of supervisors or other elective governing body of any county outside the city of New York, establish the district court for the entire area of such county or for a portion of such county consisting of one or more cities, or one or more towns which are contiguous, or of a combination of such cities and such towns provided at least one of such cities is contiguous to one of such towns.

b. No law establishing the district court for an entire county shall become effective unless approved at a general election on the question of the approval of such law by a majority of the votes cast thereon by the electors within the area of any cities in the county considered as one unit and by a majority of the votes cast thereon by the electors within the area outside of cities in the county considered as one unit.

c. No law establishing the district court for a portion of a county shall become effective unless approved at a general election on the question of the approval of such law by a majority of the votes cast thereon by the electors within the area of any cities included in such portion of the county considered as one unit and by a majority of the votes cast thereon by the electors within the area outside of cities included in such portion of the county considered as one unit.

d. The district court shall have such jurisdiction as may be provided by law, but not in any respect greater than the jurisdiction of the courts for the city of New York as provided in section fifteen of this article, provided, however, that in actions and proceedings for the recovery of money, actions and proceedings for the recovery of chattels and actions and proceedings for the foreclosure of mechanics liens and liens on personal property, the amount sought to be recovered or the value of the property shall not exceed fifteen thousand dollars exclusive of interest and costs.

e. The legislature may create districts of the district court which shall consist of an entire county or of an area less than a county.

f. There shall be at least one judge of the district court for each district and such number of additional judges in each district as may be provided by law.

g. The judges of the district court shall be apportioned among the districts as may be provided by law, and to the extent practicable, in accordance with the population and the volume of judicial business.

h. The judges shall be residents of the district and shall be chosen by the electors of the district. Their terms shall be six years from and including the first day of January next after their election.

i. The legislature may regulate and discontinue the district court in any county or portion thereof. (Subdivision d amended by vote of the people November 8, 1983.)

[Town, village and city courts; jurisdiction; judges]

§17. a. Courts for towns, villages and cities outside the city of New York are continued and shall have the jurisdiction prescribed by the legislature but not in any respect greater than the jurisdiction of the district court as provided in section sixteen of this article.

b. The legislature may regulate such courts, establish uniform jurisdiction, practice and procedure for city courts outside the city of New York and may discontinue any village or city court outside the city of New York existing on the effective date of this article. The legislature may discontinue any town court existing on the effective date of this article only with the approval of a majority of the total votes cast at a general election on the question of a proposed discontinuance of the court in each such town affected thereby.

c. The legislature may abolish the legislative functions on town boards of justices of the peace and provide that town councilmen be elected in their stead.

d. The number of the judges of each of such town, village and city courts and the classification and duties of the judges shall be prescribed by the legislature. The terms, method of selection and method of filling vacancies for the judges of such courts shall be prescribed by the legislature, provided, however, that the justices of town courts shall be chosen by the electors of the town for terms of four years from and including the first day of January next after their election.

[Trial by jury; trial without jury; claims against state]

§18. a. Trial by jury is guaranteed as provided in article one of this constitution. The legislature may provide that in any court of original jurisdiction a jury shall be composed of six or of twelve persons and may authorize any court which shall have jurisdiction over crimes and other violations of law, other than crimes prosecuted by indictment, to try such matters without a jury, provided, however, that crimes prosecuted by indictment shall be tried by a jury composed of twelve persons, unless a jury trial has been waived as provided in section two of article one of this constitution.

b. The legislature may provide for the manner of trial of actions and proceedings involving claims against the state.

[Transfer of actions and proceedings]

§19. a. The supreme court may transfer any action or proceeding, except one over which it shall have exclusive jurisdiction which does not depend upon the monetary amount sought, to any other court having jurisdiction of the subject matter within the judicial department provided that such other court has jurisdiction over the classes of persons named as parties. As may be provided by law, the supreme court may transfer to itself any action or proceeding originated or pending in another court within the judicial department other than the court of claims upon a finding that such a transfer will promote the administration of justice.

b. The county court shall transfer to the supreme court or surrogate's court or family court any action or proceeding which has not been transferred to it from the supreme court or surrogate's court or family court and over which the county court has no jurisdiction. The county court may transfer any action or proceeding, except a criminal action or proceeding involving a felony prosecuted by indictment or an action or proceeding required by this article to be dealt with in the surrogate's court or family court, to any court, other than the supreme court, having jurisdiction of the subject matter within the county provided that such other court has jurisdiction over the classes of persons named as parties.

c. As may be provided by law, the supreme court or the county court may transfer to the county court any action or proceeding originated or pending in the district court or a town, village or city court outside the city of New York upon a finding that such a transfer will promote the administration of justice.

d. The surrogate's court shall transfer to the supreme court or the county court or the family court or the courts for the city of New York established pursuant to section fifteen of this article any action or proceeding which has not been transferred to it from any of said courts and over which the surrogate's court has no jurisdiction.

e. The family court shall transfer to the supreme court or the surrogate's court or the county court or the courts for the city of New York established pursuant to section fifteen of this article any action or proceeding which has not been transferred to it from any of said courts and over which the family court has no jurisdiction.

f. The courts for the city of New York established pursuant to section fifteen of this article shall transfer to the supreme court or the surrogate's court or the family court any action or proceeding which has not been transferred to them from any of said courts and over which the said courts for the city of New York have no jurisdiction.

g. As may be provided by law, the supreme court shall transfer any action or proceeding to any other court having jurisdiction of the subject matter in any other judicial district or county provided that such other court has jurisdiction over the classes of persons named as parties.

h. As may be provided by law, the county court, the surrogate's court, the family court and the courts for the city of New York established pursuant to section fifteen of this article may transfer any action or proceeding, other than one which has previously been transferred to it, to any other court, except the supreme court, having jurisdiction of the subject matter in any other judicial district or county provided that such other court has jurisdiction over the classes of persons named as parties.

i. As may be provided by law, the district court or a town, village or city court outside the city of New York may transfer any action or proceeding, other than one which has previously been transferred to it, to any court, other than the county court or the surrogate's court or the family court or the supreme court, having jurisdiction of the subject matter in the same or an adjoining county provided that such other court has jurisdiction over the classes of persons named as parties.

j. Each court shall exercise jurisdiction over any action or proceeding transferred to it pursuant to this section.

k. The legislature may provide that the verdict or judgment in actions and proceedings so transferred shall not be subject to the limitation of monetary jurisdiction of the court to which the actions and proceedings are transferred if that limitation be lower than that of the court in which the actions and proceedings were originated.

[Judges and justices; qualifications; eligibility for other office or service; restrictions]

§20. a. No person, other than one who holds such office at the effective date of this article, may assume the office of judge of the court of appeals, justice of the supreme court, or judge of the court of claims unless he or she has been admitted to practice law in this state at least ten years. No person, other than one who holds such office at the effective date of this article, may assume the office of judge of the county court, surrogate's court, family court, a court for the city of New York established pursuant to section fifteen of this article, district court or city court outside the city of New York unless he or she has been admitted to practice law in this state at least five years or such greater number of years as the legislature may determine.

b. A judge of the court of appeals, justice of the supreme court, judge of the court of claims, judge of a county court, judge of the surrogate's court, judge of the family court or judge of a court for the city of New York established pursuant to section fifteen of this article who is elected or appointed after the effective date of this article may not:

(1) hold any other public office or trust except an office in relation to the administration of the courts, member of a constitutional convention or member of the armed forces of the United States or of the state of New York in which latter event the legislature may enact such legislation as it deems appropriate to provide for a temporary judge or justice to serve during the

period of the absence of such judge or justice in the armed forces;

(2) be eligible to be a candidate for any public office other than judicial office or member of a constitutional convention, unless he or she resigns from judicial office; in the event a judge or justice does not so resign from judicial office within ten days after his or her acceptance of the nomination of such other office, his or her judicial office shall become vacant and the vacancy shall be filled in the manner provided in this article;

(3) hold any office or assume the duties or exercise the powers of any office of any political organization or be a member of any governing or executive agency thereof;

(4) engage in the practice of law, act as an arbitrator, referee or compensated mediator in any action or proceeding or matter or engage in the conduct of any other profession or business which interferes with the performance of his or her judicial duties.

Judges and justices of the courts specified in this subdivision shall also be subject to such rules of conduct as may be promulgated by the chief administrator of the courts with the approval of the court of appeals.

c. Qualifications for and restrictions upon the judges of district, town, village or city courts outside the city of New York, other than such qualifications and restrictions specifically set forth in subdivision a of this section, shall be prescribed by the legislature, provided, however, that the legislature shall require a course of training and education to be completed by justices of town and village courts selected after the effective date of this article who have not been admitted to practice law in this state. Judges of such courts shall also be subject to such rules of conduct not inconsistent with laws as may be promulgated by the chief administrator of the courts with the approval of the court of appeals. (Amended by vote of the people November 8, 1977; November 6, 2001.)

[Vacancies; how filled]

§21. a. When a vacancy shall occur, otherwise than by expiration of term, in the office of justice of the supreme court, of judge of the county court, of judge of the surrogate's court or judge of the family court outside the city of New York, it shall be filled for a full term at the next general election held not less than three months after such vacancy occurs and until the vacancy shall be so filled, the governor by and with the advice and consent of the senate, if the senate shall be in session, or, if the senate not be in session, the governor may fill such vacancy by an appointment which shall continue until and including the last day of December next after the election at which the vacancy shall be filled.

b. When a vacancy shall occur, otherwise than by expiration of term, in the office of judge of the court of claims, it shall be filled for the unexpired term in the same manner as an original appointment.

c. When a vacancy shall occur, otherwise than by expiration of term, in the office of judge elected to the city-wide court of civil jurisdiction of the city of New York, it shall be filled for a full term at the next general election held not less than three months after such vacancy occurs and, until the vacancy shall be so filled, the mayor of the city of New York may fill such vacancy by an appointment which shall continue until and including the last day of December next after the election at which the vacancy shall be filled. When a vacancy shall occur, otherwise than by expiration of term on the last day of December of any year, in the office of judge appointed to the family court within the city of New York or the city-wide court of criminal jurisdiction of the city of New York, the mayor of the city of New York shall fill such vacancy by an appointment for the unexpired term.

d. When a vacancy shall occur, otherwise than by expiration of term, in the office of judge of the district court, it shall be filled for a full term at the next general election held not less than three months after such vacancy occurs and, until the vacancy shall be so filled, the board of supervisors or the supervisor or supervisors of the affected district if such district consists of a portion of a county or, in counties with an elected county executive officer, such county executive officer may, subject to confirmation by the board of supervisors or the supervisor or supervisors of such district, fill such vacancy by an appointment which shall continue until and including the last day of December next after the election at which the vacancy shall be filled.

[Commission on judicial conduct; composition; organization and procedure; review by court of appeals; discipline of judges or justices]

§22. a. There shall be a commission on judicial conduct. The commission on judicial conduct shall receive, initiate, investigate and hear complaints with respect to the conduct, qualifications, fitness to perform or performance of official duties of any judge or justice of the unified court system, in the manner provided by law; and, in accordance with subdivision d of this section, may determine that a judge or justice be admonished, censured or removed from office for cause, including, but not limited to, misconduct in office, persistent failure to perform his or her duties, habitual intemperance, and conduct, on or off the bench, prejudicial to the administration of justice, or that a judge or justice be retired for mental or physical disability preventing the proper performance of his or her judicial duties. The commission shall transmit an[9] such determination to the chief judge of the court of appeals who shall cause written notice of such determination to be given to the judge or justice involved. Such judge or justice may either accept the commission's determination or make written request to the chief judge, within thirty days after receipt of such notice, for a review of such determination by the court of appeals.

b. (l) The commission on judicial conduct shall consist of eleven members, of whom four shall be appointed by the governor, one by the temporary president of the senate, one by the minority leader of the senate, one by the speaker of the assembly, one by the minority leader of the assembly and three by the chief judge of the court of appeals. Of the members appointed by the governor one person shall be a member of the bar of the state but not a judge or justice, two shall not be members of the bar, justices or judges or retired justices or judges of the unified court system, and one shall be a judge or justice of the unified court system. Of the members appointed by the chief judge one person shall be a justice of the appellate division of the supreme court and two shall be judges or justices of a court or courts other than the court of appeals or appellate divisions. None of the persons to be appointed by the legislative leaders shall be justices or judges or retired justices or judges.

(2) The persons first appointed by the governor shall have respectively one, two, three, and four-year terms as the governor shall designate. The persons first appointed by the chief judge of the court of appeals shall have respectively two, three, and four-year terms as the governor shall designate. The person first appointed by the temporary president of the senate shall have a one-year term. The person first appointed by the minority leader of the senate shall have a two-year term. The person first appointed by the speaker of the assembly shall have a four-year term. The person first appointed by the minority leader of the assembly shall have a three-year term. Each member of the commission shall be appointed thereafter for a term of four years. Commission membership of a judge or justice appointed by the governor or the chief judge shall terminate if such member ceases to hold the judicial position which qualified him or her for such appointment. Membership shall also terminate if a member attains a position which would have rendered him or her ineligible for appointment at the time of appointment. A vacancy shall be filled by the appointing officer for the remainder of the term.

c. The organization and procedure of the commission on judicial conduct shall be as provided by law. The commission on judicial conduct may establish its own rules and procedures not inconsistent with law. Unless the legislature shall provide otherwise, the commission shall be empowered to designate one of its members or any other person as a referee to hear and report concerning any matter before the commission.

d. In reviewing a determination of the commission on judicial conduct, the court of appeals may admonish, censure, remove or retire, for the reasons set forth in subdivision a of this section, any judge of the unified court system. In reviewing a determination of the commission on judicial conduct, the court of appeals shall review the commission's findings of fact and conclusions of law on the record of the proceedings upon which the commission's determination was based. The court of appeals may impose a less or more severe sanction prescribed by this section than the one determined by the commission, or impose no sanction.

[9] As so in original ("an should be "any").

e. The court of appeals may suspend a judge or justice from exercising the powers of his or her office while there is pending a determination by the commission on judicial conduct for his or her removal or retirement, or while the judge or justice is charged in this state with a felony by an indictment or an information filed pursuant to section six of article one. The suspension shall continue upon conviction and, if the conviction becomes final, the judge or justice shall be removed from office. The suspension shall be terminated upon reversal of the conviction and dismissal of the accusatory instrument. Nothing in this subdivision shall prevent the commission on judicial conduct from determining that a judge or justice be admonished, censured, removed, or retired pursuant to subdivision a of this section.

f. Upon the recommendation of the commission on judicial conduct or on its own motion, the court of appeals may suspend a judge or justice from office when he or she is charged with a crime punishable as a felony under the laws of this state, or any other crime which involves moral turpitude. The suspension shall continue upon conviction and, if the conviction becomes final, the judge or justice shall be removed from office. The suspension shall be terminated upon reversal of the conviction and dismissal of the accusatory instrument. Nothing in this subdivision shall prevent the commission on judicial conduct from determining that a judge or justice be admonished, censured, removed, or retired pursuant to subdivision a of this section.

g. A judge or justice who is suspended from office by the court of appeals shall receive his or her judicial salary during such period of suspension, unless the court directs otherwise. If the court has so directed and such suspension is thereafter terminated, the court may direct that the judge or justice shall be paid his or her salary for such period of suspension.

h. A judge or justice retired by the court of appeals shall be con- sidered to have retired voluntarily. A judge or justice removed by the court of appeals shall be ineligible to hold other judicial office.

i. Notwithstanding any other provision of this section, the legislature may provide by law for review of determinations of the commission on judicial conduct with respect to justices of town and village courts by an appellate division of the supreme court. In such event, all references in this section to the court of appeals and the chief judge thereof shall be deemed references to an appellate division and the presiding justice thereof, respectively.

j. If a court on the judiciary shall have been convened before the effective date of this section and the proceeding shall not be concluded by that date, the court on the judiciary shall have continuing jurisdiction beyond the effective date of this section to conclude the proceeding. All matters pending before the former commission on judicial conduct on the effective date of this section shall be disposed of in such manner as shall be provided by law. (Former §22 repealed and new §22 added by November 6, 2001.)

[Removal of judges]

§23. a. Judges of the court of appeals and justices of the supreme court may be removed by concurrent resolution of both houses of the legislature, if two-thirds of all the members elected to each house concur therein.

b. Judges of the court of claims, the county court, the surrogate's court, the family court, the courts for the city of New York established pursuant to section fifteen of this article, the district court and such other courts as the legislature may determine may be removed by the senate, on the recommendation of the governor, if two-thirds of all the members elected to the senate concur therein.

c. No judge or justice shall be removed by virtue of this section except for cause, which shall be entered on the journals, nor unless he or she shall have been served with a statement of the cause alleged, and shall have had an opportunity to be heard. On the question of removal, the yeas and nays shall be entered on the journal. (Amended by vote of the people November 6, 2001.)

[Court for trial of impeachments; judgment]

§24. The assembly shall have the power of impeachment by a vote of a majority of all the members elected thereto. The court for the trial of impeachments shall be composed of the president of the senate, the senators, or the major part of them, and the judges of the court of appeals, or the major part of them. On the trial of an impeachment against the governor or lieutenant-governor, neither the lieutenant-governor nor the temporary president of the senate shall act as a member of the court. No judicial officer shall exercise his or her office after articles of impeachment against him or her shall have been preferred to the senate, until he or she shall have been acquitted. Before the trial of an impeachment, the members of the court shall take an oath or affirmation truly and impartially to try the impeachment according to the evidence, 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, or removal from office and disqualification to hold and enjoy any public office of honor, trust, or profit under this state; but the party impeached shall be liable to indictment and punishment according to law. (Amended by vote of the people November 6, 2001.)

[Judges and justices; compensation; retirement]

§25. a. The compensation of a judge of the court of appeals, a justice of the supreme court, a judge of the court of claims, a judge of the county court, a judge of the surrogate's court, a judge of the family court, a judge of a court for the city of New York established pursuant to section fifteen of this article, a judge of the district court or of a retired judge or justice shall be established by law and shall not be diminished during the term of office for which he or she was elected or appointed. Any judge or justice of a court abolished by section thirty-five of this article, who pursuant to that section becomes a judge or justice of a court established or continued by this article, shall receive without interruption or diminution for the remainder of the term for which he or she was elected or appointed to the abolished court the compensation he or she had been receiving upon the effective date of this article together with any additional compensation that may be prescribed by law.

b. Each judge of the court of appeals, justice of the supreme court, judge of the court of claims, judge of the county court, judge of the surrogate's court, judge of the family court, judge of a court for the city of New York established pursuant to section fifteen of this article and judge of the district court shall retire on the last day of December in the year in which he or she reaches the age of seventy. Each such former thereafter perform the duties of a justice of the supreme court, with power to hear and determine actions and proceedings, provided, however, that it shall be certificated in the manner provided by law that the services of such judge or justice are necessary to expedite the business of the court and that he or she is mentally and physically able and competent to perform the full duties of such office. Any such certification shall be valid for a term of two years and may be extended as provided by law for additional terms of two years. A retired judge or justice shall serve no longer than until the last day of December in the year in which he or she reaches the age of seventy-six. A retired judge or justice shall be subject to assignment by the appellate division of the supreme court of the judicial department of his or her residence. Any retired justice of the supreme court who had been designated to and served as a justice of any appellate division immediately preceding his or her reaching the age of seventy shall be eligible for designation by the governor as a temporary or additional justice of the appellate division. A retired judge or justice shall not be counted in determining the number of justices in a judicial district for purposes of subdivision d of section six of this article.

c. The provisions of this section shall also be applicable to any judge or justice who has not reached the age of seventy-six and to whom it would otherwise have been applicable but for the fact that he or she reached the age of seventy and retired before the effective date of this article. (Subdivision b amended by vote of the people November 8, 1966; further amended by vote of the people November 6, 2001.)

[Temporary assignments of judges and justices]

§26. a. A justice of the supreme court may perform the duties of office or hold court in any county and may be temporarily assigned to the supreme court in any judicial district or to the court of claims. A justice of the supreme court in the city of New York may be temporarily assigned to the family court in the city of New York or to the surrogate's court in any county within the city of New York when required to dispose of the business of such court.

b. A judge of the court of claims may perform the duties of office or hold court in any county and may be temporarily assigned to the supreme court in any judicial district.

c. A judge of the county court may perform the duties of office or hold court in any county and may be temporarily assigned to the supreme court in

the judicial department of his or her residence or to the county court or the family court in any county or to the surrogate's court in any county outside the city of New York or to a court for the city of New York established pursuant to section fifteen of this article.

d. A judge of the surrogate's court in any county within the city of New York may perform the duties of office or hold court in any county and may be temporarily assigned to the supreme court in the judicial department of his or her residence.

e. A judge of the surrogate's court in any county outside the city of New York may perform the duties of office or hold court in any county and may be temporarily assigned to the supreme court in the judicial department of his or her residence or to the county court or the family court in any county or to a court for the city of New York established pursuant to section fifteen of this article.

f. A judge of the family court may perform the duties of office or hold court in any county and may be temporarily assigned to the supreme court in the judicial department of his or her residence or to the county court or the family court in any county or to the surrogate's court in any county outside of the city of New York or to a court for the city of New York established pursuant to section fifteen of this article.

g. A judge of a court for the city of New York established pursuant to section fifteen of this article may perform the duties of office or hold court in any county and may be temporarily assigned to the supreme court in the judicial department of his or her residence or to the county court or the family court in any county or to the other court for the city of New York established pursuant to section fifteen of this article.

h. A judge of the district court in any county may perform the duties of office or hold court in any county and may be temporarily assigned to the county court in the judicial department of his or her residence or to a court for the city of New York established pursuant to section fifteen of this article or to the district court in any county.

i. Temporary assignments of all the foregoing judges or justices listed in this section, and of judges of the city courts pursuant to paragraph two of subdivision j of this section, shall be made by the chief administrator of the courts in accordance with standards and administrative policies established pursuant to section twenty-eight of this article.

j. (1) The legislature may provide for temporary assignments within the county of residence or any adjoining county, of judges of town, village or city courts outside the city of New York.

(2) In addition to any temporary assignments to which a judge of a city court may be subject pursuant to paragraph one of this subdivision, such judge also may be temporarily assigned by the chief administrator of the courts to the county court, the family court or the district court within his or her county of residence or any adjoining county provided he or she is not permitted to practice law.

k. While temporarily assigned pursuant to the provisions of this section, any judge or justice shall have the powers, duties and jurisdiction of a judge or justice of the court to which assigned. After the expiration of any temporary assignment, as provided in this section, the judge or justice assigned shall have all the powers, duties and jurisdiction of a judge or justice of the court to which he or she was assigned with respect to matters pending before him or her during the term of such temporary assignment. (Subdivision i amended by vote of the people November 8, 1977; subdivision f amended by vote of the people November 8, 1983; further amended by vote of the people November 6, 2001.)

[Supreme court; extraordinary terms]

§27. The governor may, when in his or her opinion the public interest requires, appoint extraordinary terms of the supreme court. The governor shall designate the time and place of holding the term and the justice who shall hold the term. The governor may terminate the assignment of the justice and may name another justice in his or her place to hold the term. (Amended by vote of the people November 6, 2001.)

[Administrative supervision of court system]

§28. a. The chief judge of the court of appeals shall be the chief judge of the state of New York and shall be the chief judicial officer of the unified court system. There shall be an administrative board of the courts which shall consist of the chief judge of the court of appeals as chairperson and the presiding justice of the appellate division of the supreme court of each judicial department. The chief judge shall, with the advice and consent of the administrative board of the courts, appoint a chief administrator of the courts who shall serve at the pleasure of the chief judge.

b. The chief administrator, on behalf of the chief judge, shall supervise the administration and operation of the unified court system. In the exercise of such responsibility, the chief administrator of the courts shall have such powers and duties as may be delegated to him or her by the chief judge and such additional powers and duties as may be provided by law.

c. The chief judge, after consultation with the administrative board, shall establish standards and administrative policies for general application throughout the state, which shall be submitted by the chief judge to the court of appeals, together with the recommendations, if any, of the administrative board. Such standards and administrative policies shall be promulgated after approval by the court of appeals. (Formerly §28. Repealed and new §28 added by vote of the people November 8, 1977; amended by vote of the people November 6, 2001.)

[Expenses of courts]

§29. a. The legislature shall provide for the allocation of the cost of operating and maintaining the court of appeals, the appellate division of the supreme court in each judicial department, the supreme court, the court of claims, the county court, the surrogate's court, the family court, the courts for the city of New York established pursuant to section fifteen of this article and the district court, among the state, the counties, the city of New York and other political subdivisions.

b. The legislature shall provide for the submission of the itemized estimates of the annual financial needs of the courts referred to in subdivision a of this section to the chief administrator of the courts to be forwarded to the appropriating bodies with recommendations and comment.

c. Insofar as the expense of the courts is borne by the state or paid by the state in the first instance, the final determination of the itemized estimates of the annual financial needs of the courts shall be made by the legislature and the governor in accordance with articles four and seven of this constitution.

d. Insofar as the expense of the courts is not paid by the state in the first instance and is borne by counties, the city of New York or other political subdivisions, the final determination of the itemized estimates of the annual financial needs of the courts shall be made by the appropriate governing bodies of such counties, the city of New York or other political subdivisions. (Subdivision b amended by vote of the people November 8, 1977.)

[Legislative power over jurisdiction and proceedings; delegation of power to regulate practice and procedure]

§30. The legislature shall have the same power to alter and regulate the jurisdiction and proceedings in law and in equity that it has heretofore exercised. The legislature may, on such terms as it shall provide and subject to subsequent modification, delegate, in whole or in part, to a court, including the appellate division of the supreme court, or to the chief administrator of the courts, any power possessed by the legislature to regulate practice and procedure in the courts. The chief administrator of the courts shall exercise any such power delegated to him or her with the advice and consent of the administrative board of the courts. Nothing herein contained shall prevent the adoption of regulations by individual courts consistent with the general practice and procedure as provided by statute or general rules. (Amended by vote of the people November 8, 1977.)

[Inapplicability of article to certain courts]

§31. This article does not apply to the peacemakers courts or other Indian courts, the existence and operation of which shall continue as may be provided by law.

[Custodians of children to be of same religious persuasion]

§32. When any court having jurisdiction over a child shall commit it or remand it to an institution or agency or place it in the custody of any person by parole, placing out, adoption or guardianship, the child shall be committed or remanded or placed, when practicable, in an institution or agency governed by persons, or in the custody of a person, of the same religious persuasion as the

child.

[Existing laws; duty of legislature to implement article]

§33. Existing provisions of law not inconsistent with this article shall continue in force until repealed, amended, modified or superseded in accordance with the provisions of this article. The legislature shall enact appropriate laws to carry into effect the purposes and provisions of this article, and may, for the purpose of implementing, supplementing or clarifying any of its provisions, enact any laws, not inconsistent with the provisions of this article, necessary or desirable in promoting the objectives of this article.

[Pending appeals, actions and proceedings; preservation of existing terms of office of judges and justices]

§34. a. The court of appeals, the appellate division of the supreme court, the supreme court, the court of claims, the county court in counties outside the city of New York, the surrogate's court and the district court of Nassau county shall hear and determine all appeals, actions and proceedings pending therein on the effective date of this article except that the appellate division of the supreme court in the first and second judicial departments or the appellate term in such departments, if so directed by the appropriate appellate division of the supreme court, shall hear and determine all appeals pending in the appellate terms of the supreme court in the first and second judicial departments and in the court of special sessions of the city of New York and except that the county court or an appellate term shall, as may be provided by law, hear and determine all appeals pending in the county court or the supreme court other than an appellate term. Further appeal from a decision of the county court, the appellate term or the appellate division of the supreme court, rendered on or after the effective date of this article, shall be governed by the provisions of this article.

b. The justices of the supreme court in office on the effective date of this article shall hold their offices as justices of the supreme court until the expiration of their respective terms.

c. The judges of the court of claims in office on the effective date of this article shall hold their offices as judges of the court of claims until the expiration of their respective terms.

d. The surrogates, and county judges outside the city of New York, including the special county judges of the counties of Erie and Suffolk, in office on the effective date of this article shall hold office as judges of the surrogate's court or county judge, respectively, of such counties until the expiration of their respective terms.

e. The judges of the district court of Nassau county in office on the effective date of this article shall hold their offices until the expiration of their respective terms.

f. Judges of courts for towns, villages and cities outside the city of New York in office on the effective date of this article shall hold their offices until the expiration of their respective terms.

[Certain courts abolished; transfer of judges, court personnel, and actions and proceedings to other courts]

§35. a. The children's courts, the court of general sessions of the county of New York, the county courts of the counties of Bronx, Kings, Queens and Richmond, the city court of the city of New York, the domestic relations court of the city of New York, the municipal court of the city of New York, the court of special sessions of the city of New York and the city magistrates' courts of the city of New York are abolished from and after the effective date of this article and thereupon the seals, records, papers and documents of or belonging to such courts shall, unless otherwise provided by law, be deposited in the offices of the clerks of the several counties in which these courts now exist.

b. The judges of the county court of the counties of Bronx, Kings, Queens and Richmond and the judges of the court of general sessions of the county of New York in office on the effective date of this article appointed, be justices of the supreme court in and for the judicial district which includes the county in which they resided on that date. The salaries of such justices shall be the same as the salaries of the other justices of the supreme court residing in the same judicial district and shall be paid in the same manner. All actions and proceedings pending in the county court of the counties of Bronx, Kings, Queens and Richmond and in the court of general sessions of the county of New York on the effective date of this article shall be transferred to the supreme court in the county in which the action or proceedings was pending, or otherwise as may be provided by law.

c. The legislature shall provide by law that the justices of the city court of the city of New York and the justices of the municipal court of the city of New York in office on the date such courts are abolished shall, for the remainder of the term for which each was elected or appointed, be judges of the city-wide court of civil jurisdiction of the city of New York established pursuant to section fifteen of this article and for such district as the legislature may determine.

d. The legislature shall provide by law that the justices of the court of special sessions and the magistrates of the city magistrates' courts of the city of New York in office on the date such courts are abolished shall, for the remainder of the term for which each was appointed, be judges of the city-wide court of criminal jurisdiction of the city of New York established pursuant to section fifteen provided, however, that each term shall expire on the last day of the year in which it would have expired except for the provisions of this article.

e. All actions and proceedings pending in the city court of the city of New York and the municipal court in the city of New York on the date such courts are abolished shall be transferred to the city-wide court of civil jurisdiction of the city of New York established pursuant to section fifteen of this article or as otherwise provided by law.

f. All actions and proceedings pending in the court of special sessions of the city of New York and the city magistrates' courts of the city of New York on the date such courts are abolished shall be transferred to the city-wide court of criminal jurisdiction of the city of New York established pursuant to section fifteen of this article or as otherwise provided by law.

g. The special county judges of the counties of Broome, Chautauqua, Jefferson, Oneida and Rockland and the judges of the children's courts in all counties outside the city of New York in office on the effective date of this article shall, for the remainder of the terms for which they were elected or appointed, be judges of the family court in and for the county in which they hold office. Except as otherwise provided in this section, the office of special county judge and the office of special surrogate is abolished from and after the effective date of this article and the terms of the persons holding such offices shall terminate on that date.

h. All actions and proceedings pending in the children's courts in counties outside the city of New York on the effective date of this article shall be transferred to the family court in the respective counties.

i. The justices of the domestic relations court of the city of New York in office on the effective date of this article shall, for the remainder of the terms for which they were appointed, be judges of the family court within the city of New York.

j. All actions and proceedings pending in the domestic relations court of the city of New York on the effective date of this article shall be transferred to the family court in the city of New York.

k. The office of official referee is abolished, provided, however, that official referees in office on the effective date of this article shall, for the remainder of the terms for which they were appointed or certified, be official referees of the court in which appointed or certified or the successor court, as the case may be. At the expiration of the term of any official referee, his or her office shall be abolished and thereupon such former official referee shall be subject to the relevant provisions of section twenty-five of this article.

l. As may be provided by law, the non-judicial personnel of the courts affected by this article in office on the effective date of this article shall, to the extent practicable, be continued without diminution of salaries and with the same status and rights in the courts established or continued by this article; and especially skilled, experienced and trained personnel shall, to the extent practicable, be assigned to like functions in the courts which exercise the jurisdiction formerly exercised by the courts in which they were employed. In the event that the adoption of this article shall require or make possible a reduction in the number of non-judicial personnel, or in the number of certain categories of such personnel, such reduction shall be made, to the extent practicable, by provision that the death, resignation, removal or retirement of an employee shall not create a vacancy until the reduced number of personnel has been reached.

m. In the event that a judgment or order was entered before the effective

date of this article and a right of appeal existed and notice of appeal therefrom is filed after the effective date of this article, such appeal shall be taken from the supreme court, the county courts, the surrogate's courts, the children's courts, the court of general sessions of the county of New York and the domestic relations court of the city of New York to the appellate division of the supreme court in the judicial department in which such court was located; from the court of claims to the appellate division of the supreme court in the third judicial department, except for those claims which arose in the fourth judicial department, in which case the appeal shall be to the appellate division of the supreme court in the fourth judicial department; from the city court of the city of New York, the municipal court of the city of New York, the court of special sessions of the city of New York and the city magistrates' courts of the city of New York to the appellate division of the supreme court in the judicial department in which such court was located, provided, however, that such appellate division of the supreme court may transfer any such appeal to an appellate term, if such appellate term be established; and from the district court, town, village and city courts outside the city of New York to the county court in the county in which such court was located, provided, however, that the legislature may require the transfer of any such appeal to an appellate term, if such appellate term be established. Further appeal from a decision of a county court or an appellate term or the appellate division of the supreme court shall be governed by the provisions of this article. However, if in any action or proceeding decided prior to the effective date of this article, a party had a right of direct appeal from a court of original jurisdiction to the court of appeals, such appeal may be taken directly to the court of appeals.

n. In the event that an appeal was decided before the effective date of this article and a further appeal could be taken as of right and notice of appeal therefrom is filed after the effective date of this article, such appeal may be taken from the appellate division of the supreme court to the court of appeals and from any other court to the appellate division of the supreme court. Further appeal from a decision of the appellate division of the supreme court shall be governed by the provisions of this article. If a further appeal could not be taken as of right, such appeal shall be governed by the provisions of this article. (Amended by vote of the people November 6, 2001.)

[Pending civil and criminal cases]

§36. No civil or criminal appeal, action or proceeding pending before any court or any judge or justice on the effective date of this article shall abate but such appeal, action or proceeding so pending shall be continued in the courts as provided in this article and, for the purposes of the disposition of such actions or proceedings only, the jurisdiction of any court to which any such action or proceeding is transferred by this article shall be coextensive with the jurisdiction of the former court from which the action or proceeding was transferred. Except to the extent inconsistent with the provisions of this article, subsequent proceedings in such appeal, action or proceeding shall be conducted in accordance with the laws in force on the effective date of this article until superseded in the manner authorized by law.

[Effective date of certain amendments to articles VI and VII]

§36-a. The amendments to the provisions of sections two, four, seven, eight, eleven, twenty, twenty-two, twenty-six, twenty-eight, twenty-nine and thirty of article six and to the provisions of section one of article seven, as first proposed by a concurrent resolution passed by the legislature in the year nineteen hundred seventy-six and entitled "Concurrent Resolution of the Senate and Assembly proposing amendments to articles six and seven of the constitution, in relation to the manner of selecting judges of the court of appeals, creation of a commission on judicial conduct and administration of the unified court system, providing for the effectiveness of such amendments and the repeal of subdivision c of section two, subdivision b of section seven, subdivision b of section eleven, section twenty-two and section twenty-eight of article six thereof relating thereto", shall become a part of the constitution on the first day of January next after the approval and ratification of the amendments proposed by such concurrent resolution by the people but the provisions thereof shall not become operative and the repeal of subdivision c of section two, section twenty-two and section twenty-eight shall not become effective until the first day of April next thereafter which date shall be deemed the effective date of such amendments and the chief judge and the associate judges of the court of appeals in office on such effective date shall hold their offices until the expiration of their respective terms. Upon a vacancy in the office of any such judge, such vacancy shall be filled in the manner provided in section two of article six. (New. Added by vote of the people November 8, 1977.)

[No section 36-b]

[Effective date of certain amendments to article VI, section 22]

§36-c. The amendments to the provisions of section twenty-two of article six as first proposed by a concurrent resolution passed by the legislature in the year nineteen hundred seventy-four and entitled "Concurrent Resolution of the Senate and Assembly proposing an amendment to section twenty-two of article six and adding section thirty-six-c to such article of the constitution, in relation to the powers of and reconstituting the court on the judiciary and creating a commission on judicial conduct", shall become a part of the constitution on the first day of January next after the approval and ratification of the amendments proposed by such concurrent resolution by the people but the provisions thereof shall not become operative until the first day of September next thereafter which date shall be deemed the effective date of such amendments. (New. Added by vote of the people November 4, 1975.)

[Effective date of article]

§37. This article shall become a part of the constitution on the first day of January next after the approval and ratification of this amendment by the people but its provisions shall not become operative until the first day of September next thereafter which date shall be deemed the effective date of this article.

ARTICLE VII
STATE FINANCES

[Estimates by departments, the legislature and the judiciary of needed appropriations; hearings]

Section 1. For the preparation of the budget, the head of each department of state government, except the legislature and judiciary, shall furnish the governor such estimates and information in such form and at such times as the governor may require, copies of which shall forthwith be furnished to the appropriate committees of the legislature. The governor shall hold hearings thereon at which the governor may require the attendance of heads of departments and their subordinates. Designated representatives of such committees shall be entitled to attend the hearings thereon and to make inquiry concerning any part thereof.

Itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house, and of the judiciary, approved by the court of appeals and certified by the chief judge of the court of appeals, shall be transmitted to the governor not later than the first day of December in each year for inclusion in the budget without revision but with such recommendations as the governor may deem proper. Copies of the itemized estimates of the financial needs of the judiciary also shall forthwith be transmitted to the appropriate committees of the legislature. (Amended by vote of the people November 8, 1977; November 6, 2001.)

[Executive budget]

§2. Annually, on or before the first day of February in each year following the year fixed by the constitution for the election of governor and lieutenant governor, and on or before the second Tuesday following the first day of the annual meeting of the legislature, in all other years, the governor shall submit to the legislature a budget containing a complete plan of expenditures proposed to be made before the close of the ensuing fiscal year and all moneys and revenues estimated to be available therefor, together with an explanation of the basis of such estimates and recommendations as to proposed legislation, if any, which the governor may deem necessary to provide moneys and revenues sufficient to meet such proposed expenditures. It shall also contain such other recommendations and information as the governor may deem proper and such additional information as may be required by law. (New. Derived in part from former §2 of Art. 4-a. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; amended by vote of the people November 2, 1965; November 6, 2001.)

[Budget bills; appearances before legislature]
§3. At the time of submitting the budget to the legislature the governor shall submit a bill or bills containing all the proposed appropriations and reappropriations included in the budget and the proposed legislation, if any, recommended therein.

The governor may at any time within thirty days thereafter and, with the consent of the legislature, at any time before the adjournment thereof, amend or supplement the budget and submit amendments to any bills submitted by him or her or submit supplemental bills.

The governor and the heads of departments shall have the right, and it shall be the duty of the heads of departments when requested by either house of the legislature or an appropriate committee thereof, to appear and be heard in respect to the budget during the consideration thereof, and to answer inquiries relevant thereto. The procedure for such appearances and inquiries shall be provided by law. (New. Derived in part from former §§2 and 3 of Art. 4-a. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; amended by vote of the people November 6, 2001.)

[Action on budget bills by legislature; effect thereof]
§4. The legislature may not alter an appropriation bill submitted by the governor except to strike out or reduce items therein, but it may add thereto items of appropriation provided that such additions are stated separately and distinctly from the original items of the bill and refer each to a single object or purpose. None of the restrictions of this section, however, shall apply to appropriations for the legislature or judiciary.

Such an appropriation bill shall when passed by both houses be a law immediately without further action by the governor, except that appropriations for the legislature and judiciary and separate items added to the governor's bills by the legislature shall be subject to approval of the governor as provided in section 7 of article IV. (New. Derived in part from former §3 of Art. 4-a. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; amended by vote of the people November 6, 2001.)

[Restrictions on consideration of other appropriations]
§5. Neither house of the legislature shall consider any other bill making an appropriation until all the appropriation bills submitted by the governor shall have been finally acted on by both houses, except on message from the governor certifying to the necessity of the immediate passage of such a bill. (New. Derived in part from former §4 of Art. 4-a. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Restrictions on content of appropriation bills]
§6. Except for appropriations contained in the bills submitted by the governor and in a supplemental appropriation bill for the support of government, no appropriations shall be made except by separate bills each for a single object or purpose. All such bills and such supplemental appropriation bill shall be subject to the governor's approval as provided in section 7 of article IV.

No provision shall be embraced in any appropriation bill submitted by the governor or in such supplemental appropriation bill unless it relates specifically to some particular appropriation in the bill, and any such provision shall be limited in its operation to such appropriation. (New. Derived in part from former §22 of Art. 3 and former §4 of Art. 4-a. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Appropriation bills]
§7. No money shall ever be paid out of the state treasury or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within two years next after the passage of such appropriation act; and every such law making a new appropriation or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object or purpose to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum. (New. Derived in part from former §21 of Art. 3. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Gift or loan of state credit or money prohibited; exceptions for enumerated purposes]
§8. 1. The money of the state shall not be given or loaned to or in aid of any private corporation or association, or private undertaking; nor shall the credit of the state be given or loaned to or in aid of any individual, or public or private corporation or association, or private undertaking, but the foregoing provisions shall not apply to any fund or property now held or which may hereafter be held by the state for educational, mental health or mental retardation purposes.

2. Subject to the limitations on indebtedness and taxation, nothing in this constitution contained shall prevent the legislature from providing for the aid, care and support of the needy directly or through subdivisions of the state; or for the protection by insurance or otherwise, against the hazards of unemployment, sickness and old age; or for the education and support of the blind, the deaf, the dumb, the physically handicapped, the mentally ill, the emotionally disturbed, the mentally retarded or juvenile delinquents as it may deem proper; or for health and welfare services for all children, either directly or through subdivisions of the state, including school districts; or for the aid, care and support of neglected and dependent children and of the needy sick, through agencies and institutions authorized by the state board of social welfare or other state department having the power of inspection thereof, by payments made on a per capita basis directly or through the subdivisions of the state; or for the increase in the amount of pensions of any member of a retirement system of the state, or of a subdivision of the state; or for an increase in the amount of pension benefits of any widow or widower of a retired member of a retirement system of the state or of a subdivision of the state to whom payable as beneficiary under an optional settlement in connection with the pension of such member. The enumeration of legislative powers in this paragraph shall not be taken to diminish any power of the legislature hitherto existing.

3. Nothing in this constitution contained shall prevent the legislature from authorizing the loan of the money of the state to a public corporation to be organized for the purpose of making loans to non-profit corporations or for the purpose of guaranteeing loans made by banking organizations, as that term shall be defined by the legislature, to finance the construction of new industrial or manufacturing plants, the construction of new buildings to be used for research and development, the construction of other eligible business facilities, and for the purchase of machinery and equipment related to such new industrial or manufacturing plants, research and development buildings, and other eligible business facilities in this state or the acquisition, rehabilitation or improvement of former or existing industrial or manufacturing plants, buildings to be used for research and development, other eligible business facilities, and machinery and equipment in this state, including the acquisition of real property therefor, and the use of such money by such public corporation for such purposes, to improve employment opportunities in any area of the state, provided, however, that any such plants, buildings or facilities or machinery and equipment therefor shall not be (i) primarily used in making retail sales of goods or services to customers who personally visit such facilities to obtain such goods or services or (ii) used primarily as a hotel, apartment house or other place of business which furnishes dwelling space or accommodations to either residents or transients, and provided further that any loan by such public corporation shall not exceed sixty per centum of the cost of any such project and the repayment of which shall be secured by a mortgage thereon which shall not be a junior encumbrance thereon by more than fifty per centum of such cost or by a security interest if personalty, and that the amount of any guarantee of a loan made by a banking organization shall not exceed eighty per centum of the cost of any such project. (Formerly §1. Derived in part from former §9 of Art. 8. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 6, 1951; November 7, 1961; November 8, 1966; November 6, 1973; November 8, 1977; November 5, 1985; November 6, 2001.)

[Short term state debts in anticipation of taxes, revenues and proceeds of sale of authorized bonds]
§9. The state may contract debts in anticipation of the receipt of taxes and

revenues, direct or indirect, for the purposes and within the amounts of appropriations theretofore made. Notes or other obligations for the moneys so borrowed shall be issued as may be provided by law, and shall with the interest thereon be paid from such taxes and revenues within one year from the date of issue.

The state may also contract debts in anticipation of the receipt of the proceeds of the sale of bonds theretofore authorized, for the purpose and within the amounts of the bonds so authorized. Notes or obligations for the money so borrowed shall be issued as may be provided by law, and shall with the interest thereon be paid from the proceeds of the sale of such bonds within two years from the date of issue, except as to bonds issued or to be issued for any of the purposes authorized by article eighteen of this constitution, in which event the notes or obligations shall with the interest thereon be paid from the proceeds of the sale of such bonds within five years from the date of issue. (Formerly §2. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 4, 1958; November 7, 1995.)

[State debts on account of invasion, insurrection, war and forest fires]

§10. In addition to the above limited power to contract debts, the state may contract debts to repel invasion, suppress insurrection, or defend the state in war, or to suppress forest fires; but the money arising from the contracting of such debts shall be applied for the purpose for which it was raised, or to repay such debts, and to no other purpose whatever. (Formerly §3. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[State debts generally; manner of contracting; referendum]

§11. Except the debts or refunding debts specified in sections 9, 10 and 13 of this article, no debt shall be hereafter contracted by or in behalf of the state, unless such debt shall be authorized by law, for some single work or purpose, to be distinctly specified therein. No such law shall take effect until it shall, at a general election, have been submitted to the people, and have received a majority of all the votes cast for and against it at such election nor shall it be submitted to be voted on within three months after its passage nor at any general election when any other law or any bill shall be submitted to be voted for or against.

The legislature may, at any time after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same; and may at any time, by law, forbid the contracting of any further debt or liability under such law. (Formerly §4. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 2, 1993.)

[State debts generally; how paid; contribution to sinking funds; restrictions on use of bond proceeds]

§12. Except the debts or refunding debts specified in sections 9, 10 and 13 of this article, all debts contracted by the state and each portion of any such debt from time to time so contracted shall be subject to the following rules:

1. The principal of each debt or any portion thereof shall either be paid in equal annual installments or in installments that result in substantially level or declining debt service payments such as shall be authorized by law, or, in the alternative, contributions of principal in the amount that would otherwise be required to be paid annually shall be made to a sinking fund.

2. When some portions of the same debt are payable annually while other portions require contributions to a sinking fund, the entire debt shall be structured so that the combined amount of annual installments of principal paid and/or annual contributions of principal made in each year shall be equal to the amount that would be required to be paid if the entire debt were payable in annual installments.

3. When interest on state obligations is not paid at least annually, there shall also be contributed to a sinking fund at least annually, the amount necessary to bring the balance thereof, including income earned on contributions, to the accreted value of the obligations to be paid therefrom on the date such contribution is made, less the sum of all required future contributions of principal, in the case of sinking fund obligations, or payments of principal, in the case of serial obligations. Notwithstanding the foregoing, nothing contained in this subdivision shall be deemed to require contributions for interest to sinking funds if total debt service due on the debt or portion thereof in the year such interest is due will be substantially the same as the total debt service due on such debt or portion thereof in each other year or if the total amount of debt service due in each subsequent year on such debt or portion thereof shall be less than the total debt service due in each prior year.

4. The first annual installment on such debt shall be paid, or the first annual contribution shall be made to a sinking fund, not more than one year, and the last installment shall be paid, or contribution made not more than forty years, after such debt or portion thereof shall have been contracted, provided, however, that in contracting any such debt the privilege of paying all or any part of such debt prior to the date on which the same shall be due may be reserved to the state in such manner as may be provided by law.

5. No such debt shall be contracted for a period longer than that of the probable life of the work or purpose for which the debt is to be contracted, or in the alternative, the weighted average period of probable life of the works or purposes for which such indebtedness is to be contracted. The probable lives of such works or purposes shall be determined by general laws, which determination shall be conclusive.

6. The money arising from any loan creating such debt or liability shall be applied only to the work or purpose specified in the act authorizing such debt or liability, or for the payment of such debt or liability, including any notes or obligations issued in anticipation of the sale of bonds evidencing such debt or liability.

7. Any sinking funds created pursuant to this section shall be maintained and managed by the state comptroller or an agent or trustee designated by the state comptroller, and amounts in sinking funds created pursuant to this section, and earnings thereon, shall be used solely for the purpose of retiring the obligations secured thereby except that amounts in excess of the required balance on any contribution date and amounts remaining in such funds after all of the obligations secured thereby have been retired shall be deposited in the general fund.

8. No appropriation shall be required for disbursement of money, or income earned thereon, from any sinking fund created pursuant to this section for the purpose of paying principal of and interest on the obligations for which such fund was created, except that interest shall be paid from any such fund only if, and to the extent that, it is not payable annually and contributions on account of such interest were made thereto.

9. The provisions of section 15 of this article shall not apply to sinking funds created pursuant to this section.

10. When state obligations are sold at a discount, the debt incurred for purposes of determining the amount of debt issued or outstanding pursuant to a voter approved bond referendum or other limitation on the amount of debt that may be issued or outstanding for a work or purpose shall be deemed to include only the amount of money actually received by the state notwithstanding the face amount of such obligations. (Derived in part from former §4. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people, November 2, 1993.)

[Refund of state debts]

§13. The legislature may provide means and authority whereby any state debt or debts, or any portion or combination thereof, may be refunded in accordance with the following provisions:

1. State debts may be refunded at any time after they are incurred provided that the state will achieve a debt service savings on a present value basis as a result of the refunding transaction, and further provided that no maturity shall be called for redemption unless the privilege to pay prior to the maturity date was reserved to the state. The legislature may provide for the method of computation of present value for such purpose.

2. In no event shall refunding obligations be issued in an amount exceeding that necessary to provide sufficient funds to accomplish the refunding of the obligations to be refunded including paying all costs and expenses related to the refunding transaction and, in no event, shall the proceeds of refunding obligations be applied to any purpose other than accomplishing the refunding of the debt to be refunded and paying costs and

expenses related to the refunding.

3. Proceeds of refunding obligations shall be deposited in escrow funds which shall be maintained and managed by the state comptroller or by an agent or trustee designated by the state comptroller and no legislative appropriation shall be required for disbursement of money, or income earned thereon, from such escrow funds for the purposes enumerated in this section.

4. Refunding obligations may be refunded pursuant to this section.

5. Refunding obligations shall either be paid in annual installments or annual contributions shall be made to a sinking fund in amounts sufficient to retire the refunding obligations at their maturity. No annual installments or contributions of principal need be made with respect to all or any portion of an issue of refunding obligations in years when debt service on such refunding obligations or portion thereof is paid or contributed entirely from an escrow fund created pursuant to subdivision 3 of this section or in years when no installments or contributions would have been due on the obligations to be refunded. So long as any of the refunding obligations remain outstanding, installments or contributions shall be made in any years that installments or contributions would have been due on the obligations to be refunded.

6. In no event shall the last annual installment or contribution on any portion of refunding debt, including refunding obligations issued to refund other refunding obligations, be made after the termination of the period of probable life of the projects financed with the proceeds of the relevant portion of the debt to be refunded, or any debt previously refunded with the refunding obligations to be refunded, determined as of the date of issuance of the original obligations pursuant to section 12 of this article to finance such projects, or forty years from such date, if earlier; provided, however, that in lieu of the foregoing, an entire refunding issue or portion thereof may be structured to mature over the remaining weighted average useful life of all projects financed with the obligations being refunded.

7. Subject to the provisions of subdivision 5 of this section, each annual installment or contribution of principal of refunding obligations shall be equal to the amount that would be required by subdivision 1 of section 12 of this article if such installments or contributions were required to be made from the year that the next installment or contribution would have been due on the obligations to be refunded, if they had not been refunded, until the final maturity of the refunding obligations but excluding any year in which no installment or contribution would have been due on the obligations to be refunded or, in the alternative, the total payments of principal and interest on the refunding bonds shall be less in each year to their final maturity than the total payments of principal and interest on the bonds to be refunded in each such year.

8. The provisions of subdivision 3 and subdivisions 7 through 9 of section 12 of this article shall apply to sinking funds created pursuant to this section for the payment at maturity of refunding obligations. (New. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 2, 1993.)

[State debt for elimination of railroad crossings at grade; expenses; how borne; construction and reconstruction of state highways and parkways]

§14. The legislature may authorize by law the creation of a debt or debts of the state, not exceeding in the aggregate three hundred million dollars, to provide moneys for the elimination, under state supervision, of railroad crossings at grade within the state, and for incidental improvements connected therewith as authorized by this section. The provisions of this article, not inconsistent with this section, relating to the issuance of bonds for a debt or debts of the state and the maturity and payment thereof, shall apply to a state debt or debts created pursuant to this section; except that the law authorizing the contracting of such debt or debts shall take effect without submission to the people pursuant to section 11 of this article. The aggregate amount of a state debt or debts which may be created pursuant to this section shall not exceed the difference between the amount of the debt or debts heretofore created or authorized by law, under the provisions of section 14 of article VII of the constitution in force on July first, nineteen hundred thirty-eight, and the sum of three hundred million dollars.

The expense of any grade crossing elimination the construction work for which was not commenced before January first, nineteen hundred thirty-nine, including incidental improvements connected therewith as authorized by this section, whether or not an order for such elimination shall theretofore have been made, shall be paid by the state in the first instance, but the state shall be entitled to recover from the railroad company or companies, by way of reimbursement (1) the entire amount of the railroad improvements not an essential part of elimination, and (2) the amount of the net benefit to the company or companies from the elimination exclusive of such railroad improvements, the amount of such net benefit to be adjudicated after the completion of the work in the manner to be prescribed by law, and in no event to exceed fifteen per centum of the expense of the elimination, exclusive of all incidental improvements. The reimbursement by the railroad companies shall be payable at such times, in such manner and with interest at such rate as the legislature may prescribe.

The expense of any grade crossing elimination the construction work for which was commenced before January first, nineteen hundred thirty-nine, shall be borne by the state, railroad companies, and the municipality or municipalities in the proportions formerly prescribed by section 14 of article VII of the constitution in force on July first, nineteen hundred thirty-eight, and the law or laws enacted pursuant to its provisions, applicable to such elimination, and subject to the provisions of such former section and law or laws, including advances in aid of any railroad company or municipality, although such elimination shall not be completed until after January first, nineteen hundred thirty-nine.

A grade crossing elimination the construction work for which shall be commenced after January first, nineteen hundred thirty-nine, shall include incidental improvements rendered necessary or desirable because of such elimination, and reasonably included in the engineering plans therefor. Out of the balance of all moneys authorized to be expended under section 14 of article VII of the constitution in force on July first, nineteen hundred thirty-eight, and remaining unexpended and unobligated on such date, fifty million dollars shall be deemed segregated for grade crossing eliminations and incidental improvements in the city of New York and shall be available only for such purposes until such eliminations and improvements are completed and paid for.

Notwithstanding any of the foregoing provisions of this section the legislature is hereby authorized to appropriate, out of the proceeds of bonds now or hereafter sold to provide moneys for the elimination of railroad crossings at grade and incidental improvements pursuant to this section, sums not exceeding in the aggregate sixty million dollars for the construction and reconstruction of state highways and parkways. (Amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 4, 1941.)

[Sinking funds; how kept and invested; income therefrom and application thereof]

§15. The sinking funds provided for the payment of interest and the extinguishment of the principal of the debts of the state heretofore contracted shall be continued; they shall be separately kept and safely invested, and neither of them shall be appropriated or used in any manner other than for such payment and extinguishment as hereinafter provided. The comptroller shall each year appraise the securities held for investment in each of such funds at their fair market value not exceeding par. The comptroller shall then determine and certify to the legislature the amount of each of such funds and the amounts which, if thereafter annually contributed to each such fund, would, with the fund and with the accumulations thereon and upon the contributions thereto, computed at the rate of three per centum per annum, produce at the date of maturity the amount of the debt to retire which such fund was created, and the legislature shall thereupon appropriate as the contribution to each such fund for such year at least the amount thus certified.

If the income of any such fund in any year is more than a sum which, if annually added to such fund would, with the fund and its accumulations as aforesaid, retire the debt at maturity, the excess income may be applied to the interest on the debt for which the fund was created.

After any sinking fund shall equal in amount the debt for which it was created no further contribution shall be made thereto except to make good any losses ascertained at the annual appraisals above mentioned, and the income thereof shall be applied to the payment of the interest on such debt. Any excess in such income not required for the payment of interest may be applied

to the general fund of the state. (Formerly §5. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 6, 2001.)

[Payment of state debts; when comptroller to pay without appropriation]
§16. The legislature shall annually provide by appropriation for the payment of the interest upon and installments of principal of all debts or refunding debts created on behalf of the state except those contracted under section 9 of this article, as the same shall fall due, and for the contribution to all of the sinking funds created by law, of the amounts annually to be contributed under the provisions of section 12, 13 or 15 of this article. If at any time the legislature shall fail to make any such appropriation, the comptroller shall set apart from the first revenues thereafter received, applicable to the general fund of the state, a sum sufficient to pay such interest, installments of principal, or contributions to such sinking fund, as the case may be, and shall so apply the moneys thus set apart. The comptroller may be required to set aside and apply such revenues as aforesaid, at the suit of any holder of such bonds.

Notwithstanding the foregoing provisions of this section, the comptroller may covenant with the purchasers of any state obligations that they shall have no further rights against the state for payment of such obligations or any interest thereon after an amount or amounts determined in accordance with the provisions of such covenant is deposited in a described fund or with a named or described agency or trustee. In such case, this section shall have no further application with respect to payment of such obligations or any interest thereon after the comptroller has complied with the prescribed conditions of such covenant. (Formerly §11. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 2, 1993.)

[Authorizing the legislature to establish a fund or funds for tax revenue stabilization reserves; regulating payments thereto and withdrawals therefrom]
§17. The legislature may establish a fund or funds to aid in the stabilization of the tax revenues of the state available for expenditure or distribution. Any law creating such a fund shall specify the tax or taxes to which such fund relates, and shall prescribe the method of determining the amount of revenue from any such tax or taxes which shall constitute a norm of each fiscal year. Such part as shall be prescribed by law of any revenue derived from such tax or taxes during a fiscal year in excess of such norm shall be paid into such fund. No moneys shall at any time be withdrawn from such fund unless the revenue derived from such tax or taxes during a fiscal year shall fall below the norm for such year; in which event such amount as may be prescribed by law, but in no event an amount exceeding the difference between such revenue and such norm, shall be paid from such fund into the general fund.

No law changing the method of determining a norm or prescribing the amount to be paid into such a fund or to be paid from such a fund into the general fund may become effective until three years from the date of its enactment. (Added by amendment approved by vote of the people November 2, 1943.)

[Bonus on account of service of certain veterans in World War II]
§18. The legislature may authorize by law the creation of a debt or debts of the state to provide for the payment of a bonus to each male and female member of the armed forces of the United States, still in the armed forces, or separated or discharged under honorable conditions, for service while on active duty with the armed forces at any time during the period from December seventh, nineteen hundred forty-one to and including September second, nineteen hundred forty-five, who was a resident of this state for a period of at least six months immediately prior to his or her enlistment, induction or call to active duty. The law authorizing the creation of the debt shall provide for payment of such bonus to the next of kin of each male and female member of the armed forces who, having been a resident of this state for a period of six months immediately prior to his or her enlistment, induction or call to active duty, died while on active duty at any time during the period from December seventh, nineteen hundred forty-one to and including September second, nineteen hundred forty-five; or who died while on active duty subsequent to September second, nineteen hundred forty-five, or after his or her separation or discharge under honorable conditions, prior to receiving payment of such bonus. An apportionment of the moneys on the basis of the periods and places of service of such members of the armed forces shall be provided by general laws. The aggregate of the debts authorized by this section shall not exceed four hundred million dollars. The provisions of this article, not inconsistent with this section, relating to the issuance of bonds for a debt or debts of the state and the maturity and payment thereof, shall apply to a debt or debts created pursuant to this section; except that the law authorizing the contracting of such debt or debts shall take effect without submission to the people pursuant to section eleven of this article.

Proceeds of bonds issued pursuant to law, as authorized by this section as in force prior to January first, nineteen hundred fifty shall be available and may be expended for the payment of such bonus to persons qualified therefor as now provided by this section. (Added by amendment approved by vote of the people November 4, 1947; further amended by vote of the people November 8, 1949.)

[State debt for expansion of state university]
§19. The legislature may authorize by law the creation of a debt or debts of the state, not exceeding in the aggregate two hundred fifty million dollars, to provide moneys for the construction, reconstruction, rehabilitation, improvement and equipment of facilities for the expansion and development of the program of higher education provided and to be provided at institutions now or hereafter comprised within the state university, for acquisition of real property therefor, and for payment of the state's share of the capital costs of locally sponsored institutions of higher education approved and regulated by the state university trustees. The provisions of this article, not inconsistent with this section, relating to the issuance of bonds for a debt or debts of the state and the maturity and payment thereof, shall apply to a state debt or debts created pursuant to this section; except that the law authorizing the contracting of such debt or debts shall take effect without submission to the people pursuant to section eleven of this article. (New. Added by vote of the people November 5, 1957.)

ARTICLE VIII
LOCAL FINANCES

[Gift or loan of property or credit of local subdivisions prohibited; exceptions for enumerated purposes]
Section 1. No county, city, town, village or school district shall give or loan any money or property to or in aid of any individual, or private corporation or association, or private undertaking, or become directly or indirectly the owner of stock in, or bonds of, any private corporation or association; nor shall any county, city, town, village or school district give or loan its credit to or in aid of any individual, or public or private corporation or association, or private undertaking, except that two or more such units may join together pursuant to law in providing any municipal facility, service, activity or undertaking which each of such units has the power to provide separately. Each such unit may be authorized by the legislature to contract joint or several indebtedness, pledge its or their faith and credit for the payment of such indebtedness for such joint undertaking and levy real estate or other authorized taxes or impose charges therefor subject to the provisions of this constitution otherwise restricting the power of such units to contract indebtedness or to levy taxes on real estate. The legislature shall have power to provide by law for the manner and the proportion in which indebtedness arising out of such joint undertakings shall be incurred by such units and shall have power to provide a method by which such indebtedness shall be determined, allocated and apportioned among such units and such indebtedness treated for purposes of exclusion from applicable constitutional limitations, provided that in no event shall more than the total amount of indebtedness incurred for such joint undertaking be included in ascertaining the power of all such participating units to incur indebtedness. Such law may provide that such determination, allocation and apportionment shall be conclusive if made or approved by the comptroller. This provision shall not prevent a county from contracting indebtedness for the purpose of advancing to a town or school district, pursuant to law, the amount of unpaid taxes returned to it.

Subject to the limitations on indebtedness and taxation applying to any county, city, town or village nothing in this constitution contained shall

prevent a county, city or town from making such provision for the aid, care and support of the needy as may be authorized by law, nor prevent any such county, city or town from providing for the care, support, maintenance and secular education of inmates of orphan asylums, homes for dependent children or correctional institutions and of children placed in family homes by authorized agencies, whether under public or private control, or from providing health and welfare services for all children, nor shall anything in this constitution contained prevent a county, city, town or village from increasing the pension benefits payable to retired members of a police department or fire department or to widows, dependent children or dependent parents of members or retired members of a police department or fire department; or prevent the city of New York from increasing the pension benefits payable to widows, dependent children or dependent parents of members or retired members of the relief and pension fund of the department of street cleaning of the city of New York. Payments by counties, cities or towns to charitable, eleemosynary, correctional and reformatory institutions and agencies, wholly or partly under private control, for care, support and maintenance, may be authorized, but shall not be required, by the legislature. No such payments shall be made for any person cared for by any such institution or agency, nor for a child placed in a family home, who is not received and retained therein pursuant to rules established by the state board of social welfare or other state department having the power of inspection thereof. (Formerly §10. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 3, 1959; November 5, 1963; November 2, 1965.)

[Restrictions on indebtedness of local subdivisions; contracting and payment of local indebtedness; exceptions]

§2. No county, city, town, village or school district shall contract any indebtedness except for county, city, town, village or school district purposes, respectively. No indebtedness shall be contracted for longer than the period of probable usefulness of the object or purpose for which such indebtedness is to be contracted, or, in the alternative, the weighted average period of probable usefulness of the several objects or purposes for which such indebtedness is to be contracted, to be determined by the governing body of the county, city, town, village or school district contracting such indebtedness pursuant to general or special laws of the state legislature, which determination shall be conclusive, and in no event for longer than forty years. Indebtedness or any portion thereof may be refunded within either such period of probable usefulness, or average period of probable usefulness, as may be determined by such governing body computed from the date such indebtedness was contracted.

No indebtedness shall be contracted by any county, city, town, village or school district unless such county, city, town, village or school district shall have pledged its faith and credit for the payment of the principal thereof and the interest thereon. Except for indebtedness contracted in anticipation of the collection of taxes actually levied and uncollected or to be levied for the year when such indebtedness is contracted and indebtedness contracted to be paid in one of the two fiscal years immediately succeeding the fiscal year in which such indebtedness was contracted, all such indebtedness and each portion thereof from time to time contracted, including any refunding thereof, shall be paid in annual installments, the first of which, except in the case of refunding of indebtedness heretofore contracted, shall be paid not more than two years after such indebtedness or portion thereof shall have been contracted, and no installment, except in the case of refunding of indebtedness heretofore contracted, shall be more than fifty per centum in excess of the smallest prior installment, unless the governing body of the county, city, town, village or school district contracting such indebtedness provides for substantially level or declining debt service payments as may be authorized by law.

Notwithstanding the foregoing provisions, indebtedness contracted by the city of New York and each portion of any such indebtedness from time to time so contracted for the supply of water, including the acquisition of land in connection with such purpose, may be financed either by serial bonds with a maximum maturity of fifty years, in which case such indebtedness shall be paid in annual installments as hereinbefore provided, or by sinking fund bonds with a maximum maturity of fifty years, which shall be redeemed through annual contributions to sinking funds established and maintained for the purpose of amortizing the indebtedness for which such bonds are issued. Notwithstanding the foregoing provisions, indebtedness hereafter contracted by the city of New York and each portion of any such indebtedness from time to time so contracted for (a) the acquisition, construction or equipment of rapid transit railroads, or (b) the construction of docks, including the acquisition of land in connection with any of such purposes, may be financed either by serial bonds with a maximum maturity of forty years, in which case such indebtedness shall be paid in annual installments as hereinbefore provided, or by sinking fund bonds with a maximum maturity of forty years, which shall be redeemed through annual contributions to sinking funds established and maintained for the purpose of amortizing the indebtedness for which such bonds are issued.

Notwithstanding the foregoing provisions, but subject to such requirements as the legislature shall impose by general or special law, indebtedness contracted by any county, city, town, village or school district and each portion thereof from time to time contracted for any object or purpose for which indebtedness may be contracted may also be financed by sinking fund bonds with a maximum maturity of fifty years, which shall be redeemed through annual contributions to sinking funds established by such county, city, town, village or school district, provided, however, that each such annual contribution shall be at least equal to the amount required, if any, to enable the sinking fund to redeem, on the date of the contribution, the same amount of such indebtedness as would have been paid and then be payable if such indebtedness had been financed entirely by the issuance of serial bonds, except, if an issue of sinking fund bonds is combined for sale with an issue of serial bonds, for the same object or purpose, then the amount of each annual sinking fund contribution shall be at least equal to the amount required, if any, to enable the sinking fund to redeem, on the date of each such annual contribution, (i) the amount which would be required to be paid annually if such indebtedness had been issued entirely as serial bonds, less (ii) the amount of indebtedness, if any, to be paid during such year on the portion of such indebtedness actually issued as serial bonds. Sinking funds established on or after January first, nineteen hundred eighty-six pursuant to the preceding sentence shall be maintained and managed by the state comptroller pursuant to such requirements and procedures as the legislature shall prescribe, including provisions for reimbursement by the issuer of bonds payable from such sinking funds for the expenses related to such maintenance and management.

Provisions shall be made annually by appropriation by every county, city, town, village and school district for the payment of interest on all indebtedness and for the amounts required for (a) the amortization and redemption of term bonds, sinking fund bonds and serial bonds, (b) the redemption of certificates or other evidence of indebtedness (except those issued in anticipation of the collection of taxes or other revenues, or renewals thereof, and which are described in paragraph A of section five of this article and those issued in anticipation of the receipt of the proceeds of the sale of bonds theretofore authorized) contracted to be paid in such year out of the tax levy or other revenues applicable to a reduction thereof, and (c) the redemption of certificates or other evidence of indebtedness issued in anticipation of the collection of taxes or other revenues, or renewals thereof, which are not retired within five years after their date of original issue. If at any time the respective appropriating authorities shall fail to make such appropriations, a sufficient sum shall be set apart from the first revenues thereafter received and shall be applied to such purposes. The fiscal officer of any county, city, town, village or school district may be required to set apart and apply such revenues as aforesaid at the suit of any holder of obligations issued for any such indebtedness.

Notwithstanding the foregoing, all interest need not be paid annually on an issue of indebtedness provided that either (a) substantially level or declining debt service payments (including all payments of interest) shall be made over the life of such issue of indebtedness, or (b) there shall annually be contributed to a sinking fund created pursuant to this section, the amount necessary to bring the balance thereof, including income earned on contributions, to the accreted value of the obligations to be paid therefrom on the date such contribution is made, less the sum of all required future contributions of principal, in the case of sinking fund obligations, or payments of principal, in the case of serial obligations. When obligations are sold by a county, city, town, village or school district at a discount, the debt incurred for the purposes

of any debt limitation contained in this constitution, shall be deemed to include only the amount of money actually received by the county, city, town, village or school district, irrespective of the face amount of the obligations. (New. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 8, 1949; November 3, 1953; November 5, 1985; November 2, 1993.)

[Local indebtedness for water supply, sewage and drainage facilities and purposes; allocations and exclusions of indebtedness]

§2-a. Notwithstanding the provisions of section one of this article, the legislature by general or special law and subject to such conditions as it shall impose:

A. May authorize any county, city, town or village or any county or town on behalf of an improvement district to contract indebtedness to provide a supply of water, in excess of its own needs, for sale to any other public corporation or improvement district;

B. May authorize two or more public corporations and improvement districts to provide for a common supply of water and may authorize any such corporation, or any county or town on behalf of an improvement district, to contract joint indebtedness for such purpose or to contract indebtedness for specific proportions of the cost;

C. May authorize any county, city, town or village or any county or town on behalf of an improvement district to contract indebtedness to provide facilities, in excess of its own needs, for the conveyance, treatment and disposal of sewage from any other public corporation or improvement district;

D. May authorize two or more public corporations and improvement districts to provide for the common conveyance, treatment and disposal of sewage and may authorize any such corporation, or any county or town on behalf of an improvement district, to contract joint indebtedness for such purpose or to contract indebtedness for specific proportions of the cost;

E. May authorize any county, city, town or village or any county or town on behalf of an improvement district to contract indebtedness to provide facilities, in excess of its own needs, for drainage purposes from any other public corporation or improvement district.

F. May authorize two or more public corporations and improvement districts to provide for a common drainage system and may authorize any such corporation, or any county or town on behalf of an improvement district, to contract joint indebtedness for such purpose or to contract indebtedness for specific proportions of the cost.

Indebtedness contracted by a county, city, town or village pursuant to this section shall be for a county, city, town or village purpose, respectively. In ascertaining the power of a county, city, town or village to contract indebtedness, any indebtedness contracted pursuant to paragraphs A and B of this section shall be excluded.

The legislature shall provide the method by which a fair proportion of joint indebtedness contracted pursuant to paragraphs D and F of this section shall be allocated to any county, city, town or village.

The legislature by general law in terms and in effect applying alike to all counties, to all cities, to all towns and/or to all villages also may provide that all or any part of indebtedness contracted or proposed to be contracted by any county, city, town or village pursuant to paragraphs D and F of this section for a revenue producing public improvement or service may be excluded periodically in ascertaining the power of such county, city, town or village to contract indebtedness. The amount of any such exclusion shall have a reasonable relation to the extent to which such public improvement or service shall have yielded or is expected to yield revenues sufficient to provide for the payment of the interest on and amortization of or payment of indebtedness contracted or proposed to be contracted for such public improvement or service, after deducting all costs of operation, maintenance and repairs thereof. The legislature shall provide the method by which a fair proportion of joint indebtedness proposed to be contracted pursuant to paragraphs D and F of this section shall be allocated to any county, city, town or village for the purpose of determining the amount of any such exclusion. The provisions of paragraph C of section five and section ten-a of this article shall not apply to indebtedness contracted pursuant to paragraphs D and F of this section.

The legislature may provide that any allocation of indebtedness, or determination of the amount of any exclusion of indebtedness, made pursuant to this section shall be conclusive if made or approved by the state comptroller. (Section added by vote of the people November 3, 1953. Paragraphs C-F added, next unnumbered paragraph amended, and three concluding unnumbered paragraphs added by amendment approved by vote of the people November 8, 1955.)

[Restrictions on creation and indebtedness of certain corporations]

§3. No municipal or other corporation (other than a county, city, town, village, school district or fire district, or a river improvement, river regulating, or drainage district, established by or under the supervision of the department of conservation) possessing the power (a) to contract indebtedness and (b) to levy taxes or benefit assessments upon real estate or to require the levy of such taxes or assessments, shall hereafter be established or created, but nothing herein shall prevent the creation of improvement districts in counties and towns, provided that the county or town or towns in which such districts are located shall pledge its or their faith and credit for the payment of the principal of and interest on all indebtedness to be contracted for the purposes of such districts, and in ascertaining the power of any such county or town to contract indebtedness, such indebtedness shall be included, unless such indebtedness would, under the provisions of this article, be excluded in ascertaining the power of a county or town to contract indebtedness. No such corporation now existing shall hereafter contract any indebtedness without the consent, granted in such manner as may be prescribed by general law, of the city or village within which, or of the town within any unincorporated area of which any real estate may be subject to such taxes or assessments. If the real estate subject to such taxes or assessments is wholly within a city, village or the unincorporated area of a town, in ascertaining the power of such city, village or town to contract indebtedness, there shall be included any indebtedness hereafter contracted by such corporation, unless such indebtedness would, under the provisions of this article, be excluded if contracted by such city, village or town. If only part of the real estate subject to such taxes or assessments is within a city, village or the unincorporated area of a town, in ascertaining the power of such city, village or town to contract indebtedness, there shall be included the proportion, determined as prescribed by general law, of any indebtedness hereafter contracted by such corporation, unless such indebtedness would, under the provisions of this article, be excluded if contracted by such city, village or town. (New. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Limitations on local indebtedness]

§4. Except as otherwise provided in this constitution, no county, city, town, village or school district described in this section shall be allowed to contract indebtedness for any purpose or in any manner which, including existing indebtedness, shall exceed an amount equal to the following percentages of the average full valuation of taxable real estate of such county, city, town, village or school district:

(a) the county of Nassau, for county purposes, ten per centum;

(b) any county, other than the county of Nassau, for county purposes, seven per centum;

(c) the city of New York, for city purposes, ten per centum;

(d) any city, other than the city of New York, having one hundred twenty-five thousand or more inhabitants according to the latest federal census, for city purposes, nine per centum;

(e) any city having less than one hundred twenty-five thousand inhabitants according to the latest federal census, for city purposes, excluding education purposes, seven per centum;

(f) any town, for town purposes, seven per centum;

(g) any village for village purposes, seven per centum; and

(h) any school district which is coterminous with, or partly within, or wholly within, a city having less than one hundred twenty-five thousand inhabitants according to the latest federal census, for education purposes, five per centum; provided, however, that such limitation may be increased in relation to indebtedness for specified objects or purposes with (1) the approving vote of sixty per centum or more of the duly qualified voters of such school district voting on a proposition therefor submitted at a general or special election, (2) the consent of The Regents of the University of the State of New York and (3) the consent of the state comptroller. The legislature shall prescribe by law the

qualifications for voting at any such election.

Except as otherwise provided in this constitution, any indebtedness contracted in excess of the respective limitations prescribed in this section shall be void.

In ascertaining the power of any city having less than one hundred twenty-five thousand inhabitants according to the latest federal census to contract indebtedness, indebtedness heretofore contracted by such city for education purposes shall be excluded. Such indebtedness so excluded shall be included in ascertaining the power of a school district which is coterminous with, or partly within, or wholly within, such city to contract indebtedness. The legislature shall prescribe by law the manner by which the amount of such indebtedness shall be determined and allocated among such school districts. Such law may provide that such determinations and allocations shall be conclusive if made or approved by the state comptroller.

In ascertaining the power of a school district described in this section to contract indebtedness, certificates or other evidences of indebtedness described in paragraph A of section five of this article shall be excluded.

The average full valuation of taxable real estate of any such county, city, town, village or school district shall be determined in the manner prescribed in section ten of this article.

Nothing contained in this section shall be deemed to restrict the powers granted to the legislature by other provisions of this constitution to further restrict the powers of any county, city, town, village or school district to contract indebtedness. (New. Approved by vote of the people November 6, 1951. Substituted for §4, derived in part from former §10, renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Ascertainment of debt-incurring power of counties, cities, towns and villages; certain indebtedness to be excluded]

§5. In ascertaining the power of a county, city, town or village to contract indebtedness, there shall be excluded:

A. Certificates or other evidences of indebtedness (except serial bonds of an issue having a maximum maturity of more than two years) issued for purposes other than the financing of capital improvements and contracted to be redeemed in one of the two fiscal years immediately succeeding the year of their issue, and certificates or other evidences of indebtedness issued in any fiscal year in anticipation of (a) the collection of taxes on real estate for amounts theretofore actually levied and uncollected or to be levied in such year and payable out of such taxes, (b) moneys receivable from the state which have theretofore been apportioned by the state or which are to be so apportioned within one year after their issue and (c) the collection of any other taxes due and payable or to become due and payable within one year or of other revenues to be received within one year after their issue; excepting any such certificates or other evidences of indebtedness or renewals thereof which are not retired within five years after their date of original issue.

B. Indebtedness heretofore or hereafter contracted to provide for the supply of water.

C. Indebtedness heretofore or hereafter contracted by any county, city, town or village for a public improvement or part thereof, or service, owned or rendered by such county, city, town or village, annually proportionately to the extent that the same shall have yielded to such county, city, town or village net revenue; provided, however, that such net revenue shall be twenty-five per centum or more of the amount required in such year for the payment of the interest on, amortization of, or payment of, such indebtedness. Such exclusion shall be granted only if the revenues of such public improvement or part thereof, or service, are applied to and actually used for payment of all costs of operation, maintenance and repairs, and payment of the amounts required in such year for interest on and amortization of or redemption of such indebtedness, or such revenues are deposited in a special fund to be used solely for such payments. Any revenues remaining after such payments are made may be used for any lawful purpose of such county, city, town or village, respectively.

Net revenue shall be determined by deducting from gross revenues of the preceding year all costs of operation, maintenance and repairs for such year, or the legislature may provide that net revenue shall be determined by deducting from the average of the gross revenues of not to exceed five of the preceding years during which the public improvement or part thereof, or service, has been in operation, the average of all costs of operation, maintenance and repairs for the same years.

A proportionate exclusion of indebtedness contracted or proposed to be contracted also may be granted for the period from the date when such indebtedness is first contracted or to be contracted for such public improvement or part thereof, or service, through the first year of operation of such public improvement or part thereof, or service. Such exclusion shall be computed in the manner provided in this section on the basis of estimated net revenue which shall be determined by deducting from the gross revenues estimated to be received during the first year of operation of such public improvement or part thereof, or service, all estimated costs of operation, maintenance and repairs for such year. The amount of any such proportionate exclusion shall not exceed seventy-five per centum of the amount which would be excluded if the computation were made on the basis of net revenue instead of estimated net revenue.

Except as otherwise provided herein, the legislature shall prescribe the method by which and the terms and conditions under which the proportionate amount of any such indebtedness to be so excluded shall be determined and no proportionate amount of such indebtedness shall be excluded except in accordance with such determination. The legislature may provide that the state comptroller shall make such determination or it may confer appropriate jurisdiction on the appellate division of the supreme court in the judicial departments in which such counties, cities, towns or villages are located for the purpose of determining the proportionate amount of any such indebtedness to be so excluded.

The provisions of this paragraph C shall not affect or impair any existing exclusions of indebtedness, or the power to exclude indebtedness, granted by any other provision of this constitution.

D. Serial bonds, issued by any county, city, town or village which now maintains a pension or retirement system or fund which is not on an actuarial reserve basis with current payments to the reserve adequate to provide for all current accruing liabilities. Such bonds shall not exceed in the aggregate an amount sufficient to provide for the payment of the liabilities of such system or fund, accrued on the date of issuing such bonds, both on account of pensioners on the pension roll on that date and prospective pensions to dependents of such pensioners and on account of prior service of active members of such system or fund on that date. Such bonds or the proceeds thereof shall be deposited in such system or fund. Each such pension or retirement system or fund thereafter shall be maintained on an actuarial reserve basis with current payments to the reserve adequate to provide for all current accruing liabilities.

E. Indebtedness contracted on or after January first, nineteen hundred sixty-two and prior to January first, two thousand twenty-four, for the construction or reconstruction of facilities for the conveyance, treatment and disposal of sewage. The legislature shall prescribe the method by which and the terms and conditions under which the amount of any such indebtedness to be excluded shall be determined, and no such indebtedness shall be excluded except in accordance with such determination. (Derived in part from former §10. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; paragraph C further amended by vote of the people November 8, 1949, and November 6, 1951; paragraph A amended by vote of the people November 3, 1953; paragraph E added by vote of the people November 5, 1963 and amended November 6, 1973; further amended by vote of the people November 8, 1983; November 2, 1994; November 4, 2003, November 5, 2013.)

[Debt-incurring power of Buffalo, Rochester and Syracuse; certain additional indebtedness to be excluded]

§6. In ascertaining the power of the cities of Buffalo, Rochester and Syracuse to contract indebtedness, in addition to the indebtedness excluded by section 5 of this article, there shall be excluded:

Indebtedness not exceeding in the aggregate the sum of ten million dollars, heretofore or hereafter contracted by the city of Buffalo or the city of Rochester and indebtedness not exceeding in the aggregate the sum of five million dollars heretofore or hereafter contracted by the city of Syracuse for so much of the cost and expense of any public improvement as may be required

by the ordinance or other local law therein assessing the same to be raised by assessment upon local property or territory. (Derived in part from former §10. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Debt-incurring power of New York city; certain additional indebtedness to be excluded]

§7. In ascertaining the power of the city of New York to contract indebtedness, in addition to the indebtedness excluded by section 5 of this article, there shall be excluded:

A. Indebtedness contracted prior to the first day of January, nineteen hundred ten, for dock purposes proportionately to the extent to which the current net revenues received by the city therefrom shall meet the interest on and the annual requirements for the amortization of such indebtedness. The legislature shall prescribe the method by which and the terms and conditions under which the amount of any such indebtedness to be so excluded shall be determined, and no such indebtedness shall be excluded except in accordance with such determination. The legislature may confer appropriate jurisdiction on the appellate division of the supreme court in the first judicial department for the purpose of determining the amount of any such indebtedness to be so excluded.

B. The aggregate of indebtedness initially contracted from time to time after January first, nineteen hundred twenty-eight, for the construction or equipment, or both, of new rapid transit railroads, not exceeding the sum of three hundred million dollars. Any indebtedness thereafter contracted in excess of such sum for such purposes shall not be so excluded, but this provision shall not be construed to prevent the refunding of any of the indebtedness excluded hereunder.

C. The aggregate of indebtedness initially contracted from time to time after January first, nineteen hundred fifty, for the construction, reconstruction and equipment of city hospitals, not exceeding the sum of one hundred fifty million dollars. Any indebtedness thereafter contracted in excess of such sum for such purposes, other than indebtedness contracted to refund indebtedness excluded pursuant to this paragraph, shall not be so excluded.

D. The aggregate of indebtedness initially contracted from time to time after January first, nineteen hundred fifty-two, for the construction and equipment of new rapid transit railroads, including extensions of and interconnections with and between existing rapid transit railroads or portions thereof, and reconstruction and equipment of existing rapid transit railroads, not exceeding the sum of five hundred million dollars. Any indebtedness thereafter contracted in excess of such sum for such purposes, other than indebtedness contracted to refund indebtedness excluded pursuant to this paragraph, shall not be so excluded.

E. Indebtedness contracted for school purposes, evidenced by bonds, to the extent to which state aid for common schools, not exceeding two million five hundred thousand dollars, shall meet the interest and the annual requirements for the amortization and payment of part or all of one or more issues of such bonds. Such exclusion shall be effective only during a fiscal year of the city in which its expense budget provides for the payment of such debt service from such state aid. The legislature shall prescribe by law the manner by which the amount of any such exclusion shall be determined and such indebtedness shall not be excluded hereunder except in accordance with the determination so prescribed. Such law may provide that any such determination shall be conclusive if made or approved by the state comptroller. (Derived in part from former §10. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938. Paragraph D added by amendment approved by vote of the people November 8, 1949; paragraphs E and F added by vote of the people November 6, 1951. Former paragraph A deleted; subsequent paragraphs re-lettered A to E by amendment approved by vote of the people November 3, 1953.)

[Debt-incurring power of New York city; certain indebtedness for railroads and transit purposes to be excluded]

§7-a. In ascertaining the power of the city of New York to contract indebtedness, in addition to the indebtedness excluded under any other section of this constitution, there shall be excluded:

A. The aggregate of indebtedness initially contracted from time to time by the city for the acquisition of railroads and facilities or properties used in connection therewith or rights therein or securities of corporations owning such railroads, facilities or rights, not exceeding the sum of three hundred fifteen million dollars. Provision for the amortization of such indebtedness shall be made either by the establishment and maintenance of a sinking fund therefor or by annual payment of part thereof, or by both such methods. Any indebtedness thereafter contracted in excess of such sum for such purposes shall not be so excluded, but this provision shall not be construed to prevent the refunding of any such indebtedness.

Notwithstanding any other provision of the constitution, the city is hereby authorized to contract indebtedness for such purposes and to deliver its obligations evidencing such indebtedness to the corporations owning the railroads, facilities, properties or rights acquired, to the holders of securities of such owning corporations, to the holders of securities of corporations holding the securities of such owning corporations, or to the holders of securities to which such acquired railroads, facilities, properties or rights are now subject.

B. Indebtedness contracted by the city for transit purposes, and not otherwise excluded, proportionately to the extent to which the current net revenue received by the city from all railroads and facilities and properties used in connection therewith and rights therein owned by the city and securities of corporations owning such railroads, facilities, properties or rights, owned by the city, shall meet the interest and the annual requirements for the amortization and payment of such non-excluded indebtedness.

In determining whether indebtedness for transit purposes may be excluded under this paragraph of this section, there shall first be deducted from the current net revenue received by the city from such railroads and facilities and properties used in connection therewith and rights therein and securities owned by the city: (a) an amount equal to the interest and amortization requirements on indebtedness for rapid transit purposes heretofore excluded by order of the appellate division, which exclusion shall not be terminated by or under any provision of this section; (b) an amount equal to the interest on indebtedness contracted pursuant to this section and of the annual requirements for amortization on any sinking fund bonds and for redemption of any serial bonds evidencing such indebtedness; (c) an amount equal to the sum of all taxes and bridge tolls accruing to the city in the fiscal year of the city preceding the acquisition of the railroads or facilities or properties or rights therein or securities acquired by the city hereunder, from such railroads, facilities and properties; and (d) the amount of net operating revenue derived by the city from the independent subway system during such fiscal year. The legislature shall prescribe the method by which and the terms and conditions under which the amount of any indebtedness to be excluded hereunder shall be determined, and no indebtedness shall be excluded except in accordance with the determination so prescribed. The legislature may confer appropriate jurisdiction on the appellate division of the supreme court in the first judicial department for the purpose of determining the amount of any debt to be so excluded. (New. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Indebtedness not to be invalidated by operation of this article]

§8. No indebtedness of a county, city, town, village or school district valid at the time of its inception shall thereafter become invalid by reason of the operation of any of the provisions of this article. (Derived in part from former §10. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[When debt-incurring power of certain counties shall cease]

§9. Whenever the boundaries of any city are the same as those of a county, or when any city includes within its boundaries more than one county, the power of any county wholly included within such city to contract indebtedness shall cease, but the indebtedness of such county shall not, for the purposes of this article, be included as a part of the city indebtedness. (Derived in part from former §10. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Limitations on amount to be raised by real estate taxes for local purposes; exceptions]

§10. Hereafter, in any county, city, village or school district described in this

section, the amount to be raised by tax on real estate in any fiscal year, in addition to providing for the interest on and the principal of all indebtedness, shall not exceed an amount equal to the following percentages of the average full valuation of taxable real estate of such county, city, village or school district, less the amount to be raised by tax on real estate in such year for the payment of the interest on and redemption of certificates or other evidence of indebtedness described in paragraphs A and D of section five of this article, or renewals thereof:

(a) any county, for county purposes, one and one-half per centum; provided, however, that the legislature may prescribe a method by which such limitation may be increased to not to exceed two per centum;

(b) any city of one hundred twenty-five thousand or more inhabitants according to the latest federal census, for city purposes, two per centum;

(c) any city having less than one hundred twenty-five thousand inhabitants according to the latest federal census, for city purposes, two per centum;

(d) any village, for village purposes, two per centum;

(e) Notwithstanding the provisions of sub-paragraphs (a) and (b) of this section, the city of New York and the counties therein, for city and county purposes, a combined total of two and one-half per centum.

The average full valuation of taxable real estate of such county, city, village or school district shall be determined by taking the assessed valuations of taxable real estate on the last completed assessment rolls and the four preceding rolls of such county, city, village or school district, and applying thereto the ratio which such assessed valuation on each of such rolls bears to the full valuation, as determined by the state tax commission or by such other state officer or agency as the legislature shall by law direct. The legislature shall prescribe the manner by which such ratio shall be determined by the state tax commission or by such other state officer or agency.

Nothing contained in this section shall be deemed to restrict the powers granted to the legislature by other provisions of this constitution to further restrict the powers of any county, city, town, village or school district to levy taxes on real estate. (Derived in part from former §10. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 8, 1949; November 3, 1953; subparagraph (f) added by separate amendment approved by vote of the people November 3, 1953. Former subparagraph (e) repealed and former subparagraph (f) relettered (e) by amendment approved by vote of the people November 5, 1985.)

[Application and use of revenues: certain public improvements]

§10-a. For the purpose of determining the amount of taxes which may be raised on real estate pursuant to section ten of this article, the revenues received in each fiscal year by any county, city or village from a public improvement or part thereof, or service, owned or rendered by such county, city or village for which bonds or capital notes are issued after January first, nineteen hundred fifty, shall be applied first to the payment of all costs of operation, maintenance and repairs thereof, and then to the payment of the amounts required in such fiscal year to pay the interest on and the amortization of, or payment of, indebtedness contracted for such public improvement or part thereof, or service. The provisions of this section shall not prohibit the use of excess revenues for any lawful county, city or village purpose. The provisions of this section shall not be applicable to a public improvement or part thereof constructed to provide for the supply of water. (New section added by amendment approved by vote of the people November 8, 1949. Amended by vote of the people November 3, 1953.)

[Taxes for certain capital expenditures to be excluded from tax limitation]

§11. (a) Whenever the city of New York is required by law to pay for all or any part of the cost of capital improvements by direct budgetary appropriation in any fiscal year or by the issuance of certificates or other evidence of indebtedness (except serial bonds of an issue having a maximum maturity of more than two years) to be redeemed in one of the two immediately succeeding fiscal years, taxes required for such appropriation or for the redemption of such certificates or other evidence of indebtedness may be excluded in whole or in part by such city from the tax limitation prescribed by section ten of this article, in which event the total amount so required for such appropriation and for the redemption of such certificates or other evidence of indebtedness shall be deemed to be indebtedness to the same extent and in the same manner as if such amount had been financed through indebtedness payable in equal annual installments over the period of the probable usefulness of such capital improvement, as determined by law. The fiscal officer of such city shall determine the amount to be deemed indebtedness pursuant to this section, and the legislature, in its discretion, may provide that such determination, if approved by the state comptroller, shall be conclusive. Any amounts determined to be deemed indebtedness of any county, city, other than the city of New York, village or school district in accordance with the provisions of this section as in force and effect prior to January first, nineteen hundred fifty-two, shall not be deemed to be indebtedness on and after such date.

(b) Whenever any county, city, other than the city of New York, village or school district which is coterminous with, or partly within, or wholly within, a city having less than one hundred twenty-five thousand inhabitants according to the latest federal census provides by direct budgetary appropriation for any fiscal year for the payment in such fiscal year or in any future fiscal year or years of all or any part of the cost of an object or purpose for which a period of probable usefulness has been determined by law, the taxes required for such appropriation shall be excluded from the tax limitation prescribed by section ten of this article unless the legislature otherwise provides. (New. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; amended by vote of the people November 8, 1949, and by vote of the people November 6, 1951.)

[Powers of local governments to be restricted; further limitations on contracting local indebtedness authorized]

§12. It shall be the duty of the legislature, subject to the provisions of this constitution, to restrict the power of taxation, assessment, borrowing money, contracting indebtedness, and loaning the credit of counties, cities, towns and villages, so as to prevent abuses in taxation and assessments and in contracting of indebtedness by them. Nothing in this article shall be construed to prevent the legislature from further restricting the powers herein specified of any county, city, town, village or school district to contract indebtedness or to levy taxes on real estate. The legislature shall not, however, restrict the power to levy taxes on real estate for the payment of interest on or principal of indebtedness theretofore contracted. (New. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938. Amended by vote of the people November 5, 1963.)

ARTICLE IX[10]

LOCAL GOVERNMENTS

[Bill of rights for local governments]

Section 1. Effective local self-government and intergovernmental cooperation are purposes of the people of the state. In furtherance thereof, local governments shall have the following rights, powers, privileges and immunities in addition to those granted by other provisions of this constitution:

(a) Every local government, except a county wholly included within a city, shall have a legislative body elective by the people thereof. Every local government shall have power to adopt local laws as provided by this article.

(b) All officers of every local government whose election or appointment

[10] New article, adopted by amendment approved by vote of the people November 5, 1963. Former Article IX repealed, except sections 5, 6 and 8, which were relettered subdivisions (a), (b) and (c) respectively of new section 13 of Article XIII.

is not provided for by this constitution shall be elected by the people of the local government, or of some division thereof, or appointed by such officers of the local government as may be provided by law.

(c) Local governments shall have power to agree, as authorized by act of the legislature, with the federal government, a state or one or more other governments within or without the state, to provide cooperatively, jointly or by contract any facility, service, activity or undertaking which each participating local government has the power to provide separately. Each such local government shall have power to apportion its share of the cost thereof upon such portion of its area as may be authorized by act of the legislature.

(d) No local government or any part of the territory thereof shall be annexed to another until the people, if any, of the territory proposed to be annexed shall have consented thereto by majority vote on a referendum and until the governing board of each local government, the area of which is affected, shall have consented thereto upon the basis of a determination that the annexation is in the over-all public interest. The consent of the governing board of a county shall be required only where a boundary of the county is affected. On or before July first, nineteen hundred sixty-four, the legislature shall provide, where such consent of a governing board is not granted, for adjudication and determination, on the law and the facts, in a proceeding initiated in the supreme court, of the issue of whether the annexation is in the over-all public interest.

(e) Local governments shall have power to take by eminent domain private property within their boundaries for public use together with excess land or property but no more than is sufficient to provide for appropriate disposition or use of land or property which abuts on that necessary for such public use, and to sell or lease that not devoted to such use. The legislature may authorize and regulate the exercise of the power of eminent domain and excess condemnation by a local government outside its boundaries.

(f) No local government shall be prohibited by the legislature (1) from making a fair return on the value of the property used and useful in its operation of a gas, electric or water public utility service, over and above costs of operation and maintenance and necessary and proper reserves, in addition to an amount equivalent to taxes which such service, if privately owned, would pay to such local government, or (2) from using such profits for payment of refunds to consumers or for any other lawful purpose.

(g) A local government shall have power to apportion its cost of a governmental service or function upon any portion of its area, as authorized by act of the legislature.

(h) (1) Counties, other than those wholly included within a city, shall be empowered by general law, or by special law enacted upon county request pursuant to section two of this article, to adopt, amend or repeal alternative forms of county government provided by the legislature or to prepare, adopt, amend or repeal alternative forms of their own. Any such form of government or any amendment thereof, by act of the legislature or by local law, may transfer one or more functions or duties of the county or of the cities, towns, villages, districts or other units of government wholly contained in such county to each other or when authorized by the legislature to the state, or may abolish one or more offices, departments, agencies or units of government provided, however, that no such form or amendment, except as provided in paragraph (2) of this subdivision, shall become effective unless approved on a referendum by a majority of the votes cast thereon in the area of the county outside of cities, and in the cities of the county, if any, considered as one unit. Where an alternative form of county government or any amendment thereof, by act of the legislature or by local law, provides for the transfer of any function or duty to or from any village or the abolition of any office, department, agency or unit of government of a village wholly contained in such county, such form or amendment shall not become effective unless it shall also be approved on the referendum by a majority of the votes cast thereon in all the villages so affected considered as one unit.

(2) After the adoption of an alternative form of county government by a county, any amendment thereof by act of the legislature or by local law which abolishes or creates an elective county office, changes the voting or veto power of or the method of removing an elective county officer during his or her term of office, abolishes, curtails or transfers to another county officer or agency any power of an elective county officer or changes the form or composition of the county legislative body shall be subject to a permissive referendum as provided by the legislature. (Amended by vote of the people November 6, 2001.)

Powers and duties of legislature; home rule powers of local govern- ments; statute of local governments.

§2. (a) The legislature shall provide for the creation and organization of local governments in such manner as shall secure to them the rights, powers, privileges and immunities granted to them by this constitution.

(b) Subject to the bill of rights of local governments and other applicable provisions of this constitution, the legislature:

(l) Shall enact, and may from time to time amend, a statute of local governments granting to local governments powers including but not limited to those of local legislation and administration in addition to the powers vested in them by this article. A power granted in such statute may be repealed, diminished, impaired or suspended only by enactment of a statute by the legislature with the approval of the governor at its regular session in one calendar year and the re-enactment and approval of such statute in the following calendar year.

(2) Shall have the power to act in relation to the property, affairs or government of any local government only by general law, or by special law only (a) on request of two-thirds of the total membership of its legislative body or on request of its chief executive officer concurred in by a majority of such membership, or (b) except in the case of the city of New York, on certificate of necessity from the governor reciting facts which in the judgment of the governor constitute an emergency requiring enactment of such law and, in such latter case, with the concurrence of two-thirds of the members elected to each house of the legislature.

(3) Shall have the power to confer on local governments powers not relating to their property, affairs or government including but not limited to those of local legislation and administration, in addition to those otherwise granted by or pursuant to this article, and to withdraw or restrict such additional powers.

(c) In addition to powers granted in the statute of local governments or any other law, (i) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to its property, affairs or government and, (ii) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to the following subjects, whether or not they relate to the property, affairs or government of such local government, except to the extent that the legislature shall restrict the adoption of such a local law relating to other than the property, affairs or government of such local government:

(l) The powers, duties, qualifications, number, mode of selection and removal, terms of office, compensation, hours of work, protection, welfare and safety of its officers and employees, except that cities and towns shall not have such power with respect to members of the legislative body of the county in their capacities as county officers.

(2) In the case of a city, town or village, the membership and composition of its legislative body.

(3) The transaction of its business.

(4) The incurring of its obligations, except that local laws relating to financing by the issuance of evidences of indebtedness by such local government shall be consistent with laws enacted by the legislature.

(5) The presentation, ascertainment and discharge of claims against it.

(6) The acquisition, care, management and use of its highways, roads, streets, avenues and property.

(7) The acquisition of its transit facilities and the ownership and operation thereof.

(8) The levy, collection and administration of local taxes authorized by the legislature and of assessments for local improvements, consistent with laws enacted by the legislature.

(9) The wages or salaries, the hours of work or labor, and the protection, welfare and safety of persons employed by any contractor or sub-contractor performing work, labor or services for it.

(10) The government, protection, order, conduct, safety, health and well-being of persons or property therein.

(d) Except in the case of a transfer of functions under an alternative form of county government, a local government shall not have power to adopt local laws which impair the powers of any other local government.

(e) The rights and powers of local governments specified in this section insofar as applicable to any county within the city of New York shall be vested in such city. (Amended by vote of the people November 6, 2001.)

Existing laws to remain applicable; construction; definitions.
§3. (a) Except as expressly provided, nothing in this article shall restrict or impair any power of the legislature in relation to:

(1) The maintenance, support or administration of the public school system, as required or provided by article XI of this constitution, or any retirement system pertaining to such public school system,

(2) The courts as required or provided by article VI of this constitution, and

(3) Matters other than the property, affairs or government of a local government.

(b) The provisions of this article shall not affect any existing valid provisions of acts of the legislature or of local legislation and such provisions shall continue in force until repealed, amended, modified or superseded in accordance with the provisions of this constitution.

(c) Rights, powers, privileges and immunities granted to local governments by this article shall be liberally construed.

(d) Whenever used in this article the following terms shall mean or include:

(1) "General law." A law which in terms and in effect applies alike to all counties, all counties other than those wholly included within a city, all cities, all towns or all villages.

(2) "Local government." A county, city, town or village.

(3) "People." Persons entitled to vote as provided in section one of article two of this constitution.

(4) "Special law." A law which in terms and in effect applies to one or more, but not all, counties, counties other than those wholly included within a city, cities, towns or villages.

ARTICLE X
CORPORATIONS

[Corporations; formation of]
Section 1. Corporations may be formed under general law; but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the legislature, the objects of the corporation cannot be attained under general laws. All general laws and special acts passed pursuant to this section may be altered from time to time or repealed. (Formerly §1 of Art. 8. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Dues of corporations]
§2. Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law. (Formerly §2 of Art. 8. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Savings bank charters; savings and loan association charters; special charters not to be granted]
§3. The legislature shall, by general law, conform all charters of savings banks, savings and loan associations, or institutions for savings, to a uniformity of powers, rights and liabilities, and all charters hereafter granted for such corporations shall be made to conform to such general law, and to such amendments as may be made thereto. The legislature shall have no power to pass any act granting any special charter for banking purposes; but corporations or associations may be formed for such purposes under general laws. (Formerly §4 of Art. 8. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; amended by vote of the people November 8, 1983.)

[Corporations; definition; right to sue and be sued]
§4. The term corporations as used in this section, and in sections 1, 2 and 3 of this article shall be construed to include all associations and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue and shall be subject to be sued in all courts in like cases as natural persons. (Formerly §3 of Art. 8. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Public corporations; restrictions on creation and powers; accounts; obligations of]
§5. No public corporation (other than a county, city, town, village, school district or fire district or an improvement district established in a town or towns) possessing both the power to contract indebtedness and the power to collect rentals, charges, rates or fees for the services or facilities furnished or supplied by it shall hereafter be created except by special act of the legislature.

No such public corporation (other than a county or city) shall hereafter be given both the power to contract indebtedness and the power, within any city, to collect rentals, charges, rates or fees from the owners of real estate, or the occupants of real estate (other than the occupants of premises owned or controlled by such corporation or by the state or any civil division thereof), for services or facilities furnished or supplied in connection with such real estate, if such services or facilities are of a character or nature then or formerly furnished or supplied by the city, unless the electors of the city shall approve the granting to such corporation of such powers by a majority vote at a general or special election in such city; but this paragraph shall not apply to a corporation created pursuant to an interstate compact.

The accounts of every such public corporation heretofore or hereafter created shall be subject to the supervision of the state comptroller, or, if the member or members of such public corporation are appointed by the mayor of a city, to the supervision of the comptroller of such city; provided, however, that this provision shall not apply to such a public corporation created pursuant to agreement or compact with another state or with a foreign power, except with the consent of the parties to such agreement or compact.

Neither the state nor any political subdivision thereof shall at any time be liable for the payment of any obligations issued by such a public corporation heretofore or hereafter created, nor may the legislature accept, authorize acceptance of or impose such liability upon the state or any political subdivision thereof; but the state or a political subdivision thereof may, if authorized by the legislature, acquire the properties of any such corporation and pay the indebtedness thereof. (New. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Liability of state for payment of bonds of public corporation to construct state thruways; use of state canal lands and properties]
§6. Notwithstanding any provision of this or any other article of this constitution, the legislature may by law, which shall take effect without submission to the people:

(a) make or authorize making the state liable for the payment of the principal of and interest on bonds of a public corporation created to construct state thruways, in a principal amount not to exceed five hundred million dollars, maturing in not to exceed forty years after their respective dates, and for the payment of the principal of and interest on notes of such corporation issued in anticipation of such bonds, which notes and any renewals thereof shall mature within five years after the respective dates of such notes; and

(b) authorize the use of any state canal lands and properties by such a public corporation for so long as the law may provide. To the extent payment is not otherwise made or provided for, the provisions of section sixteen of article seven shall apply to the liability of the state incurred pursuant to this section, but the powers conferred by this section shall not be subject to the limitations of this or any other article. (New. Added by vote of the people November 6, 1951.)

[Liability of state for obligations of the port of New York authority for railroad commuter cars; limitations]
§7. Notwithstanding any provision of this or any other article of this constitution, the legislature may by law, which shall take effect without submission to the people, make or authorize making the state liable for the payment of the principal of and interest on obligations of the port of New York authority issued pursuant to legislation heretofore or hereafter enacted, to purchase or refinance the purchase of, or to repay advances from this state made for the purpose of purchasing, railroad passenger cars, including self-

propelled cars, and locomotives and other rolling stock used in passenger transportation, for the purpose of leasing such cars to any railroad transporting passengers between municipalities in the portion of the port of New York district within the state, the majority of the trackage of which within the port of New York district utilized for the transportation of passengers shall be in the state; provided, however, that the total amount of obligations with respect to which the state may be made liable shall not exceed one hundred million dollars at any time, and that all of such obligations shall be due not later than thirty-five years after the effective date of this section.

To the extent payment is not otherwise made or provided for, the provisions of section sixteen of article seven shall apply to the liability of the state incurred pursuant to this section, but the powers conferred by this section shall not be subject to the limitations of this or any other article. (New. Added by vote of the people November 7, 1961.)

[Liability of state on bonds of a public corporation to finance new industrial or manufacturing plants in depressed areas]

§8. Notwithstanding any provision of this or any other article of this constitution, the legislature may by law, which shall take effect without submission to the people, make or authorize making the state liable for the payment of the principal of and interest on bonds of a public corporation to be created pursuant to and for the purposes specified in the last paragraph of section eight of article seven of this constitution, maturing in not to exceed thirty years after their respective dates, and for the principal of and interest on notes of such corporation issued in anticipation of such bonds, which notes and any renewals thereof shall mature within seven years after the respective dates of such notes, provided that the aggregate principal amount of such bonds with respect to which the state shall be so liable shall not at any one time exceed nine hundred million dollars, excluding bonds issued to refund outstanding bonds. (New. Added by vote of the people November 7, 1961. Formerly duplicate §7 added by vote of the people November 7, 1961; renumbered and amended by vote of the people November 4, 1969; further amended by vote of the people November 3, 1981; November 5, 1985; November 5, 1991.)

ARTICLE XI
EDUCATION

[Common schools]

Section 1. The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated. (Formerly §1 of Art. 9. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Regents of the University]

§2. The corporation created in the year one thousand seven hundred eighty-four, under the name of The Regents of the University of the State of New York, is hereby continued under the name of The University of the State of New York. It shall be governed and its corporate powers, which may be increased, modified or diminished by the legislature, shall be exercised by not less than nine regents. (Formerly §2 of Art. 9. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Use of public property or money in aid of denominational schools prohibited; transportation of children authorized]

§3. Neither the state nor any subdivision thereof, shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination or inspection, of any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught, but the legislature may provide for the transportation of children to and from any school or institution of learning. (Formerly §4 of Art. 9. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938. Formerly §4, renumbered §3 without change by amendment approved by vote of the people November 6, 1962; former § 4 repealed by same amendment.)

ARTICLE XII[11]
DEFENSE

[Defense; militia]

Section 1. The defense and protection of the state and of the United States is an obligation of all persons within the state. The legislature shall provide for the discharge of this obligation and for the maintenance and regulation of an organized militia.

ARTICLE XIII
PUBLIC OFFICERS

[Oath of office; no other test for public office]

Section 1. Members of the legislature, and all officers, executive and judicial, except such inferior officers as shall be by law exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the State of New York, and that I will faithfully discharge the duties of the office of ....., according to the best of my ability;" and no other oath, declaration or test shall be required as a qualification for any office of public trust, except that any committee of a political party may, by rule, provide for equal representation of the sexes on any such committee, and a state convention of a political party, at which candidates for public office are nominated, may, by rule, provide for equal representation of the sexes on any committee of such party. (Amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Duration of term of office]

§2. When the duration of any office is not provided by this constitution it may be declared by law, and if not so declared, such office shall be held during the pleasure of the authority making the appointment. (Formerly §3 of Art. 10. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938. Formerly §6, renumbered §2 without change by amendment approved by vote of the people November 6, 1962; former §2 repealed by same amendment.)

[Vacancies in office; how filled; boards of education]

§3. The legislature shall provide for filling vacancies in office, and in case of elective officers, no person appointed to fill a vacancy shall hold his or her office by virtue of such appointment longer than the commencement of the political year next succeeding the first annual election after the happening of the vacancy; provided, however, that nothing contained in this article shall prohibit the filling of vacancies on boards of education, including boards of education of community districts in the city school district of the city of New York, by appointment until the next regular school district election, whether or not such appointment shall extend beyond the thirty-first day of December in any year. (Formerly §5 of Art. 10. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938. Formerly §8, renumbered §3 without change by amendment approved by vote of the people November 6, 1962; former §3 repealed by same amendment. Amended by vote of the people November 8, 1977; November 6, 2001.)

[Political year and legislative term]

§4. The political year and legislative term shall begin on the first day of January; and the legislature shall, every year, assemble on the first Wednesday after the first Monday in January. (Formerly §6 of Art. 10. Renumbered and amended by Constitutional Convention of 1938 and

[11] New article, adopted by vote of the people November 6, 1962; repealing and replacing former article adopted November 8, 1938.

approved by vote of the people November 8, 1938. Formerly §9, renumbered §4 without change by amendment approved by vote of the people November 6, 1962; former §4 repealed by same amendment.)

[Removal from office for misconduct]
§5. Provision shall be made by law for the removal for misconduct or malversation in office of all officers, except judicial, whose powers and duties are not local or legislative and who shall be elected at general elections, and also for supplying vacancies created by such removal. (Formerly §7 of Art. 10. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938. Formerly §10, renumbered §5 without change by amendment approved by vote of the people November 6, 1962; former §5 repealed by same amendment.)

[When office to be deemed vacant; legislature may declare]
§6. The legislature may declare the cases in which any office shall be deemed vacant when no provision is made for that purpose in this constitution. (Formerly §8 of Art. 10. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938. Formerly §11, renumbered §6 without change by amendment approved by vote of the people November 6, 1962; former §6 repealed by same amendment.)

[Compensation of officers]
§7. Each of the state officers named in this constitution shall, during his or her continuance in office, receive a compensation, to be fixed by law, which shall not be increased or diminished during the term for which he or she shall have been elected or appointed; nor shall he or she receive to his or her use any fees or perquisites of office or other compensation. (Formerly §9 of Art. 10. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938. Formerly §12, renumbered §7 without change by amendment approved by vote of the people November 6, 1962; former §7 repealed by same amendment; further amended as §12 by vote of the people November 5, 1963; further amended by vote of the people November 6, 2001.)

[Election and term of city and certain county officers]
§8. All elections of city officers, including supervisors, elected in any city or part of a city, and of county officers elected in any county wholly included in a city, except to fill vacancies, shall be held on the Tuesday succeeding the first Monday in November in an odd-numbered year, and the term of every such officer shall expire at the end of an odd-numbered year. This section shall not apply to elections of any judicial officer. (New. Added by amendment approved by vote of the people November 2, 1965.)

[No sections 9-12; former 9-12 renumbered 4-7]

[Law enforcement and other officers]
§13. (a) Except in counties in the city of New York and except as authorized in section one of article nine of this constitution, registers in counties having registers shall be chosen by the electors of the respective counties once in every three years and whenever the occurring of vacancies shall require; the sheriff and the clerk of each county shall be chosen by the electors once in every three or four years as the legislature shall direct. Sheriffs shall hold no other office. They may be required by law to renew their security, from time to time; and in default of giving such new security, their offices shall be deemed vacant. The governor may remove any elective sheriff, county clerk, district attorney or register within the term for which he or she shall have been elected; but before so doing the governor shall give to such officer a copy of the charges against him or her and an opportunity of being heard in his or her defense. In each county a district attorney shall be chosen by the electors once in every three or four years as the legislature shall direct. The clerk of each county in the city of New York shall be appointed, and be subject to removal, by the appellate division of the supreme court in the judicial department in which the county is located. In addition to his or her powers and duties as clerk of the supreme court, he or she shall have power to select, draw, summon and empanel grand and petit jurors in the manner and under the conditions now or hereafter prescribed by law, and shall have such other powers and duties as shall be prescribed by the city from time to time by local law.

(b) Any district attorney who shall fail faithfully to prosecute a person charged with the violation in his or her county of any provision of this article which may come to his or her knowledge, shall be removed from office by the governor, after due notice and an opportunity of being heard in his or her defense. The expenses which shall be incurred by any county, in investigating and prosecuting any charge of bribery or attempting to bribe any person holding office under the laws of this state, within such county, or of receiving bribes by any such person in said county, shall be a charge against the state, and their payment by the state shall be provided for by law.

(c) The city of New York is hereby vested with power from time to time to abolish by local law, as defined by the legislature, the office of any county officer within the city other than judges, clerks of counties and district attorneys, and to assign any or all functions of such officers to city officers, courts or clerks of counties, and to prescribe the powers, duties, qualifications, number, mode of selection and removal, terms of office and compensation of the persons holding such offices and the employees therein, and to assign to city officers any powers or duties of clerks of counties not assigned by this constitution. The legislature shall not pass any law affecting any such matters in relation to such offices within the city of New York except on message from the governor declaring that an emergency exists and the concurrent action of two-thirds of the members of each house, except that existing laws regarding each such office shall continue in force, and may be amended or repealed by the legislature as heretofore, until the power herein granted to the city has been exercised with respect to that office. The provisions of article nine shall not prevent the legislature from passing general or special laws prescribing or affecting powers and duties of such city officers or such courts or clerks to whom or which functions of such county officers shall have been so assigned, in so far as such powers or duties embrace subjects not relating to property, affairs or government of such city. (Added by vote of the people November 5, 1963. Subdivisions (a), (b) and (c), formerly §§5, 6 and 8 of Art. 9. Subdivision (a) amended by vote of the people November 7, 1972; subdivision (a) further amended by vote of the people November 6, 1984; November 7, 1989; further amended by vote of the people November 6, 2001.)

[Employees of, and contractors for, the state and local governments; wages, hours and other provisions to be regulated by legislature]
§14. The legislature may regulate and fix the wages or salaries and the hours of work or labor, and make provisions for the protection, welfare and safety, of persons employed by the state or by any county, city, town, village or other civil division of the state, or by any contractor or subcontractor performing work, labor or services for the state or for any county, city, town, village or other civil division thereof. (New. Added by amendment approved by vote of the people November 5, 1963.)

ARTICLE XIV
CONSERVATION

[Forest preserve to be forever kept wild; authorized uses and exceptions]
Section 1. The lands of the state, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed. Nothing herein contained shall prevent the state from constructing, completing and maintaining any highway heretofore specifically authorized by constitutional amendment, nor from constructing and maintaining to federal standards federal aid interstate highway route five hundred two from a point in the vicinity of the city of Glens Falls, thence northerly to the vicinity of the villages of Lake George and Warrensburg, the hamlets of South Horicon and Pottersville and thence northerly in a generally straight line on the west side of Schroon Lake to the vicinity of the hamlet of Schroon, then continuing northerly to the vicinity of Schroon Falls, Schroon River and North Hudson, and to the east of Makomis Mountain, east of the hamlet of New Russia, east of the village of Elizabethtown and continuing northerly in the vicinity of the hamlet of Towers Forge, and east of Poke-O-Moonshine Mountain and continuing northerly to the vicinity of the village of Keeseville and the city of Plattsburgh, all of the aforesaid taking not to exceed

a total of three hundred acres of state forest preserve land, nor from constructing and maintaining not more than twenty-five miles of ski trails thirty to two hundred feet wide, together with appurtenances thereto, provided that no more than five miles of such trails shall be in excess of one hundred twenty feet wide, on the north, east and northwest slopes of Whiteface Mountain in Essex county, nor from constructing and maintaining not more than twenty-five miles of ski trails thirty to two hundred feet wide, together with appurtenances thereto, provided that no more than two miles of such trails shall be in excess of one hundred twenty feet wide, on the slopes of Belleayre Mountain in Ulster and Delaware counties and not more than forty miles of ski trails thirty to two hundred feet wide, together with appurtenances thereto, provided that no more than eight miles of such trails shall be in excess of one hundred twenty feet wide, on the slopes of Gore and Pete Gay mountains in Warren county, nor from relocating, reconstructing and maintaining a total of not more than fifty miles of existing state highways for the purpose of eliminating the hazards of dangerous curves and grades, provided a total of no more than four hundred acres of forest preserve land shall be used for such purpose and that no single relocated portion of any highway shall exceed one mile in length. Notwithstanding the foregoing provisions, the state may convey to the village of Saranac Lake ten acres of forest preserve land adjacent to the boundaries of such village for public use in providing for refuse disposal and in exchange therefore the village of Saranac Lake shall convey to the state thirty acres of certain true forest land owned by such village on Roaring Brook in the northern half of Lot 113, Township 11, Richards Survey. Notwithstanding the foregoing provisions, the state may convey to the town of Arietta twenty-eight acres of forest preserve land within such town for public use in providing for the extension of the runway and landing strip of the Piseco airport and in exchange therefor the town of Arietta shall convey to the state thirty acres of certain land owned by such town in the town of Arietta. Notwithstanding the foregoing provisions and subject to legislative approval of the tracts to be exchanged prior to the actual transfer of title, the state, in order to consolidate its land holdings for better management, may convey to International Paper Company approximately eight thousand five hundred acres of forest preserve land located in townships two and three of Totten and Crossfield Purchase and township nine of the Moose River Tract, Hamilton county, and in exchange therefore International Paper Company shall convey to the state for incorporation into the forest preserve approximately the same number of acres of land located within such townships and such County on condition that the legislature shall determine that the lands to be received by the state are at least equal in value to the lands to be conveyed by the state. Notwithstanding the foregoing provisions and subject to legislative approval of the tracts to be exchanged prior to the actual transfer of title and the conditions herein set forth, the state, in order to facilitate the preservation of historic buildings listed on the national register of historic places by rejoining an historic grouping of buildings under unitary ownership and stewardship, may convey to Sagamore Institute, Inc., a not-for-profit educational organization, approximately ten acres of land and buildings thereon adjoining the real property of the Sagamore Institute, Inc. and located on Sagamore Road, near Racquette Lake Village, in the Town of Long Lake, county of Hamilton, and in exchange therefor; Sagamore Institute, Inc. shall convey to the state for incorporation into the forest preserve approximately two hundred acres of wild forest land located within the Adirondack Park on condition that the legislature shall determine that the lands to be received by the state are at least equal in value to the lands and buildings to be conveyed by the state and that the natural and historic character of the lands and buildings conveyed by the state will be secured by appropriate covenants and restrictions and that the lands and buildings conveyed by the state will reasonably be available for public visits according to agreement between Sagamore Institute, Inc. and the state. Notwithstanding the foregoing provisions the state may convey to the town of Arietta fifty acres of forest preserve land within such town for public use in providing for the extension of the runway and landing strip of the Piseco airport and providing for the maintenance of a clear zone around such runway, and in exchange therefor, the town of Arietta shall convey to the state fifty-three acres of true forest land located in lot 2 township 2 Totten and Crossfield's Purchase in the town of Lake Pleasant.

Notwithstanding the foregoing provisions and subject to legislative approval prior to actual transfer of title, the state may convey to the town of Keene, Essex county, for public use as a cemetery owned by such town, approximately twelve acres of forest preserve land within such town and, in exchange therefor, the town of Keene shall convey to the state for incorporation into the forest preserve approximately one hundred forty-four acres of land, together with an easement over land owned by such town including the riverbed adjacent to the land to be conveyed to the state that will restrict further development of such land, on condition that the legislature shall determine that the property to be received by the state is at least equal in value to the land to be conveyed by the state.

Notwithstanding the foregoing provisions and subject to legislative approval prior to actual transfer of title, because there is no viable alternative to using forest preserve lands for the siting of drinking water wells and necessary appurtenances and because such wells are necessary to meet drinking water quality standards, the state may convey to the town of Long Lake, Hamilton county, one acre of forest preserve land within such town for public use as the site of such drinking water wells and necessary appurtenances for the municipal water supply for the hamlet of Raquette Lake. In exchange therefor, the town of Long Lake shall convey to the state at least twelve acres of land located in Hamilton county for incorporation into the forest preserve that the legislature shall determine is at least equal in value to the land to be conveyed by the state. The Raquette Lake surface reservoir shall be abandoned as a drinking water supply source.

Notwithstanding the foregoing provisions and subject to legislative approval prior to actual transfer of title, the state may convey to National Grid up to six acres adjoining State Route 56 in St. Lawrence County where it passes through Forest Preserve in Township 5, Lots 1, 2, 5 and 6 that is necessary and appropriate for National Grid to construct a new 46kV power line and in exchange therefore National Grid shall convey to the state for incorporation into the forest preserve at least 10 acres of forest land owned by National Grid in St. Lawrence county, on condition that the legislature shall determine that the property to be received by the state is at least equal in value to the land conveyed by the state.

Notwithstanding the foregoing provisions, the legislature may authorize the settlement, according to terms determined by the legislature, of title disputes in township forty, Totten and Crossfield purchase in the town of Long Lake, Hamilton county, to resolve longstanding and competing claims of title between the state and private parties in said township, provided that prior to, and as a condition of such settlement, land purchased without the use of state-appropriated funds, and suitable for incorporation in the forest preserve within the Adirondack park, shall be conveyed to the state on the condition that the legislature shall determine that the property to be conveyed to the state shall provide a net benefit to the forest preserve as compared to the township forty lands subject to such settlement.

Notwithstanding the foregoing provisions, the state may authorize NYCO Minerals, Inc. to engage in mineral sampling operations, solely at its expense, to determine the quantity and quality of wollastonite on approximately 200 acres of forest preserve land contained in lot 8, Stowers survey, town of Lewis, Essex county provided that NYCO Minerals, Inc. shall provide the data and information derived from such drilling to the state for appraisal purposes. Subject to legislative approval of the tracts to be exchanged prior to the actual transfer of the title, the state may subsequently convey said lot 8 to NYCO Minerals, Inc., and, in exchange therefor, NYCO Minerals, Inc. shall convey to the state for incorporation into the forest preserve not less than the same number of acres of land, on condition that the legislature shall determine that the lands to be received by the state are equal to or greater than the value of the land to be conveyed by the state and on condition that the assessed value of the land to be conveyed to the state shall total not less than one million dollars. When NYCO Minerals, Inc. terminates all mining operations on such lot 8 it shall remediate the site and convey title to such lot back to the state of New York for inclusion in the forest preserve. In the event that lot 8 is not conveyed to NYCO Minerals, Inc. pursuant to this paragraph, NYCO Minerals, Inc. nevertheless shall convey to the state for incorporation into the forest preserve not less than the same number of acres of land that is disturbed by any mineral sampling operations conducted on said lot 8 pursuant to this paragraph on condition that the legislature shall determine that the lands to be received by the state are equal to or greater than the value of the lands disturbed by the mineral sampling operations.

Notwithstanding the foregoing provisions and subject to legislative approval prior to actual transfer of title, a total of no more than two hundred

fifty acres of forest preserve land shall be used for the establishment of a health and safety land account. Where no viable alternative exists and other criteria developed by the legislature are satisfied, a town, village or county may apply, pursuant to a process determined by the legislature, to the health and safety land account for projects limited to: address bridge hazards or safety on county highways, and town highways listed on the local highway inventory maintained by the department of transportation, dedicated, and in existence on January first, two thousand fifteen, and annually plowed and regularly maintained; elimination of the hazards of dangerous curves and grades on county highways, and town highways listed on the local highway inventory maintained by the department of transportation, dedicated, and in existence on January first, two thousand fifteen, and annually plowed and regularly maintained; relocation and reconstruction and maintenance of county highways, and town highways listed on the local highway inventory maintained by the department of transportation, dedicated, and in existence on January first, two thousand fifteen and annually plowed and regularly maintained, provided further that no single relocated portion of any such highway shall exceed one mile in length; and water wells and necessary appurtenances when such wells are necessary to meet drinking water quality standards and are located within five hundred thirty feet of state highways, county highways, and town highways listed on the local highway inventory maintained by the department of transportation, dedicated, and in existence on January first, two thousand fifteen, and annually plowed and regularly maintained. As a condition of the creation of such health and safety land account the state shall acquire two hundred fifty acres of land for incorporation into the forest preserve, on condition that the legislature shall approve such lands to be added to the forest preserve. (Formerly §7 of Art. 7. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 4, 1941; November 4, 1947; November 5, 1957; November 3, 1959; November 5, 1963; November 2, 1965; November 6, 1979; November 8, 1983; November 3, 1987; November 5, 1991; November 7, 1995; November 6, 2007; November 3, 2009; November 5, 2013; November 7, 2017.)

[Reservoirs]

§2. The legislature may by general laws provide for the use of not exceeding three per centum of such lands for the construction and maintenance of reservoirs for municipal water supply, and for the canals of the state. Such reservoirs shall be constructed, owned and controlled by the state, but such work shall not be undertaken until after the boundaries and high flow lines thereof shall have been accurately surveyed and fixed, and after public notice, hearing and determination that such lands are required for such public use. The expense of any such improvements shall be apportioned on the public and private property and municipalities benefited to the extent of the benefits received. Any such reservoir shall always be operated by the state and the legislature shall provide for a charge upon the property and municipalities benefited for a reasonable return to the state upon the value of the rights and property of the state used and the services of the state rendered, which shall be fixed for terms of not exceeding ten years and be readjustable at the end of any term. Unsanitary conditions shall not be created or continued by any such public works. (Derived in part from former §7 of Art. 7. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 3, 1953.)

[Forest and wild life conservation; use or disposition of certain lands authorized]

§3. 1. Forest and wild life conservation are hereby declared to be policies of the state. For the purpose of carrying out such policies the legislature may appropriate moneys for the acquisition by the state of land, outside of the Adirondack and Catskill parks as now fixed by law, for the practice of forest or wild life conservation. The prohibitions of section 1 of this article shall not apply to any lands heretofore or hereafter acquired or dedicated for such purposes within the forest preserve counties but outside of the Adirondack and Catskill parks as now fixed by law, except that such lands shall not be leased, sold or exchanged, or be taken by any corporation, public or private.

2. As to any other lands of the state, now owned or hereafter acquired, constituting the forest preserve referred to in section one of this article, but outside of the Adirondack and Catskill parks as now fixed by law, and consisting in any case of not more than one hundred contiguous acres entirely separated from any other portion of the forest preserve, the legislature may by appropriate legislation, notwithstanding the provisions of section one of this article, authorize: (a) the dedication thereof for the practice of forest or wild life conservation; or (b) the use thereof for public recreational or other state purposes or the sale, exchange or other disposition thereof; provided, however, that all moneys derived from the sale or other disposition of any of such lands shall be paid into a special fund of the treasury and be expended only for the acquisition of additional lands for such forest preserve within either such Adirondack or Catskill park. (Formerly §16 of Art. 7. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 5, 1957; November 6, 1973.)

[Protection of natural resources; development of agricultural lands]

§4. The policy of the state shall be to conserve and protect its natural resources and scenic beauty and encourage the development and improvement of its agricultural lands for the production of food and other agricultural products. The legislature, in implementing this policy, shall include adequate provision for the abatement of air and water pollution and of excessive and unnecessary noise, the protection of agricultural lands, wetlands and shorelines, and the development and regulation of water resources. The legislature shall further provide for the acquisition of lands and waters, including improvements thereon and any interest therein, outside the forest preserve counties, and the dedication of properties so acquired or now owned, which because of their natural beauty, wilderness character, or geological, ecological or historical significance, shall be preserved and administered for the use and enjoyment of the people. Properties so dedicated shall constitute the state nature and historical preserve and they shall not be taken or otherwise disposed of except by law enacted by two successive regular sessions of the legislature. (New. Added by vote of the people November 4, 1969.)

[Violations of article; how restrained]

§5. A violation of any of the provisions of this article may be restrained at the suit of the people or, with the consent of the supreme court in appellate division, on notice to the attorney-general at the suit of any citizen. (New. Derived from former §7 of Art. 7. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938. Renumbered §5 by vote of the people November 4, 1969.)

[Public utility lines and bicycle paths in forest preserves]

§6. Where state, county, or town highways listed on the local highway inventory maintained by the department of transportation, dedicated and in existence on January first, two thousand fifteen, and annually plowed and regularly maintained, traverse forest preserve land, public utility lines, limited to electric, telephone, broadband, water or sewer lines as defined in law, may, consistent with standards and requirements set forth in law, and following receipt of all permits or authorizations required by law, be buried or co-located within the widths of such highways as defined in law, and bicycle paths may, consistent with standards and requirements set forth in law, and following receipt of all permits or authorizations required by law, be constructed and maintained within the widths of such highways, as defined in law; provided, however, when no viable alternative exists and when necessary to ensure public health and safety, a stabilization device for an existing utility pole may be located in proximity to the width of the road, as defined in law; provided further, that any co-location, burial, maintenance or construction shall minimize the removal of trees or vegetation and shall not include the construction of any new intrastate natural gas or oil pipelines that have not received all necessary state and local permits and authorizations as of June first, two thousand sixteen. (New. Added by vote of the people November 7, 2017.)

ARTICLE XV
CANALS

[Disposition of canals and canal properties prohibited]

Section 1. The legislature shall not sell, abandon or otherwise dispose of the

now existing or future improved barge canal, the divisions of which are the Erie canal, the Oswego canal, the Champlain canal, and the Cayuga and Seneca canals, or of the terminals constructed as part of the barge canal system; nor shall it sell, abandon or otherwise dispose of any portion of the canal system existing prior to the barge canal improvement which portion forms a part of, or functions as a part of, the present barge canal system; but such canals and terminals shall remain the property of the state and under its management and control forever. This prohibition shall not prevent the legislature, by appropriate laws, from authorizing the granting of revocable permits or leases for periods of time as authorized by the legislature for the occupancy or use of such lands or structures. (Formerly §8 of Art. 7. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; November 5, 1991.)

[Prohibition inapplicable to lands and properties no longer useful; disposition authorized]

§2. The prohibition of sale, abandonment or other disposition contained in section 1 of this article shall not apply to barge canal lands, barge canal terminals or barge canal terminal lands which have or may become no longer necessary or useful for canal or terminal purposes; nor to any canal lands and appertaining structures constituting the canal system prior to the barge canal improvement which have or may become no longer necessary or useful in conjunction with the now existing barge canal. The legislature may by appropriate legislation authorize the sale, exchange, abandonment or other disposition of any barge canal lands, barge canal terminals, barge canal terminal lands or other canal lands and appertaining structures which have or may become no longer necessary or useful as a part of the barge canal system, as an aid to navigation thereon, or for barge canal terminal purposes. (Formerly duplicate §8 of Art. 7. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; November 5, 1991.)

[Contracts for work and materials; special revenue fund]

§3. All boats navigating the canals and the owners and masters thereof, shall be subject to such laws and regulations as have been or may hereafter be enacted concerning the navigation of the canals. The legislature shall annually make provision for the expenses of the superintendence and repairs of the canals, and may provide for the improvement of the canals in such manner as shall be provided by law notwithstanding the creation of a special revenue fund as provided in this section. All contracts for work or materials on any canal shall be made with the persons who shall offer to do or provide the same at the lowest responsible price, with adequate security for their performance as provided by law.

All funds that may be derived from any sale or other disposition of any barge canal lands, barge canal terminals, barge canal terminal lands or other canal lands and appertaining structures and any other funds collected for the use of the canals or canal lands shall be paid into a special revenue fund of the treasury. Such funds shall only be expended for the maintenance, construction, reconstruction, development or promotion of the canal, canal lands, or lands adjacent to the canal as provided by law. (Formerly §9 of Art. 7. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; November 5, 1991.)

[Lease or transfer to federal government of barge canal system authorized]

§4. Notwithstanding the prohibition of sale, abandonment or other disposition contained in section one of this article, the legislature may authorize by law the lease or transfer to the federal government of the barge canal, consisting of the Erie, Oswego, Champlain, Cayuga and Seneca divisions and the barge canal terminals and facilities for purposes of operation, improvement and inclusion in the national system of inland waterways. Such lease or transfer to the federal government for the purposes specified herein may be made upon such terms and conditions as the legislature may determine with or without compensation to the state. Nothing contained herein shall prevent the legislature from providing annual appropriations for the state's share, if any, of the cost of operation, maintenance and improvement of the barge canal, the divisions thereof, terminals and facilities in the event of the transfer of the barge canal in whole to the federal government whether by lease or transfer.

The legislature, in determining the state's share of the annual cost of operation, maintenance and improvement of the barge canal, the several divisions, terminals and facilities, shall give consideration and evaluate the benefits derived from the barge canal for purposes of flood control, conservation and utilization of water resources. (Added by vote of the people November 3, 1959.)

ARTICLE XVI[12]

TAXATION

[Power of taxation; exemptions from taxation]

Section 1. The power of taxation shall never be surrendered, suspended or contracted away, except as to securities issued for public purposes pursuant to law. Any laws which delegate the taxing power shall specify the types of taxes which may be imposed thereunder and provide for their review.

Exemptions from taxation may be granted only by general laws. Exemptions may be altered or repealed except those exempting real or personal property used exclusively for religious, educational or charitable purposes as defined by law and owned by any corporation or association organized or conducted exclusively for one or more of such purposes and not operating for profit.

[Assessments for taxation purposes]

§2. The legislature shall provide for the supervision, review and equalization of assessments for purposes of taxation. Assessments shall in no case exceed full value.

Nothing in this constitution shall be deemed to prevent the legislature from providing for the assessment, levy and collection of village taxes by the taxing authorities of those subdivisions of the state in which the lands comprising the respective villages are located, nor from providing that the respective counties of the state may loan or advance to any village located in whole or in part within such county the amount of any tax which shall have been levied for village purposes upon any lands located within such county and remaining unpaid.

[Situs of intangible personal property; taxation of]

§3. Moneys, credits, securities and other intangible personal property within the state not employed in carrying on any business therein by the owner shall be deemed to be located at the domicile of the owner for purposes of taxation, and, if held in trust, shall not be deemed to be located in this state for purposes of taxation because of the trustee being domiciled in this state, provided that if no other state has jurisdiction to subject such property held in trust to death taxation, it may be deemed property having a taxable situs within this state for purposes of death taxation. Intangible personal property shall not be taxed ad valorem nor shall any excise tax be levied solely because of the ownership or possession thereof, except that the income therefrom may be taken into consideration in computing any excise tax measured by income generally. Undistributed profits shall not be taxed.

[Certain corporations not to be discriminated against]

§4. Where the state has power to tax corporations incorporated under the laws of the United States there shall be no discrimination in the rates and method of taxation between such corporations and other corporations exercising substantially similar functions and engaged in substantially similar business within the state.

[Compensation of public officers and employees subject to taxation]

§5. All salaries, wages and other compensation, except pensions, paid to officers and employees of the state and its subdivisions and agencies shall be subject to taxation. (Amended by vote of the people November 6, 2001.)

[12] Entire new article, adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.

[Public improvements or services; contract of indebtedness; creation of public corporations]
§6. Notwithstanding any provision of this or any other article of this constitution to the contrary, the legislature may by law authorize a county, city, town or village, or combination thereof acting together, to undertake the development of public improvements or services, including the acquisition of land, for the purpose of redevelopment of economically unproductive, blighted or deteriorated areas and, in furtherance thereof, to contract indebtedness. Any such indebtedness shall be contracted by any such county, city, town or village, or combination thereof acting together, without the pledge of its faith and credit, or the faith and credit of the state, for the payment of the principal thereof and the interest thereon, and such indebtedness may be paid without restriction as to the amount or relative amount of annual installments. The amount of any indebtedness contracted under this section may be excluded in ascertaining the power of such county, city, town or village to contract indebtedness within the provisions of this constitution relating thereto. Any county, city, town or village contracting indebtedness pursuant to this section for redevelopment of an economically unproductive, blighted or deteriorated area shall pledge to the payment thereof that portion of the taxes raised by it on real estate in such area which, in any year, is attributed to the increase in value of taxable real estate resulting from such redevelopment. The legislature may further authorize any county, city, town or village, or combination thereof acting together, to carry out the powers and duties conferred by this section by means of a public corporation created therefor. (New. Added by vote of the people November 8, 1983; amended by vote of the people November 6, 2001.)

ARTICLE XVII
SOCIAL WELFARE

[Public relief and care]
Section 1. The aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions, and in such manner and by such means, as the legislature may from time to time determine. (New. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[State board of social welfare; powers and duties]
§2. The state board of social welfare shall be continued. It shall visit and inspect, or cause to be visited and inspected by members of its staff, all public and private institutions, whether state, county, municipal, incorporated or not incorporated, which are in receipt of public funds and which are of a charitable, eleemosynary, correctional or reformatory character, including all reformatories for juveniles and institutions or agencies exercising custody of dependent, neglected or delinquent children, but excepting state institutions for the education and support of the blind, the deaf and the dumb, and excepting also such institutions as are hereinafter made subject to the visitation and inspection of the department of mental hygiene or the state commission of correction. As to institutions, whether incorporated or not incorporated, having inmates, but not in receipt of public funds, which are of a charitable, eleemosynary, correctional or reformatory character, and agencies, whether incorporated or not incorporated, not in receipt of public funds, which exercise custody of dependent, neglected or delinquent children, the state board of social welfare shall make inspections, or cause inspections to be made by members of its staff, but solely as to matters directly affecting the health, safety, treatment and training of their inmates, or of the children under their custody. Subject to the control of the legislature and pursuant to the procedure prescribed by general law, the state board of social welfare may make rules and regulations, not inconsistent with this constitution, with respect to all of the functions, powers and duties with which the department and the state board of social welfare are herein or shall be charged. (New. Derived in part from former §11 of Art. 8. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Public health]
§3. The protection and promotion of the health of the inhabitants of the state are matters of public concern and provision therefor shall be made by the state and by such of its subdivisions and in such manner, and by such means as the legislature shall from time to time determine. (New. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Care and treatment of persons suffering from mental disorder or defect; visitation of institutions for]
§4. The care and treatment of persons suffering from mental disorder or defect and the protection of the mental health of the inhabitants of the state may be provided by state and local authorities and in such manner as the legislature may from time to time determine. The head of the department of mental hygiene shall visit and inspect, or cause to be visited and inspected by members of his or her staff, all institutions either public or private used for the care and treatment of persons suffering from mental disorder or defect. (New. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; amended by vote of the people November 6, 2001.)

[Institutions for detention of criminals; probation; parole; state commission of correction]
§5. The legislature may provide for the maintenance and support of institutions for the detention of persons charged with or convicted of crime and for systems of probation and parole of persons convicted of crime. There shall be a state commission of correction, which shall visit and inspect or cause to be visited and inspected by members of its staff, all institutions used for the detention of sane adults charged with or convicted of crime. (New. Derived in part from former §11 of Art. 8. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938. Amended by vote of the people November 6, 1973.)

[Visitation and inspection]
§6. Visitation and inspection as herein authorized, shall not be exclusive of other visitation and inspection now or hereafter authorized by law. (New. Derived from former §13 of Art. 8. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Loans for hospital construction]
§7. Notwithstanding any other provision of this constitution, the legislature may authorize the state, a municipality or a public corporation acting as an instrumentality of the state or municipality to lend its money or credit to or in aid of any corporation or association, regulated by law as to its charges, profits, dividends, and disposition of its property or franchises, for the purpose of providing such hospital or other facilities for the prevention, diagnosis or treatment of human disease, pain, injury, disability, deformity or physical condition, and for facilities incidental or appurtenant thereto as may be prescribed by law. (New. Added by vote of the people November 4, 1969.)

ARTICLE XVIII[13]
HOUSING

[Housing and nursing home accommodations for persons of low income; slum clearance]
Section 1. Subject to the provisions of this article, the legislature may provide in such manner, by such means and upon such terms and conditions as it may prescribe for low rent housing and nursing home accommodations for persons of low income as defined by law, or for the clearance, replanning, reconstruction and rehabilitation of substandard and insanitary areas, or for both such purposes, and for recreational and other facilities incidental or appurtenant thereto. (Amended by vote of the people November 2, 1965.)

[13] Entire new article, adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.

[*Idem*; powers of legislature in aid of]

§2. For and in aid of such purposes, notwithstanding any provision in any other article of this constitution, but subject to the limitations contained in this article, the legislature may: make or contract to make or authorize to be made or contracted capital or periodic subsidies by the state to any city, town, village, or public corporation, payable only with moneys appropriated therefor from the general fund of the state; authorize any city, town or village to make or contract to make such subsidies to any public corporation, payable only with moneys locally appropriated therefor from the general or other fund available for current expenses of such municipality; authorize the contracting of indebtedness for the purpose of providing moneys out of which it may make or contract to make or authorize to be made or contracted loans by the state to any city, town, village or public corporation; authorize any city, town or village to make or contract to make loans to any public corporation; authorize any city, town or village to guarantee the principal of and interest on, or only the interest on, indebtedness contracted by a public corporation; authorize and provide for loans by the state and authorize loans by any city, town or village to or in aid of corporations regulated by law as to rents, profits, dividends and disposition of their property or franchises and engaged in providing housing facilities or nursing home accommodations; authorize any city, town or village to make loans to the owners of existing multiple dwellings for the rehabilitation and improvement thereof for occupancy by persons of low income as defined by law; grant or authorize tax exemptions in whole or in part, except that no such exemption may be granted or authorized for a period of more than sixty years; authorize cooperation with and the acceptance of aid from the United States; grant the power of eminent domain to any city, town or village, to any public corporation and to any corporation regulated by law as to rents, profits, dividends and disposition of its property or franchises and engaged in providing housing facilities.

As used in this article, the term "public corporation" shall mean any corporate governmental agency (except a county or municipal corporation) organized pursuant to law to accomplish any or all of the purposes specified in this article. (Amended by vote of the people November 2, 1965.)

[Article VII to apply to state debts under this article, with certain exceptions; amortization of state debts; capital and periodic subsidies]

§3. The provisions of article VII, not inconsistent with this article, relating to debts of the state shall apply to all debts contracted by the state for the purpose of providing moneys out of which to make loans pursuant to this article, except (a) that any law or laws authorizing the contracting of such debt, not exceeding in the aggregate three hundred million dollars, shall take effect without submission to the people, and the contracting of a greater amount of debt may not be authorized prior to January first, nineteen hundred forty-two; (b) that any such debt and each portion thereof, except as hereinafter provided, shall be paid in equal annual installments, the first of which shall be payable not more than three years, and the last of which shall be payable not more than fifty years, after such debt or portion thereof shall have been contracted; and (c) that any law authorizing the contracting of such debt may be submitted to the people at a general election, whether or not any other law or bill shall be submitted to be voted for or against at such election.

Debts contracted by the state for the purpose of providing money out of which to make loans to or in aid of corporations regulated by law as to rents, profits, dividends and disposition of their property or franchises and engaged in providing housing facilities pursuant to this article may be paid in such manner that the total annual charges required for the payment of principal and interest are approximately equal and constant for the entire period in which any of the bonds issued therefor are outstanding.

Any law authorizing the making of contracts for capital or periodic subsidies to be paid with moneys currently appropriated from the general fund of the state shall take effect without submission to the people, and the amount to be paid under such contracts shall not be included in ascertaining the amount of indebtedness which may be contracted by the state under this article; provided, however, (a) that such periodic subsidies shall not be paid for a period longer than the life of the projects assisted thereby, but in any event for not more than sixty years; (b) that no contracts for periodic subsidies shall be entered into in any one year requiring payments aggregating more than one million dollars in any one year; and (c) that there shall not be outstanding at any one time contracts for periodic subsidies requiring payments exceeding an aggregate of thirty-four million dollars in any one year, unless a law authorizing contracts in excess of such amounts shall have been submitted to and approved by the people at a general election; and any such law may be submitted to the people at a general election, whether or not any other law or bill shall be submitted to be voted for or against at such election. (Amended by vote of the people November 8, 1955; further amended by vote of the people November 5, 1957.)

[Powers of cities, towns and villages to contract indebtedness in aid of low rent housing and slum clearance projects; restrictions thereon]

§4. To effectuate any of the purposes of this article, the legislature may authorize any city, town or village to contract indebtedness to an amount which shall not exceed two per centum of the average assessed valuation of the real estate of such city, town or village subject to taxation, as determined by the last completed assessment roll and the four preceding assessment rolls of such city, town or village, for city, town or village taxes prior to the contracting of such indebtedness. In ascertaining the power of a city, or village having a population of five thousand or more as determined by the last federal census, to contract indebtedness pursuant to this article there may be excluded any such indebtedness if the project or projects aided by guarantees representing such indebtedness or by loans for which such indebtedness was contracted shall have yielded during the preceding year net revenue to be determined annually by deducting from the gross revenues, including periodic subsidies therefor, received from such project or projects, all costs of operation, maintenance, repairs and replacements, and the interest on such indebtedness and the amounts required in such year for the payment of such indebtedness; provided that in the case of guarantees such interest and such amounts shall have been paid, and in the case of loans an amount equal to such interest and such amounts shall have been paid to such city or village. The legislature shall prescribe the method by which the amount of any such indebtedness to be excluded shall be determined, and no such indebtedness shall be excluded except in accordance with such determination. The legislature may confer appropriate jurisdiction on the appellate division of the supreme court in the judicial departments in which such cities or villages are located for the purpose of determining the amount of any such indebtedness to be so excluded.

The liability of a city, town or village on account of any contract for capital or periodic subsidies to be paid subsequent to the then current year shall, for the purpose of ascertaining the power of such city, town or village to contract indebtedness, be deemed indebtedness in the amount of the commuted value of the total of such capital or periodic subsidies remaining unpaid, calculated on the basis of an annual interest rate of four per centum. Such periodic subsidies shall not be contracted for a period longer than the life of the projects assisted thereby, and in no event for more than sixty years. Indebtedness contracted pursuant to this article shall be excluded in ascertaining the power of a city or such village otherwise to create indebtedness under any other section of this constitution. Notwithstanding the foregoing the legislature shall not authorize any city or village having a population of five thousand or more to contract indebtedness hereunder in excess of the limitations prescribed by any other article of this constitution unless at the same time it shall by law require such city or village to levy annually a tax or taxes other than an ad valorem tax on real estate to an extent sufficient to provide for the payment of the principal of and interest on any such indebtedness. Nothing herein contained, however, shall be construed to prevent such city or village from pledging its faith and credit for the payment of such principal and interest nor shall any such law prevent recourse to an ad valorem tax on real estate to the extent that revenue derived from such other tax or taxes in any year, together with revenues from the project or projects aided by the proceeds of such indebtedness, shall become insufficient to provide fully for payment of such principal and interest in that year. (Amended by vote of the people November 8, 1949.)

[Liability for certain loans made by the state to certain public corporations]

§5. Any city, town or village shall be liable for the repayment of any loans and interest thereon made by the state to any public corporation, acting as an

instrumentality of such city, town or village. Such liability of a city, town or village shall be excluded in ascertaining the power of such city, town or village to become indebted pursuant to the provisions of this article, except that in the event of a default in payment under the terms of any such loan, the unpaid balance thereof shall be included in ascertaining the power of such city, town or village to become so indebted. No subsidy, in addition to any capital or periodic subsidy originally contracted for in aid of any project or projects authorized under this article, shall be paid by the state to a city, town, village or public corporation, acting as an instrumentality thereof, for the purpose of enabling such city, town, village or corporation to remedy an actual default or avoid an impending default in the payment of principal or interest on a loan which has been theretofore made by the state to such city, town, village or corporation pursuant to this article. (Amended by vote of the people November 5, 1957.)

[Loans and subsidies; restrictions on and preference in occupancy of projects]
§6. No loan, or subsidy shall be made by the state to aid any project unless such project is in conformity with a plan or undertaking for the clearance, replanning and reconstruction or rehabilitation of a substandard and unsanitary area or areas and for recreational and other facilities incidental or appurtenant thereto. The legislature may provide additional conditions to the making of such loans or subsidies consistent with the purposes of this article. The occupancy of any such project shall be restricted to persons of low income as defined by law and preference shall be given to persons who live or shall have lived in such area or areas.

[Liability arising from guarantees to be deemed indebtedness; method of computing]
§7. The liability arising from any guarantee of the principal of and interest on indebtedness contracted by a public corporation shall be deemed indebtedness in the amount of the face value of the principal thereof remaining unpaid. The liability arising from any guarantee of only the interest on indebtedness contracted by a public corporation shall be deemed indebtedness in the amount of the commuted value of the total interest guaranteed and remaining unpaid, calculated on the basis of an annual interest rate of four per centum.

[Excess condemnation]
§8. Any agency of the state, or any city, town, village, or public corporation, which is empowered by law to take private property by eminent domain for any of the public purposes specified in section one of this article, may be empowered by the legislature to take property necessary for any such purpose but in excess of that required for public use after such purpose shall have been accomplished; and to improve and utilize such excess, wholly or partly for any other public purpose, or to lease or sell such excess with restrictions to preserve and protect such improvement or improvements.

[Acquisition of property for purposes of article]
§9. Subject to any limitation imposed by the legislature, the state, or any city, town, village or public corporation, may acquire by purchase, gift, eminent domain or otherwise, such property as it may deem ultimately necessary or proper to effectuate the purposes of this article, or any of them, although temporarily not required for such purposes.

[Power of legislature; construction of article]
§10. The legislature is empowered to make all laws which it shall deem necessary and proper for carrying into execution the foregoing powers. This article shall be construed as extending powers which otherwise might be limited by other articles of this constitution and shall not be construed as imposing additional limitations; but nothing in this article contained shall be deemed to authorize or empower the state, or any city, town, village or public corporation to engage in any private business or enterprise other than the building and operation of low rent dwelling houses for persons of low income as defined by law, or the loaning of money to owners of existing multiple dwellings as herein provided.

ARTICLE XIX
AMENDMENTS TO CONSTITUTION

[Amendments to constitution; how proposed, voted upon and ratified; failure of attorney-general to render opinion not to affect validity]
Section 1. Any amendment or amendments to this constitution may be proposed in the senate and assembly whereupon such amendment or amendments shall be referred to the attorney-general whose duty it shall be within twenty days thereafter to render an opinion in writing to the senate and assembly as to the effect of such amendment or amendments upon other provisions of the constitution. Upon receiving such opinion, if the amendment or amendments as proposed or as amended 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, and the ayes and noes taken thereon, and referred to the next regular legislative session convening after the succeeding general election of members of the assembly, and shall be published for three months previous to the time of making such choice; and if in such legislative session, 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 each proposed amendment or amendments to the people for approval in such manner and at such times as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors voting thereon, such amendment or amendments shall become a part of the constitution on the first day of January next after such approval. Neither the failure of the attorney-general to render an opinion concerning such a proposed amendment nor his or her failure to do so timely shall affect the validity of such proposed amendment or legislative action thereon. (Formerly §1 of Art. 14. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 4, 1941; November 6, 2001.)

[Future constitutional conventions; how called; election of delegates; compensation; quorum; submission of amendments; officers; employees; rules; vacancies]
§2. At the general election to be held in the year nineteen hundred fifty-seven, and every twentieth year thereafter, and also at such times as the legislature may by law provide, the question "Shall there be a convention to revise the constitution and amend the same?" shall be submitted to and decided by the electors of the state; and in case a majority of the electors voting thereon shall decide in favor of a convention for such purpose, the electors of every senate district of the state, as then organized, shall elect three delegates at the next ensuing general election, and the electors of the state voting at the same election shall elect fifteen delegates-at-large. The delegates so elected shall convene at the capitol on the first Tuesday of April next ensuing after their election, and shall continue their session until the business of such convention shall have been completed. Every delegate shall receive for his or her services the same compensation as shall then be annually payable to the members of the assembly and be reimbursed for actual traveling expenses, while the convention is in session, to the extent that a member of the assembly would then be entitled thereto in the case of a session of the legislature. A majority of the convention shall constitute a quorum for the transaction of business, and no amendment to the constitution shall be submitted for approval to the electors as hereinafter provided, unless by the assent of a majority of all the delegates elected to the convention, the ayes and noes being entered on the journal to be kept. The convention shall have the power to appoint such officers, employees and assistants as it may deem necessary, and fix their compensation and to provide for the printing of its documents, journal, proceedings and other expenses of said convention. The convention shall determine the rules of its own proceedings, choose its own officers, and be the judge of the election, returns and qualifications of its members. In case of a vacancy, by death, resignation or other cause, of any district delegate elected to the convention, such vacancy shall be filled by a vote of the remaining delegates representing the district in which such vacancy occurs. If such vacancy occurs in the office of a delegate-at-large, such vacancy shall be filled by a vote of the remaining delegates-at-large. Any proposed constitution or

constitutional amendment which shall have been adopted by such convention, shall be submitted to a vote of the electors of the state at the time and in the manner provided by such convention, at an election which shall be held not less than six weeks after the adjournment of such convention. Upon the approval of such constitution or constitutional amendments, in the manner provided in the last preceding section, such constitution or constitutional amendment, shall go into effect on the first day of January next after such approval. (Formerly §2 of Art. 14. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 6, 2001.)

[Amendments simultaneously submitted by convention and legislature]
§3. Any amendment proposed by a constitutional convention relating to the same subject as an amendment proposed by the legislature, coin- cidently submitted to the people for approval shall, if approved, be deemed to supersede the amendment so proposed by the legislature. (Formerly §3 of Art. 14. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

ARTICLE XX
WHEN TO TAKE EFFECT

[Time of taking effect]
Section 1. This constitution shall be in force from and including the first day of January, one thousand nine hundred thirty-nine, except as herein otherwise provided. (Formerly §1 of Art. 15. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

★★★

DONE in Convention at the Capitol in the city of Albany, the twenty-fifth day of August, in the year one thousand nine hundred thirty-eight, and of the Independence of the United States of America the one hundred and sixty-third.
IN WITNESS WHEREOF, we have hereunto subscribed our names.

FREDERICK E. CRANE,
President and Delegate-at-Large

U.H. Boyden, *Secretary*

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THE ENGLISH HERITAGE - INTRODUCTION:

The Development of Legal Institutions and Common Law to the Time of Sir Edward Coke

Many of the dynamics of modern law, society, and political institutions are evident in the first 400 years following the Norman conquest of England in 1065. The Romans invaded England in 43 AD. By 300 A.D., we can speak of Britannia, as the Romans named it, as "Romanized."

With Italy and Rome threatened by the invasions of the Goths and Vandals, in 407 A.D. Constantine III called Britain's military legions home. Without Roman protection, the Britons were soon overwhelmed by invading bands of Angles and Saxons from Germany, and later Vikings and Danes. These new occupiers set up their own kingdoms, though in time the Danes and English emerged as the dominant elements. (The word "law" is derived from Danish.)

Edward "the Confessor" (1042 66), an Englishman, was the first to unite the country under a single ruler, though his hold was tenuous. The Christian Church was by now an established institution, through the influence of the Romans and the later efforts of missionaries. Its clergy were among the few who were literate. Customs, laws or "dooms" of particular kings, "oaths," and grants of land ("bocs," which is the origin of the word "hook" because it contained the written record of land grants) made up the legal infrastructure of this essentially primitive society.

In Anglo Saxon England, most village conflicts were settled informally among warring clans, and the king's law was more a guide than a mandate. Still, what was later to become English criminal law originated in this Anglo Saxon era with the concept of a superior right of the king to impose his own brand of law on anyone violating his "peace," which extended to his habitations and eventually to markets and roads.

Not less important is the Anglo Saxon concept of "right" which was an extension of the sphere of the King's Peace. A right was understood as the space to which the King's Peace extended, and this space, which might include a physical or geographic area, also could include persons. The Anglo Saxon term "folc riht" embodied this notion of a personal right.

Edward the Confessor's death in 1066 left an already unstable country vulnerable. That same year Duke William II of Normandy crossed the channel and defeated Harold, Edward's successor, and his Anglo Saxons at the Battle of Hastings. William the Conqueror, as he became known, embarked on an ambitious resettlement of the English lands by Norman nobles, and he imposed a new regime of central administration. The Anglo Saxon shires (or counties, supervised by the shire-reeve, or "sheriff") were kept intact, as were local units of the shire, known as "hundreds."

These ancient administrative forms each had local courts run by laymen, and continued to be useful. The inspired contribution of the Normans was to create, in steps, a bureaucracy on top of these local customary institutions that in time established the king and his courts as the basis of a new law "common" to the realm.

This administrative structure carved out royal jurisdiction for felonies, certain civil disputes, and taxation; introduced a process in writing, known as royal "writs", for initiating action; and formed centralized royal "courts" to adjudicate civil complaints and criminal actions. The name "court" was taken from the noun describing the royal household that included advisors and administrators. The Normans also introduced juries, a Norman practice, and "justiciars" or judges to whom the king delegated his authority as his representative in the courts.

French, the language of the Norman king and his barons, also became the language of the royal courts. "Law French" was an amalgamation of Anglo French that gave us words such as plaintiff defendant and brief. Latin, the language of the church and the educated, found its way into law through the writ system; writs were issued on parchment in Latin, and bore a royal seal. The writ initiated civil action in a royal court by asserting a right or complaining of a wrong. Among the better known writs are habeas corpus, mandamus, and certiorari. Until 1731 Latin was the language of record in common law courts.

The Magna Carta (1215) or Great Charter grew from the disgruntlement of Norman barons who believed their customary rights were being abused by King John. These abuses included arbitrary arrests and imprisonment, the imposition of fines, and other grievances. At Runnyinede Meadow, on the banks of the Thames River, nobles extracted from John his written approval of a list of specific rights. The Great Charter was something of a housekeeping document, the sorting out of rights that were presumed to exist and in need of affirmation. The real importance of this document comes from the meaning later attributed to it. For the first time, it set forth a concept of a supreme law that no person was above, not even a king

The Great Charter also contained phrases and concepts later generations on both sides of the Atlantic would reinterpret in light of contemporary events, such as "No scuttage [taxation] or aid shall be imposed in our kingdom except by the common council of the kingdom..." Chapter 39 of the Charter reads: "No free man shall be taken or imprisoned or disposed, or outlawed, or banished, or in any way destroyed, nor will we go upon him, nor send upon him, except by the legal judgment of his peers or by the law of the land."

The Development of Legal Institutions and Common Law to the Time of Sir Edward Coke - Continued

While the Charter was revised, reissued, and confirmed many times, Chapter 39 clearly points to what we now know as due process of law, and to law as a potential bulwark against arbitrary power an extraordinary and early contribution to constitutional jam.

In 1397-1399 the enlargement of the great Westminster Hall was completed. Here the royal central courts finally came to rest, assuming the trappings of a permanent and authoritative judicial system. They included the Court of Common Pleas (civil and appellate jurisdiction), the Court of Kings Bench (criminal and appellate jurisdiction), and the Court of Exchequer (jurisdiction over taxation, finances, and accounting involving the king). The existence of circuit courts, or "assizes," in the countryside allowed the central courts to stay put and to function primarily as courts of appeal. It was from this early royal adjudicatory system that the main elements of the future Anglo American legal system sprung: the development of substantive common law; a highly formalized process for initiating, hearing and trying cases; a class of professionals who represented clients before these courts; a system of record keeping, and a judicial establishment known for its competence and expertise. The Normans and Angevins (the Normans' French successors to the crown) introduced system, process, and rules, backed by the royal authority and the emergence of a professional class prepared to encourage allegiance to law.

The distinction between common law and legislation in post-Conquest England was murky. The courts were formed, by officials from the King's household. These included his political advisors (the Curia Regis) and the justiciars, his personal representatives. Similarly, legislation was the product of the king in his council and tended to take on the character of ad hoc lawmaking and adjudication in response to complaints, a process not unlike judging. In any event, this lawmaking was seen as a complement to rather than a departure from custom and common law.

The authority of the king to participate in lawmaking was unquestioned, though his presence in the legal process being carried out in his courts came to be more a fiction than a fact, creating the opportunity for the tension between the King and his judges which you will soon observe.

Not until after the reign of King Edward III (1327 1377) did Parliament begin to form as a distinctive body composed of Lords and Commons, each of whose consent (with the king's) was eventually necessary for the enactment of laws. During the later Tudor period, and especially during the reign of Henry VIII (1491 1547), legislation took on the form of a distinct departmental activity based on careful drafting of bills, Parliamentary debate, and policy making.

As Parliament evolved into a formal institution with specific powers, it eventually began to assert a self-conscious power to change law, including common law, or to enact new law, its only limit being its capacity to bind a future Parliament, although this development was not completed until well into the Seventeenth Century. At the same time that the "High Court of Parliament" as it was then called, began to evolve into an institution to make rather than interpret the law, adjudication was evolving as the task of a distinct non-legislative department a judiciary though there is little doubt that judges enjoyed latitude in interpreting the language of legislation. The precise nature and authority of the legislative and judicial jurisdictions, however, were based on custom and practice. The possibility for conflicting interpretations of authority and law was always present among king, Parliament, and the courts; the tricky part was how to determine the rules to play by when fundamental questions of authority and jurisdiction were involved, as occurred in the reign of King James I.

Medieval law (1066 to approximately 1500) was complex, entwined in "feudal" custom and practice. Under feudalism, the social system of the Normans, the king owned the land and granted rights to others, his "tenants," to its use. In return they made payment, rendered services, or may have owed other obligations. A tier of rights might descend from king and through nobles, to farmers, to craftsmen, and finally to the lowest order who were "serfs," usually the Anglo-.Saxons in Norman England. For all practical purposes, a serf lacked any rights at all. In theory, only the king owned lands outright. Feudalism was not a Norman invention; it was a pattern of rule and service common in Europe at the time of the Conquest, and one that the Normans brought with them. The expectations that formed around feudal rights of tenure and obligations were evident in the complex law (to modern eyes) that took form through disputes in courts. Long after feudalism receded as a social system, its vestiges could still be found in English law.

Norman land law, because it was rooted in a variety of tenures, called upon conceptual powers that arrayed minute detail with overarching ideas Not surprising, a final Norman contribution to Anglo-American legal history was the treatise writer, the unofficial clarifier who drew law together by explaining the significance of leading cases. The first great treatise writer in English history was known as "Bracton," (c. 1210 1268). The man (or men) who wrote Bracton's work was probably a judge, and Bracton's treatise on The Laws and Customs of England was not only a guide for the judges who followed: it was the first work to present early Norman law as a "system" (the common law) that contained basic "rules" discovered through logical analysis of precedent. Using both Canon and Roman law for comparison, Bracton was the first to use concepts and theories to explain an unwritten law. To use F.W. Maitland's words, he was the "crown and flower of English jurisprudence." He gave intellectual credibility to English common law and to the profession of lawyers.

The importance of the relationship between the crown and the church cannot be overestimated as a matter of English history, and had far-reaching effects in law. The relationship was often problematic, as the murder of Archbishop Thomas a Becket at the instigation of King Henry II showed (1170). Difficulties could flare up around any number of areas, from jurisdiction, to the ownership of church lands, to the binding force of papal decrees.

The Development of Legal Institutions and Common Law to the Time of Sir Edward Coke - Continued

Because the common law developed apart from Canon law with its Roman law roots, Church and common law courts at times clashed in politically tinged contests of the kind that you will soon see occupying James I and Sir Edward Coke. These clashes were not only about the authority to decide cases, but also involved fundamental differences in legal procedure and the sources of law, and pitted emerging desires for English nationalism against the continental Roman heritage.

Centralized kingship, the rise of central courts, the emergence of a class of learned legal professionals, the formation of a common law that encompassed substance and process, a distinction between precedent-based adjudication and legislation, the idea of a supreme law, and the presence of an intellectual and conceptual approach to law are among the elements of the new legal system the early Norman and Angevin kings and their successors called into being.

The elements exerted a profound shaping influence not only on the constitutional development of English law spanning almost 900 years, but on the English colonies of the seventeenth and eighteenth centuries who viewed themselves as beneficiaries of the rights and privileges of the English constitutional system.

Note: Early English legal history is normally divided chronologically by kingships. The reign of French Norman kings includes the Normans, Angevins, and Plantagenets (1066 1485). The Tudors of Welsh origin succeeded to the throne in 1485 and ruled through 1603. In 1603 King James VI of Scotland, a Stuart, acceded to the throne as King James I of England. The Stuart line ended with Queen Anne (1714).

SECTION A. THE KING AND THE CHIEF JUSTICE: JAMES I AND SIR EDWARD COKE

The Common Law, the Civil Law Tradition, the Church, and the King

There are two great strands of legal thought in the West. One is the Anglo American "Common Law" tradition originating with the England of the Middle Ages. The other is the Civil Law tradition originating in Continental Europe. Through the historical processes of colonization, innovation, and adoption, the two systems have become the dominant traditions in the world today.

The "civilian" tradition has its origins in classical Roman law. In the sixth century, Roman Emperor Justinian promulgated a new summary and update of the law in the *Corpus Juris Civilis*. During the Middle Ages, approximately 500 to 1450, legal scholars developed and spread Roman law through the Byzantine Empire. The defining characteristic of the civilian tradition is the written law, or code, founded on broad principles and doctrines. Legislative in nature, Civil Law was interpreted and applied by courts on the basis of deduction from first principles. Because the Roman-based legal tradition is founded on scholarship and official statements of what the law is, it is sometimes referred to as "the learned laws." The legislator is the most powerful actor in this tradition. For civilians, the lawyer and judge function more as trained technicians of law, for their task is not to discover the law, or even interpret it, but to apply it.

In contrast, the developing English common law was founded on local customs, traditions, and precedent. Its method of proceeding was the case, and its manner of proceeding was adversarial, with each party represented by attorneys. The rules of the common law were derived from prior cases, and therefore are "unwritten" (to distinguish them from officially-promulgated and drafted legislation). Moving from the specifics of the case to general principles, the common law mode of reasoning was inductive. The centrality of tradition, custom, the law case, the attorney, the judge, and the inductive method of reasoning is what most distinguishes common law from Roman law. The judge and the lawyer are the most important actors in this tradition, and their job is to "discover" the law.

The "leaned laws" exerted an impact in England through the Church's Latin culture and Canon law, which borrowed from classical Roman law. Though the Romans introduced Christianity in the British Isles, it was Augustine's mission in Canterbury around the time of 600 that is dated as the English Church's beginning. The Synod of Whitby in 644 consolidated the Church in the medieval era, insuring that the Roman branch of Christianity prevailed over the Celtic branch. William the Conqueror, a Christian, strengthened the Church and among his first acts was the appointment of Norman prelates with close ties to the Holy See. William also created a system of courts through which the bishops' spiritual authority was exercised. These courts were called "ecclesiastical" because they pertained to matters of the Church, the Greek word for which is ekklesia. They were made distinct from the "temporal" or regular courts at the levels of the county shire and local hundreds, and also from the king's court (Curia Regis).

Jurisdiction of the ecclesiastical courts was based on the law of the Church, or Canon law. The influence of the Church ranged widely in English society, and so therefore did its law. The Church exercised jurisdiction over marriage, other familial issues, inheritance of personal property, sexual offenses, and breaches of faith. Church law was administered by bishops' chancellors Appeals lay to the archbishop and ultimately to papal delegates or to the Papal Curia in Rome Because church law was administered by clergy learned in Canon law, the jurisprudence of the English Church developed separately from common law. At times, Church law seemed to be a rival system to common law because it was continental in origin and not beholden to English traditions or customs.

The Common Law, the Civil Law Tradition, the Church, and the King - *Continued*

Conflicts between the Church and the crown in early English history were inevitable, and they tended to flare around issues of taxation and revenues (the king controlled most of the Church's land), the appointment of bishops, and discipline by the Church of royal officials and representatives. As we will see in the dispute between Coke and James I, there was also the question of what was, or was not, temporal or spiritual. Much of this conflict was worked out not through contests between pope and king, but through private litigation. By means of the "writ of prohibition," a judge who believed the common law's jurisdiction was being sidestepped could pluck a case out of the ecclesiastical court.

The relationship between Church and Crown changed fundamentally in 1534, when Parliament enacted the Supremacy Act and officially broke all ties with the Church in Rome. Henry VIII originally instigated what became the English Reformation because the pope denied his request for an annulment of his marriage to Catherine of Aragon, which would have freed him to marry Anne Boleyn. Even if Henry had not forced the issue, the Reformation probably would have occurred in England at some point, for its appeal was present before Henry wed Anne. On the continent, the Protestant Reformation was begun by Martin Luther when he nailed his Ninety Five Theses to the door of the Wittenherg Church in 1517.

While Henry disapproved of the study of Canon law at Oxford and Cambridge, he did create the Regius Chair of Civil Law at Cambridge. Also during his reign the Society of Doctors of Civil Law was founded. The judges and advocates in the ecclesiastical courts, which were continued under the Reformed English Church, were doctors of Civil Law, and this body of scholars furnished the legal and clerical professionals for Courts outside the common law. On the continent and in England 1ng the Renaissance, there was a revival of interest in classical Roman literature and law, as well as classical Greek philosophy. There were some English royal advisors who favored a "reception" of the Civil law as a replacement for the common law, seeing the continental system as more rational, consistent, and based on time-proven principles. Civil law was also well suited to a system of centralized administration and control, making it an ideal tool for European monarchial absolutism.

The English Reformation led to a number of royal administrative developments that shifted more power to the crown. One was the creation of the Ecclesiasticai Court of High Commission by the King, which replaced the pope in criminal matters and became the legal mechanism for enforcing conformity to the new Church of England. As we will see, this court used the oath ex officio to force a person to testify against himself in opposition of the common law privilege against self-incrimination.

Another encroachment on common law was the Court of Chancery. The Court of Chancery grew out of petitions to the king for special justice because the civil complainant, for one reason or another, could not gain satisfaction through the royal central courts. Initially created from the king's court in the late fourteenth century, Chancery, because it was not a common law court, was bound by less formality of procedure and was not hindered by precedent or rules. By 1460 its jurisdiction (and business) enlarged, making it as important as the common law courts. The Court of Chancery dispensed "justice" in accordance with the dictates of "conscience." This was an Aristotelian concept popular during the Renaissance that held great appeal, and when operating in unison with common law, offered an important corrective to England's relatively rigid legal system.

Under the Tudors, however, and especially Henry VIII, Chancery showed a certain disdain for common law as it adopted an aggressive stance in relation to the central courts. Tudor Chancellors tended to be Church men who served the king; their background was in Canon and Civil law and they were inclined toward continental systems and the idea of centralized power.

As we will see, the widening gulf between courts of common law and equity reached a highpoint during the reign of the Stuart King James I, with the face off between the king, Coke, and behind the scenes, Lord Ellesmere, who served as James' Chancellor (1596 1617).

Courts like Chancery that grew from the king's council took the name of "conciliar" or "prerogative" courts because they were created by means of the king's prerogative to satisfy claims of justice made to him personally. The Court of Star Chamber, taking its name from the gilded stars on the roof of the chamber it met in, was one such court founded in 1487; it functioned as the king's tool for the prosecution of crimes and offences that could not be tried at common law or could not be entrusted to a jury. These were usually cases of a political nature, and included offenses like riot, libel, forgery, perjury, and conspiracies. Because Star Chamber acted outside of the common law, it enjoyed streamlined procedures that made action speedy: The Attorney General prosecuted cases, and trials were by affidavit and interrogation rather than by jury. Torture, or its threat, was the usual tool for obtaining confessions, and punishments included fines, imprisonment, the pillory, branding, and cutting off of ears but not death. Star chamber rulings could not be appealed.

For a portion of its history, like the Court of Chancery, Star Chamber was accepted as a supplement to common law courts, and it may well have corrected deficiencies in the central royal courts that frustrated notions of justice and fairness. The potential for abuse of executive power was always present, however, and under Henry VIII, traditionally regarded as one of the most absolute and ruthless of English kings, Star Chamber became a useful tool for persecuting dissidents and non-conformists.

Under the Scots Stuarts, who never enjoyed the popularity of the Welsh Tudor monarchs Henry and Elizabeth, the Star Chamber prerogatives began to chafe, especially when, Charles I, the son of James, used it in place of convening Parliament. Eventually Parliament abolished Star Chamber as one of the reforms of the English Revolution.

The Common Law, the Civil Law Tradition, the Church, and the King - *Continued*

In all, the centralization of authority under Henry VII and the Tudors, and his elevation as the head of the Reformed Church of England was an extraordinary augmentation of royal power. The common law, with its origin in custom and archaic feudal traditions, was certainly open to criticism. Its procedures had become dilatory, and its use of Law French highly archaic. The common law was also the exclusive domain of a learned profession, lawyers and judges, jealous of their position as the sole interpreters and transmitters of an unwritten law.

To legal scholars trained in Canon and Roman law, the common law was a throwback to a more primitive time. Yet, as you will soon note, it was this law, according to Coke, that was and ought to be supreme in the land because it was source of English liberties and rights, protector of both ruler and ruled, as he put it. Henry's (and later the Stuarts') reach for power was part of a modern European trend toward centralizing national authority and lawmaking. The existence of Chancery and Star Chamber, and the prerogative courts that borrowed their procedure from Civil law, offered an impressive set of legal tools that any modern monarch would want to have. They also became symbols in a power struggle between Parliament and the king that would lead to the violent events of the English Civil War and the interregnum of 1640 1660, but not be finally settled until the "Glorious Revolution" of 1688.

For colonial Americans, the significance of these events was not fully felt until almost a century later. Then, the Americans rediscovered the political theory and argumentation of the radical Whigs who had struck at monarchial power in the name of English liberty, and employed these arguments against the British. As the colonials moved toward Revolution, the target was Parliament instead of the king, and the goal was creation of a republic, instead of the constitutional monarchy England had become.

AMERICAN LEGAL HISTORY

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LAW IN THE MORNING OF AMERICA - THE BEGINNINGS OF AMERICAN LAW, TO 1760

In his famous book The Common Law (1881), Oliver Wendell Holmes, Jr. (who later became a U.S. Supreme Court justice) concluded that "the life of the law has not been logic; it had been experience." He observed that “the felt necessities of the times, the prevalent moral and political theories," and "intuitions of public policy, avowed or unconscious" have been central to the development of American law.

The development of law in early America illustrates the wisdom of Holmes's observation. The English who came to America brought a well-developed legal culture with them. Their cultural "baggage" included English statutes, case law, and common law, as well as local rules, customs, and usages. They came from a legalistic society, and some of the early leaders, like John Winthrop of the Massachusetts Bay Colony, had legal training and experience. But new conditions and changed social circumstances led, almost immediately, to both subtle and dramatic legal changes. Colonial law was a dynamic as it blended the inherited English legal culture with new rules that were necessary for a new environment. In addition, some colonists brought with them ideas about law that were quite distinct from what existed in England. Quakers in Pennsylvania, for example, firmly believed that law should be merciful, and thus they consciously rejected the huge number of English laws that provided for capital punishment.

English inhabitants of the mainland colonies, even those who were born in the New World, did not think of themselves as "Americans" until the last third of the eighteenth century. Rather, they considered themselves English people who happened to be living outside of Great Britain but within the Empire. They therefore regarded themselves as heirs of the English constitutional tradition, especially those parts of it that guaranteed individual liberty. Yet, even as they stressed their "rights as Englishmen," these settlers discovered that New World conditions both required and allowed for an alteration of English ways.

Some English Protestant thought emphasized both the individual and the community. It thus laid a foundation for the prominent place of individualism in American law, giving American legal institutions, both public and private, a strong bent toward protecting the rights of the individual. At the same time, the communitarian element of Protestant theology - especially among the Puritans and Quakers - suggested a role for law in protecting the community. American law has never been exclusively individualistic in its emphasis. Community needs, rather than those of the individual, were particularly important in the early period when English Americans felt themselves beset on all sides by hostile peoples: Catholic Spaniards to the south, Catholic French to the north, Indians everywhere, and enslaved Africans in their midst. This feeling produced a fortress mentality that used law to fortify the community.

Although Americans thought of themselves as English people, the very act of creating new societies provided both the opportunity and the necessity for inventing or adapting legal institutions appropriate to the New World environment. For example, legal institutions that supported the established church in England, such as canon law and its ecclesiastical courts, were unsuited to the new colonies. The religious dissenters in New England and Pennsylvania rejected all church hierarchy, and the Anglican Church never became the established church in these places. Even where Anglicans predominated, like Virginia and Georgia, the lack of an educated clergy or sometimes any clergy at all made it impossible for church courts to successfully cross the Atlantic. In the religiously heterogeneous colonies, like Rhode Island, New York. New Jersey, and South Carolina, adoption of canon law was both impractical and irrelevant. Instead, these colonies, along with Pennsylvania, pioneered in creating governments that tolerated religious diversity. The emergence of religious toleration in the colonies was an adaptation to conditions unique to the New World.

Americans ultimately created a legal order based on older traditions and ideas, but which in the end was significantly different. They accomplished this without having to crawl out from underneath centuries of legal tradition and custom found in Europe. Americans often selected out of the English heritage only those legal elements that met their needs. Rhode Island's 1663 charter, for example, limited conformity to those English laws suited to the "nature and constitution of the place and people”. In 1833 Justice Joseph Story summed up this tradition in his book Commentaries on the Constitution. noting that the colonists "did not carry over with them all the laws of England when they migrated hither, for many of them must, from the nature of the case, be wholly inapplicable to their situation, and inconsistent with their comfort and property. "Rather they brought "with them all the laws applicable to their situation, and not repugnant to the local and political circumstances, in which they are placed." Americans created their legal order in a spirit of eclectic opportunism, drawing from various sources of law and devising new rules of law when they found nothing suitable in existing systems.

While never fully free to reject all English laws they did not like, or adopt all new rules they wanted, Americans were less constrained than their English cousins in molding laws to fit their society's needs. Consequently, American law was easier to reform and more instrumentalist in its development than British law.

Americans did not develop their laws unthinkingly or reflexively. On the contrary, they displayed a remarkable sophistication in thinking about the governance of their societies. In addition to English common law and statutes, they drew freely from a variety of legal sources, including Roman law, local English law and customs, contemporary justice-of-the-peace manuals, and some biblical law (especially in the early seventeenth century). Similarly, they turned to various sources for political theory including the writings of Montesquieu, James Harrington, and John Locke.

The Beginnings of American Law, to 1760 - *Continued*

Thus, by the eve of the Revolution, Americans had developed a political philosophy to support the choices they made about the directions of their legal development. Eventually, they reaffirmed their commitment to the English common law as the foundation of their legal order, but it was the common law stripped of unsuitable doctrines. Americans regarded the common law as a guarantor of personal liberty after the American Revolution.

Early American law contained within itself the basis of the legal and constitutional order of the post-Revolutionary states and nation. During the colonial period, American law incorporated some essentials of what we today call the rule of law, including concepts of higher law, limited government, separation of powers, an independent judiciary, due process of law, and consent as the basis of legal obligation. Legal development in the colonial period anticipated much of what later became American constitutionalism. Law, as historian Arthur Bestor has observed, both molds people and the way they think as much as it is molded by them. So it was with law in America's morning. We have become the people that we are today in part because of the laws that we adopted, borrowed, and created in the early English settlements.

THE ENGLISH HERITAGE AND MAGNA CHARTA

American law traces its beginning to the landmarks of English constitutional development. The earliest and most revered of these was Magna Charta. The "great charter" began as an agreement between King John I and the leading barons of England. On June 15, 1215, the barons surrounded the king on Runnymede Island and forced him to sign the document. Much of the document's sixty-three chapters dealt with property, inheritance, and feudal obligations. But a number of significant provisions were directed at the fair administration of law, fundamental justice, and basic rights.

Magna Charta
1215

Magna Charta was ostensibly designed to protect the barons and their property from the king. However, the language of the document was more open-ended and ultimately became available to "all free men of our realm."

More than half a millennium later, many of its provisions had evolved into important constitutional provisions and legal principles in the United States.

For example, Chapter 17, requiring that lawsuits "not follow the royal court around," evolved into the provision in Article III, Section 2, of the United States Constitution, requiring that Congress fix the places where couns would meet.

Similarly, Chapter 18 can be seen as the ancestor of the grand jury.

Chapters 20 and 21 of the Magna Chana, providing that fines be "in proportion to the degree of' the offense, led to the ban on excessive fines found in the Eighth Amendment to the Constitution.

Chapter 35 is the ancestor of the provision in Article I, Section 8 of the Constitution that authorizes Congress to "fix the Standard of Weights and Measures."

Chapter 39 is the source of modem procedural and substantive due process.

Magna Charta's law-of-the-land phrasing appears in many of the early American state constitutions and, together with the concept of due process, is at the core of modern concepts of the fair administration of justice and the protection of fundamental liberties. Magna Carta contains many key concepts of American law, such as the idea that the government cannot take private property without compensation, the notion that no one can "sell" justice, and the commitment to maintain a legal system based upon "the law of the land".

John, by the grace of God, king of England, lord of Ireland, duke of Normandy and Aquitaine, and count of Anjou, to the archbishop, bishops, abbots, earls, barons, justiciaries, foresters, sheriffs, stewards, servants, and to all his bailiffs and liege subjects, greetings.

1. In the first place we have granted to God, and by this our present charter confirmed for us and our heirs forever that the English Church shall be free, and shall have her rights entire, and her liberties inviolate; and we will that it be thus observed; . . . We have also granted to all freemen of our kingdom, for us and our heirs forever, all the underwritten liberties, to be had and held by them and their heirs, of us and our heirs forever.

* * *

The Magna Carta - ***Continued***

17. Common pleas [trial courts] shall not follow our court [that is the "Royal Court"], but shall be held in some fixed place.

* * *

18. Inquests of novel disseisin, of mort d'ancestor, and of darrein presentment shall not be held elsewhere than in their own county courts, and that in manner following; We, or, if we should be out of the realm, our chief justiciar, will send two justiciaries through every county four times a year, who shall alone with four knights of the county chosen by the county, hold the said assizes in the county court, on the day and in the place of meeting of that court.

* * *

20. A freeman shall not be amerced for a slight offense, except in accordance with the degree of the offense; and for a grave offense he shall be amerced in accordance with the gravity of the offense, yet saving always his "contentment"; and a mercljant in the same way, saving his "merchandise"; and a villein shall be amerced in the same way, saving his "wainage" if they have fallen into our mercy: and none of the aforesaid amercements shall be imposed except by the oath of honest men of the neighborhood.

* * *

21. Earls and barons shall not be amerced except through their peers, and only in accordance with the degree of the offense.

* * *

28. No constable or other bailiff of ours shall take corn or other provisions from anyone without immediately tendering money therefor, unless he can have postponement thereof by permission of the seller.

* * *

30. No sheriff or bailiff of ours, or other person, shall take the horses or carts of any freeman for transport duty, against the will of the said freeman.

* * *

31. Neither we nor our bailiffs shall take, for our castles or for any other work of ours, wood which is not ours, against the will of the owner of that wood.

* * *

35. Let there be one measure of wine throughout our whole realm; and one measure of ale; and one measure of corn, to wit, "the London quarter"; and one width of cloth (whether dyed, or russet, or "halberget"), to wit, two ells within the selvedges; of weights also let it be as of measures.

* * *

38. No bailiff for the future shall, upon his own unsupported complaint, put anyone to his "law," without credible witnesses brought for this purposes.

* * *

39. No freemen shall be taken or imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land.

* * *

40. To no one will we sell, to no one will we refuse or delay, right or justice.

* * *

45. We will appoint as justices, constables, or bailiffs only such as know the law of the realm and mean to observe it well.

* * *

63. Wherefore we will and firmly order as is aforesaid. that the English Church be free, and that the men in our kingdom have and hold all the aforesaid liberties, rights and concessions, well and peaceably, freely and quietly, fully and wholly, for themselves and their heirs, of us and our heirs, in all respects and in all places forever, as is aforesaid.

The Beginnings of American Law, to 1760 - *Continued*

Note: Due Process and the Law of the Land

Two parliamentary enactments of the late Middle Ages explicitly extended some of the benefits of Magna Charta beyond the nobility to all subjects of the realm. An act of 1346 provided that "every Man may be free to sue for and defend his Right in our Courts and elsewhere, according to the Law" (20 Edw. III, c. 4).

A law passed in 1354 introduced the phrase "due process of law" for the first time into English law and declared that "no Man, of what Estate or Condition that he be, shall be put out of Land or Tenement, nor taken, nor imprisoned, nor put to Death, without being brought in answer by due Process of Law" (28 Edw. III, c. 3).

American courts in the nineteenth and twentieth centuries were to hold that the phrases "law of the land" and "due process of law" were equivalent. The notion of "due process" would eventually emerge as a driving force in the expansion of legal rights for all Americans.

Note: The Reformation and Tudor England

Until 1531 Roman Catholicism was the official, or "established," church for England. As the Protestant Reformation swept northern and parts of central Europe, King Henry VIII of England remained a staunch Catholic. In 1521 the pope declared Henry to be a "Defender of the Faith" after the English king wrote a small book attacking Martin Luther's writings.

However, in 1527 the pope rejected Henry's request for an annulment of his marriage to Catherine of Aragon, his Spanish wife. Henry responded by initiating what is known as the English Reformation. He broke away from the Catholic faith and in 1531 became head of the newly created Church of England (also known as the Anglican Church), which became the official religion of his nation.

The king of England was now the head of the church, which increased its popularity within the realm no longer would England be subject to the nilings and decisions of n foreign potentate. In addition, Henry distributed or sold vast amounts of church lands, thus giving many of England's elite a financial stake in the religion. The new church abolished priestly celibacy, which gained Henry support among many of the clergy, and most English clerics easily made the transition to the new faith.

While most Englishmen and women were happy to abandon Catholicism, some thought the English Reformation had not gone far enough. English followers of the Swiss theologian John Calvin wanted to further reform, or "purify," the Church and were thus called Puritans. These dissenters argued for the abolition of the church hierarchy, including bishops and archbishops, and demanded a less elaborate form of worship.

Henry generally tolerated these dissenters but never supported their goals. His successor, King Edward VI, was far more sympathetic to the Puritans, but his short reign (1547 1553) prevented any fundamental changes in the new church.

Edward's early death put his oldest sister, Mary, on the throne. Queen Mary (r. 1553 1558) was the daughter of Henry's first wife, Catherine of Aragon; like her mother, Mary was a practicing Catholic and as such wanted to bring England back under the authority of the pope. Queen Mary brutally persecuted Protestant leaders, especially Puritans, ordering many to be burned at the stake. The reign of "Bloody Mary," as she was known, was mercifully brief. But its impact on subsequent constitutional developments was profound.

The deaths of the Marian martyrs, burned at the stake at Smithfield, were alive in the historical memory of many eighteenth-century Americans. This left them with a profound fear of tyranny and for many Americans an equally strong fear of the Catholic Church.

Mary's death led to the reign of her younger sister Elizabeth "Good Queen Bess" as she would be known. Under Queen Elizabeth I (r. 1558 1603), the people of England enjoyed growing prosperity and, by the standards of the era, remarkable freedom. Elizabeth did not tolerate open dissent political or religious but she also claimed that she did not seek "windows into men's souls" and thus did nothing to persecute Puritans and other Protestant dissenters as long as they quietly practiced their faith and did not challenge her reign.

Under Elizabeth, England experienced a cultural golden age, exemplified by the writing of William Shakespeare and Christopher Marlowe. In 1585 the first English settlement in the New World was attempted at Roanoke Island, off the coast of present-day North Carolina. Meanwhile, the defeat of the Spanish Armada in 1588 made England a world power and set the stage for successful English settlements two decades later.

At the death of Elizabeth in 1603, England turned to her cousin, King James VI of Scotland. who moved south to become King James I of England. James was far more autocratic than Elizabeth, and his harassment of religious dissenters led some to move to Holland and later to America, where in 1620 they created the Plymouth Colony. Even before this, in 1607, England established its first successful New World settlement, Jamestown, which was the first town of the Virginia Colony.

The Beginnings of American Law, to 1760 - *Continued*

THE VIRGINIA COLONY

The Virginia Colony was organized as a joint stock company, but unlike a modem corporation, the charter for the corporation came directly from the king. The goals of the Crown were partially idealistic and religious, as the king hoped the colony would lead to the conversion of the "heathen" Indians. The investors (known as "adventurers of the company") bought stock in hopes of making a profit.

None of these goals and hopes were ever realized. Relations with the Indians were more murderous than religious, and the colony constantly lost money and was initially an economic and political failure. It was also a great human fiasco, with a huge death rate for the colonists and violent, often murderous relations with the local Indians.

In 1611 the stockholders in London sent Sir Thomas Dale to Virginia with men, supplies, and orders to impose a legal order based on the notion that as deputy governor he should "proceed rather as Chauncelor then a judge, rather uppon the naturall right and equity then upon the nicenes and letter of the lawe."

Instead he imposed a set of laws that were more military than civilian. While it may be unfair to blame Dale for these rules, since others in the Virginia Company were involved in their drafting and implementation, they are remembered as "Dale's Laws."

The attempts to impose this harsh rule through Dale's Laws succeeded only in alienating settlers. The charter was revoked in 1624 and a royal governor was appointed. By this time, however, three developments within the colony would have a long-term impact on American legal history.

In 1617 Virginians began to plant tobacco as a cash crop. This would set the stage for the development of a plantation economy and bring great wealth to Virginia's planter elite. In 1619 Virginia's landowners established the House of Burgesses - the first representative legislature in the New World. The experience in lawmaking over the next 150 years would prepare Virginians and other Americans for self-government after the Revolution.

Ironically, in the same year that an elected legislature arrived in Virginia, the first Africans also arrived. These blacks were treated as indentured servants, but within a generation Virginia would become committed to a slave-based economy in which race would become a marker of servitude and legal inferiority.

THE BEGINNINGS OF CONSTITUTIONALISM IN AMERICA

Throughout the American experience, the polestar of public law has been the concept of "constitutionalism," a vague and comprehensive catchword embracing the ideals of limited government, the rule of law, and the various structural devices that achieve the substantive content of republican government in America. The origins of constitutionalism long predated the Revolution and the creation of the American Republic. They derived partly from the way that we think about the sources of law, and partly from the way that Americans structured the governments of their societies.

The concepts first developed most clearly in two religiously based colonies: Plymouth and Massachusetts Bay. Both were settled by Calvinist Protestants who believed that the English Reformation of Henry VIII had not gone far enough. As one Puritan minister put it, in breaking with the Roman church, King Henry had lopped off the "head" of Catholicism (the pope), but left the "body" intact by maintaining bishops, elaborate ritual, and a top-down practice in which the people were more the recipients of religion than participants in it.

The Puritans and the Separatists differed in one fundamental way. The Puritans believed that the Church of England could be reformed—purified—and so they were willing to worship in the Anglican Church while in England. in addition to holding their own meetings and services; the Separatists considered the English church to be beyond redemption, and thus had separated themselves from it. On other matters, these groups were similar. Most important, they believed that churches, and the larger society, should be organized on the basis of a compact between the members. Compact theory and practice, as exemplified in the Mayflower Compact of 1620, was a basic element of constitutionalism. So was representative government, a logical derivative of social covenants.

Another central constitutional principle of American culture has been the conflict between governmental power and individual liberty. Americans confronted this dualism from the outset, especially in Massachusetts. Neither the Puritans nor the Separatists believed in religious freedom; they wanted to be free to worship as they wished hut did not have any interest in extending such liberties or rights to others. They stressed the need for conformity within their community

John Winthrop, a founder and longtime leader of the Massachusetts Bay Colony, addressed the issue in his lay sermon aboard the ship *Arhella* in 1629 just before the Puritans landed in Massachusetts. Here Winthrop coined the endlessly captivating image of America as a "city upon a hill." Winthrop emphasized the primacy of community over individual interests.

THE BEGINNINGS OF CONSTITUTIONALISM IN AMERICA - CONTINUED

Roger Williams, a learned and enormously well-liked Puritan minister who arrived in Massachusetts Bay just a short time after Winthrop, quickly rejected Puritan and Separatist orthodoxy. He ultimately espoused an altogether different approach to governance, condemning government efforts to coerce religious belief and practice. Ultimately he became the founder of the Rhode Island Colony, which allowed virtually unlimited religious free exercise and did not have an established church. Between them, Winthrop and Williams defined the polar opposites of power and liberty that have remained in tension throughout our political history.

The Laws and Liberties of Massachusetts (1648) provided a sophisticated official affirmation of the sources of governmental authority and underscored the growing belief in America that law should be published and accessible to the people. They also illustrate the variety of ways in which the Puritans attempted to merge a “Bible commonwealth” with the everyday needs of their society.

Constitutionalism also derived from the structuring of colonial government, which took different forms. The covenants of Plymouth embodied compact theory in its purest form. A variant was the liberal and democratic order established in Rhode Island under the influence of Roger Williams.

Emigration to the New World languished during the English Civil War and Protectorate but resumed vigorously after the restoration of the monarchy in 1661. The charters and compacts of the Restoration period embody many innovations in the forms and principles of government, such as the bizarre and abortive experiments in John Locke’s Fundamental Constitutions of Carolina, the liberal and democratizing approaches of William Penn in his Frames of Government for Pennsylvania, and the do-it-yourself innovations in guarantees for personal liberty in New York’s Charter of Libertyes (1683). All attest to the robust experimentation in a constitutional form of government that characterized America’s first century.

THE SOURCES OF LAW IN AMERICA

American lawyers have sometimes claimed that the common law was the only body of English law that Americans drew on for their own law, that it was adopted early in the period of English settlement, and that its reception was both inevitable and noncontroversial. Some judges still make such assertions. Yet, each of these assumptions is wrong.

More than half a century ago, the legal historian Julius Goebel speculated that it would have been unlikely that the settlers of New England would have replicated the common law "as absurd as to expect that they would establish a religious system on the principles of the Anglican Church." Rather, he suggested, in creating their new legal order they would have drawn on the body of law most familiar to them:

English local and customary law of the sort found in the borough customals and in the practice of the manorial and county courts. Subsequent scholarship has confinned Goebel's conjecture. The result was a heterogeneous body of law, "a layman's version of English legal institutions," as Daniel Boorstin called it.

In New York during the proprietary period (1664 1684), at least five separate bodies of law and judicial systems prevailed: Dutch civil law, which was based on Roman law; the "Bible codes" of the Connecticut immigrants in Westchester County and on Long Island, reaffirmed in the Duke's Laws of 1665; the laws enforced in the manoria! courts on Long Island and up the Hudson River valley; the new statutes enacted by the colonial legislature; and the common law, which was fully applied to New York in the legal reforms of 1691. But until it did, the common law met vigorous competition from its rivals.

A Dutch resident of Dutchess County expressed his contempt for the new system, declaring that he "valued no English law no more than a Turd." American law was composed in unequal parts of vaguely and inaccurately remembered fragments of common law, local law, Mosaic law (in most of New England and in parts of Long Island), and Roman law.

Colonial law was also constantly changing to adapt to the circumstances and physical geography of the New World. To further complicate the picture, the colonies borrowed from one another's laws extensively yet with great selectivity, choosing only those elements of law suited to their local conditions.

The English common law was a part of American law, of course, however imperfectly it may have been understood and received before 1700. So were parliamentary statutes enacted before the settlement of a particular colony. Subsequent statutes were not part of a colony's laws unless explicitly made applicable to it.

New England presents a special case, however.

Although the common law was eventually received there after the American Revolution, Massachusetts resisted the extension of English law before the 1690s.

THE SOURCES OF LAW IN AMERICA - CONTINUED

John Winthrop insolently proclaimed that "our allegiance binds us not to the laws of England any longer than while we live in England, for the laws of the Parliament of England reach no further, nor do the king's writs under the great seal go any further."

Moreover, in 1678, the General Court of Massachusetts Bay objected to the Navigation Acts, insisting that "the lawes of England are bounded within the fower [four] seas, and doe not reach America." John Adams, writing in 1776 as "Novanglus," also reiterated this viewpoint: "Our ancestors were entitled to the common law of England when they emigrated; that is, to just so much of it as they pleased to adopt, and no more. They were not bound or obliged to submit to it, unless they chose."

Note: Reception of the Common Law

The common law was eventually received in all American jurisdictions, including refractory New England, by the nineteenth century. The beginnings of reception may be found in the charters to companies and proprietors granted by the Stuart monarchs in the early seventeenth century. Most of these charters insisted that any laws enacted by the colonists for their own governance must conform to the legal culture of the mother country. The Massachusetts Charter of 1629 declared that the leaders of the colony "from tyme to tyme" were empowered "to make Lawes and Ordinances for the Good and Welfare of the saide Company, and the Government and ordering of the saide Lande and Plantation, and the People inhabiting and to inhabite the same" as long as "such Lawes and Ordinances be not contrarire or repugnanat to the Lawes and Statuts of this our Realme of England." A subsequent clause in the charter empowered the magistrates of the colony to "ordeine, and establishe all Manner of wholesome and reasonable Orders, Lawes, Statutes, and Ordinances, Directions, and Instructions, not contrairie to the Lawes of this our Realme of England."

Similarly, the charter of New Plymouth authorized legislation, "provided that the said lawes and orders be not repugnante to the lawes of Englande." The Maryland Charter granted lawmaking powers to the new government, provided that "the said Ordinances be consonant to Reason and be not repugnant nor contrary, but (so far as conveniently may be done) agreeable to the Laws, Statutes, or Rights of our Kingdom of England: And so that the same Ordinances do not, in any Sort, extend to oblige, bind, charge, or take away the Right or Interest of any Person or Persons, of, or in Member, Life, Freehold, Goods or Chattels."

Such provisions were the first step on the road to the reception of the common law in America, as well as to the transference of English libertarian traditions, such as the principles derived from Magna Charta. Viewed by the Crown at the time as a means of controlling distant settlements, the conformity clauses came to be seen by Americans in the next century as an assurance that the settlers enjoyed the same rights and liberties as English people who had never left the realm. At the same time, these provisions allowed for vast experimentation in lawmaking, and indeed through these powers the colonies developed their own laws on a variety of topics, including inheritance, water rights, land usage and personal rights, including the development of slavery.

BLACKSTONE

Long before Americans began to think seriously about the transit of English law, English judges and lawyers had begun to work out the basis for a theory of reception of their legal systems. This was not surprising, since the English had become active colonizers in the sixteenth century and had had to confront the practical problems of legal administration for places like Ireland even earlier.

After a century of development, the English theory of reception was summed up by William Blacksione, the magisterial commentator on English laws, in his four-volume treatise. Commentaries on the Laws of England (1765)

Sir William Blackstone was born on July 10, 1723, the son of Mary Blackstone and Charles Blackstone, of London. Blackstone's father, a silk merchant, died before Blackstone was born; his mother died while he was a young boy. Raised by an older brother and tutored by an uncle, Blackstone attended Charterhouse and Pembroke College, at Oxford University, where his education included a thorough exposure to mathematics and logic. Blackstone entered All Souls College, Oxford, in 1743, and became a fellow in 1744.

In preparation for a law practice, Blackstone received a Civil Law degree in 1745, and became a barrister in 1746. In 1750, he became a doctor of civil law. One year later, he was selected as an assessor (judge) of Chancellor's Court.

In 1755, after three years of a lusterless law practice, Blackstone decided to devote all of his time to teaching law at Oxford. His first book, published in 1757, was titled ***"An Analysis of the Laws of England".*** In 1758, Blackstone was named Oxford's Vinerian Professor of English Law, receiving the first chair of common law ever established at the university. Blackstone's lectures were well received, providing students with a comprehensive introduction to the laws of England.

The Beginnings of American Law, to 1760 - *Continued*

BLACKSTONE - CONTINUED

The success of his lectures enhanced Blackstone's career. In 1761 he became a bencher (supervisor and lecturer) at Oxford's Middle Temple. That same year, he was elected to Parliament, where he served for seven years although, according to most historians, he was not an especially ambitious or effective politician. Also in 1761, Blackstone married Sarah Clitherow, with whom he had nine children.

In 1765, Blackstone published the first of his four volumes of Commentaries. The treatise discussed the cases, rules, and legal principles outlined in his popular Oxford lectures. Each volume concentrated on a particular area of law personal rights, property rights, torts, or criminal law.

Blackstone's commentaries would prove the groundwork for U.S. jurisprudence. Entitled, ***"Blackstone's Commentaries on the Laws of England"***, they provided a systematic analysis of English Common Law between 1765 and 1769. It was an exhaustive compilation of Blackstone's Oxford University lectures on law. These commentaries was unprecedented in scope and purpose, and profoundly influenced the development of common law and legal education in England and the United States.

As Blackstone analyzed the laws, he also revealed their relationship to a higher power. Throughout his Commentaries, Blackstone wove the concept of "natural law,"or God's laws imposed on humankind.

Although some contend that Blackstone's work presented a more uniform and simplified system of law then actually existed in England at the time he wrote, even his harshest critics concede that Blackstone's effort to synthesize English law was indeed impressive, an had an enormous impact in his country and beyond.

Blackstone's Commentaries was particularly influential in the United States as the new nation sought to establish its own laws and legal system. Although Blackstone is seldom now cited by practicing attorneys, his importance and work remains revered in U.S. law. Over thirty editions of his commentaries have been printed in the United States and England.

In 1770, Blackstone became judge of the Court of Common Pleas and was knighted. He died on February 14, 1780, at age fifty-seven.

A HISTORY OF AMERICAN LAW

LAWRENCE M. FRIEDMAN

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THIRD EDITION

A HISTORY OF AMERICAN LAW

THIRD EDITION

Lawrence Friedman

PROLOGUE

Modern communications and technology have made the world smaller. They have leveled many variations in world culture. Yet, people still speak different languages, wear different clothes, follow different religions, and hold different values dear. They are also subject to very different laws. How different is not easy to sum up. Clearly, legal systems are not as different as different languages.

The new world, the world we live in urban, industrial, technological creates a certain kind of society; and this kind of society depends on and welcomes certain kinds of laws. An income tax, for example, is a common feature among developed countries. But the exact form that a tax law takes depends on the general legal culture. Americans are naturally used to American laws. Law is an integral part of American culture. Americans could adjust to very alien laws and procedures about as easily as they could adjust to a diet of roasted ants or a costume of togas. Judge and jury, wills and deeds, the familiar drama of a criminal trial, an elected assembly or council at work making laws, licenses to get married, to keep dogs, to hunt deer these are all part of a common experience, peculiar to the United States. No other legal culture is quite like it. Presumably, no other culture fits the American system quite so aptly.

Many people think that history and tradition are very strong in American law. There is some basis for this belief. Some parts of the law can be traced back very far the jury system, the mortgage, the trust, and some aspects of land law. But other parts of the law are quite new. The living law, the law we use every day, the law that affects us every day, including tax law, traffic codes, and social- welfare laws, is comparatively recent, on the whole.

While one Lawyer is advising his client how to react to a ruling from Washington, issued that very day, another may be telling his client that some plausible course of action is blocked by a statute well known to the lawyers of Henry VIII or by a decision of some older judges whose names, language, and habits would be unfathomable mysteries to both attorney and client. But the first situation is much more likely than the second.

Some parts of the law are like the layers of geological formations. The new presses down on the old, displacing, changing, altering, but not necessarily wiping out everything that has gone before. Law, by and large, evolves; it changes in piecemeal fashion. Revolutions in essential structure are few and far between. That, at least, is the Anglo-American experience. Most of the legal system is new, or fairly new; but some bits of the old get preserved among the mass of the new.

What is kept of the old is highly selective. Society may be fast or slow as it changes; but in either case, it is ruthless. Neither evolution nor revolution is sentimental. Old rules of law and old legal institutions stay alive only when they still have a purpose. They have to have survival value. The trust, the mortgage, the jury are legal institutions that can be traced back centuries. But they still have the vigor of youth. They have come down from medieval times, but the needs they now serve are twenty-first-century needs. They have survived because they found a place in the vigorous, pushy society of today a society that does not hesitate to pour old wine into new bottles and new wine into old bottles, or throw both bottles and wine away. At any rate, the theory of this book is that law moves with its times and is eternally new. From time to time, the theory may not fit the facts. But more light can be shed on legal history if one asks why does this survive than if one assumes that law, unlike the rest of social life, is a museum of accidents and the mummified past.

In an important sense, law is always up-to-date. The legal system always "works"; it always functions. Every society governs itself and settles disputes. Every society has a working system of law. If the courts, for example, are hide-bound and ineffective, that merely means some other agency has taken over what courts might otherwise do. The system is like a blind, insensate machine. It does the bidding of those whose hands are on the controls.

The laws of China, the United States, Saudi Arabia, France, of North and South Korea reflect the goals and policies of those who call the tune in those societies. Often, when we call law "archaic,' we mean that the power system of its society is morally out of tune. But change the power system, and the law too will change.

The basic premise of this book is this: Despite a strong dash of history and idiosyncrasy, the strongest ingredient in American law, at any given time, is the present current emotions, real economic interests, and concrete political groups. It may seem a curious beginning to a book of history to downgrade the historical element of law. But this is not really a paradox. The history of law has meaning only if we assume that at any given time the vital portion is new and changing, form following function, not function following form.

History of law is not or should not be a search for fossils, but a study of social development, unfolding through time. Law and society both have a long and elaborate history in the United States. Compared to some, the United States is a new country but Boston and New York are more than three hundred years old, and the Constitution may be the world's oldest living organic law. In short, enough time has elapsed for American law to be essentially American, the product of American experience.

But American law is not an isolate. It has, and has had, close affinities to other legal cultures. The most important immediate ancestor is easy to identify. The basic substratum of American law, as of American speech, is English.

Prologue- ***Continued***

Before the Europeans came, the country belonged to the native Americans. Europeans came late, but they came in force. They settled first along the coast. The Spanish settled Florida; the French built New Orleans. Swedes settled briefly on the Delaware; the Dutch pushed them out. Then the Dutch were overwhelmed by the English. The Hudson and Delaware settlements were added to a chain of tiny colonies, all English-speaking, along the Atlantic coast. Their populations grew. More Englishmen came. And English speakers, as Englishmen or Americans, ultimately pushed out the native peoples, took over their lands; and the lands of the French and the Spanish; and a big chunk of Mexico. They established an empire that stretched from sea to sea. And then they pushed out across the ocean to Hawaii, Puerto Rico, and the Philippines.

Each culture group lived by its own legal norms. Of many of the native laws, it is fair to say, not a trace remains. Others retained more vitality. There are native American communities today with their own court systems, and some bits and pieces of their tradition still live on. Some scholars have claimed to find a speck or two surviving from the Dutch legal tradition. The office of district attorney may be Dutch in origin. French law gained a more or less lasting foothold in Louisiana, and there (in translation) it stays. Spanish law sent down wider if not deeper roots; no state can call its law Spanish, but some aspects of Spanish or Mexican law (for example, the community-property system), persist in California and in other parts of the West. Everything else, if not strictly native, is English, or comes by way of England. or is built on an English base.

But English law was complex and bewildering. It is not easy to say which English law was the ancestor of American law. Colonial law the law of the colonies, up to Independence is, after all, an abstraction; there was no "colonial law" any more than there is an "American law," common to all fifty states. There were as many colonial systems as there were colonies. The original union was made up of thirteen states; but this thirteen represents, if anything, only a head count at one arbitrary time. Some colonies, such as Plymouth and New Haven, were swallowed up by larger ones. It was also the merger of two entities that produced New Jersey. Each of these entities had its own legal system.

Each colony, moreover, was founded at a different time. At least a century separates the beginnings of Massachusetts from the beginnings of Georgia. During this time, English law did not stand still. The colonies began their careers at different points in the process of legal development. During all this time, the law of the mother country was theoretically superior. But the colonial condition was not one of simple subordination, like the relationship of a ward to a city, or a county to a state. Even as a matter of theory, it was not clear which acts of Parliament and which court decisions were binding on the colonies. The colonies borrowed as much English law as they wanted to take or were forced to take. Their appetite was determined by requirements of the moment, by ignorance or knowledge of what was happening abroad, and by general obstinacy.

Mapping out how far colonial law fit English law is almost hopeless. Legal cultures differed in different colonies. New England deviated from standard English law more than the southern colonies did. The connection between the two sides of the Atlantic was always strong but never harmonious. They were also very far apart, in the literal sense. A big ocean separated them. It was hard for the mother country to control its unruly children. The colonies quarreled with the mother country over law as well as over politics and taxes.

Even after the Revolution, the legal connection was not totally severed. A complex legal relationship survived after 1776. English law continued to be imported, in some quantity, when and as needed. A thin, thin trickle remained even at the end of the nineteenth century.

English law, as we said, was complex and difficult. But what was English law? Two decades before the Revolution, Sir William Blackstone reduced to writing what he considered the core of the common law. His Commentaries on the Law of England, in four parts, can be printed out as one thick but manageable book.

This book, in its sluggishly elegant style, became a great bestseller, both in England and America. On the whole, Blackstone did a good job of putting the rank weeds of English law into some kind of order. But the picture he presented was partial and defective, like a dictionary that omitted all slang, all dialect, all colloquial and technical words. And even this imperfect guide was not available in the colonies before the 1750s. As such, they lacked a handy key to English law. Yet, a key was desperately needed. The English common law was one of the world's great legal systems; but it was incredibly hard to master or understand.

English law stood apart and still stands apart from most European systems of law. A modified, modernized form of Roman law swept over much of the Continent, starting in the middle ages. English law resisted the "reception," as the process is called. Modern continental law finds its highest expression in a code. "The law" in France and Germany is above all the law of the great codes statutes, in other words.

"Common law," on the other hand, was "unwritten law," as Blackstone called it. "Unwritten' was not meant literally; English and American laws are, if anything, overwritten. Blackstone meant, however, that the ultimate, highest source of law was not an enactment, not a statute of Parliament; but rather it was "general custom," as reflected in the decisions of the common-law judges. These judges were "the depositaries of the laws the living oracles, who must decide in all cases of doubt, and who are bound by an oath to decide according to the law of the land," (1 El. Comm. 69).

Prologue- ***Continued***

Common law was judge-made law molded, refined, examined, and changed in the crucible of actual decision, and handed down from generation to generation in the form of reported cases. In theory, the judges drew their decisions from existing principles of law; ultimately these principles reflected the living values, attitudes, and ethical ideas of the English people. In practice, the judges relied on their own past actions, which they modified under the pressure of changing times and changing patterns of litigation.

As a general rule, common law adhered to precedent. Precedent is commonly considered one of the basic concepts of the common law. It was never quite a straitjacket, as some laymen (and lawyers) have tended to think, American judges have always assumed power to overrule an earlier case, if they considered the case seriously misguided. The power was not often exercised. Still, it was there, along with the more important power to "distinguish" an embarrassing precedent that is, to interpret it into oblivion, or twist its meaning. In any event, the common law was and is a system in which judges are kings. Whether they are following or distinguishing precedent, they create and expound principles of law.

In its prime, the decided case was one of the basic building blocks of law. For a long time, judges looked at statutes with great suspicion. Statutes were unwelcome intrusions on the law, and were treated accordingly. In continental law, all law (in theory) is contained in the codes. In common law, many basic rules of law are found nowhere but in the published opinions of the judges.

What Parliament can do in a month's intensive work, a court can do only over the years. And it can never do it quite so systematically, since the common law only handles actual disputes, actual cases. It cannot deal with hypothetical or future cases. If no one brings up a matter, it never gets into court. It is no answer to say that all important questions will turn into disputes; "disputes" are not litigation, and only litigation actually, only appellate litigation makes new law.

Nor is it easy for judges to lay down quantitative rules, or rules that can't be carried out without heavy public support (in the form of taxes), or rules that would have to he enforced by a new corps of civil servants. Judges are supposed to decide on the basis of legal principles. They decide specific cases; but they have only limited power to regulate. They are not equipped to decide what the speed limit ought to be, or what food additives are carcinogens, or what animals should go on the list of endangered species. An English (or American) court could not possibly "evolve" a Social Security law. The common law is therefore not only slow; it is also impotent to bring about certain important kinds of legal change.

Older English law was often as devious in making changes as it was (sometimes) slow. The culture of the common law shied away from formal, overt abolition of obsolete doctrines and institutions; English law preferred to supersede and ignore them. Trial by battle, a favorite of medieval romance and costume movies, was not done away with in England until 1819. For centuries, it slept in its sarcophagus; but a chance mistake in court, in 1818, reminded the legal profession that battle was still a legal possibility. An embarrassed Parliament quickly buried the corpse (59 Ceo. III, c. 46, 1819).

Legal evolution sometimes took the form of shortcuts called legal fictions. The rise of the action of ejectment is a famous example. Suppose two men we will call them Henry Black and Richard Brown are fighting over title to a piece of land. Brown is in possession, but Black has a claim to it. Each thinks he is the rightful owner. Medieval common law had a form of trial that could be used to resolve this dispute, but this form of action was torturous and heavy-handed. Ejectment developed as a way around it. In ejectrnent, the pleadings papers filed in court would tell a rather odd story. A man named John Doe, it seems, had leased the land from Henry Black. Another man, named William Styles, held a lease from Richard Brown. Styles (it was said) had "ejected"John Doe. In fact, Doe, Styles, and the two leases were pure figments of legal imagination. Black and Brown were the only real people in the case. This mummery (which everybody, the court included, knew to be false) served the purpose of bringing the issue of title before the court. Only now it was a case about a lease (well, an imaginary lease). Because it was a lease case, the ancient land actions (which did not apply to leases) could be avoided, and a more streamlined procedure used. In the' course of time, ejectment itself caine to be considered a complicated nuisance. But this action was not reformed in England until past the middle of the nineteenth century.

The strange history of ejectment is not an isolated example of high technicality and fiction. What is the nonlegal mind to make of a social institution that treats corporations as "persons," which at times classified slaves as real estate, and that allowed a plaintiff to state that the city of Paris was located in England, or that London (admittedly it rains a lot there) was located on the high seas; and in each of these cases, the defendant was not allowed to contradict these absurdities? One of these, the corporate fiction, is still alive (and useful); the others served their purpose and then died out. Enough high technicality survives to make Anglo-American law a difficult system for both lawyers and lay people. But the common law was involute, over-formalized, and fiction ridden not because it was changeless, but precisely because it was constantly changing.

Part of the problem lay in the traditional theories in which the common law was tightly swaddled. In theory, the common law was not man-made in the ordinary sense; the judges uncovered the law (or found" it); they did not make it, or tamper with it as it was found. The modern idea of law as essentially man-made, as essentially a tool or an instrument, was foreign to the classic common law. Change therefore had to be hidden, disguised. Blunt, overt reforms (by judges) were out of the question. Moreover, working doctrines of law, however quaint they may seem, must be acting as the servants of some economic or social interest. In a society with many rough, contentious holders of power, at war with each other, the court can effect power relations only slowly and subtly. Otherwise a delicate balance is upset.

Prologue- ***Continued***

Moreover, foolish traditions are tolerable as long as they are harmless. The abolition of trial by battle illustrates this point. If trial by battle had not been all but dead, it could not have survived to the nineteenth century. Powerful engines of change can and do exist inside the legal system but they may be, and often are, outside the courts. Some major changes take place in law by means of opening and shutting institutional valves. Subject matter moved from one legal agency to another. The courts gained work, lost work, then gained new work. Parliament's role got stronger; the king's power waxed and waned. In the course of these changes, some ancient, specialized, essentially marginal kinds of business stayed with the courts. Because they were colorful and old, these fossils attracted more attention than they deserved. They gave an impression of an archaic, hide-bound system; but this impression was in large part false.

Then, too, a good deal of the law is not addressed to the public directly. Lawyers stand between the laymen and the lawmaker. It is the business of the lawyer to tolerate and master artifice. After all, technical difficulty is one of the lawyer's excuses for existing: his power, his income, his monopoly; his stranglehold on court work, on the drafting of documents, and on the counseling of clients.

The English bar was, by the time our story opens, an important influence on the shape of English law. The evolution of the bar was a long and complicated process. But by 1600, English lawyers plainly were a profession a group of men trained and educated in law. They were not, however, trained at universities, at Oxford or Cambridge. Lawyers came out of the Inns of Court, in London.

The Inns had no connection with the universities. They had no connection with Roman law or with the general legal culture of Europe. Young men at the Inns, if they learned anything, learned English law, English pleading, English legal experience. Legal training was primarily practical, not theoretical. This peculiar bent in English legal education helped the common law to resist the seductions of a rejuvenated Roman law, at a time when continental law fell under the spell of the “reception."

In England, too, the bench was recruited from the bar. Lawyers and judges made up a single legal community, with a shared background and common experiences, as they do to this day. They formed a cohesive group, a kind of clan, or guild.

For these reasons and others, then, the common law came down through the centuries with some of its past sticking to it, like a skin it never quite succeeded in molting. This skin was strongly colored by the feudal past. But it was only a skin. Medieval English practice left deep marks on the language and habits of common law lawyers; but as the economy, and society, and culture changed, so too did the common law its substance, its guts, its bones and body, even as form and language kept a certain amount of ancient attitude.

The classic common law was utterly obsessed by two central topics: formal legal process and the law relating to land. A second's thought tells one, however, that these two topics could not have been all of the living law of England, any more than the life of great lords could have been the life of everyone in England. Common law was, essentially, the law of the royal central courts. It was this law, basically, that the great English jurists, up to and including Blackstone, described. But the royal central courts, by and large, handled the legal problems of a tiny group of people. Leaf through the pages of Lord Coke's reports, compiled in the late sixteenth and early seventeenth centuries; and you will find a colorful set of litigants, all drawn from the very top of British society lords and ladies, landed gentry. high-ranking clergymen, and wealthy merchants. Common law was an aristocratic law, it was a law for and of the gentry and nobility. The masses were hardly touched by this system and only indirectly under its rule except for the bite of a rather savage system of criminal justice.

There was law on the manor, law that controlled the common people and bound them to their betters. This was local law, customary law; and it made very little impact on the treatises, on books like Blackstone's. Law books were written at the seat of power: they dealt with the king's kind of law. The day-to-day law of the lower orders was barely noticed in these circles.

Nor did common law, which was royal law, the law of the realm, in fact cover the whole kingdom. Authority was not so centralized and compact. There was no single focus, no single legal culture. English law was pluralistic; it took many forms, and it varied from place to place. It was a little bit like the law of England's later colonial empire, especially the African colonies, where official law, modeled on the mother country, was dominant in the capital, among expatriates and businessmen, while in the countryside. customary law was left largely to fend for itself. In England, too, in the Middle Ages, many local customs, like local dialects, lived on alongside the common law.

Primogeniture, for example inheritance of land by the eldest son was the common-law rule, but not the rule in the county of Kent. In Kent, under the system known as gavelkind tenure (abolished in 1925), land descended to all the sons equally. Local and customary law had important influence on the law of early America. Colonial practice derived in part from that law which the settlers knew best: the local laws and local customs of their communities back home.

Even for important affairs of important people, the reign of the common law was not undisputed; it had to contend with rival courts, institutions, and subsystems of law. In the end, the royal common law usually won out. But it won only by granting deep concessions. Language once more is a useful analogy. The Anglo-Saxon language held out against onslaughts of Norse and French, and two culture tongues, Latin and Greek. But the surviving language English was drenched with foreign words, and heavily overlaid with foreign syntax.

Prologue- ***Continued***

Modern common law is full of Roman-law words and ideas and is also heavily indebted to equity, admiralty, and the law merchant, branches of law that were basically indebted to continental law-ways.

Of the formal rivals of the common law, the most astounding was the peculiar system, administered by the chancellors, known as equity. Since early medieval times, the chancellor had been an important royal official. The chancellor's office the chancery was responsible for issuing writs to the common-law courts. Through a long and complex process, chancery itself became a court. But it was a court with a difference. Chancery did not follow strict common-law rules. Looser principles governed, principles in accord with prevailing ideas of "equity."

The chancellor was said to be "keeper of the king's conscience." As such, he had the power to dispense with unjust rules. The chancellor was a clergyman, originally; and he could read and write (no small achievement). He had a staff of scribes, too, who were in charge of the machinery" of writs, the documents that petitioners needed to set legal processes in motion. This power gave him a strategic position in the royal system of justice. Over the course of time, the chancellor, as the king's delegate, loosened the rule of the common law in a number of fields of law. The theory of "equity" developed to explain the chancellor's power, and reduce his work to some kind of logical order. The ad hoc character of equity rules gradually disappeared. One could speak of rules, principles, and doctrines of equity as well as of "law." Equity became. in short, almost a system of antilaw.

In England, in short, two contradictory systems of civil law coexisted and not always peacefully. Yet, in many ways law and equity complemented each other. The common law could proclaim duties and rights; it could award money damages. But it could not force anybody to act (other than to pay money). Equity, on the other hand, had a whole battery of supple remedies. The injunction was one of these. An injunction is an order commanding a person to do something (or sometimes to stop doing something). It is enforceable because, if a defendant disobeys, the chancellor can declare him in contempt of court, and put him in jail without further ado. Equity had power over persons, not over things. It could not renderjudgments that actually affected the title to the land, for example. It could only act on the parties. The chancellor could order B to give A's land back to him. If B refused, the chancellor could send him to jail until he obeyed. But the chancellor could not give A the land directly.

Procedurally, the two systems were very different. Equity was closer to continental law and to canon law. No jury ever sat in a chancery court. The jury was purely a common-law institution. On the other hand, many familiar doctrines, and some whole branches of law, such as the law of trusts, grew up out of equity rules and equity practices.

What was curious, perhaps unique, was the separation, within one legal system, and one country, of these two systems, law and equity. A person could have a claim that was good in equity and bad in law; or vice versa. For example. the common law judges tended to consider a deed of land valid so long as it was executed in the proper form. In equity, however, the deed had no effect if it was the product of fraud or deceit, no matter how good it was in form. Hence, a claim based on a deed might win or lose, depending on which courtroom door the plaintiff entered.

Courts of common law paid no attention to the norms of equity. For their part, an equity court would dismiss a case if the plaintiff had an "adequate remedy at law."

Relations between the two systems were different, of course, at different times. In Tudor-Stuart days, open and bitter conflict broke out between equity and law. The common law lawyers did not succeed in driving their rival out of business, much as they would have liked to. After a time, the two systems came to a rough and ready coexistence. In the nineteenth century, equity and law finally "merged' in most of the states. This meant, basically, that there would no longer be separate courts of equity and law; judges would handle both systems in a single court, and with a single procedure. Where rules of law and equity collided, equity usually won. Some states, Massachusetts for one, had never had a system of equity. Most of the states made their merger move in the nineteenth century, New York, for example. New Jersey, however, did not abolish its chancery courts until 1947. And in little Delaware, the separate chancery court has lasted into the twenty-first century.

Even though equity, almost everywhere, is gone as a separate entity, its historical memory lingers on, and makes a difference. The right to trial by jury often depends on whether the case would have been, in the past, an equity case or not. Chancery was not the only court that did not follow strict norms of common law.

The court of star chamber was an efficient, somewhat arbitrary arm of royal power. It was at the height of its career in the days of the Tudor and Stuart kings. The Star chamber stood for swiftness and power; it was not a competitor of the common law so much as a limitation on it a reminder that kings and queens could not safely entrust high state policy to feisty, independent courts.

The special commercial courts also outside the common law lasted longer than star chamber. The royal central courts, absorbed in the tangle of land titles, paid little attention to the Lombard merchants, and to the bankers and tradesmen, foreign and native, who bought and sold and trafficked and used the customs and habits of international business. The mercantile courts, however, Were sensitive to these customs and habits; and knowledgeable about them. In these courts, a separate body of law the law merrhant governed, rather than the ordinary law of England. There were various types of commercial courts, including the colorful courts of piepowder, a court of the fairs where merchants gathered.

Prologue- ***Continued***

Sir Edward Coke spoke of it as a court of "speedy justice . . . for advancement of trade, and traffic," as fast "as the dust can fall from the foot."

Through fair courts and merchant courts, English law and practice recognized the merchant's ways of doing business. From these sources, English law learned to handle the documents from which modern checks, notes, bills of exchange, and bills of lading are descended. Eventually, the ordinary courts absorbed the law merchant into the bloodstream of the common law; and the merchant courts decayed. By the seventeenth century, this process was well advanced.

A final key figure in this development was Lord Mansfield, who died in 1793. Mansfield, deeply versed in Roman and continental law, had a sure touch for commercial cases. His decisions were sensitive and responsive to the merchant's needs and ways.

Admiralty, the law of the high seas and maritime commerce, was another. "rival" of the common law. Admiralty too had an ancient international tradition, quite separate from the common law. As early as the sixteenth century, the English court of admiralty came into conflict with the common-law courts. The struggle for control over sea law was not finally resolved for many years. It was not the romance of the sea that was at stake, but power over naval policy and international transport.

Family law marriage and divorce was also largely outside the pale of common law. Marriage was a sacrament; church courts, even after the Reformation, maintained jurisdiction.

The law of succession to property (in modern law, wills and estates) was curiously divided; the common law controlled inheritance of land; church courts controlled inheritance of personal property. The two courts used quite different rules. If a man died intestate (without a will), his eldest son inherited his land. But the children shared equally any personal property (money and goods). The ecclesiastical courts, like, the courts of equity, did not use common-law procedures; a jury, therefore, had no role in its decisions.

This prologue has laid heavy stress on courts. But one must not assume that all English law was judge-made. A great deal of law came, directly or indirectly, from King and Parliament. In Renaissance England, there was nothing like the steady stream-of statutes that is usual today. But there were statutes; and they were important. Some of them fundamentally altered the structure and substance of the law. Some were carried over into the colonies.

English law was never static. The law of Charles II was not the law of Edward I, and it was light-years away from the law of King Alfred. Mostly, what has been described is what resulted from centuries of evolution and enactment, roughly at the time of the settlements. England, in 1600, stood on the brink of a period of the most profound changes, a period that has not yet ended.

As far as the legal order is concerned, probably the single most important aspect of this modern period has been a revolutionary shift in the attitude of society toward law. In traditional cultures, law was basically static: a divine or time-honored body of rules. It defined people's place in the order of society. In modern times, law is a tool, an instrument; the people in power use it to push or pull toward some definite goal. The idea of law as a rational tool or instrument underlies all modern systems, whether capitalist, socialist, fascist, whether democratic or authoritarian. And all modern societies govern by and through law through rules, regulations, statutes, decisions. And these norms are constantly growing, shrinking, changing. The period covered by this book is a period of restless and insatiable change.

Discovering The Meaning of Property - A Review of Fundamental Rights

By Dr. Robert T. Farley, J.D./L.L.M.

Property rights are the lynchpin of liberty. They form a fundamental element of our freedom.

Long recognized as inherent to our humanity, our right to exclude, possess, use and transfer private property, is a quintessential benchmark, that defines our modern society and its quality of life.

Under our system of laws, property rights reside in the individual. They are personal and unique.

Think about freedom and you ultimately get back to property rights. For the unrestrained use and enjoyment of property is ingrained in our very being as Americans.

Take away property rights, and you take away an individual's freedom. Limit property rights, and you limit an individual's liberty. Restrict or impair property rights, and you diminish a person's quality of life.

The founders of our nation knew, and the system of laws they developed recognized, that the protection of private property rights was one of the most important factors to building a free society. They knew, if you want freedom, you better guarantee property rights, and the people's ability to freely exercise them.

James Madison, fourth President of the United States and the principal author of the United States Constitution and the Bill of Rights, encapsulated this vision when he said:

> ***"Government is instituted to protect property of every sort; as well that which lies in the various rights of individuals ... This being the end of government, that alone is a just government, which impartially secures to every man, whatever is his own."*** [1]

John Adams, second president of the United States and collaborative author of the Declaration of Independence, further amplified this view when he stated:

> ***"Property must be secured or liberty can not exist."*** [2] ***"The moment the idea is admitted into society, that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence."*** [3]

Thomas Jefferson, third President of the United States and the primary author of the Declaration of Independence, declared:

> ***"The first foundations of the social compact would be broken up were we definitely to refuse to its members the protection of their persons and property while in their lawful pursuits."*** [4] ***"Persons and property make the sum of the objects of government."*** [5]

John Jay, first Chief Justice of the United States Supreme Court, renowned legal scholar and author of the Federalist Papers (with Madison and Hamilton) pronounced:

> ***"It is the undoubted right and unalienable privilege ... not to be divested or interrupted in the innocent use of ... property. ... This is the cornerstone of every free Constitution."*** [6]

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1. James Madison, Selected Writings of James Madison, edited and assembled by Ralph Ketcham, (Hackett Pub. Inc. New York 2006), 52 - Political Essay on Property, First Published in the National Gazette - March 29, 1792 on Pages 266-68, Pg 223.

2. John Adams,, The Works of John Adams, Second President of the United States: edited and assembled by his Grandson Charles Francis Adams, (Boston: Little, Brown and Co., 1856), Published in 10 volumes. Vol. VI, pg 280.

3. John Adams,, The Works of John Adams, Second President of the United States: edited and assembled by his Grandson Charles Francis Adams, (Boston: Little, Brown and Co., 1856), Published in 10 volumes. Vol. VI, pg 9.

4. Thomas Jefferson, Thomas Jefferson: Letter to James Maury, 1812. ME 13:145

5. Thomas Jefferson, Thomas Jefferson: Letter to James Madison, 1789. ME 7:459, Papers 15:396

6. John Jay, John Jay The Making of a Revolutionary, Unpublished Papers, 1745-1780, Richard B. Morris, editor (New York: Harper & Row Publishers, 1980), Vol. I, p. 462, "A Freeholder: A Hint to the Legislature of the State of New York," Winter 1778.

George Washington, the first President of the United States and Presiding Officer of the Constitutional Convention, said:

> ***"[I]n a country so extensive as ours, a government of as much vigor as is consistent with the perfect security of liberty is indispensable. Liberty itself will find in such a government, with powers properly distributed and adjusted, its surest guardian. It is, indeed, little else than a name, where the government is too feeble to withstand the enterprises of faction, to confine each member of the society within the limits prescribed by the laws, and to maintain all in the secure and tranquil enjoyment of the rights of person and property. "*** [7]

Alexander Hamilton, Delegate to the Constitutional Convention, author of the Federalist Papers (with Madison and Jay) and first Treasury Secretary of the United States, declared:

> ***"The sacred rights of mankind are not to be rummaged for among old parchments or musty records. They are written, as with a sunbeam, in the whole volume of human nature, by the hand of the divinity itself; and can never be erased."*** [8] ***"It is the unalienable birthright ... to participate in framing the laws which are to bind ... either as to ... life or property."*** [9] ***"[T]he end and intention ... is to preserve ... life, property, and liberty ... from the encroachments of oppression and tyranny."*** [10] ***"What the law gives us an unconditional permission to enjoy, no person can legally withhold from us. It becomes our property, and we can enforce our right to it."*** [11] ***"In the general course of human nature, a power over a man's subsistence amounts to a power over his will."*** [12]

The State of Virginia, home of four of the first five presidents, adopted a Bill of Rights on June 7, 1776, written by George Mason, a delegate to the Philadelphia Constitutional Convention in 1787. Section 1 of this Declaration of Rights stated:

> ***"That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety".*** [13]

As can be seen from the above, the founders maintained a clear grasp of the connection between liberty, freedom and property rights. They understood that it is the pursuit of property that is the catalyst of freedom, and that a person's unfettered ability to freely exercise their property rights is the gateway of liberty.

Their's was not a concept of materialism. For nowhere in the founders' writings is wealth the focus of their arguments. It was not the value of the property that mattered. It was not the property itself, that the framers linked to liberty and freedom. Rather, they believed that it was the pursuit of property, and the exercise of the rights thereof, that are the key. They understood that it is not about equality of means or outcome, but rather about freedom and equality of opportunity.

Although the founders were intellectual giants, they were, also, however, reflective of their society's beliefs as a whole. They recognized that so many of their fellow Americans, became Americans, and came to this country, so that they could freely exercise and pursue property.

Gifted legal scholars like Madison, Jefferson, Jay and Hamilton may have been able to offer elegant, legal justifications for their fundament belief in property rights, but the average citizen too understood and held these same beliefs implicitly. Unlike most of the founders, this average citizen didn't express their view through legal prose. Instead they voted with their feet, coming to America from overseas, in order to seek the free exercise and pursuit of property. It was this embodiment of the publically held belief in property, as maintained in all of colonial society, as well as their intellectual philosophy, that compelled the founders to form our legal system, with a deep reverence for property rights.

This belief in property rights, and their pursuit, was instilled in the legal institutions and government that the founders created. Accordingly, one can see, throughout the Declaration of Independence, the Constitution and the Bill of Rights, that the pursuit of property, and a person's ability to freely exercise their property rights, is sacrosanct. It was upon this foundational pillar that the founders built. The system of government and law we enjoy today, is a reflection of their dedication to the principle that the pursuit of property, and the exercise of its rights, are indispensable and inseparable from liberty, freedom and the natural rights of man. As a result, this belief has been innately incorporated as a fundamental principle of our free government.

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7. George Washington, George Washington, First President of the United States - Farewell Address, authored September 17, 1796, published in The Independent Chronicle of Boston, Massachusetts, September 26, 1796, Paragraph 19.

8. Alexander Hamilton, The Revolutionary Writings of Alexander Hamilton, edited and assembled by Richard Vernier, (Liberty Fund, Inc. Publishing - Indianapolis 2008), pg 62.

9. Alexander Hamilton, The Revolutionary Writings of Alexander Hamilton, edited and assembled by Richard Vernier, (Liberty Fund, Inc. Publishing - Indianapolis 2008), pg 57.

10. Alexander Hamilton, The Revolutionary Writings of Alexander Hamilton, edited and assembled by Richard Vernier, (Liberty Fund, Inc. Publishing - Indianapolis 2008), pg 62.

11. Alexander Hamilton, The Revolutionary Writings of Alexander Hamilton, edited and assembled by Richard Vernier, (Liberty Fund, Inc. Publishing - Indianapolis 2008), pg 146.

12. Alexander Hamilton, The Federalist, A Commentary of the Constitution of the United States, A Collection of Essays by Alexander Hamilton, James Madison and John Jay, edited and assembled by John C. Hamilton (J. B. Lippincott & Co. Pub. Philadelphia 1869), Federalist LXXIX, pg 583.

13. James McClellan, Liberty, Order, and Justice: An Introduction to the Constitutional Principles of American Government, third edition (Liberty Fund, Inc. Publishing - Indianapolis 2008), Appendix F: Reprint of the Virginia Bill of Rights (A Declaration of Rights - June 12th 1776), pg 188.

Part One - Introduction:

Property is among the oldest and most fundamental of all legal concepts. From the dawn of recorded history, it has influenced relations among people and their societies.

Long viewed as a critical element of every person's existence, property represents so much of what is necessary for the preservation and quality of human life.

But it is the right to exercise control over property, and not the item itself, that gives property its value.

As such, legal scholars, for generations, have effectively viewed property, not in terms of a collection of "things", but rather, in terms of a collection of "rights".

With people's concerns, and society's demands, focused on property, the ever present need to protect property rights has led to the development of the law itself. Reciprocally, the development of the law, has shaped our concept of property. This means that a great deal of the law is derived from, and devoted to, property, its protection, and the rights surrounding it.

As such, the law, in great part, evolved from the need to protect property rights, and property rights, in turn, evolved from this legal recognition. The two are necessarily intertwined.

Society's understanding of the critical importance of property rights has also resulted in the recognition of property rights under natural law. Flowing from this concept, our society, and its laws, view property rights, not as privileges granted by the state, but instead, as rights that are intrinsic to our very existence as human beings.

As such, under our American system of laws, private property rights are inherent to our humanity, and it is government's sacred duty to respect and protect them. Government recognizes these rights, but it did not give them, and it can not take them away.

The societal respect for the value of private property rights, and their accepted recognition under law, have helped the western world in general, and America in particular, to grow and prosper to the highest status in human history. The very nature of private property rights is reflective in one's ability to excise those rights through the element of control. Control is the fundamental element of a property right.

As such, having the right to control property, by exclusion, possession, use and transfer, has become a fundamental pillar of modern civilization.

What is Property?

Just what is property? What does it mean? How is it defined?

In common parlance, when one thinks of what constitutes "property", they generally visualize 'items" or "things".

To view property through this limited vision, however, causes one to miss a very valuable element: "control".

Since it is only through the perspective of control, that one can truly understand the full nature of property, it is essential to think of property in terms of "rights". For it is only through that perspective, a merger of item with control, that a true legal understanding can be had. Accordingly, the law needs to view property, not in terms of a collection of items or things, but in terms of a collection of rights.

It is for this reason that "property" has been described by legal scholar, John Sprankling as "rights among people that concern things". [14] Professor Sprankling (a nationally respected authority on property law, Distinguished Professor and Scholar of Law at University of the Pacific - McGeorge School of Law, and author of the internationally renowned book "Understanding Property Law"), argues that under our system of law, "a high degree of owner autonomy is both desirable and inevitable" with respect to property. [15] Consequently, he continues, "clear limits on the scope of owner autonomy" are needed. [16] These limits, Professor Sprankling asserts, can best be expressed through the law by recognizing circumscribed rights in people with respect to their private property. [17] It is upon this basis, that our system of law has awarded control over property by means of rights.

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14. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pg 2.

15. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pg 4

16. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pg 4

17. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pgs 1.-9

The United States Supreme Court has a similar view, holding that the term "property" should be deemed to be "the group of rights inhering in the citizen's relation to the physical thing". [18]

Under these definitions, virtually every item that can have rights attached to it, can constitute property. Such can include almost anything that can be imagined, such as:

1. Real property (rights in land);

2. Personal property (rights in objects); and

3. Intellectual property (rights in ideas).

In short, property includes nearly every material thing, over which people can legally exercise rights.

In America today, under our federal system, most of the law of property is based in, and pronounced by, state law. [19] For it is in state law, where the common law rests, and where our nation's respect for property rights has been most applied. [20]

Property rights are, however, also fundamentally recognized and protected in the United States Constitution, as well as, in our nation's founding documents. [21] Additionally, one exception to the general principle of state based property law, is intellectual property, which is protected pursuant to federal statutes. [22]

In the State of New York, case law has established the baseline definition for the term "property". The Court of Appeals has defined the term "property" to mean "an aggregate of rights which are guaranteed and protected by government". [23]

New York's statutory definition, is secondary to the Court of Appeals pronouncement, and is found in the General Construction Law. This chapter defines the term "property" to include both"real and personal property"; defines the term "personal property" to include rights in "chattels, money, things in action, and all written instruments themselves"; and defines the term "real property" to include rights in "real estate, lands, tenements and hereditaments, corporeal and incorporeal". [24]

When the proverbial man on the street thinks of his property, however, he thinks of his home (real property) his car (personal property) and maybe even the invention he has always dreamed of when working in his garage (intellectual property). He may not be able to offer a precise definition of what property is, but he knows it when he sees it. Moreover, deeply ingrained in his American psyche, is the belief that the property under his dominion and control, is his, to do with pretty much as he pleases, with few, if any, restrictions of government.

This man on the street understands that he can not use his property to injure his neighbor, or that he can not violate some understandable public policy, such as torturing his dog or setting his cat on fire (personal property), but he holds the firm belief that outside of these restrictions, if he wishes to use his property in an otherwise unconventional manner, or even not use it at all, he has the legally protected right to do so. He knows that property, and the rights that go with it, are held as sacred under our system of free government, and that he has these protections against the government, and other persons, who may seek to violate those rights.

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18. U.S. v. General Motors Corp., 323 U.S. 373, 378 (1945), and see also, Newman v. Sathyavaglswaran, 287 F.3d 786, 795 (9th Cir.2002), cert. denied, 537 U.S. 1029 (2002).

19. Barlow Burke and Joseph Snoe, Property: Examples and Explanations, Second Edition (Aspen Publishers, New York 2004), The Law of Property, Common Law Cases, Pg 5.

20. Barlow Burke and Joseph Snoe, Property: Examples and Explanations, Second Edition (Aspen Publishers, New York 2004), The Law of Property, Common Law Cases, Pgs 5-7.

21. See The Declaration of Independence ("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, that among these are life, liberty and the pursuit of happiness") - with the "pursuit of happiness" being long held to be derived from the "pursuit of property" and Amendments V (No person shall ... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation), IX (The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people), X (The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people) and XIV (nor shall any State deprive any person of life, liberty, or property, without due process of law) of the United States Constitution.

22. For Patents, see Title 35 - United States Code, et. seq., for Trade marks see Title 37 - United States Code, et. seq., and for Copyrights see Title 17 - United States Code, et. seq.

23. Fulton Light, Heat and Power Co. v. State, 65 Misc 263, 288 (Ct of Claims 1909), aff'd, 200 N.Y. 400 (1911), reargument denied, 202 N.Y. 543 (1911), see also, New York Jurisprudence, Second Edition, (Thompson West Pub, St. Paul, 2005), Vol 87, Property, §1 Generally, Pg 28.

24. See New York State General Construction Law, Sections 38, 39 and 40, "Property", "Property, personal", and "Property, real", originally enacted as Chapter 27 of the Laws of 1909.

Despite an overall understanding by lay people of what property consists of, for generations, legal philosophers have had different perspectives as to what property means. [25]

- John Locke viewed property as essentially the product of one's labor. [26]
- John Jay saw it as a fundamental human right endowed by God. [27]
- Jeremy Bentham conceived of it in light of one's settled expectations. [28]
- Karl Marx perceived it to be the foundation of capitalism and class conflict. [29]
- G.W.F. Hegel declared it to be the extension of one's will. [30]
- Harold Demsetz envisioned it as a product of externalities. [31]

In light of all these seemingly different viewpoints, property is still, however, a concept we all can understand. For property is both a foundational basis in the law as well as a reflection of it. [32] It is unquestionably linked to society and to its needs. [33]

Although understandable, and relatively fixed, property is not intransigent. It is a concept, that can change over time. Since property is the expression of the rights conferred by law, and since the law and society can change over time, so can the concept of what constitutes property, and what rights of control over it are protected by law. [34]

But these dynamic changes have their limits. Like a glacier, any changes in property rights are slow to evolve. Because of its importance to both individual people, as well as society as a whole, property rights have long been held to be among the most sacred and relatively fixed in all the law. As seen above, these concepts are embodied and protected by our constitutions, statutes and case law. Under these legal embodiments and protections, the law recognizes that property rights are inherent to our humanity, and although not unchangeable, they need to be dependable and not easily modified.

It is with this perspective that we will begin to examine the meaning of property through a review of its fundamental rights.

It is upon this understanding that we will view property in terms of its simplest definition: ***The legally recognized rights relating to a material item or idea.***

It is in order to gain a true discovery, that we will conduct this examination through the prism of four postulates that define property law. They are as follows:

1. That Property Must be Viewed as a Collection of Rights not a Collection of Things;

2. That Property Rights are those Recognized by Law, the Law evolved from Property Rights, and they are intertwined;

3. That Property Rights are Inherent to our Humanity; and

4. That Property Rights Include the Rights of Exclusion, Possession, Use and Transfer.

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25. Barlow Burke and Joseph Snoe, Property: Examples and Explanations, Second Edition (Aspen Publishers, New York 2004), The Law of Property, Pg 3.

26. John Locke, Two Treatises on Government 1690, A New Edition, (Printed for C & J Rivington, London 1824), 2 volumes, Book II, Chapter 4: Of Property, Pages 140 - 158.

27. John Jay, The Life of John Jay, Chief Justice of the Supreme Court, edited and assembled by his Son William Jay, (J & J Harper Publishing Pub New York 1833) 2 volumes, Vol II, Pg 466

28. Jeremy Bentham, Theory of Legislation, Fourth Edition (Trubner & Co., London 1908), Part First: Objects of the Civil Law, Chapter VIII - Of Property, Pgs 111-113.

29. See Karl Marx, Das Kapital: A Critique of Political Economy, edited by Frederick Engels and translated by Samuel Moore (Charles Kurr & Co. Pub. Chicago 1921).

30. G. W. F. Hegel, Philosophy of Right, translated by S. W. Dyde, A Reprint of the original 1821 publication, (Batoche Books, Kitchner, ON 2001), Pgs 55-76.

31. Harold Demsetz, Toward a Theory of Property Rights, 57 Am. Econ. Rev. 347-357 (Pap. & Proc. 1967), reprinted in Property, by Jesse Dukeminier and James Krier, Fourth Edition, (Aspen Publishers. New York 1998), Pgs 40-47.

32. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pg 4

33. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pg 4

34. New York Jurisprudence, Second Edition, (Thompson West Pub, St. Paul, 2005), Vol 87, Property, §1 Generally, Pg 29.

Part Two: The Meaning of Property - Examining Property Through the Prism of the Four Postulates

In the attempt to discover the meaning of property rights under our American legal system, four postulates have been devised to provide perspective and enlightenment. Examining property rights through the prism of these four postulates will allow for a discussion of the legal foundations of property rights as well as their evolution. It is upon this mantle that a true understanding is sought.

1. That Property Must be Viewed as a Collection of Rights not a Collection of Things

Viewing property as a collection of rights rather than a collection of things serves a dual purpose. First, as aforementioned, the essential element which gives property its value, is not the item itself, but rather the ability to control the item. The issue of control is reflected by an analysis of rights. Second, it is only through a perspective of rights, that we are able to broaden our concept of property, to include many of the more abstract property interests of great value to modern society. Concepts such as intellectual property, future interests, and non possessory interests, do not lend themselves to be easily considered as "tangible items", and as such, are property interests best viewed through the context of rights. Accordingly, by employing this "rights" perspective, a more inclusive and accurate picture of what property actually is, and means, can truly be had.

A. The Concept of Right

In order to properly view property as a collection of rights, exactly what a right is, and where it came from, needs to be understood.

The legal concept of "right" is a relatively recent one, that was not fundamentally expressed until after the rise of English jurisprudence.

Indeed, according to Susan Ford Wiltshire, Chair of the Classical Studies Department of Vanderbilt University: "Theories of rights assume a dignity of persons and a status of individuals that did not exist in the classical world". [35]

To this end, Dr. Wiltshire contends that prior to the predominance of English jurisprudence, the legal status of an individual was determined by their relationship with the state. [36] As English jurisprudence developed however, with both the events surrounding the Magna Carta and the establishment of the Common law, the law began to see a "slow transition from a state-defined, to an individual-defined, political identity", driven primarily by a new belief in the concept of natural law. [37]

Fundamentally, the first step toward the development of the concept of rights can be traced back to ancient Athens, when the Greeks "invented the revolutionary idea that human beings are capable of governing themselves through laws of their own making". [38] Thereafter, the development of the concept of rights gained a significant boost, through the Romans' creation of their complex and sophisticated legal system. [39] Despite this foundation, however, the concept of "right" that we know today, did not begin to truly emerge, until after the establishment of English jurisprudence, and upon such time, as under its influence, the unification of political thought between clerics and legal scholars occurred, to create the concept of natural law. [40]

The 13th century was especially important for the development of "rights" as we know them today. The first transformation occurred during the early middle ages, which saw the replacement of a person's classical legal status through the state with a new similar bind with the Roman Catholic church (thus continuing to leave no room for the legal concept of non collective, individual "right"). [41] By the time of the 13th century, however, the establishment of English jurisprudence, as influenced by the occurrence of certain political and social events, began to change this perspective. [42]

During the 13th century, the combination of the establishment of the Common law of England, the events surrounding the Magna Carta, and the rise of a new clerical-legal philosophy (which started to impart human beings as instruments of God with fundamental, individual natural rights), began to put mankind on the legal path to "rights" [43]

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35. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Introduction, Pg 2.

36. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Introduction, Pgs 1-2.

37. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Introduction, Pg 2.

38. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), The Origins: Greek Philosophy and Roman Law, Pg 9.

39. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), The Origins: Greek Philosophy and Roman Law, Pgs 25-29.

40. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Law, Individual and the Church in the Middle Ages; English Beginnings: Common Law and the Magna Carta; and Enlightenment, Humanism and the New Thought, Pgs 39-88.

41. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Law, Individual and the Church in the Middle Ages, Pg 30.

42. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Law, Individual and the Church in the Middle Ages; English Beginnings: Common Law and the Magna Carta, Pgs 39-61.

43. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Law, Individual and the Church in the Middle Ages; English Beginnings: Common Law and the Magna Carta, Pgs 39-61.

I. The Rise of English Jurisprudence:

As a former Roman colony, the jurisprudence of England originated in Roman Law. Since English jurisprudence led to the development of the legal concept of "right", in order to fully comprehend this concept, it is necessary to not only understand its Roman origins, but also the development of the Common Law, the events of the Magna Carta, and the rise of a new clerical-legal philosophy which began to recognize the concept of rights itself.

a. Roman Law

The law of Rome "occupies a unique place in the history of our civilization". [44] Indeed, it has been said that the "Roman law is the single greatest legacy which the ancient world has bequeathed to the modern". [45] Over two thousand years after its development, Roman law still today forms the "basis for all the legal systems of Western Europe". [46] Even in England, and countries which evolved from English law (such as the United States), the influence of Roman law, although kept within limits "because of the early rise of a national legal profession and the early origination of a national common law", "is considerable and much greater than often admitted." [47]

Referred to as "the most original product of the Roman mind" [48], the invention of a comprehensive body of law was a development of Roman society. [49] This body of law, which was both comprehensive and practical, would establish within its purview, the foundational elements of what we know today as property rights. Due to its universal character, comprehensiveness, practicality, and refinement, and because of Rome's military strength, power and prestige, this body of law would prove both successful and enduring. [50] It would further form the foundation for all future English jurisprudence.

A fundamental basis shaping Roman law was the idea of continuity. Rome was the first civilization to openly recognize that the culture of Rome Itself, was greater and more eternal than any one ruler or emperor. Roman law became an extension of this view. For Roman society understood, that its civilization and culture would be extended and perpetuated through its law.

Roman Citizens were very well versed in the law. [51] Indeed, in Roman society, knowledge of the law was viewed "as the outstanding mark of a fine man". [52] Romans respected the law, took it seriously, and believed in its value and purpose. They built a legal infrastructure with courts, lawyers and procedures. They held an abiding interest in the creation and administration of the law, provided for its flexibility to address new challenges, and created a system that was both a comprehensive model and easy to copy. [53] Like so many other Roman institutions, the law was developed as a tool. A tool to order their civilization and its conquests. Inherent in these principles was the concept of justice. The root of the word, "jus", is a Latin legal term.

The very underpinnings of what we know today as rights in private property find their antecedents in Roman law. [54] For although Roman society was without question stratified, where class status dominated legal principles [55], it was also the first society to legally recognize the individual person (called persona) together with their claims and obligations (what we would call today their rights and duties). [56] Although, as aforementioned, these rights and duties were directly linked to a person's relationship as a citizen of the Roman state, or with respect to their state recognized relationship with a family, tribe or clan (unlike our modern view where such rights and duties are held by the individual) these principles, which established a legal relationship between property and its exclusion, possession, use and transfer, did offer a pathway to the development of modern property rights in the individual.

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44. Hans J. Wolff, Roman Law: An Historical Introduction, (University of Oklahoma Press, Norman, OK 1978), The Place of Roman Law in Western Civilization, Pg 3.

45. Frederick Walton, Historical Introduction to the Law of Rome, Fourth Edition, (WMW Gaunt & Sons Pub. Holmes Beach, FL 1994), Introduction, Pg 1.

46. Alan Watson, Roman Law and Comparative Law, (University of Georgia Press, Athens, GA 1991), Law and the Roman Mind, Pg 3.

47. Alan Watson, Roman Law and Comparative Law, (University of Georgia Press, Athens, GA 1991), Law and the Roman Mind, Pg 3; and Hans J. Wolff, Roman Law: An Historical Introduction, (University of Oklahoma Press, Norman, OK 1978), The Place of Roman Law in Western Civilization, Pgs. 4-6.

48. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), The Origins: Greek Philosophy and Roman Law, Pg 17.

49. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), The Origins: Greek Philosophy and Roman Law, Pgs 17-20; Alan Walton, Roman Law and Comparative Law, (University of Georgia Press, Athens, GA 1991), Law and the Roman Mind, Pg 3, and Frederick Walton, Historical Introduction to the Law of Rome, Fourth Edition, (WMW Gaunt & Sons Pub. Holmes Beach, FL 1994), Introduction, Pgs 8-9.

50. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), The Origins: Greek Philosophy and Roman Law, Pgs 17-20; Alan Watson, Roman Law and Comparative Law, (University of Georgia Press, Athens, GA 1991), Law and the Roman Mind, Pg 3, Hans J. Wolff, Roman Law: An Historical Introduction, (University of Oklahoma Press, Norman, OK 1978), The Place of Roman Law in Western Civilization, Pgs 4-6, and Frederick Walton, Historical Introduction to the Law of Rome, Fourth Edition, (WMW Gaunt & Sons Pub. Holmes Beach, FL 1994), Introduction, Pgs 8-9.

51. John A. Crook, Law and Life of Rome, (Cornell University Press, Ithaca, NY 1984), Introduction - Law and Society, Pg 8.

52. Alan Watson, Roman Law and Comparative Law, (University of Georgia Press, Athens, GA 1991), Law and the Roman Mind, Pg 4

53. Alan Watson, Roman Law and Comparative Law, (University of Georgia Press, Athens, GA 1991), Law and the Roman Mind, Pg 3.

54. W. H. Kelke, A Primer of Roman Law, (WMW Gaunt & Sons Pub, Holmes Beach, FL 1994), Law, Pg 10.

55. John A. Crook, Law and Life of Rome, (Cornell University Press, Ithaca, NY 1984), The Law of Status, Pgs. 36-67.

56. William H. Kelke, A Primer of Roman Law, (WMW Gaunt & Sons Pub, Holmes Beach, FL 1994), Family, Pg 16.

It is thus unsurprising that property interests comprised a large part of Roman law. Moreover, it is interesting to note, that accordingly, legal scholars have said, that perhaps more than anything else, the greatest focus of Roman law was "concerned with distinguishing meum from tuum, that is, with the rights of property, its ownership and conveyance, with those rights other than ownership which people may have over things". [57]

Roman Law focused on property, because the exercise of control over it, provides the avenue to wealth, and the engine of economic activity. Rome inherently understood this, and used its law to advance this idea.

For Rome was an empire based upon land, commerce, trade and its military. [58] Accordingly, its law helped promote both property rights and civilization across the then known world. Roman law did this by advancing conquest, instilling both consumer and merchant confidence, and by providing a consistent template for the governance and operation of conquered lands and peoples. [59] The law of Rome, especially upon its codification, helped to make its empire the greatest of its time.

Through its law, respect for the legal principles, and the concept of continuity, Rome became the center of civilization, power, wealth and trade for the entire known world. Roman law was carried to all its colonies for a framework of administration. Centered upon property rights, with those rights based in the society as a whole rather than in the individual person, Roman law addressed those practical needs that its empire required to run effectively, grow and prosper.

Under Roman law, these legally protected property rights allowed the Roman economy to flourish, businesses to develop, and trade to dominate all other nations and peoples. [60] The Roman concept of the law, acknowledged contractual agreements, invented corporations, established trade standards, and punished those who did not respect property rights. [61]

Like the great architecture for which it is known, Rome developed a system of law that was timeless and has provided a foundational element of all other legal systems throughout the ages.

American law, and its concept of rights, were derived from England. England was a part of the Roman Empire. [62] Conquered by the Romans, through a series of campaigns between 55 B.C. and 43 A.D., [63] the empire instilled in England the philosophy of respect for the law, as well as many foundational Roman legal principles. Due to its vast distance and difficulties of administration, however, the Romans allowed the English to develop a great deal of autonomy in their local law. [64]

For like several other former Roman colonies that suffered great distance from Rome, England developed its own system for making and enforcing the law. It used Roman legal principles as a template, but did not adopt all Roman law in specific. Consequently, although English law largely rejected many irrelevant parts of the Roman code itself, the Roman template and idea of the law being the basis for civilization and justice, and of its need for respect, did become an unquestioned value of the English people. As a result, from Roman times to the present, Englishmen could disagree over who should make the law, or over what laws should be made, but they always held dear and respected the concept of the law itself, and the fundamental procedures that were intended to produce justice.

When the Roman Empire fell, and England was left to fend for itself, this tradition of respect for the law, and the foundational basis that the law is a means to resolve disputes and deliver justice, had already taken hold in Britain for hundreds of years. Due to its distance from Rome before the fall of the empire, as well as the passage of time after its fall, however, by the time of the middle ages, the settled law under which the English people lived, had significantly diverged from the Roman Code. [65]

Accordingly, although the Roman code may not have expressly become the law of England, many of its core principles, including legal procedures, organization, practical outcomes, and respect for the rule of law, did become foundational attributes of the English Common law that was developed.

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57. John A. Crook, Law and Life of Rome, (Cornell University Press, Ithaca, NY 1984), Property, Pg. 139.

58. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), The Origins: Greek Philosophy and Roman Law, Pgs 17-20; and John A. Crook, Law and Life of Rome, (Cornell University Press, Ithaca, NY 1984), Commerce, Pgs.. 206-249.

59. John A. Crook, Law and Life of Rome, (Cornell University Press, Ithaca, NY 1984), Commerce, Pgs.. 206-249; Frederick Walton, Historical Introduction to the Law of Rome, Fourth Edition, (WMW Gaunt & Sons Pub. Holmes Beach, FL 1994), Introduction, Pgs 8-14; Hans J. Wolff, Roman Law: An Historical Introduction, (University of Oklahoma Press, Norman, OK 1978), The Evolution of the Law, Pgs 52-54; and Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), The Origins: Greek Philosophy and Roman Law, Pgs 17-22.

60. John A. Crook, Law and Life of Rome, (Cornell University Press, Ithaca, NY 1984), Property and Commerce, Pgs.. 139-249.

61. John A. Crook, Law and Life of Rome, (Cornell University Press, Ithaca, NY 1984), Property and Commerce, Pgs.. 139-249.

62. Hans J. Wolff, Roman Law: An Historical Introduction, (University of Oklahoma Press, Norman, OK 1978), The Historical and Constitutional Background of Roman Law, Pg. 12.

63. Michael Grant, The History of Rome (Charles Scribner's Sons Pub., New York 1978), VI Caesar and Augustus, Pg. 218, and VII The Imperial Peace, Pg. 282.

64. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), The Origins: Greek Philosophy and Roman Law, Pgs 9-29, and English Beginnings. Common Law and the Magna Carta, Pg 51.

65. Hans J. Wolff, Roman Law: An Historical Introduction, (University of Oklahoma Press, Norman, OK 1978), Reception of Roman Law, Pgs. 197-198.

b. The Development of English Common Law.

In 1066, six centuries after the fall of Rome, William the Conqueror, a Norman Knight, who due to his illegitimate birth status had questionable property inheritance rights in his native France, formed an army, invaded England, killed its King Harold, and took over the throne of the country. [66] Proving an able ruler, William effectively began to unite the country and place it on the road to relative security and prosperity. [67]

William brought with him a respect for Roman law, as well as the concepts of feudalism, swearing oaths, and that one accused of a crime should be judged by a jury (from the Latin word "jurare", meaning to swear an oath).[68] Dedicated to these concepts, he began to transform both England and its people. As England developed into its own feudal system, English Law and its system of jurisprudence began to follow suit. Accordingly, the concept of subjectism (only having rights awarded by the sovereign as merely a subject of the king) started to be replaced with a growing sense of individualism.[69]

For feudalism "was contractual in nature, a matter of oaths and loyalties exercised in both directions between lords and vassals". [70] This concept relied on mutual obligations, and as such, highlighted the importance of the individual and his individual ability and right to swear the oath and fulfill the duty. [71] During the next century, this concept began to make its way into the legal beliefs of Englishmen. Consequently, Englishmen began to perceive that these oaths and promises meant something, and if a lord or king was a tyrant, then they could withhold their oath and duty. These reciprocal promises began to form legally supported expectations, and with them, the rudimentary basis for what we call today "rights".

By 1154, England was ruled by a distant decedent of William: King Henry, II. [72] By such time, feudalism had taken hold, and a growing sense of individualism began to become associated with the concept of being a citizen. [73] A talented and intelligent king, Henry (the first man to use the title King of England) greatly expanded England's territory (ruling significant portions of France, upon his marriage to Eleanor of Aquitaine, who was a of French royal lineage) and dramatically advanced England's trade and commerce. [74] Perhaps Henry's greatest accomplishment, however, is that he worked to promote a national and unified system of law through out England, and is thus regarded today, as the father of the English Common law. [75]

As this national and unified system of law began to develop (commenced by Henry's creation of the King's Magistrate Courts) the Common law began to emerge. [76] Local judges ruled on cases of disputes between parties (very often property disputes) and then following precedent of past decided cases, issued decisions to resolve the controversies. [77] This practice began to give those who could ask the courts to resolve their disputes (usually those who owned real property) an expectation that they could gain a just and predictable result under the law, based upon custom, justice and what was the right thing to do. [78]

According to Dr. Wiltshire, this developing English Common law was "common in more than one sense", in that, not only did it help "to produce a common culture", but that it also was "earthbound and daily instead of speculative and abstract" paying greater respect to individuals. [79] It lead the English people, and their law, to begin to recognize the emergence of natural law, and with it, develop a further concept of their own individual rights.

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66. C. Warren Hollister, The Making of England, 55 B.C. to 1399, Sixth Edition (D.C. Heath & Co., Lexington, MA 1992), Late Saxon England, Pgs 93-99.

67. C. Warren Hollister, The Making of England, 55 B.C. to 1399, Sixth Edition (D.C. Heath & Co., Lexington, MA 1992), The Impact of the Norman Conquest, Pgs. 103-121.

68. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Amendments V, VI, VII and VIII, Pgs 158-159

69. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), English Beginnings: Common Law and the Magna Carta, Pgs 52-55.

70. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), English Beginnings: Common Law and the Magna Carta, Pgs 52-55.

71. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), English Beginnings: Common Law and the Magna Carta, Pgs 52-55.

72. C. Warren Hollister, The Making of England, 55 B.C. to 1399, Sixth Edition (D.C. Heath & Co., Lexington, MA 1992), Henry II and Sons, Pg. 144.

73. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), English Beginnings: Common Law and the Magna Carta, Pgs 53-55.

74. C. Warren Hollister, The Making of England, 55 B.C. to 1399, Sixth Edition (D.C. Heath & Co., Lexington, MA 1992), Henry II and Sons, Pgs. 144-163; and Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), English Beginnings: Common Law and the Magna Carta, Pgs 53-55.

75. C. Warren Hollister, The Making of England, 55 B.C. to 1399, Sixth Edition (D.C. Heath & Co., Lexington, MA 1992), Henry II and Sons, Pgs. 144-163; and Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), English Beginnings: Common Law and the Magna Carta, Pgs 53-55.

76. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), English Beginnings. Common Law and the Magna Carta, Pgs. 53-55; and C. Warren Hollister, The Making of England, 55 B.C. to 1399, Sixth Edition (D.C. Heath & Co., Lexington, MA 1992), Henry II and Sons, Pgs. 149-151; and Hans J. Wolff, Roman Law: An Historical Introduction, (University of Oklahoma Press, Norman, OK 1978), Reception of Roman Law, Pgs. 197-198.

77. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), English Beginnings. Common Law and the Magna Carta, Pgs. 53-55; and C. Warren Hollister, The Making of England, 55 B.C. to 1399, Sixth Edition (D.C. Heath & Co., Lexington, MA 1992), Henry II and Sons, Pgs. 149-151; and Hans J. Wolff, Roman Law: An Historical Introduction, (University of Oklahoma Press, Norman, OK 1978), Reception of Roman Law, Pgs. 197-198.

78. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), English Beginnings. Common Law and the Magna Carta, Pgs. 53-55; and C. Warren Hollister, The Making of England, 55 B.C. to 1399, Sixth Edition (D.C. Heath & Co., Lexington, MA 1992), Henry II and Sons, Pgs. 149-151; and Hans J. Wolff, Roman Law: An Historical Introduction, (University of Oklahoma Press, Norman, OK 1978), Reception of Roman Law, Pgs. 197-198.

79. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), English Beginnings. Common Law and the Magna Carta, Pgs. 53-55

The Common law we know today was first developed through a process of legal reforms employed by King Henry, II. Dedicated to improving what he saw as peace and justice in his country, his legal reforms were vast and meaningful. Through a series of Assizes (decrees made upon investigation) he took measures to standardize legal outcomes, assure justice and promote faith in the legal system. [80] Henry's reforms included:

- The expansion of the authority of royal courts (the King's Magistrate Courts), to allow for the emergence of a new body of Common case based law to replace the disparate customs of feudal and county courts;
- The employment of jury trials to end the old Germanic trials by ordeal or battle;
- The extension of royal jurisdiction into the extensive, bewildering area of land disputes; and
- The development of the first systematic set of resolution standards in the crucial area of property law.[81]

Accordingly, Henry's systematic approach to law worked. It provided a common basis for development of royal institutions throughout the entire Kingdom, and created a more uniform, dependable and modern network of law. [82]

This new system of law, which would become known as the Common law of England, gave rise to expected, standardized outcomes in the resolving of disputes. These expectations in outcomes, which began to be held as a firm belief by all citizens in England, helped to develop the concept of rights. For it is in expectations, founded in law, that a right is created.

c. The Magna Carta - A Battle for Property Rights

Upon Henry's death in 1189, his eldest surviving son Richard (known as Richard the Lionheart) ascended to the throne. [83]

Handsome, charming, gallant and ambitious, Richard would spend less than six months of his ten year reign in England. [84] Immediately after his coronation, Richard, a battle hardened knight, began preparing to join the crusades. [85] The leader of a three king force on the third crusade (which also included Frederick of Germany and Philip of France), Richard gained international renown, as the instrumental field commander who lead Christian Forces to capture of the important Mediterranean Port City of Acre. [86] Heralded for his gallantry and bravery, Richard became a national hero of the English people.

During Richard's return home from the Crusades he was captured and held for ransom. [87] In Richard's absence, his aging mother Eleanor, and younger brother, John, (Henry and Eleanor's youngest son) were asked to temporarily administer the duties of the king. With the economy is shambles, massive expenditures from the Crusades, and Richard's ransom, John was forced to enormously raise taxes during an economic downturn. [88] Disliked by the people and nobility alike, a national clamor erupted for the return of his brother, the heroic Richard the Lionheart, as the rightful king, earning John the literary ignominy as the royal usurper in the tales of Robin Hood. (Richard on the other hand would become Prince Charming in Snow White).

Upon Richard's return from captivity to the throne in 1194, the economy rebounded and he recaptured all of the French lands lost by John during his absence.[89] Richard's successful re-ascension to the throne was seen as proof of John's ineptitude.

Just five years later, in 1199 Richard died, and John was crowned king in his own right. [90] Due to his poor performance years earlier, however, this was not without controversy, and several interests tried to place John's nephew Arthur, son of his deceased brother Geoffrey, on the throne. [91]

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80. C. Warren Hollister, The Making of England, 55 B.C. to 1399, Sixth Edition (D.C. Heath & Co., Lexington, MA 1992), Henry II and Sons, Pgs. 150-151; and Hans J. Wolff, Roman Law: An Historical Introduction, (University of Oklahoma Press, Norman, OK 1978), Reception of Roman Law, Pgs. 197-198.

81. C. Warren Hollister, The Making of England, 55 B.C. to 1399, Sixth Edition (D.C. Heath & Co., Lexington, MA 1992), Henry II and Sons, Pgs. 150-151; and Hans J. Wolff, Roman Law: An Historical Introduction, (University of Oklahoma Press, Norman, OK 1978), Reception of Roman Law, Pgs. 197-198.

82. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), English Beginnings. Common Law and the Magna Carta, Pgs. 53-55.

83. C. Warren Hollister, The Making of England, 55 B.C. to 1399, Sixth Edition (D.C. Heath & Co., Lexington, MA 1992), Henry II and Sons, Pg.. 163..

84. C. Warren Hollister, The Making of England, 55 B.C. to 1399, Sixth Edition (D.C. Heath & Co., Lexington, MA 1992), Henry II and Sons, Pg.. 161

85. C. Warren Hollister, The Making of England, 55 B.C. to 1399, Sixth Edition (D.C. Heath & Co., Lexington, MA 1992), Henry II and Sons, Pg.. 163.

86. C. Warren Hollister, The Making of England, 55 B.C. to 1399, Sixth Edition (D.C. Heath & Co., Lexington, MA 1992), Henry II and Sons, Pg.. 163.

87. C. Warren Hollister, The Making of England, 55 B.C. to 1399, Sixth Edition (D.C. Heath & Co., Lexington, MA 1992), Henry II and Sons, Pg.. 164.

88. Geoffrey Hindley, A Brief History of the Magna Carta: The Story of the Origins of Liberty, (Running Press, London 2008), The Brothers Plantagenet, Pgs 12-22.

89. C. Warren Hollister, The Making of England, 55 B.C. to 1399, Sixth Edition (D.C. Heath & Co., Lexington, MA 1992), Henry II and Sons, Pgs. 164-165

90. Geoffrey Huntley, A Brief History of the Magna Carta: The Story of the Origins of Liberty, (Running Press, London 2008), The Brothers Plantagenet, Pg 25.

91. Geoffrey Huntley, A Brief History of the Magna Carta: The Story of the Origins of Liberty, (Running Press, London 2008), The Brothers Plantagenet, Pg 25.

From 1199 to 1215, many of John's detractors were proven right. Showcasing his incompetence and failings as a ruler for over a decade and a half, John presided over a near depression like economy, lost nearly all England's holdings in Normandy and Angevin to an ambitious and capable King Phillip II of France [92] and became embroiled in a bitter dispute with Pope Innocent III over the right to select the next Archbishop of Canterbury. [93] In doing so, he completely lost the support and faith of the English people, the nobility, and the Catholic church. Accordingly, a battle for property rights was about to begin.

By 1215, scared and nervous by what had taken place in France (with the English supported barons deposed of their holdings), the landed barons of England, the people of property, desperate to protect their interests, had endured enough. [94] After suffering from incompetent government and high taxation, and fearful that France would invade and dispossess them of their lands (and thereby impoverish and/or kill them) these nobles raised an army to rebel against King John. [95] On June 15, 1215, their forces confronted King John at Runnymede, and forced him to put his seal on the Magna Carta (the Great Charter). [96]

The Magna Carta established one of the foremost foundations of modern British law. The United States Constitution and its Amendments (the Bill of Rights) viewed it as a guiding document for the further expansion of the rights and liberties of the people and the limitation of the power of government. Containing 63 clauses, this landmark document:

- Created a council to the King (a forerunner to parliament);
- Promised all freemen (the nobles) access to courts and a fair trial;
- Specified the protection of many property rights against infringement by the king and his agents;
- Eliminated unfair fines and punishments;
- Gave certain legal powers to the Catholic Church; and
- Addressed many lesser issues. [97]

Due to the nature of the feudal society, which was the source of the nobles' wealth and power, the Magna Carta did not, however, abolish involuntary servitude (serfdom). [98] That would take another 608 years in England, and 650 in America.

But despite this shortfall, the Magna Carta was still incredibly meaningful and historic. For with its signing, what the oaths of feudalism and the developing Common law had begun to recognize as custom and practice (mainly the ability of the individual to assert their property rights) now became, for the first time, the written and public law, by seal of the king. [99] Specifically, "the individual's safety, freedom and property were declared inviolate" and "were removed from arbitrary interference". [100]

It is interesting to note, that King John had no intention of ever honoring the promises he made in the Magna Carta, and merely saw it as an expeditious end to a temporary difficulty. With his death only a year later in 1216, King John, however, never had the opportunity to effectively repudiate its terms. Accordingly, the English people were thus able to then eternally promote the sovereign's sealed document, that granted and protected their rights and liberties.[101]

So meaningful did the Magna Carta become in the minds of the English people, that future monarchs felt compelled to promote, confirm and support it, ordering it to be publically read biennially, as a means to prevent insurrection. [102] As it became a document of common understanding, "men assumed it contained what they wanted it to contain", seeing in it the protections and guarantees they wished to see. [103] This document thereby became a threshold foundation for the legal concept of rights.

The significance of the Magna Carta, however, can not be overstated. For the first time in recorded history, a sovereign was forced (albeit at sword point) to limit his power, in writing, and to recognize the individual rights of his subjects (albeit the landed nobility). This, in an era of the divine right of kings, sent legal shockwaves across the known world, and caused scholars everywhere to start examining the concept of what would become known as "rights". All of this was caused by a desire of landowners to protect their property. [104]

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92. C. Warren Hollister, The Making of England, 55 B.C. to 1399, Sixth Edition (D.C. Heath & Co., Lexington, MA 1992), Henry II and Sons, Pgs. 169-171

93. C. Warren Hollister, The Making of England, 55 B.C. to 1399, Sixth Edition (D.C. Heath & Co., Lexington, MA 1992), Henry II and Sons, Pgs. 171-173

94. C. Warren Hollister, The Making of England, 55 B.C. to 1399, Sixth Edition (D.C. Heath & Co., Lexington, MA 1992), Henry II and Sons, Pgs. 173-176..

95. C. Warren Hollister, The Making of England, 55 B.C. to 1399, Sixth Edition (D.C. Heath & Co., Lexington, MA 1992), Henry II and Sons, Pgs. 173-176..

96. Geoffrey Huntley, A Brief History of the Magna Carta: The Story of the Origins of Liberty, (Running Press, London 2008), Timetable of a Crisis, Pgs 203-207.

97. Geoffrey Huntley, A Brief History of the Magna Carta: The Story of the Origins of Liberty, (Running Press, London 2008), Appendix - The Magna Carta, Pgs 311-324.

98. Geoffrey Huntley, A Brief History of the Magna Carta: The Story of the Origins of Liberty, (Running Press, London 2008), Appendix - The Magna Carta, Pgs 311-324

99. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), English Beginnings. Common Law and the Magna Carta, Pg. 56

100. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), English Beginnings. Common Law and the Magna Carta, Pgs. 58.

101. Danny Danziger and John Gillingham, 1215: The Year of the Magna Carta (Simon and Schuster Pub., New York 2005), Myth, Pgs. 267-274.

102. Danny Danziger and John Gillingham, 1215: The Year of the Magna Carta (Simon and Schuster Pub., New York 2005), Myth, Pg. 269.

103. Danny Danziger and John Gillingham, 1215: The Year of the Magna Carta (Simon and Schuster Pub., New York 2005), Myth, Pgs. 269-270.

104. Danny Danziger and John Gillingham, 1215: The Year of the Magna Carta (Simon and Schuster Pub., New York 2005), Myth, Pgs. 267-274.

d. Clerical Philosophy and the Recognition of Natural Law

The final element of the progression of English jurisprudence that led to the legal concept of rights, was a merger of clerical and legal philosophy that produced a recognition of natural law. This progression took four stages, from the body of Roman law (which produced a practical tool to order society and create legal rules that were definite, understandable and just), to the development of English Common law (which provided a uniform system of practically applying these rules of law, by means of precedent and custom, in order to produce definite, understandable and just results), to the Magna Carta (which gave individuals, as citizens, an expectation that no man, not even a king, could deny individual citizens the definite, understandable and just application of the rules of law), to the development of a new clerical and legal philosophy (which held that individuals, as endowed instruments of God, have certain legally recognized rights, to the definite, understandable and just application of the rules of law, by the state, that no man, or their institutions, have power to violate).

This progression, of English jurisprudence, developed a legal system of rules and procedures that created just expectations upon which citizens could rely. It further, for the first time in human history, produced a recognition of the inherent value and importance of the individual person, as a citizen within this legal system. By merging these two principles, it developed the legal concept of rights. Under this concept, each individual person, as a citizen of the state, is deemed to hold certain fundamental rights, to the definite, understandable and just application of the rules of law, that the law itself, has a duty to protect. This was the concept that was recognized through this clerical-legal philosophy of what became known as natural law.

Although great classical philosophers such as Socrates, Aristotle, the Stoics and Cicero, all espoused many foundational natural law concepts, that provided antecedents to the development of legally recognized rights in individuals[105], the true recognition of such rights came by means of these clerical-legal philosophers, after the sealing of the Magna Carta. [106]

There are certain times in history, which produce dramatic, meaningful change for the human condition. For English speaking people, 1215 was such a year. [107] The Magna Carta, especially how its was viewed after its signing, provided a major break with the way people looked at themselves, and fundamentally changed their relationship with both law and government. [108] As aforementioned, it was a document which recognized individuals as individuals, which promised legal guarantees that were deemed to be inviolate, and which offered everyone a promise of hope and empowerment, of which their classical ancestors had never dreamed. [109] It is for this reason, this sense of aspirational promise that it offered, that is why the Magna Carta has often been characterized as being seen how men wanted to see it, and containing in it, what they wanted it to contain. [110]

Without the influence of the Magna Carta, without its meaningful philosophical break with the past, it is unknowable whether English jurisprudence would have ever independently developed the legal concept of individual based rights that we know today. For it was under the influence of the Magna Carta, and the aspirational principles that it represented, that clerical-legal philosophers were able to complete the legal concept of rights. English jurisprudence relied on this progression, and the legal principles it produced, have stood the test of time, and exist to this very day.

The first development of the new legal philosophy, that led to the creation of the legal concept of rights, arose from clerical philosophers. This was not entirely predictable at the time, due to the fact that the Roman Catholic Church, through the Pope, had actually repudiated the Magna Carta. [111] But in the transformational year of 1215, an act of the pope himself, made this development possible.

A few months after the Magna Carta, in November of 1215, Pope Innocent III, one of history's most able popes, held the Fourth Lateran Council, in an effort to shape the theological structure and teachings of the Church, as well as the delivery of justice to its faithful. [112] "England was a staunchly Catholic country", and this Council, and the decrees issued from it by the Pope, would have profound effect upon England, its clergy, and its jurisprudence. [113] Canon 18 of this Council, discussed what would become the precursor of a doctrine of rights, by requiring just legal procedures in trials, as well as a blanket prohibition of all clergy from engaging in torturous activities, the blessing of trials by combat or ordeals, and pronouncement of capital sentences. [114] Influenced greatly by the legal reforms of Henry II for English jurisprudence, this Canon adopted many of the same principles, into the Catholic Church's doctrine for the entire world. [115] Through this Council, the Pope, viewed as God's representative on earth, gave his blessing for the Church to both study, and philosophically influence, the secular law.

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105. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), From Athens to America: The Evolution of the Idea of Rights, Pgs 9-29.

106. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), From Athens to America: The Evolution of the Idea of Rights, Pgs 9-61.

107. Danny Danziger and John Gillingham, 1215: The Year of the Magna Carta (Simon and Schuster Pub., New York 2005), Introduction, Pgs. ix-xix.

108. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), English Beginnings. Common Law and the Magna Carta, Pgs. 56-60; and Danny Danziger and John Gillingham, 1215: The Year of the Magna Carta (Simon and Schuster Pub., New York 2005), Myth, Pgs. 267-274.

109. Danny Danziger and John Gillingham, 1215: The Year of the Magna Carta (Simon and Schuster Pub., New York 2005), Myth, Pgs. 267-274.

110. Danny Danziger and John Gillingham, 1215: The Year of the Magna Carta (Simon and Schuster Pub., New York 2005), Myth, Pgs. 267-274.

111. Danny Danziger and John Gillingham, 1215: The Year of the Magna Carta (Simon and Schuster Pub., New York 2005), Myth, Pg. 267.

112. Danny Danziger and John Gillingham, 1215: The Year of the Magna Carta (Simon and Schuster Pub., New York 2005), Introduction, Pgs. xiv-xv.

113. Danny Danziger and John Gillingham, 1215: The Year of the Magna Carta (Simon and Schuster Pub., New York 2005), Introduction, Pgs. xiv-xv.

114. R.C. Van Caenegen, Legal History: A European Perspective, (Hambledon Press, London 1991), Methods of Proof in Western Medieval Law, Pgs. 83-88

115. Danny Danziger and John Gillingham, 1215: The Year of the Magna Carta (Simon and Schuster Pub., New York 2005), Introduction, Pgs. xiv-xv.

Upon this green light by the Catholic church, to permit the most educated persons of the day, clerics, to study and philosophically consider the impacts of the secular legal principles, 13th century clerical philosophers such as Thomas Aquinas, William Ockham and John Wycliffe, began to create the legal concept of individual rights from their emerging theory of natural law. [116] These men, brilliant philosophers and students of both religious and legal theories and relationships, held that individuals, as endowed instruments of God, have certain legally recognized rights, to the definite, understandable and just application of the rules of law, that no man, or their institutions, have power to violate. [117] Building off of secular law to advance their theories, it is unlikely that concept could have been effectively advanced, nor enthusiastically received, in a pre Magna Carta world.

This concept of rights was a developing one. For later, legal, non-clerical philosophers, such as Thomas Hobbes, Richard Cumberland and John Locke, leveraged these clerical derived perspectives, to produce a lasting recognition of individual based rights within English jurisprudence. [118] These rights, linked with life, liberty and property, today form the fundamental basis of Anglo-American law. [119]

This journey, that led to the development of the legal concept of rights, by means of clerical-legal philosophers, began in 1225. For it was in that year, within a decade of the Magna Carta and the Fourth Lateran Council, that the greatest ordained legal philosopher in the history of the Catholic church was born. [120] In a short life that lasted only 49 years, this Dominican philosopher, Thomas Aquinas, became one of the most prominent intellectual minds of his age [121] The son of Sicilian nobility, and a child of privilege, he was educated in the finest schools of Europe. [122] A student of the classical thinkers of Greece and Rome, Aquinas became well versed and proficient in their thinking, and a devoted disciple of the concept of reason. [123] A well traveled, brilliant and prolific writer, who produced 34 volumes in a 29 year period, he believed in individualism, and began the parade of philosophical constructs that was to form the basis for natural law. [124] Canonized fifty years after his death, by Pope John XXII, Thomas Aquinas was recognized by the First Vatican Council as the pre-eminent “Teacher of the Church”. [125]

Thomas Aquinas believed that men were instruments of God’s Devine will, and that as such, justice and law must reflect the importance and value of humanity, and the individual, in their mission to do God’s work. [126] Relying heavily upon reason and concepts of natural law derived from Aristotle and the Stoics, Aquinas argued in his masterpiece *Summa Contra Gentiles*, that “Grace does not do away with nature, it perfects it”. [127] His concepts of natural law, and his ability to combine philosophy, theology and law, through practical, reasoned solutions, made Thomas Aquinas a pioneer in the field of human thought. [128] His recognition of individual duties and claims, under both theology and law, laid the ground work for the development and recognition of the rights of man, and propelled the Catholic church to establish a new harmony between human and Christian values, through his interpretation of the natural law. [129]

While the writings of Thomas Aquinas never expressly declared the concept that men have abstract rights, or that the autonomy of the individual is the source of all law, his linking of the individual with the mission of seeking God’s Grace, and his belief that the law, and its implementation of justice, must respect that mission, and the value of the individual person seeking it, was a fundamental breakthrough in the development of the legal concept of individual based, inviolate rights. [130] This breakthrough would be taken to the next level, of actually declaring the concept of rights, and providing for their recognition under English jurisprudence, by another cleric philosopher, who was an intellectual disciple of Aquinas, the English Franciscan William Ockham. [131]

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116. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), From Athens to America: The Evolution of the Idea of Rights, Pgs 34-64.

117. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), From Athens to America: The Evolution of the Idea of Rights, Pgs 34-64

118. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), From Athens to America: The Evolution of the Idea of Rights, Pgs 72-88

119. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), From Athens to America: The Evolution of the Idea of Rights, Pgs 9-88

120. Ralph McInerny, Aquinas, (Blackwell Publishing, Malden, MA 2004), A Short Life: Pgs 3-4.

121. Ralph McInerny, Aquinas, (Blackwell Publishing, Malden, MA 2004), A Short Life: Pgs 3-8

122. Ralph McInerny, Aquinas, (Blackwell Publishing, Malden, MA 2004), A Short Life: Pgs 3-26

123. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Law, Individual and Church, Pgs. 35-39.

124. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Law, Individual and Church, Pgs. 35-39.

125. Jean-Pierre Torrell, St. Thomas Aquinas: The Person and His Work, (Catholic University of America Press, Washington, D.C., 2005), Epilogue: Canonization in Avignon, Pg. 321.

126. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Law, Individual and Church, Pgs. 35-39.

127. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Law, Individual and Church, Pgs. 35-39.

128. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Law, Individual and Church, Pgs. 35-39.

129. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Law, Individual and Church, Pgs. 33-39.

130. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Law, Individual and Church, Pgs. 35-39.

131. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Common Law and The Magna Carta, Pgs. 60-61.

William Ockham was an important transitional figure who lived in England from 1290 to 1349. [132] A Franciscan Friar, best known for the development of his maxim 'Ockham's Razor' (the simplest answer tends to be the best), he saw natural law as a positive reflection of the Devine will. [133]

A believer in the individual, Ockham created a volume of writing which established a "political theory not far removed from the classic theories of rights of the seventeenth century". [134] Indeed, he is said to have "inaugurated a 'semantic revolution' which transformed the traditional" ideas of natural law "into a new theory of subjective natural rights", marking "a 'Copernican moment' in the history of the science of law". [135]

Devoted to his Franciscan order, which held great respect for nature, minimalism, and the value of the individual, Ockham was heavily influenced by these beliefs in his intellectual theories. William Ockham, and other Franciscans theorized that, if "God has property in the world", then "human beings can, too, and in this one way, resemble their maker". [136] This basic perception about human beings, directly led to an individualistic political theory, and thus to an individual's ability to have rights. [137]

As aforementioned, in a world that had previously viewed people as having rights only through their role as citizens or subjects, this was a rather significant intellectual departure. But Ockham, a courageous and gifted intellect, took on even the Pope in making his arguments for this theory of individual rights. [138] The power of his beliefs gained followers, and Ockham, who became a national intellectual hero in England, provided inspiration to those developing English jurisprudence.

One such younger protégée of William Ockham was John Wycliffe.[139] Wycliffe, was a legal and theological scholar, Doctor of Divinity and a University Professor at Oxford. [140] He is most famous for being the first man to translate the Bible into the English vernacular. [141]

Wycliffe, who was 30 years younger than Ockham, lived from 1320 to 1384, and has been credited with advancing the theme of the "individual as a fully fledged, autonomous, independent member of society who had inherent, inborn rights." [142] This extension of Ockham's views would lead to the evolution of individual right based liberties, and would create an entirely new way of thinking about human autonomy and individual rights. [143]

Ockham and Wycliffe's philosophy had a marked influence upon English jurisprudence. For once "individuals are considered autonomous human beings, endowed with natural human rights, they are no longer 'subjects' or mere 'members' of a higher power". [144] With Common law and public acceptance of this concept, English jurisprudence propelled it further forward. This new legal concept of individual rights created a fundamental principle of Anglo-American law, "without which there would have been no United States Bill of Rights". [145]

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132. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Common Law and The Magna Carta, Pgs. 60-61.

133. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Common Law and The Magna Carta, Pgs. 60-61.

134. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Common Law and The Magna Carta, Pgs. 60-61.

135. Brian Tierney, The Idea of Natural Rights: Studies on Natural Rights, Natural Law and Church Law (Eerdmans Publishing Co., Grand Rapids 1997), Origins, Pg. 14.

136. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Common Law and The Magna Carta, Pg. 61, and Richard Tuck, Natural Rights Theories: Their Origin and Development, (Cambridge University Press, New York, 1981), The First Rights Theories, Pgs 20-29.

137. Richard Tuck, Natural Rights Theories: Their Origin and Development, (Cambridge University Press, New York, 1981), The First Rights Theories, Pgs 20-29.

138. Richard Tuck, Natural Rights Theories: Their Origin and Development, (Cambridge University Press, New York, 1981), The First Rights Theories, Pgs 20-29; and Brian Tierney, The Idea of Natural Rights: Studies on Natural Rights, Natural Law and Church Law (Eerdmans Publishing Co., Grand Rapids 1997), Origins, Pgs. 13-18.

139. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Common Law and The Magna Carta, Pg. 61, and Richard Tuck, Natural Rights Theories: Their Origin and Development, (Cambridge University Press, New York, 1981), The First Rights Theories, Pgs 20-29.

140. Thomas F. Tout, The History of England: From Henry III to Edward III, (Longmans, Green & Co., New York, 1905), The Latter Years of Edward III, Pgs. 425-426.

141. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Common Law and The Magna Carta, Pgs. 60-61.

142. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Common Law and The Magna Carta, Pgs. 60-61.

143. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Common Law and The Magna Carta, Pgs. 60-61.

144. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Enlightenment: Humanism and New Thought, Pg. 71.

145. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Enlightenment: Humanism and New Thought, Pg. 63.

II. The Social Contract Theory

This emphasis on the individual in natural law gave rise to the 'social contract' theory of civil society. [146] Under this theory, there exists a contract between the citizen and their government. Such contract implies equality of individuals, and the choice of entering into mutual obligations, that exist by virtue of natural law. [147] It further implies, the bartering of the natural rights of individuals, in exchange for achieving political and social organization. [148] This idea of the social contract, was the way that natural rights of an individual, under natural law, could be deemed consistent within the framework of the state. [149]

As English jurisprudence began to absorb the social contract theory, it also began to comprehend that natural law could be "invoked to support the claim that human beings are individuals capable of making their own judgments and acting in their own behalf". [150] This concept was activated through the recognition that every individual has rights, that such rights are inviolate and inherent to their humanity, and that it is the duty of the state to protect such rights. Under the social contract theory, the individual contracted to be a dutiful citizen of the state, while the state contracted to protect the rights and liberties of every individual. [151]

Through this social contract theory, natural law was transformed. Where previously it was seen as the basic order in the universe, determined by God's sovereign will, it was now viewed as a guarantee of individual rights and a basis for political equality. [152] Commented on by such legal scholars as John Locke, Thomas Hobbes, Jacques Rousseau, Montesquieu (Charles-Louis de Secondat), Adam Smith, David Hume, James Mill, and Edmund Burke, this issue of inviolate, individual rights, derived from natural law, became the topic of the day, throughout the course of the Enlightenment. [153] English jurisprudence and the English people readily accepted this framework as a part of their culture, leading them to believe that they were protected individuals, and endowed citizens, possessing the "Rights of Englishmen".

III. The Definition of Right

When the legal concept of right became recognized under English jurisprudence, what exactly did they mean by the term "right"? How could this idea, this term, be defined?

According to William Blackstone, author of the famous Commentaries on the Law of England, a treatise often referred to as "the Bible of the Law", the legal definition of the word "Right" represents the closest English translation of the Latin term "jus" (from which the term justice is derived), and essentially means "the abstract sense of law". [154]

Black's Law Dictionary, the quintessential gold standard for legal definitions, defines the term"Right" to mean:

> ***"Powers of free action…a capacity residing in one man of controlling, with the assent and assistance of the state, the actions of others; or***
>
> ***"A power, privilege or immunity guaranteed under a constitution, statutes or decisional law, or claimed as a result of long usage.***" [155]

For our purposes, however, perhaps the best and most effective understanding of what the term "Right" actually means, can be seen from the writings of the Scottish philosopher and legal commentator, James Mill. Mill saw "rights" in terms of a claim based upon a legally justified expectation (which explains how rights progressed from the Rules of Roman law, to the public expectations produced from Common law decisions and the pronouncement of the Magna Carta, and then through the individualist centered citizenship of the clerical-legal philosophers). [156] From Mill's writings, a corresponding definition of the term "Right", can accordingly be derived to be:

> ***"The legally recognized ability to exercise power and control over an action or object"***. [157]

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146. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Enlightenment: Humanism and New Thought, Pg. 71.

147. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Enlightenment: Humanism and New Thought, Pg. 71.

148. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Enlightenment: Humanism and New Thought, Pg. 71.

149. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Enlightenment: Humanism and New Thought, Pg. 71.

150. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Enlightenment: Humanism and New Thought, Pg. 72.

151. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Enlightenment: Humanism and New Thought, Pgs. 72-73.

152. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Enlightenment: Humanism and New Thought, Pgs. 72-73.

153. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Enlightenment: Humanism and New Thought, Pgs. 72-76.

154. William Blackstone, Commentaries on the Laws of England, Edited and Assembled by William Lewis (Rees, Welsh & Co., Philadelphia 1902, Book I, Of the Nature of Law, Pg. 28.

155. Henry C. Black, Black's Law Dictionary, Fifth Edition, edited and assembled by Publishers Editorial Staff, (West Publishing Co., St. Paul 1979), Pg 1189.

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157. James Mill, Political Writings, Edited and Assembled by Terence Ball, (Cambridge University Press, New York 1992), Jurisprudence, Pgs. 45-50.

IV. John Locke and the Pronouncement of Property Rights

With the legal concept of individual, in violate, "right", established under English jurisprudence, its intellectual linkage to the concept of property, created one of the greatest benefits to mankind that the world has ever seen. For this linkage made possible, every organized benefit of a capitalistic society, as well as giving tangible meaning, to the very liberties that the legal concept of right promised. This linkage was first expressed through the brilliance of John Locke.

The Scottish philosopher and theologian, Lord Thomas Erskine, referred to John Locke as:

"the man, next to Sir Isaac Newton, of the greatest strength of understanding, that England, perhaps, ever had" [158]

John Locke, was an intellectual giant of legal and political thought. Born in Somerset, England, in 1632, he was the son of John Locke (a liberal, Puritan attorney) and Agnes Keene (the daughter of a prosperous tanner). [159] His parents gave their son "the values of simplicity, temperance and tolerance". [160] After earning a bachelor and masters degree at Oxford, he was employed by the University as a professor. [161] Upon his death in 1704, at age 72, he had earned a reputation as one of England's greatest scholars and philosophical thinkers, amassing a large volume of written works (including his *Essay Concerning Human Understanding, Two Treatises on Government, Letters on Toleration, Some Thoughts Concerning Education*, and *Reasonableness of Christianity*) and providing vast and prominent public service in a great number of high public offices. [162]

A scholar of languages (Greek, Latin, Hebrew and Arabic), political systems, and science (including physics and medicine), Locke was adverse to innate ideas, scholastic philosophy, intellectual intolerance. [163] Well traveled and well read, John Locke was personally known to many leading thinkers of the day, and commented extensively on both the contemporary and foreseeable issues facing his society. [164] Known for his practicality, sensibility and intellectual elegance, John Locke believed deeply in the rights of man, the value of every individual person, the importance of education, and the need to oversee government to insure that it serves the people and protects their natural rights. [165] A devotee of natural law, with a practical twist, his commentaries have proved both timeless and enduring. [166] He despised authoritarianism, and believed in the power reason to oppose it, through the use of empirical ideas. [167]

In 1690, John Locke published his masterpiece *Two Treatises on Government*. [168] The comprehensive 277 page tome, has been referred to as: "the most influential work on natural law ever written". [169] In this book, Locke emphasized the link between natural law and natural rights, that arise from the belief in human reason, as attached to the rule of law. [170] For Locke, the function of natural law, and the state itself, is to establish as inalienable, the rights of the individual. [171]

Expounding on the social contract theory, John Locke strongly asserted in his famous work, that natural equality is the basis of the doctrine of consent to government. [172] His pronouncement that the fundamental rights of life, liberty and property, provide the basis for free government [173], dramatically transformed political thinking, and offered a concept of human dignity and meaningful rights, that established the inspiration for the United States, and its system of free, and practical, self government. [174] Locke held as fundamental, that the primary purpose of government is to protect and preserve rights. Moreover, he held that among the most fundamental all rights, is the right to property.

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158. Thomas Eskine, The Speeches of Lord Thomas Eskine, Edited and Assembled by James Ridgeway - Two Volumes (Eastburn, Kirk & Co. Pub., New York, 1813), Vol. II, Pg. 292.

159. John Locke, An Essay Concerning Human Understanding, Oxford World Classics, (Oxford University Press, New York, 2008), Introduction, Pg I.

160. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Enlightenment: Humanism and New Thought, Pg. 76.

161. John Locke, An Essay Concerning Human Understanding, Oxford World Classics, (Oxford University Press, New York, 2008), Introduction, Pg I.

162. John Locke, An Essay Concerning Human Understanding, Oxford World Classics, (Oxford University Press, New York, 2008), Introduction, Pg I.

163. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Enlightenment: Humanism and New Thought, Pgs. 76-80.

164. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Enlightenment: Humanism and New Thought, Pgs. 76-80.

165. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Enlightenment: Humanism and New Thought, Pgs. 76-80.

166. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Enlightenment: Humanism and New Thought, Pgs. 76-80.

167. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Enlightenment: Humanism and New Thought, Pgs. 76-80.

168. John Locke, Two Treatises on Government 1690, A New Edition, (Printed for C & J Rivington, London 1824), 2 volumes, Book I, Title Page.

169. Paul E. Sigmund, Natural Law and Political Thought (Winthrop Publishers, Cambridge, MA, 1971), From Medieval to Modern Natural Law, Pg. 81.

170. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Enlightenment: Humanism and New Thought, Pg. 79.

171. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Enlightenment: Humanism and New Thought, Pg. 79.

172. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Enlightenment: Humanism and New Thought, Pg. 80.

173. John Locke, Two Treatises on Government 1690, A New Edition, (Printed for C & J Rivington, London 1824), 2 volumes, Book II, Of Civil Government, Pg 179.

174. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Enlightenment: Humanism and New Thought, Pgs. 76-80.

When John Locke asserted that private property was a fundamental right of natural law, he created a landmark basis for modern government and the freedom of man. For the first time in history, under Locke's analysis, property was placed under the power, dominion and control of the individual, and that it was such person's fundamental right, and not the state's, to do with it as they pleased. This belief that property was a fundamental, individual, inviolate right, created a workable political theory, that for the first time, established a practical solution to the dilemma of private property. [175] Indeed, by "incorporating a doctrine of private ownership into natural rights theory, he achieved a pragmatic synthesis that avoided the extremes of communitarianism and greed". [176] Locke's theory, now in practice under United States law for over two centuries, has stood the test of time, and has helped to build the strongest economy, and most prosperous and free society, that the world has ever seen.

When John Locke equated and linked the right of property, with the fundamental rights of life and liberty, he differed from earlier theorists. [177] From Aristotle to Hobbes, previous commentators had been ambivalent about private property. [178] In his brilliance and practical understanding, however, Locke asserted that property rights are "an integral part of the human condition and a fundamental characteristic of human activity". [179]

In his historic *Two Treatises*, Locke devotes an entire section to a discussion of property rights and their critical importance in the fulfillment of liberty. [180] In this section, John Locke fervently asserts that mankind works in and with nature, in a desire to make it our own. [181] He further contends that not only is this pursuit of property the fulfillment of human liberty (to work and enjoy the fruits of our labor), but that such a pursuit, is in fact the very essence of humanity, and makes us who we are. [182]

John Locke's arguments empower every person to seek and achieve their material dreams. But his arguments are not materialistic. For Locke's theory argues that it is the *pursuit* of property, and not the material item itself, that is linked to life and liberty. [183] Moreover, his assertions have been characterized to hold that the "enjoyment of the fruits of one's labors is not the sin of acquisitiveness but the ability to fulfill the Christian duty of liberality and charity". [184]

To Locke, property rights represent the true essence of freedom. [185] He understood that a person's material needs and wants, inspire and drive the individual to work, and motivate them to pursue goals that will beneficial all society. [186] The fundamental argument that Locke makes, is that it is only through the freedom of people to pursue their material dreams, and exercise their property rights, that the human spirit can be fulfilled, and a true meaning of life and liberty can be enjoyed. [187]

What John Locke could not have known at the time of his authorship of the *Two Treatises on Government*, is that his views of life, liberty and property as fundamental, inviolate and sacred legal rights, would have been so readily accepted and inculcated into the foundations and beliefs of Anglo-American law. Adopted by the framers of American Government, as well as within the precepts of English common law, today the Lockean concept of the sacredity of property rights, forms one of the most deeply held beliefs of every citizen of both America and England. Enumerated and echoed in the Declaration of Independence, and the Constitution, as well as through out the laws of Great Britain, John Locke's trio of the inseparable foundational rights of life, liberty and property, have become axiomatic, and have gained wholesale and virtual unquestioned acceptance.

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175. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Enlightenment: Humanism and New Thought, Pg. 80.

176. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Enlightenment: Humanism and New Thought, Pgs. 80-81.

177. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Enlightenment: Humanism and New Thought, Pg. 81.

178. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Enlightenment: Humanism and New Thought, Pg. 81.

179. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Enlightenment: Humanism and New Thought, Pg. 81.

180. John Locke, Two Treatises on Government 1690, A New Edition, (Printed for C & J Rivington, London 1824), 2 volumes, Book II, Chapter 4: Of Property, Pages 140 - 158.

181. John Locke, Two Treatises on Government 1690, A New Edition, (Printed for C & J Rivington, London 1824), 2 volumes, Book II, Chapter 4: Of Property, Pages 140 - 158, and Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Enlightenment: Humanism and New Thought, Pg. 81.

182. John Locke, Two Treatises on Government 1690, A New Edition, (Printed for C & J Rivington, London 1824), 2 volumes, Book II, Chapter 4: Of Property, Pages 140 - 158, and Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Enlightenment: Humanism and New Thought, Pg. 81.

183. John Locke, Two Treatises on Government 1690, A New Edition, (Printed for C & J Rivington, London 1824), 2 volumes, Book II, Chapter 4: Of Property, Pages 140 - 158, and Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Enlightenment: Humanism and New Thought, Pgs. 82-83.

184. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Enlightenment: Humanism and New Thought, Pg. 83.

185. John Locke, Two Treatises on Government 1690, A New Edition, (Printed for C & J Rivington, London 1824), 2 volumes, Book II, Chapter 4: Of Property, Pages 140 - 158.

186. John Locke, Two Treatises on Government 1690, A New Edition, (Printed for C & J Rivington, London 1824), 2 volumes, Book II, Chapter 4: Of Property, Pages 140 - 158, and Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Enlightenment: Humanism and New Thought, Pgs. 80-83.

187. John Locke, Two Treatises on Government 1690, A New Edition, (Printed for C & J Rivington, London 1824), 2 volumes, Book II, Chapter 4: Of Property, Pages 140 - 158, and Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Enlightenment: Humanism and New Thought, Pgs. 80-83.

B. Why Look at Property in Terms of Rights?

The fundamental question that our first postulate begs, is why look at property as a collection of rights, as opposed to a collection of things.

As we have seen, John Locke viewed property in terms of rights, and viewed "rights" through the prism of God given protections. He held that the state was required, through the social contract, to protect three fundamental, individual based, inviolate rights. These were the rights of life, liberty, and the pursuit of property. They were all linked and inseparable.[188]

Locke believed, that because property was one of these fundamental rights, that individual persons had the God-given and state protected power to exercise control over the property they owned. He further believed that through this right, to the pursuit of property, that people could exclude, possess, use and transfer their private property, as they saw fit, generally without interference from the state. Indeed, he argued, it was the state's duty to protect an individual's, inviolate property rights.

The entire system of capitalism now employed by western civilization, and our entire Angelo-American legal system, has accepted this Lockean legal concept of a right to the pursuit of property. Accordingly, viewing property in terms of a fundamental, individual, inviolate right, has become a pillar of free government everywhere, and a foundation of the most successful and prosperous economic system, that the world has ever seen. It has been inculcated in the American psyche, and forms a core part of our national belief system.

As a result, if a modern legal philosopher was asked why should we view property as a collection of rights, as opposed to a collection of things, the simplest answer might be, because Americans see it that way inherently, and because it works.

In his famous book *The Right of Private Property,* the legal scholar, Jeremy Waldron, arguing in favor of viewing property in terms of a collection of rights, holds that:

> ***"private property has a great moralizing effect on the individual owner. It promotes virtues and responsibility, prudence and self-reliance; it gives him a place to stand in the world, a place where he can be confident that his freedom will be recognized and respected; and it affords him control of at least a minimum of those natural resources access to which is a necessary condition of his agency."*** [189]

Waldron further continues that we should view property in terms of rights because:

> ***"individuals have a right to the conditions necessary for the full development of their autonomy, their ethical personality, and their capacity for responsible agency. Mere negative freedom is not enough: we must look, at least in the abstract, of the quality of choice which it is open to individuals to exercise, otherwise we risk attracting the accusation that we do not after all take the issue of human freedom seriously."*** [190]

Accordingly, it is through this view of property as a collection of rights that we truly gain an understanding of what property really is and means.

Moreover, as aforementioned previously, viewing property as a collection of rights, rather than a collection of things, also serves two other purposes in the advancement of our legal understanding.

First, we have seen that a definition of the term "right" is "the legally recognized ability to exercise power and control over an action or object". Since the essential element which gives property its value, is not the item itself, but rather the ability to control the item, then understanding this issue of control, is best reflected by an analysis of rights.

Second, in order to develop a more comprehensive understanding of property, which includes many of the more abstract property interests of great value to modern society, we need to broaden our concept of what property actually is.

Concepts such as intellectual property, future interests, and non possessory interests, do not lend themselves to be easily considered as "tangible items". This understanding can be best performed through a perspective of rights. As a result, by employing this "rights" perspective, a more inclusive and accurate picture of what property actually is and means can be truly had.

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188. John Locke, Two Treatises on Government 1690, A New Edition, (Printed for C & J Rivington, London 1824), 2 volumes, Book II, Chapter 4: Of Property, Pages 140 - 158, and Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Enlightenment: Humanism and New Thought, Pgs. 76-85.

189. Jeremy Waldon, The Right to Private Property, (Oxford University Press, New York 1988), Introduction, Pg. 22.

190. Jeremy Waldon, The Right to Private Property, (Oxford University Press, New York 1988), Introduction, Pg. 23.

C. Types of Property Rights

Property Rights have traditionally been classified into three principal types: Rights in Land, Rights in Objects and Rights in Ideas. [191] These classifications are known as Real Property, Personal Property and Intellectual Property. [192]

I. Rights in Land - Real Property

Rights in Land, commonly known as real property, consist of interests in land and anything attached to land (e.g., buildings, fixtures, signs, fences, or trees).[193] These interests can include ownership interests, leaseholds, easements, life estates and future interests.[194] These interests further include rights in the land surface, the subsurface (including minerals and groundwater), and the airspace above the surface. [195]

Historically, property law was almost exclusively concerned with real property. [196] For land, as the source of food (where crops and animals are raised), clothing (where material for cloth is harvested) and housing (where buildings for shelter are constructed and maintained), has traditionally been the ultimate source of wealth, status and sustenance, as well as, social, political, and economic power. [197]

Control over land provided the basis for political sovereignty, and disputes concerning real property were historically resolved in the king's courts.[198] Indeed, disputes over real property traditionally made up the bulk of all litigation.

Even today, a person's real estate holdings typically make up their most important and most valuable asset. Accordingly, rights in land remain the single most important resource for human existence, and as our population increases and environmental concerns continue, disputes about property rights, in our finite land supply, will continue to make this a very important legal right. [199]

II. Rights in Objects - Personal Property

Rights in Objects or Items, commonly known as personal property or chattels, consist of interests in items or objects of tangible, visible, personal property, such as automobiles, clothing, jewelry, money, domesticated animals and books. [200]

Traditionally, personal property was viewed by the law as comparatively unimportant, and as such, when a person died, the distribution of his personal property was supervised by church courts. [201] In contrast, today personal property can be highly valuable, and is the subject of vast amounts of litigation disputes.

Under present law, virtually every movable thing is a deemed to be personal property owned by someone, but there are exceptions. [202] The law views wild animals, in their natural habitats, as unowned. [203] Additionally, pursuant to public policy, although certain body parts such as kidneys and hearts, may be characterized as "tangible, visible things," most courts and legislatures have proven reluctant to extend property rights these items. [204] As such, these items have been classified as "market inalienable" personal property. [205]

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191. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pgs 7.-9.

192. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pgs 7.-9.

193. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pg 8.

194. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "Estates in Land", Pgs 89.-144.

195. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pg 8.

196. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pg 8

197. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pg 8.

198. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pg 8.

199. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pg 8.

200. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pg 9.

201. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pg 9.

202. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pg 9.

203. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pg 9.

204. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pg 9.

205. Margaret Radin, Market Inalienability, (Harvard Law Review, Vol 100, No. 8, 1987), Pgs. 1849-1937.

III. Rights in Ideas - Intellectual Property

Rights in Ideas, commonly known as intellectual property, consist of interests in patents, trademarks and copyrights. [206] These items, were not afforded a high level of property right protection historically under Common law, and are recognized today pursuant to federal statutes. [207]

Patents are ideas for products or processes, trademarks are ideas for logos, identifications or distinctions, and copyrights are written or performed works. [208] They each occupy today a valuable and important property right concept.

The importance of intellectual property has skyrocketed during the twentieth century, and now into the twenty-first, posing new challenges that our property law system was previously poorly equipped to handle. [209] For particularly in our electronic age, where so much of our work product can be converted into intangible electronic format, this area of property law will be becoming more and more active and important.

D. Why Have Property Rights?

As many theories as have been presented on how to properly examine property rights, an equal amount of debate has transpired as to why property rights should exist. Scholars have essentially categorized these reasons into five main areas. The answer they present to this question is important, because just as in other areas of the law, the justification for private property rights, will necessarily affect the substance of property law.

Accordingly, scholars have rationalized private property rights for the following reasons:

I. First in Time, First in Right

The first in time, first in right theory (sometimes referred to as the first occupancy theory) reflects the familiar concept that the first person to take occupancy or possession of something owns it. This theory seeks to explain how rights of private property arise in unowned property or unclaimed natural resources. [210] A fundamental part of American property law today, this theory is often blended together with other theories, particularly utilitarianism and the labor theory. [211]

Particularly influential during nineteenth century America, this theory was used to allocate property rights in land races on the frontier, and for such diverse resources as wild animals, fish, oil, natural gas, and surface water. [212] Even today, First in Time, First in Right is still the basic rule for determining the respective priority of competing title claims to real property. [213]

II. Labor

The Labor theory reflects the principle that people should be entitled to fruits of their labor. Originally advanced by John Locke, this theory asserts that it encourages industry and hard work in people, and merely reflects the way people actually act. [214] Used particularly with respect to unowned property, or the conversion of raw materials into useful products, this theory remains in active use today, under the doctrines of accession, adverse possession and with respect to intellectual property. [215]

III. Liberty and Personhood

The Liberty and Personhood theory asserts that private property is essential to the development of a free society as a whole and to individuals personally. This theory argues that it supports both self government and the full development of the individual person. [216]

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206. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pg 9.

207. For Patents, see Title 35 - United States Code, et. seq., for Trade marks see Title 37 - United States Code, et. seq., and for Copyrights see Title 17 - United States Code, et. seq.

208. For Patents, see Title 35 - United States Code, et. seq., for Trade marks see Title 37 - United States Code, et. seq., and for Copyrights see Title 17 - United States Code, et. seq.

209. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pg 9.

210. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pg 13.

211. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pg 13.

212. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pg 13.

213. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pg 13.

214. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pg 15.

215. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pg 15.

216. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pgs 20-21.

IV. Utilitarianism

The Utilitarianism theory contends that private property exists in order to maximize the overall happiness and utility of all citizens. It argues that people respond to incentives. Utilitarian theory views property "as a means to means to an end", and is considered by many legal scholars to be by far the most dominant theory underlying American property law. [217] Under this approach, property rights are allocated and defined in the manner that best promotes the general welfare of society. [218]

V. Economics

The Economic theory declares that private property exists to maximize the overall wealth of society. This theory contends that society as a whole responds to incentives. While traditional utilitarianism theory defines human happiness in rather vague terms, the economics theory essentially assumes that happiness may be measured in dollars, and under this view, private property exists in order to maximize the overall wealth of society. [219] This theory has been quite influential in recent decades, in areas ranging from tenants' rights to land use law. [220]

E. Theories of Property Rights

As property rights are so central to our society and so meaningful to our individual lives, it is not surprising that legal scholars have debated what property rights are and should be, since the time they were first pronounced by John Locke. Accordingly, there are almost as many theories on property rights and their applications as there are legal scholars who specialize in property.

- In 1690, John Locke, the originator of property rights, viewed property as essentially the product of one's labor. [221]
- Exactly a century later, in 1790, Jeremy Bentham, conceived of property rights in light of one's settled expectations. [222]
- Contemporaneous to Bentham, Georg Hegel declared property rights to be the extension of one's will. [223]
- In 1923, Wesley Hohfeld, developed a theory that categorized property rights in terms of its relationships, stating that they constitute a complex web of legally enforceable duties. [224]
- In 1968, Harold Demsetz wrote on how property rights need to be seen as a product of externalities. [225]
- In 1985, Jeremy Waldron expressed the view that property rights need to be considered as "a system of rules governing access to and control of scarce material resources". [226]
- In 1985, Jeremy Waldron expressed the view that property rights need to be considered as "a system of rules governing access to and control of scarce material resources". [227]
- In 1990, Stephen Munzer, outlined a pluralistic view of utility and efficiency, justice and equality, and lastly, desert based on labor. [228]

Each of these perspectives have merit and have added to the intellectual understanding of property. For, like anything of importance, property rights can be viewed from many directions, and have its many impacts, analyzed in a vast array of ways.

The analysis presented that an understanding of property rights can be had through the perspective of the four postulates (that property must be viewed as a collection of rights not a collection of things; that property rights are those recognized by law, the law evolved from property rights, and they are intertwined; that property rights are inherent to our humanity; and that property rights include the rights of exclusion, possession, use and transfer) seeks to add this perspective to the other theories advanced since Locke, and provide another helpful tool, for the examination of this important and meaningful topic.

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217. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pg 16.

218. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pg 16.

219. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pg 18.

220. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pg 19.

221. John Locke, Two Treatises on Government 1690, A New Edition, (Printed for C & J Rivington, London 1824), 2 volumes, Book II, Chapter 4: Of Property, Pages 140 - 158.

222. Jeremy Bentham, Theory of Legislation, Fourth Edition (Trubner & Co., London 1882), Part First: Objects of the Civil Law, Chapter VIII - Of Property, Pgs 111-113.

223. G. W. F. Hegel, Philosophy of Right, translated by S. W. Dyde, A Reprint of the original 1821 publication, (Batoche Books, Kitchner, ON 2001), Pgs 55-76.

224. Wesley Hohfeld, Some Fundamental Legal Conceptions as Applied in Judicial Reasoning, Edited and Assembled by Walter Cook (Yale U. Press, New Haven, 1923)

225. Harold Demsetz, Toward a Theory of Property Rights, 57 Am. Econ. Rev. 347-357 (Pap. & Proc. 1967), reprinted in Property, by Jesse Dukeminier and James Krier, Fourth Edition, (Aspen Publishers. New York 1998), Pgs 40-47.

226. Jeremy Waldron, What is Private Property?, (5 Oxford Journal of Legal Studies 313, 1985), Pg. 318.

227. Jeremy Waldron, What is Private Property?, (5 Oxford Journal of Legal Studies 313, 1985), Pg. 318.

228. Stephen Munzer, A Theory of Property (Cambridge University Press, New York 1990), Property, Justification and Evaluation, Section 1.2 A Solution, Pgs. 3-9.

2. That Property Rights are those Recognized by Law, the Law evolved from Property Rights, and they are Intertwined

In this postulate the interrelationship between the law and property rights will be examined. Through the prism of what the law is, of the reflections that it has upon property rights, and that property rights has upon it, as well as the circular protective relationship that the law and property rights have, a more inclusive and complete understanding of what property actually is, and means, is sought.

A. The Interrelationship Between Law and Property Rights

I. Natural Law vs. Legal Positivism

For generations those scholars who support the natural law theory have clashed with those who support the positivist theory of the law.

Those who subscribe to the natural law theory hold that law is derived from nature, in that there is a higher, morality based law in which truth, morality and justice can be found. [229] Natural law is philosophical, general, aspirational and seeks to find the best possible motives of mankind.

Those who subscribe to legal positivism assert than law is derived from man, in that societal needs and solutions create the basis for creating law in which practicality, utility and rules govern. [230] Positive law is specific, practical, logical and responsive to the needs of the governed.

But it is asserted, that especially in the federal system that the United States possesses, that these two theories of law can, and indeed do, coexist. Reality need not be all one thing, or all the other. For these theories are merely a means of looking at the law, and not the law itself. Our law is made by people, and people are complex, sometimes contradictory, beings. The fact that both the natural law theory and the legal positivism theory have existed together for hundreds of years, provides empirical evidence that they do co-exist, and each have some merit to offer legal philosophers.

In our system of federal government where we have a Declaration of Independence and Constitution which are clearly based in natural law, which are undoubtedly philosophical, general, aspirational and seek to find the best possible motives of mankind, together with statutes and case law, which are clearly specific, practical, logical and responsive to the needs of the governed, a strong argument can be made, that we enjoy a somewhat schizophrenic, dual natural law and positivist system, where both theories of law exist simultaneously, on different, non intersecting levels,

Similarly, it can also be argued, that natural law and positivism can coexist together, because of their inherent principles. Natural law focuses on the motives and foundation of the law, whereas positivism focuses on the application and practical effect the law has. These are two different directions, and it can be asserted, that they need not necessarily bisect or conflict.

Whether or not these two legal theories can in actuality simultaneously co-exist, and work together, at the same time, however, need not be decided. For it is without question, that a legal analysis, using both theories, to look at the same issue, does of course have merit. This is because there is value in each perspective, and legal understanding to be gained from each view. That is why these two theories have indeed existed for so long together.

It is with this in mind that we will use a legal positivist view, in the second postulate, to gain a better understanding of what property is and means. For although property rights are an outgrowth of natural law, as was seen in the analysis of the first postulate, a full understanding can only be had, from looking at property rights from all directions, including positivism.

II. The Property Perspectives of Jeremy Bentham

Jeremy Bentham was a rather strange but brilliant man. An unabashed utilitarian and disciple of legal positivism, he believed that natural law was "nonsense", and that the law was established to serve the needs of man. [231] An English legal scholar and jurist (1746-1842), he was well known for advocating a purely positivist philosophy of the law. [232] In his landmark work, *Theory of Legislation*, Bentham wrote:

> ***"Property and Law are born together, and die together. Before laws were made, there was no property; take away laws, and property ceases."*** [233]

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229. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pg 3.

230. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pg 2.

231. Jeremy Bentham, The Works of Jeremy Bentham, Volume II, edited and assembled by John Bowring, his executor (Simpkin, Marshal & Co., London 1843), A Critical Examination of The Declaration of Rights, Pg. 501.

232. Julius Stone, Human Law and Human Justice, (Standford University Press, Stanford, CA 1965), The Life and Character of Jeremy Bentham, Pgs. 105- 108.

233. Jeremy Bentham, Theory of Legislation, Fourth Edition (Trubner & Co., London 1908), Part First: Objects of the Civil Law, Chapter VIII - Of Property, Pg 113.

What Jeremy Bentham was expressing in this viewpoint, of the interrelationship between property and law, was the summation of his positivist conception of property rights. For it was his belief that :

> ***"there is no such thing as natural property, and that it is entirely the work of law. Property is nothing but a basis of expectation; the expectation of deriving certain advantages from a thing which we are said to possess, in consequence of the relation in which we stand towards it. There is no image, no painting, no visible trait, which can express the relation that constitutes property. It is not material, it is metaphysical; it is a mere conception of the mind."*** [234]

One need not accept Bentham's entire philosophical perspective, that the law has no basis under natural law, however, to recognize his truth, that law and property do indeed have an interrelationship. This is for two reasons.

First, as aforementioned, it can be argued that property is a concept in the law that is both consistent with natural law and legal positivism at the same time. For the foundations of property rights are clearly based in natural law. Justified by nature and a higher law, morality concept, these foundations are general, aspirational and seek to find the best possible motives of mankind. Concurrently, the application of property rights can be seen as positivist. For the use of property is the very definition of utility. Such use is derived from the needs of man, in an effort to achieve a practical solution, and serves as a specific, practical, logical and responsive act to such need. Accordingly, pursuant to this view, property rights can have elements of both natural law and positivism concurrently.

Second, even if the traditional view of natural law being completely the polar opposite of legal positivism is asserted, as in being flip sides of the same coin, looking at one legal concept (such as property rights) through more than one philosophical perspective, can still indeed build a deeper understanding. For like the master portrait artist that captures the essence of his vision upon a two dimensional canvass, he still examines his subject from every three dimensional angle, in order to paint his masterpiece. An understanding of the law is no different, and at times, an examination of an area of the law through multiple perspectives, can certainly help to build such a true understanding of what the that area of the law is and means.

To this degree, it is proper to follow the road of the interrelationship between law and property. Empirical evidence does indicate that such an interrelationship does indeed exist. For there does seem to be support for the idea that property and the law did in fact grow up together, that they are a reflection of each other, that the law does recognize property rights, that the law did evolve from the need to protect property rights, and that in the end, there is a deep and lasting interrelationship between the two.

In order to build an understanding of this idea, we must first review what the law is defined to be under Anglo-American jurisprudence, and then examine where the law came from, and how it evolved and developed.

III. The Definition of Law

Under Anglo-American English jurisprudence, what exactly is meant by the term "law"? How could this idea, this term, be defined?

William Blackstone, in his heralded Commentaries on the Law of England, provided the following definition of the term "Law":

> ***"Law, in its most general and comprehensive, sense, signifies a rule of action; and is applied indiscriminately to all kinds of action, whether animate or inanimate, rational or irrational. Thus we say, the laws of motion, of gravitation, of optics, or mechanics, as well as the laws of nature and of nations. And it is that rule of action which is prescribed by some superior, and which the inferior is bound to obey. ... But laws, in their more confined sense, and in which it is our present business to consider them, denote the rules, not of action in general, but of human action or conduct; that is, the precepts by which man, the noblest of all sublunary beings, a creature endowed with both reason and free-will, is commanded to make use of those faculties in the general regulation of his behavior."*** [235]

Additionally, Black's Law Dictionary, once again the quintessential gold standard for legal definitions, defines the term "law" to mean:

> ***"That which is laid down, ordained, or established.***
>
> ***A rule or method according to which a phenomena or actions co-exist or follow each other.***
>
> ***Law, in its generic sense, is a body of rules of action or conduct proscribed by controlling authority, and having binding legal force. …***
>
> ***Law is a solemn expression of the will of the supreme power of the state."*** [236]

With this in mind, a syntheses of these definitions, yields a basic, simple description of the Law, as follows:

> ***"Law is the Rules by which civilization is ordered."***

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234. Jeremy Bentham, Theory of Legislation, Fourth Edition (Trubner & Co., London 1908), Part First: Objects of the Civil Law, Chapter VIII - Of Property, Pg 111-112.

235. William Blackstone, Commentaries on the Laws of England, Edited and Assembled by William Lewis (Rees, Welsh & Co., Philadelphia 1902, Book I, Of the Nature of Law, Pgs. 27-28.

236. Henry C. Black, Black's Law Dictionary, Fifth Edition, edited and assembled by Publishers Editorial Staff, (West Publishing Co., St. Paul 1979), Pgs. 795-796.

IV The Evolution and Development of the Law with Property Rights

Property is one of the oldest concepts which exists in the law. [237] As we have seen, however, the legal recognition of property in ancient times, was not the legal standing of individual ownership, nor the acknowledgment of individual property rights. [238] These legal concepts came later, and are a much more recent development of mature legal systems. [239]

Ancient Law saw property and people as associations, as being in proximity to the land or object. [240] Indeed, Roman law had no actual word for "ownership", and the word does not appear in English Common law until 1583. [241]

But that does not mean that the property was not a fundamental concept of the earliest legal systems. People have been concerned with property, and its uses, and their law has recognized its importance and value, since man came down from the trees. [242] Accordingly, in the earliest societies, their concept of property, can best be understood, through the perspective of a Hohfeldian analysis, whereby property is seen as an object in connection with a complex web of social relations, with these relations establishing a limiting and defined relationship between the person and the object. [243]

As a result, in the interrelationship between law and property, it can be seen that one of the reasons law was developed in the first place, was to protect property rights and resolve property disputes. [244] It is to this understanding that Bentham speaks when he says, "Property and law are born together, and die together. Before laws were made, there was no property; take away laws, and property ceases." To Bentham's point, we can see from ancient law, that the need to protect property gave rise to the development of legal rules to do so. Concurrently, if those rules were taken away, the property would not be protected, and would accordingly be lost. It was pursuant to this need, that the rules of ancient property law were crafted. [245]

It is this reciprocal nature of property and law, that the second postulate seeks to illuminate. That the law was developed to protect property, and that without the law, which was so crafted to protect property, the property itself would not continue to exist. It is this interrelationship that makes the development of property laws so special.

a. Roman Law

In 451 B.C. the governing Assembly of Rome, enacted as a statute, and openly published on stone tablets at the Forum, the famous Twelve Tables, which established a the first code of Roman law. [246] This statute, codified several legal principles regarding the legal concept of property, but such concept was well established in Rome, even before the enactment of the Twelve Tables statute. [247] For prior to their codification in the Twelve Tables, the concept of property was already a part of Roman law by custom and practice. [248]

This legal recognition of private property under Roman law, through both the Twelve Tables and through custom and practice beforehand, was evidence of the fact that property and the law grew up together, and are intertwined. For such legal recognition was in responsive in nature. The need to protect property was important to Roman citizens, and their society, and Roman law acted in response to this need.

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237. Arthur S. Diamond, Primitive Law (Longmans, Green and Co. Pub., New York - Reprint 1998), Chapter XXII, Property, Pgs. 260-266.

238. Arthur S. Diamond, Primitive Law (Longmans, Green and Co. Pub., New York - Reprint 1998), Chapter XXII, Property, Pgs. 260-266.

239. Arthur S. Diamond, Primitive Law (Longmans, Green and Co. Pub., New York - Reprint 1998), Chapter XXII, Property, Pgs. 260-266.

240. Arthur S. Diamond, Primitive Law (Longmans, Green and Co. Pub., New York - Reprint 1998), Chapter XXII, Property, Pgs. 260-266.

241. Arthur S. Diamond, Primitive Law (Longmans, Green and Co. Pub., New York - Reprint 1998), Chapter XXII, Property, Pgs. 260-266.

242. Arthur S. Diamond, Primitive Law (Longmans, Green and Co. Pub., New York - Reprint 1998), Chapter XXII, Property, Pgs. 260-276, and Henry Maine, Ancient Law, Tenth Edition (Hazel, Watson and Vinny, Ltd., London, 1907), Chapter VIII, The Early History of Property, Pgs. 258-318.

243. Edward Hoebel, The Law of Primitive Man, (Harvard University Press, Cambridge, MA 1964), Fundamental Legal Concepts, Pgs. 57-59.

244. Arthur S. Diamond, Primitive Law (Longmans, Green and Co. Pub., New York - Reprint 1998), Chapter XXII, Property, Pgs. 266-267.

245. Arthur S. Diamond, Primitive Law (Longmans, Green and Co. Pub., New York - Reprint 1998), Chapter XXII, Property, Pgs. 260-276, and Henry Maine, Ancient Law, Tenth Edition (Hazel, Watson and Vinny, Ltd., London, 1907), Chapter VIII, The Early History of Property, Pgs. 258-318.

246. Michael Grant, The History of Rome (Charles Scribner's Sons Pub., New York 1978), II The Unity of Italy and Rome, Pg. 75.

247. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Amendment IV Search and Seizure, Pg. 147.

248. Frederick Walton, Historical Introduction to the Law of Rome, Fourth Edition, (WMW Gaunt & Sons Pub. Holmes Beach, FL 1994), The Early Law of Property and Wills, Pg 151..

Property was perhaps the greatest single focus of Roman law. [249] Conversely, property was also the strongest catalyst for its legal development. [250] Romans understood that the exercise of control over property, would provide the avenue to wealth and the engine of economic activity. They used this knowledge to advance both their economy and their law.

Romans structured their real property interests through families, and not through the individual. [251] When families were in the nomad stage, no private property in land was necessary or legally recognized. [252] When families settled down in definite territory, however, the law responded to the need to protect this family based private property. [253] Accordingly, private property rights started to be recognized under Roman law, in such lands, upon the societal and individual needs for the families who resided on, and used them. [254] Once again, this is but another example of how property shaped the law, and the law shaped property.

The Roman empire, which was based upon land, commerce, trade and its military, used its law as a tool to help promote both property rights and civilization across the then known world. [255] Roman law was responsive to the needs of its people to control property, and addressed those practical needs, so that its empire could run effectively, grow and prosper.

Under Roman law, these legally protected property rights allowed the Roman economy to flourish, businesses to develop, and trade to dominate all other nations and peoples. [256] From commerce and trade, to real property and agriculture, to personal property and common property, Roman law, advanced the reciprocal relationship between law and property, by responding to needs. [257] They used their law in innovative ways, through the recognition of real property in families, the acknowledgment of contractual agreements, the invention of corporations, the establishment of trade standards, and punishment of those who did not respect property rights. [258]

In these ways, it can be seen, that under the first major civilized legal system, property and the law had reciprocal influences. Property rights enjoyed by Roman citizens were those that were recognized by Roman law. That the Roman law evolved from the need to provide property rights to Roman citizens. These two concepts, Roman law and property, were indeed, intertwined.

b. English Law

Under English jurisprudence, the law and property can also be seen to be interrelated through out the course of history. From the practice of feudalism, to operation of the Common law, to the signing of the Magna Carta at Runnymede, property interests, and their effect in the law, can be seen at the center of English society. Perhaps this is why, Jeremy Bentham, an Englishman, pronounced his theory on the interrelationship between the law and property. Perhaps it is why John Locke, another Englishman, pronounced his theory on property rights.

In England, after William the Conqueror brought feudalism to the country, the law had to respond to a need to create complex legal relationships in real property. The terms of feudalism required the establishment of private property interests, in law, for both a land owner and a tenant. [259] In order for feudalism to be effective, it required mutual oaths, as well as the legal recognition of these two distinct property interests. [260] English law met this need by recognizing these property rights, which in turn, created an entire economic and social system, feudalism, lasting for nearly 500 years after the Norman conquest. [261]

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249. John A. Crook, Law and Life of Rome, (Cornell University Press, Ithaca, NY 1984), Property, Pg. 139.

250. John A. Crook, Law and Life of Rome, (Cornell University Press, Ithaca, NY 1984), Property and Commerce, Pgs.. 139-249

251. Frederick Walton, Historical Introduction to the Law of Rome, Fourth Edition, (WMW Gaunt & Sons Pub. Holmes Beach, FL 1994), The Early Law of Property and Wills, Pgs 151-153; and William H. Kelke, A Primer of Roman Law, (WMW Gaunt & Sons Pub, Holmes Beach, FL 1994), Law, Pg 10.

252. Frederick Walton, Historical Introduction to the Law of Rome, Fourth Edition, (WMW Gaunt & Sons Pub. Holmes Beach, FL 1994), The Early Law of Property and Wills, Pg 151.

253. Frederick Walton, Historical Introduction to the Law of Rome, Fourth Edition, (WMW Gaunt & Sons Pub. Holmes Beach, FL 1994), The Early Law of Property and Wills, Pg 151.

254. Frederick Walton, Historical Introduction to the Law of Rome, Fourth Edition, (WMW Gaunt & Sons Pub. Holmes Beach, FL 1994), The Early Law of Property and Wills, Pgs 151-153; and William H. Kelke, A Primer of Roman Law, (WMW Gaunt & Sons Pub, Holmes Beach, FL 1994), Law, Pg 10.

255. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), The Origins: Greek Philosophy and Roman Law, Pgs 17-20; and John A. Crook, Law and Life of Rome, (Cornell University Press, Ithaca, NY 1984), Commerce, Pgs.. 206-249.

256. John A. Crook, Law and Life of Rome, (Cornell University Press, Ithaca, NY 1984), Property and Commerce, Pgs.. 139-249.

257. John A. Crook, Law and Life of Rome, (Cornell University Press, Ithaca, NY 1984), Property and Commerce, Pgs.. 139-249, Frederick Walton, Historical Introduction to the Law of Rome, Fourth Edition, (WMW Gaunt & Sons Pub. Holmes Beach, FL 1994), The Early Law of Property and Wills, Pgs 151-153; and William H. Kelke, A Primer of Roman Law, (WMW Gaunt & Sons Pub, Holmes Beach, FL 1994), Law, Pg 10

258. John A. Crook, Law and Life of Rome, (Cornell University Press, Ithaca, NY 1984), Property and Commerce, Pgs.. 139-249, Frederick Walton, Historical Introduction to the Law of Rome, Fourth Edition, (WMW Gaunt & Sons Pub. Holmes Beach, FL 1994), The Early Law of Property and Wills, Pgs 151-153; and William H. Kelke, A Primer of Roman Law, (WMW Gaunt & Sons Pub, Holmes Beach, FL 1994), Law, Pg 10

259. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Common Law and the Magna Carta, Pgs 52-53.

260. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Common Law and the Magna Carta, Pgs 52-53.

261. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Common Law and the Magna Carta, Pgs 52-53.

By its very nature, the English Common law was responsive to the needs of the governed. Constructed from custom and precedent, the Common law reflected solutions to problems, and looked for practical, realistic outcomes, [262] Accordingly, when the need to recognize private property interests arose, on an island with finite land resources, the Common law responded, [263] and produced a legal acknowledgment of those interests. [264] Additionally, the flexibility and moldability, of a law based on custom and precedent, is custom made for responding to the needs of the people and their private property. [265]

As aforementioned, under English Common law, local judges ruled on cases of disputes between parties (very often property disputes) and then following precedent of past decided cases (stare decisis), issued decisions to resolve controversies. [266] This practice began to give those who could ask the courts to resolve their disputes (usually those who owned real property) an expectation that they could gain a just and predictable result under the law, based upon custom and practicality. [267]

Because property at the height of Common law England, meant wealth, power and prestige, those who had property interests were the primary litigators in English Courts. Not surprisingly, the vast majority of the civil cases in controversy before these Common law courts involved disputes of property interests.

With so many of these disputes before the Courts in England involving property interests, the law which became precedent, began to become dominated by the property issues and their legal solutions. Accordingly, it can be seen how property and the law influenced the development of each other. Under this Common law system, the law and property proved their reciprocal nature.

But if this were not enough evidence that property and the law of England are intertwined, one need only look to the Magna Carta. The Magna Carta, which was originally called the Charter of Liberties, was the first fundamental constitutional document of English law. [268] As seen previously, the Magna Carta, came about because of a battle for property rights.

For the 1215 Magna Carta came about because the landed barons of England, the people of property, desperate to protect their interests, suffering from high taxation, were fearful that they were going to be dispossessed from their lands (and thereby become impoverished). [269] On June 15, 1215, when these Barons forced King John to put his seal on the Magna Carta, it was done to protect their property rights. [270]

The Magna Carta established one of the foremost foundations of modern British law. The United States Constitution and its Amendments (the Bill of Rights) used it as a guiding document for the further expansion of the rights and liberties of the people and the limitation of the power of government. [271] Among its principal provisions were guarantees of property rights. [272]

Upon the signing of the Magna Carta, the Common law began to recognize as custom and practice, the ability of the property owners to assert their rights. [273] Accordingly, "the individual's safety, freedom and property were declared inviolate" and "were removed from arbitrary interference". [274] All of this was caused by a desire of landowners to protect their property. [275]

As a result, once again, it can be seen that the property rights enjoyed by English citizens were those that were recognized by Common law. It can also be seen how the English Common law evolved from the need to resolve property disputes between English citizens. As a result, these two concepts, Common law and property, are also intertwined.

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262. George M. Trevelyan, History of England, Volume I, Anchor Books Edition, (Longmans, Green and Co., Ltd., New York 1953), Origin of the Common Law, Pgs 213-218.

263. George M. Trevelyan, History of England, Volume I, Anchor Books Edition, (Longmans, Green and Co., Ltd., New York 1953), Origin of the Common Law, Pgs 213-218.

264. George M. Trevelyan, History of England, Volume I, Anchor Books Edition, (Longmans, Green and Co., Ltd., New York 1953), Origin of the Common Law, Pgs 213-218.

265. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Common Law and the Magna Carta, Pgs 53-55 and C. Warren Hollister, The Making of England, 55 B.C. to 1399, Sixth Edition (D.C. Heath & Co., Lexington, MA 1992), Henry II and Sons, Pgs. 148-163.

266. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), English Beginnings. Common Law and the Magna Carta, Pgs. 53-55; and C. Warren Hollister, The Making of England, 55 B.C. to 1399, Sixth Edition (D.C. Heath & Co., Lexington, MA 1992), Henry II and Sons, Pgs. 149-151; and Hans J. Wolff, Roman Law: An Historical Introduction, (University of Oklahoma Press, Norman, OK 1978), Reception of Roman Law, Pgs. 197-198.

267. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), English Beginnings. Common Law and the Magna Carta, Pgs. 53-55; and C. Warren Hollister, The Making of England, 55 B.C. to 1399, Sixth Edition (D.C. Heath & Co., Lexington, MA 1992), Henry II and Sons, Pgs. 149-151; and Hans J. Wolff, Roman Law: An Historical Introduction, (University of Oklahoma Press, Norman, OK 1978), Reception of Roman Law, Pgs. 197-198.

268. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), English Beginnings. Common Law and the Magna Carta, Pgs. 56-60, and C. Warren Hollister, The Making of England, 55 B.C. to 1399, Sixth Edition (D.C. Heath & Co., Lexington, MA 1992), Henry II and Sons, Pgs. 173-176.

269. C. Warren Hollister, The Making of England, 55 B.C. to 1399, Sixth Edition (D.C. Heath & Co., Lexington, MA 1992), Henry II and Sons, Pg.s. 173-176..

270. Geoffrey Hindley, A Brief History of the Magna Carta: The Story of the Origins of Liberty, (Running Press, London 2008), Timetable of a Crisis, Pgs 203-207.

271. Geoffrey Hindley, A Brief History of the Magna Carta: The Story of the Origins of Liberty, (Running Press, London 2008), Appendix - The Magna Carta, Pgs 311-324.

272. Geoffrey Hindley, A Brief History of the Magna Carta: The Story of the Origins of Liberty, (Running Press, London 2008), Appendix - The Magna Carta, Pgs 311-324

273. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), English Beginnings. Common Law and the Magna Carta, Pg. 56

274. Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), English Beginnings. Common Law and the Magna Carta, Pgs. 58.

275. Danny Danziger and John Gillingham, 1215: The Year of the Magna Carta (Simon and Schuster Pub., New York 2005), Myth, Pgs. 267-274.

C. American Law

The law of early America is based largely upon the law of England. We were, of course prior to the Revolution, English subjects. Our founders initially spoke of redressing their grievances under a format of the "Rights of Englishmen".

In Colonial America, there was very little statutory law, and even after the development of the United States, and the State Constitutions, most law was still based upon English Court precedent under English Common law. [276] Indeed statutes were looked upon with a skeptical eye. For it should be remembered that the Quartering Act, Stamp Act and the Townsend Acts (all acts which effected property rights) were all statutes, and an igniting cause for the Revolution. [277]

Early Americans were practical, independent sorts. They wanted the Government to deliver the mail, defend the shores, protect their property rights, and stay the heck out of their life.

Their new system of law reflected this mentality. That is why most of the early statutes, and the vast majority of case law decisions, were about property. [278] Back in England, property was power. As we have seen previously, it was the property class that litigated, about their property rights, and it was these disputes that made the law. So too in America. Although land was much more plentiful in the United States than back in England (one of the main reasons for immigration) property (especially land) still meant life. [279] We were an agrarian society, where land translated into food, shelter and wealth. [280]

In 1765, Sir William Blackstone, a jurist and professor, produced the historical and analytic treatise on the law known as Commentaries on the Law of England. [281] A baseline "Bible of the law" of its time, these famous Commentaries proved an important source on classical views of the English Common law and its principles. [282] Used not only through out England, but through out the United States as well, they focused heavily on Property Rights. [283]

Over time, the United States, through its State and Federal Courts, began to build its own substantial body of law. Just like under English Common law, this new American law was reported and memorialized through published decisions of judges, following the concept of precedent. [284] Using the Commentaries of Blackstone, as well as the previous case decisions of Judges, Courts found a bench mark to decide new ones. [285] Again, just as in England, a significant number of these decisions, dealt with the issue of property rights. [286]

Both British and American law depended heavily upon custom as well as precedent to decide cases. [287] What was customary, necessary, practical and popular found its way into the law by way of reported court decisions. [288] With elected judges and empaneled juries, this reflection of society came to be placed in its law, especially in the area of property rights. Indeed, until the later part of the 20th century, litigation was rare and utilized almost exclusively, by the wealthy, over serious disputes, most often concerning issues of property. [289]

As a result, as in Rome and England, in the United States, property rights decided the law, shaped the law, and were shaped and formed by it. Therefore, it can easily be seen, that property and the law evolved together and are intertwined, here as well.

This circular relationship, of property rights flowing from the law, and the law evolving from property rights, helps us understand the fact, that we need to see property in a new light, in terms of its relationship to the law, and in terms as its operation as a collection of rights. For this circular, protective nature of property rights and the law, has helped to keep these rights as one of the most important and sacred of all principles within American Jurisprudence.

This fact is fundamental to understanding the concept of Property Rights.

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276. Lawrence Friedman, A History of the American Law, Third Edition (Simon and Schuster Pub., New York 2005), Prologue, Pgs. xi-xx.

277. Lawrence Friedman, A History of the American Law, Third Edition (Simon and Schuster Pub., New York 2005), Prologue, Pgs. xi-xx., Part I Pgs. 3-61, and Part II Pgs. 63-104, 120-249.

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281. William Blackstone, Commentaries on the Laws of England, Edited and Assembled by William Lewis (Rees, Welsh & Co., Philadelphia 1902), Books I-IV; and Lawrence Friedman, A History of the American Law, Third Edition (Simon and Schuster Pub., New York 2005), Prologue, Pgs. xiii-xiv.

282. Lawrence Friedman, A History of the American Law, Third Edition (Simon and Schuster Pub., New York 2005), Prologue, Pgs. xiii-xiv.

283. William Blackstone, Commentaries on the Laws of England, Edited and Assembled by William Lewis (Rees, Welsh & Co., Philadelphia 1902), Books I-IV; and Lawrence Friedman, A History of the American Law, Third Edition (Simon and Schuster Pub., New York 2005), Prologue, Pgs. xiii-xiv.

284. Lawrence Friedman, A History of the American Law, Third Edition (Simon and Schuster Pub., New York 2005), Prologue, Pgs. xi-xx., Part I Pgs. 3-61, and Part II Pgs. 63-104, 120-249.

285. William Blackstone, Commentaries on the Laws of England, Edited and Assembled by William Lewis (Rees, Welsh & Co., Philadelphia 1902), Books I-IV; and Lawrence Friedman, A History of the American Law, Third Edition (Simon and Schuster Pub., New York 2005), Prologue, Pgs. xiii-xiv.

286. Lawrence Friedman, A History of the American Law, Third Edition (Simon and Schuster Pub., New York 2005), Prologue, Pgs. xi-xx., Part I Pgs. 3-61, and Part II Pgs. 63-104, 120-249.

287. Lawrence Friedman, A History of the American Law, Third Edition (Simon and Schuster Pub., New York 2005), Prologue, Pgs. xi-xx., Part I Pgs. 3-61, and Part II Pgs. 63-104, 120-249.

288. Lawrence Friedman, A History of the American Law, Third Edition (Simon and Schuster Pub., New York 2005), Prologue, Pgs. xi-xx., Part I Pgs. 3-61, and Part II Pgs. 63-104, 120-249.

289. Lawrence Friedman, A History of the American Law, Third Edition (Simon and Schuster Pub., New York 2005), Prologue,Pgs. xi-xx., Part I Pgs. 3-61, and Part II Pgs. 63-104, 120-249.

3. That Property Rights are inherent to our Humanity

From a time even before the Declaration of Independence, the fact that Americans held property rights to be individual, inviolate, rights, that are inherent to our humanity, was intrinsically understood as a fundamental part of our national mind set. Americans believed then, and still do today, that property rights are the very foundation of a free government.

Since the time of our founding, property rights have held the highest place of our beliefs as a free people. This fact was expressed throughout our founding documents, including the Declaration of Independence, the Constitution, and the Bill of Rights. Property rights, together with life and liberty, form the three inviolate rights, which according to Locke, and our forefathers, are natural, inalienable rights, which come from God. This idea is among the founding principles which we, as Americans, hold dearest, and most meaningful, in the establishment of our system of law, government and society.

In this third postulate, this concept, that under our American system of law, that property rights are deemed to be inherent to our humanity, will be examined. Through the prism of property rights, being protected by government, and not awarded from government, a more inclusive and complete understanding of what property actually is, and means, is sought.

A. Property Rights as a Natural Right

As we have seen, since they were first recognized and pronounced by John Locke, property rights have been viewed as a natural right, which draws its justification from a higher, moral authority.[290] As such, property rights have always been viewed, under American law, as the same as the other individual, inviolate rights of life and liberty.[291] All of these individual, inviolate rights are legally deemed as coming from God, by virtue of our humanity.[292] Accordingly, as a natural right, that is not given to mankind by the government, property rights can not be taken away from mankind by the government, and must be protected by the government.[293]

B. Locke, Jefferson and the Declaration of Independence

The deepest linkage of property rights as an inviolate right protected under American Law comes from the Declaration of Independence.[294] Indeed, the Declaration of Independence has been characterized as “the high water mark of natural law theory in the United States.”[295]

The Declaration of Independence was a legislative resolution of the second Continental Congress, which met in Philadelphia in 1776.[296] Thomas Jefferson, John Adams and Benjamin Franklin were all delegates to the Congress from their respective states (Virginia, Massachusetts, and Pennsylvania, respectively).[297] During its session on June 11, 1776, a committee (consisting of Jefferson - as Chairman, Franklin, Adams, Robert Livingston of New York and Roger Sherman of Connecticut) was chosen by Congress to prepare a draft of a Declaration of Independence.[298] As Chairman, Jefferson was selected to personally prepare a draft of the Declaration.[299]

Jefferson was particularly qualified to write this document. Known to be an astute lawyer, a skillful parliamentarian, renowned writer, and accomplished graduate of the College of William and Mary, he was a student of the classics, and was known to have made a careful study of the legal issues between the Colonies and England.[300] An outspoken proponent of liberty and natural rights, and espouser of the views of John Locke, Francis Hutcheson, Jean Jacques Rousseau, Jefferson expressed mature and respected views of both natural law and free government.[301]

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290. John Locke, Two Treatises on Government 1690, A New Edition, (Printed for C & J Rivington, London 1824), 2 volumes, Book II, Chapter 4: Of Property, Pages 140 - 158, and Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Enlightenment: Humanism and New Thought, Pgs. 76-85.

291. Kermit Hall, American Legal History, Cases and Materials, 3rd Edition, (Oxford University Press, New York 2005), Chapter 2: Law in a Republican Revolution 1760-1815, Pgs. 78-144, and Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Amendments IX and X, Pg. 169.

292. Kermit Hall, American Legal History, Cases and Materials, 3rd Edition, (Oxford University Press, New York 2005), Chapter 2: Law in a Republican Revolution 1760-1815, Pgs. 78-144.

293. Kermit Hall, American Legal History, Cases and Materials, 3rd Edition, (Oxford University Press, New York 2005), Chapter 2: Law in a Republican Revolution 1760-1815, Pgs. 78-144, John Locke, Two Treatises on Government 1690, A New Edition, (Printed for C & J Rivington, London 1824), 2 volumes, Book II, Chapter 4: Of Property, Pages 140 - 158, and Susan Ford Wiltshire, Greece, Rome and the Bill of Rights, (University of Oklahoma Press, Norman, OK 1992), Enlightenment: Humanism and New Thought, Pgs. 76-85..

294. Kermit Hall, American Legal History, Cases and Materials, 3rd Edition, (Oxford University Press, New York 2005), Chapter 2: Law in a Republican Revolution 1760-1815, Pgs. 78-144; Julius Stone, Human Law and Human Justice, (Standford University Press, Stanford, CA 1965), Natural Rights in the Declaration of Independence and Bill of Rights, Pgs. 89- 91; and John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: “What is Property”, Pg 3.

295. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: “What is Property”, Pg 3.

296. Lillian Rhodes, The Story of Philadelphia, (American Book Company, New York 1900), The Declaration of Independence, 163-185.

297. Lillian Rhodes, The Story of Philadelphia, (American Book Company, New York 1900), The Declaration of Independence, 163-185.

298. Lillian Rhodes, The Story of Philadelphia, (American Book Company, New York 1900), The Declaration of Independence, 163-185.

299. Lillian Rhodes, The Story of Philadelphia, (American Book Company, New York 1900), The Declaration of Independence, 163-185.

300. Lillian Rhodes, The Story of Philadelphia, (American Book Company, New York 1900), The Declaration of Independence, 163-185.

301. Lillian Rhodes, The Story of Philadelphia, (American Book Company, New York 1900), The Declaration of Independence, 163-185.

As he went to work, Jefferson understood his very important mission. He was charged with the responsibility of putting down on paper, in a declaratory document, the legal rights that Americans enjoyed, and their justifications for commencing down a path of self government. By Jefferson's own admission, his writings in the Declaration, set forth no original ideas, but contained instead:

> ***"a statement of sentiments widely shared by supporters of the American Revolution".*** [302]

Indeed, when he was asked, at the time of its drafting, how he prepared the Declaration, Jefferson was quoted, that he wrote:

> ***"from the fullness of his mind, without consulting one book."*** [303]

Thomas Jefferson maintained this assertion throughout his life. In a statement, made just before his death, for the 50th anniversary of the Declaration's signing, Jefferson recalled that:

> ***"Neither aiming at originality of principle or sentiment, nor yet copied from any particular and previous writing, it was intended to be an expression of the American mind, and to give to that expression the proper tone and spirit called for by the occasion."*** [304]

Upon Jefferson's completion of the Declaration, he offered it up for comments to his Committee, and after some minor revisions by members Adams and Franklin, it was reported from the Committee to Congress. [305] Upon its report, a spirited debate ensued on the floor of Congress, which lasted for three days. [306] During this time, Jefferson remained seated and did not utter a word. [307] After the debate, Congress made two substantive changes to the draft, redacting passages which conveyed censures on the people of England, and that reprobated the enslaving of inhabitants of Africa, leaving the remaining text pretty much unchanged. [308]

On July 4, 1776, the final text of the Declaration was approved by Congress, and sent to the printer for publication. Containing some of the greatest pronouncements of the natural rights of man, the Declaration provides:

> ***"When, in the course of human events, it becomes necessary for one people to dissolve the political bonds which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which THE LAWS OF NATURE and of NATURE'S GOD entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation. 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, that among these are LIFE, LIBERTY and THE PURSUIT OF HAPPINESS. That to secure these rights, governments are instituted among men, DERIVING THEIR JUST POWERS FROM THE CONSENT OF THE GOVERNED. ... And for the support of this declaration, with a firm reliance on the protection of DIVINE PROVIDENCE, we mutually pledge to each other our LIVES, OUR FORTUNES and OUR SACRED HONOR.***" [emphasis added] [309]

Through the Declaration of Independence, Jefferson's text put into words, the mind set of America. Expressing fundamental Lockean principles, and parroting much from Locke's Two Treatises on Government, Jefferson authored a document that outlined:

- The ultimate sovereignty of the people,
- The need to restrain the exercise of arbitrary governmental power, and
- The innate ability of people to revoke the social contract when such power has been arbitrarily used against them. [310]

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302. Lillian Rhodes, The Story of Philadelphia, (American Book Company, New York 1900), The Declaration of Independence, 163-185.

303. Lillian Rhodes, The Story of Philadelphia, (American Book Company, New York 1900), The Declaration of Independence, 163-185.

304. Lillian Rhodes, The Story of Philadelphia, (American Book Company, New York 1900), The Declaration of Independence, 163-185.

305. Lillian Rhodes, The Story of Philadelphia, (American Book Company, New York 1900), The Declaration of Independence, 163-185.

306. Lillian Rhodes, The Story of Philadelphia, (American Book Company, New York 1900), The Declaration of Independence, 163-185.

307. Lillian Rhodes, The Story of Philadelphia, (American Book Company, New York 1900), The Declaration of Independence, 163-185.

308. Lillian Rhodes, The Story of Philadelphia, (American Book Company, New York 1900), The Declaration of Independence, 163-185.

309. Kermit Hall, American Legal History, Cases and Materials, 3rd Edition, (Oxford University Press, New York 2005), Chapter 2: Law in a Republican Revolution 1760-1815, Pgs. 88-91

310. Kermit Hall, American Legal History, Cases and Materials, 3rd Edition, (Oxford University Press, New York 2005), Chapter 2: Law in a Republican Revolution 1760-1815, Pgs. 88-91

When reviewed in depth, it can be clearly seen, that Jefferson's Declaration of Independence is a derivational statement of Locke's core ideas, and a national pronouncement of natural law and inviolate, individual rights. [311] Included within these rights are the individual, inviolate, property rights, that Americans hold so dear. [312]

Consequently, within this pronouncement of its natural law theories, the Declaration, expressly sets forth the American legal commitment to the individual, inviolate right of "the pursuit of property". In doing so, the Declaration declares and restates the trio of Lockean rights, through its language of "Life, Liberty and the Pursuit of Happiness." [313]

Although some scholars have argued that the term "pursuit of happiness", used by Jefferson, was an intentional departure by him away from the Lockean *Two Treatises* concept of "pursuit of property", these arguments, are without historical basis or merit, and do not conform to either Jefferson's intent, nor to the legal principles he sought to express through the Declaration.

If that is so, why then, did Thomas Jefferson substitute John Locke's *Two Treatises* phrase "pursuit of property" with the phrase "pursuit of happiness", if he was intentionally referring to property rights?

According to property scholar, Gottfried Dietze, it was because Jefferson understood Locke, and his *Two Treatises,* so exceedingly well. [314] In examining Jefferson's intent in writing the Declaration of Independence, Dietze holds that Thomas Jefferson relied very heavily on Locke's *Two Treatises* to form its underlying principles and meaning. [315] According to Dietz, Jefferson was a disciple of John Locke's argument in the *Two Treatises,* that an individual's happiness was intrinsically linked to their "pursuit of property". [316] As a result, Deitz asserts, that with respect to Jefferson's understanding of Locke's *Two Treatises*:

> ***"He simply read it carefully enough to know the protection of property is the major prerequisite of, and perhaps even identical with, happiness. His phrase 'pursuit of happiness' is thus nothing but a mere summary statement of the various Lockean ideas on the ethical purposes of private property. It strengthens rather than weakens the case for property."*** [317]

This understanding was confirmed by Jefferson himself. For Jefferson made it clear, according to Dietze, that the phrase "pursuit of happiness" was language that was intended to summarize the Lockean ideas on the ethical purposes of private property. [318]

In using the phrase "pursuit of happiness", Jefferson said he was not seeking to convey a new or stirring idea, but rather, express the idea of the complete value of private property. [319] The phrase "pursuit of happiness", according to Jefferson, was "intended as an expression of the American mind", and reflected a common sense, American belief in the protection of property rights. [320]

Indeed, perhaps another reason for Jefferson's phraseology substitution, may have been an attempt to merely be consistent with his home state of Virginia, when it adopted a Bill of Rights, just a month earlier on June 7, 1776. The very first section of this Bill of Rights, provides a very similar Lockean restatement of property rights, when it said:

> ***"That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety".*** [321]

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311. Kermit Hall, American Legal History, Cases and Materials, 3rd Edition, (Oxford University Press, New York 2005), Chapter 2: Law in a Republican Revolution 1760-1815, Pgs. 88-91

312. Gottfried Dietz, In Defense of Property, (John Hopkins Press, Baltimore 1971), Property and the Enlightenment, Pgs. 31-32.

313. Kermit Hall, American Legal History, Cases and Materials, 3rd Edition, (Oxford University Press, New York 2005), Chapter 2: Law in a Republican Revolution 1760-1815, Pgs. 88-91

314. Gottfried Dietz, In Defense of Property, (John Hopkins Press, Baltimore 1971), Property and the Enlightenment, Pgs. 31-32.

315. Gottfried Dietz, In Defense of Property, (John Hopkins Press, Baltimore 1971), Property and the Enlightenment, Pgs. 31-32.

316. Gottfried Dietz, In Defense of Property, (John Hopkins Press, Baltimore 1971), Property and the Enlightenment, Pgs. 31-32.

317. Gottfried Dietz, In Defense of Property, (John Hopkins Press, Baltimore 1971), Property and the Enlightenment, Pgs. 31-32.

318. Gottfried Dietz, In Defense of Property, (John Hopkins Press, Baltimore 1971), Property and the Enlightenment, Pg. 32.

319. Gottfried Dietz, In Defense of Property, (John Hopkins Press, Baltimore 1971), Property and the Enlightenment, Pg. 32.

320. Gottfried Dietz, In Defense of Property, (John Hopkins Press, Baltimore 1971), Property and the Enlightenment, Pg. 32.

321. James McClellan, Liberty, Order, and Justice: An Introduction to the Constitutional Principles of American Government, third edition (Liberty Fund, Inc. Publishing - Indianapolis 2008), Appendix F: Reprint of the Virginia Bill of Rights (A Declaration of Rights - June 12th 1776), pg 188, and Gottfried Dietz, In Defense of Property, (John Hopkins Press, Baltimore 1971), Property and the Enlightenment, Pg. 32.

Consequently, it is virtually unquestioned, that Jefferson saw the security of private property as one of the foundational reasons for the Revolution. [322] He believed the English were not doing enough to protect this all important right. [323] Moreover, as evidence to his commitment to the concept of property rights in the Declaration, in his famous 1781 *Notes on Virginia,* Jefferson chided his own state for not doing enough to protect property rights, and quoting Locke, declared such to be one of the three, fundamental, inalienable rights that Americans enjoy. [324]

In fact, in Jefferson's mind, the pursuit of happiness and the pursuit of property, were interchangeable concepts, where one could not have the first without the second. [325] But Jefferson was not alone. Indeed, all the founders maintained a clear grasp of the connection between liberty, freedom and property. [326]

This concept would be continued as America, transformed by the Revolution, drafted, ratified and amended its Constitution.

C. James Madison, the Constitution and the Bill of Rights

The Constitution of the United States was written in Philadelphia during the summer of 1787, in the same room the Declaration of Independence was debated, eleven years before. [327] Its principle author was a 36 year old Virginia lawyer, James Madison. A political protegee, and great admirer of Thomas Jefferson, Madison, who later went on to support its ratification as one of the authors of the Federalist papers (together with Hamilton and Jay), is known today as the "Father of the Constitution". [328] In regular correspondence with Jefferson, who was serving as American Ambassador to France during the Constitutional Convention, Madison shared Jefferson's commitment to property rights, and their protection as an inviolate, natural right. [329]

After the ratification of the Constitution, accomplished in large part due to Madison's influence in the Federalist papers, a Bill of Rights was proposed in the new Congress of the United States. [330] This bill, which provided for Amendments to the new Constitution, was drafted, sponsored and pushed through Congress by none other than James Madison, who by 1789, was a member of the House of Representatives. [331] One of his partners in this effort, was the new Vice President, and President of the Senate, John Adams. [332] Both these men were devoted to the preservation and protection of property rights.

Of the ten Amendments in the Bill of Rights, three are devoted to the preservation of property rights. Indeed in the Fifth Amendment, John Locke's language is tracked directly when it states:

> ***"No person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall 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."*** [Emphasis Added] [333]

This provision of the United States Constitution expressly declared "Property" (without the code word "Happiness") to be an inviolate, individual right, that government must protect. For in two places within this Amendment, it acknowledges the critical importance of property rights, and government's obligations to respect them. In this Amendment, the progression from Locke's Two Treatises, to Jefferson's Declaration, to Madison's Bill of Rights, is formalized in legal concrete, and expressly confirms American law's devotion to our rights in private property. A right that is inherent to our humanity.

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322. Gottfried Dietz, In Defense of Property, (John Hopkins Press, Baltimore 1971), Property and the Enlightenment, Pg. 33.

323. Gottfried Dietz, In Defense of Property, (John Hopkins Press, Baltimore 1971), Property and the Enlightenment, Pg. 30-34

324. Gottfried Dietz, In Defense of Property, (John Hopkins Press, Baltimore 1971), Property and the Enlightenment, Pg. 33.

325. Gottfried Dietz, In Defense of Property, (John Hopkins Press, Baltimore 1971), Property and the Enlightenment, Pg. 30-34

326. Gottfried Dietz, In Defense of Property, (John Hopkins Press, Baltimore 1971), Property and the Enlightenment, Pg. 30-34.

327. Kermit Hall, American Legal History, Cases and Materials, 3rd Edition, (Oxford University Press, New York 2005), Chapter 2: Law in a Republican Revolution 1760-1815, Pgs. 109-120, and John A. Garraty, The American Nation, A History of the United States to 1877, 4th Edition, (Harper Row Publishers, New York 1979), The Philadelphia Convention, Pgs 118-127.

328. Kermit Hall, American Legal History, Cases and Materials, 3rd Edition, (Oxford University Press, New York 2005), Chapter 2: Law in a Republican Revolution 1760-1815, Pgs. 109-120, and John A. Garraty, The American Nation, A History of the United States to 1877, 4th Edition, (Harper Row Publishers, New York 1979), The Philadelphia Convention, Pgs 118-127.

329. Kermit Hall, American Legal History, Cases and Materials, 3rd Edition, (Oxford University Press, New York 2005), Chapter 2: Law in a Republican Revolution 1760-1815, Pgs. 109-120, and John A. Garraty, The American Nation, A History of the United States to 1877, 4th Edition, (Harper Row Publishers, New York 1979), The Philadelphia Convention, Pgs 118-127.

330. Kermit Hall, American Legal History, Cases and Materials, 3rd Edition, (Oxford University Press, New York 2005), Chapter 2: Law in a Republican Revolution 1760-1815, Pgs. 124-125, and John A. Garraty, The American Nation, A History of the United States to 1877, 4th Edition, (Harper Row Publishers, New York 1979), The Philadelphia Convention, Pgs 118-127.

331. Kermit Hall, American Legal History, Cases and Materials, 3rd Edition, (Oxford University Press, New York 2005), Chapter 2: Law in a Republican Revolution 1760-1815, Pgs. 124-125, and John A. Garraty, The American Nation, A History of the United States to 1877, 4th Edition, (Harper Row Publishers, New York 1979), The Philadelphia Convention, Pgs 118-127.

332. Kermit Hall, American Legal History, Cases and Materials, 3rd Edition, (Oxford University Press, New York 2005), Chapter 2: Law in a Republican Revolution 1760-1815, Pgs. 124-125, and John A. Garraty, The American Nation, A History of the United States to 1877, 4th Edition, (Harper Row Publishers, New York 1979), The Philadelphia Convention, Pgs 118-127.

333. Kermit Hall, American Legal History, Cases and Materials, 3rd Edition, (Oxford University Press, New York 2005), Appendix: United States Constitution, Amendments, Pg. 685.

The Fifth Amendment, however was not the only section of the Bill of Rights that set forth American law's dedication to property rights. Both the Ninth and Tenth Amendments also take measures to protect people's property rights, when they state:

> ***Amendment IX -"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people"***
>
> ***Amendment X –"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people"*** [334]

Through these Amendments, Madison sought to protect the rights of life, liberty and the pursuit of property.

The Ninth Amendment, is a direct acknowledgment of natural law, and expressly states that the Constitution will neither "deny" nor "disparage" individual, inviolate rights (such as property rights). In stating such, this Amendment makes the implicit promise to protect such natural rights, and to prevent their denial and disparagement.

The Tenth Amendment too is also an acknowledgment of natural law, and the rights that flow therefrom. By its terms, this Amendment reserves such rights, and the power to protect them, to the state common law, and to the people themselves. By reserving such powers to the states, and the people themselves, this Amendment, recognizes that the Anglo-American Common law (which resides in states) has a tradition and precedent of protecting the inviolate, individual rights of life, liberty and the pursuit of property, and expressly declares that the power to protect such rights can not ever be deemed as prohibited by the Constitution.

After the ratification of the Bill of Rights, in 1792, Madison placed a capstone on his intent to protect property rights, by writing his famous legal essay for the National Gazette, entitled "Property". [335] In this essay, Madison expressed his belief that property rights were inseparable from liberty and human freedom. [336] Under American law, he argued, such rights were inviolate, individual rights that government was required to protect. [337]

In this essay, Madison declared:

> ***"Property. This term in its particular application means 'that dominion which one man claims and exercises over external things in the world, in exclusion of every other individual'. In its larger and juster meaning, it embraces everything to which a man may attach a value and have a right ... In a word, as a man is said to have a right to his property, he may equally be said to have a property in his rights. ... Government is instituted to protect property of every sort ... If the United States mean to obtain or deserve the full praise due to wise and just governments, they will equally respect the rights of property, and the property in rights"*** [338]

Legal commentators from that time to today, have remarked, how Madison's view of property in this essay was both enlightening and prophetic, reflecting on its interrelationships with Courts and Lawyers, that have proven correct from his time to the present. [339] Madison's reflections on the importance of the individual, inviolate right of the pursuit of property, has offered an eternal look into the importance of this fundamental right. [340] This coming from the "Father of the Constitution" is pretty good authority.

As if the Declaration and Bill of Rights restatement of the inherent nature of property rights, was not enough, after the American Civil War, the Constitution was further amended to add the Fourteen Amendment to further declare the importance of property rights under American law. [341] Section One of this Amendment expressly expounds once again on the critical link between liberty and property rights, and their need for protection, when it states:

> ***"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 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"*** [Emphasis Added]. [342]

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334. Kermit Hall, American Legal History, Cases and Materials, 3rd Edition, (Oxford University Press, New York 2005), Appendix: United States Constitution, Amendments, Pg. 686.

335. Kermit Hall, American Legal History, Cases and Materials, 3rd Edition, (Oxford University Press, New York 2005), Chapter 2: Law in a Republican Revolution 1760-1815, Pgs. 126-127.

336. Kermit Hall, American Legal History, Cases and Materials, 3rd Edition, (Oxford University Press, New York 2005), Chapter 2: Law in a Republican Revolution 1760-1815, Pgs. 126-127.

337. Kermit Hall, American Legal History, Cases and Materials, 3rd Edition, (Oxford University Press, New York 2005), Chapter 2: Law in a Republican Revolution 1760-1815, Pgs. 126-127.

338. Kermit Hall, American Legal History, Cases and Materials, 3rd Edition, (Oxford University Press, New York 2005), Chapter 2: Law in a Republican Revolution 1760-1815, Pgs. 126-127.

339. Kermit Hall, American Legal History, Cases and Materials, 3rd Edition, (Oxford University Press, New York 2005), Chapter 2: Law in a Republican Revolution 1760-1815, Pgs. 126-127.

340. Kermit Hall, American Legal History, Cases and Materials, 3rd Edition, (Oxford University Press, New York 2005), Chapter 2: Law in a Republican Revolution 1760-1815, Pgs. 126-127.

341. Kermit Hall, American Legal History, Cases and Materials, 3rd Edition, (Oxford University Press, New York 2005), Appendix: United States Constitution, Amendments, Pg. 687.

342. Kermit Hall, American Legal History, Cases and Materials, 3rd Edition, (Oxford University Press, New York 2005), Appendix: United States Constitution, Amendments, Pg. 687.

D. Modern Perspectives

From the founding of our nation, to today, the American law has recognized the truth of the third postulate, that property rights are inherent to our humanity. This concept has become ingrained in the American Psyche, and serves as a fundamental truth in our law.

One need only look at the national uproar that occurred from the Supreme Court's decision in the Kelo case [343] to understand America's continued commitment to private property rights, and the belief that these inherently possessed rights should not be violated by government. [344] For even when Constitutional constraints are followed, Americans find these rights sacrosanct.

In the Kelo case, a Connecticut coastal city sought to take certain private property, which some viewed as blighted and slum, for the purposes of economic development. [345] After the Supreme Court ruled that this case constituted a "public purpose" under the Fifth Amendment (which would permit such a taking), legal commentators, in reaffirming the legal and social importance of inherent, inviolate property rights, declared:

> ***"Nonetheless, ensuring heightened procedural review when inoffensive property is being condemned seems, if nothing else, to be promoted by the Fourteenth Amendment's Due Process Clause and Lockean principles"*** [346]

All over the nation, after the Kelo decision was handed down, citizens began decrying their federal and governments, not to step on their rights of private property. [347] Accordingly, even when the law may allow for the qualified piercing of property rights, to support what it feels is in the public interest, and even when such action is performed under the protections of compensation as proscribed by the Fifth Amendment takings clause, Americans continue to hold such a firm devotion to the inherent nature of property rights, that they will invariably demand that their governments tread more lightly.

American law has and will continue to respond to this view. After Kelo, state legislatures all across the nation, have begun to restrict the ability of state and local governments to take property by eminent domain. [348] Elected legislators, and elected judges, both understand that their constituents hold their individual, inviolate property rights as precious, and believe that such are their inherent birthright. [349] Indeed, as might be the ultimate test to the strength of this feeling in America, the very project that the Kelo case authorized, has not proceeded, despite its technical authorization, due in large part to the public's concern that inviolate, private property rights were not given as deep a level of respect as they should be.

The response to Kelo case clearly demonstrates, that still today, the spirit of Locke, Jefferson, and Madison, and their commitment to the individual American's inviolate right to the unfettered pursuit of property, remains alive and well throughout our nation. It is a concept still solidly embraced in our law and in society.

As a result, the doctrine of the third postulate, that property rights should be viewed as inherent to our humanity, has a firm basis in American law. From the time before our founding, to the present, this concept, adds value and understanding to property law, and the rights that flow from it. It is a useful and important analysis that allows this perspective to add a more inclusive and complete understanding of what property actually is, and means.

4. That Property Rights Include the Rights of Exclusion, Possession, Use and Transfer

For generations, those who have engaged in a legal analysis of property, have examined it in terms of a "Bundle of Rights". Indeed, even the United States Supreme Court has employed this view, when it examines property issues in its cases, asking whether an "owner has somehow lost one of the most essential sticks in the bundle of rights that are commonly characterized as property". [350]

In this postulate the nature of property rights as a bundle of rights, including the rights to exclude, possess, use and transfer will be examined. Through this prism, of these bundle of rights, a more inclusive and complete understanding of what property actually is, and means, is sought.

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343. Kelo v. City of New London, 545 U.S. 469 (2005).

344. Eric Rutkow, Kelo v. City of New London, Harvard Environmental Law Review, (Vol 30, No. 1, 2006), Pgs. 261-279.

345. Eric Rutkow, Kelo v. City of New London, Harvard Environmental Law Review, (Vol 30, No. 1, 2006), Pgs. 261-279.

346. Eric Rutkow, Kelo v. City of New London, Harvard Environmental Law Review, (Vol 30, No. 1, 2006), Pg. 276.

347. Eric Rutkow, Kelo v. City of New London, Harvard Environmental Law Review, (Vol 30, No. 1, 2006), Pgs. 261-279.

348. Ilya Somin, The Limits of Backlash: Assessing the Political Response to Kelo, Selected Works, George Mason University School of Law (2008), Pgs. 1-64.

349. Ilya Somin, The Limits of Backlash: Assessing the Political Response to Kelo, Selected Works, George Mason University School of Law (2008), Pgs. 1-64.

350. Kaiser Aetna v. United States, 444 U.S. 164, 176 (1979).

A. The Collection of Rights - The Rights of Exclusion, Possession, Use and Transfer

When Americans exercise their property rights they do it in four ways, signified by the acronym E-PUT. These include

1. The Right to Exclude;

2. The Right to Possess;

3. The Right to Use; and

4. The Right to Transfer. [351]

According to the property scholar Thomas Grey, in his famous essay *The Disintegration of Property*, "the theory of property rights held by the modern specialist tends to dissolve the notion of ownership and to eliminate any necessary connection between property rights and things. The specialist fragments the robust unitary conception of ownership into a more shadowy 'bundle of rights'." [352]

So why then, focus not on the issue of ownership and instead on a collection of rights?

For, as aforementioned, if one only thinks of what constitutes "property", as 'items" or "things", or as the ownership of those items or things, the true concept of property, and its rights, will not appear.

To view property through this limited vision, however, causes one to miss a very valuable element: "control". For property can be owned by more than one person, and sometimes property need not even be owned at all by a person in order for such person to legally exercise control over such item or thing.

Accordingly, since it is only through the perspective of control, that one can truly understand the full nature of property, it is essential to think of property in terms of "a collection of rights". For it is only through that perspective, a merger of item with control, that a true legal understanding can be had. As a result, the law needs to view property, not in terms of a collection of items or things, but in terms of a collection of rights.

Perhaps this is why Thomas Grey commented:

> ***"[T]he basic need to teach lawyers the technical tools of their trade would suggest if not require some movement toward a bundle- of-rights formulation of property, as against the historical and popular thing-ownership conception."*** [353]

So just what are these property rights that make up this "metaphorical bundle"? They can be described as follows:

1. The Right to Exclude:

The first right in "the metaphorical bundle of property rights" is the right to exclude. This right has often been described as the most important of all the property rights. [354] Exclusion is the ultimate expression of control over an item, where all others are prevented from the use or occupancy of the particular "thing." [355] For nothing commands power and control more than the ability to exclude. Of course, like many rights, the right to exclude is not absolute. For example, police officers may enter the in pursuit of fleeing criminals; and can not bar entry to emergency medical staff who would treat an injured person on the basis of public policy.

2. The Right to Possess:

The second right in "the metaphorical bundle of property rights" is the right to possess. Possession demonstrates control by the means of holding, keeping and/or retaining the particular "thing." [356] Simply put, the right to possess is the right to hold, control or enjoy. Black's law dictionary defines "possession" as:"

> ***"1. The fact of having or holding property in one's power; the exercise of dominion over property;***
>
> ***2. The right under which one may exercise control over something to the exclusion of overs; the continuing exercise of a claim of exclusive use of a material object;***
>
> ***3. Something that a person owns or controls; or***
>
> ***4. The detention and control, or the manual or ideal custody, of anything which maybe the subject of property, for one's use and enjoyment, either as owner or as the proprietor of a qualified right in it, and either held personally or by another who exercises it in one's place and name."*** [357]

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351. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pgs. 4-7.

352. Thomas Grey, The Disintegration of Property, Property: Edited and Assembled by J. Roland Pennock, (New York University Press, New York, 1980), Pg. 69.

353. Thomas Grey, The Disintegration of Property, Property: Edited and Assembled by J. Roland Pennock, (New York University Press, New York, 1980), Pg. 76.

354. Kaiser Aetna v. United States, 444 U.S. 164, 176 (1979).

355. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pgs. 4-7.

356. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pgs. 4-7.

357. Henry C. Black, Black's Law Dictionary, Seventh Edition, edited and assembled by Publishers Editorial Staff, (West Publishing Co., St. Paul 1999), Pg 1183.

3. The Right to Use:

The third right in the "metaphorical bundle of property rights" is the right to use. The law usually gives broad discretion to determine how someone will use "their" property. [358] With a house, you can live in the house, plant a garden in the back yard, play tag on the front lawn, install a satellite dish on the roof, and host parties for your friends. [359] With an apple, you can eat it, bake it, place it in a bowl for decoration, or simply let it rot. [360]

The right to use is perhaps the most important property right for society. For the use and productivity of material things tends to be important for the public good, supportive of overall productivity and promoting of the collective wealth and benefits. It must be remembered again, like all rights, this right is also not absolute, for it has long been held that a use may be limited when it interferes with the free use of another's property (i.e. nuisance). [361]

4.The Right to Transfer:

The fourth right in the "metaphorical bundle of property rights" is the right to transfer. Through this right, the law recognizes broad power to transfer items either during lifetime or at death. [362] Such transfers can be made by intervivos sale or gift, or through a will or by means of statutes that govern intestate distributions. [363]

Like the other rights within this bundle, the law does impose various restrictions on this right. For example, a person could not transfer title to their home for the purpose of avoiding creditors' claims, or impose an unreasonable condition incident to the transfer; such as a conveyance "to my daughter on condition that she never sell the land". [364] Also some types of property are market inalienable, due to public policy, in that they can not be sold at all (such as human body organs), [365] while other types of property can not be transferred after death (such as a life estate). [366]

B. The Examination of Property Through the Collection of the Rights of Exclusion, Possession, Use and Transfer

The examination of property through the prism of the collection of the rights of exclusion, possession, use and transfer offers a more in depth understanding of the meaning of property and how it relates and functions under the law. It enables each element of property rights to be thoroughly considered, and reflected upon. It is in this light that a truer understanding of property can be obtained, and a more thorough grasp of its meaning can be had.

Although some legal commentators argue that property can not be adequately understood by an analysis of its component parts through a "bundle of rights" [367], this perspective overwhelmingly fails on the basis of their contention that property can only be seen under the law as a physical thing, and to do otherwise, is merely a legal fiction. [368] Their claim that examining property through the perspective of a collection of rights, disassociates the law from the actual item, [369] and causes property to "lose its meaning", [370] is a myopic view, that fails to recognize, that the value of property to people, is not the item itself, but rather, one's ability to control that item.

The a full understanding and operation of the law requires us, in a free society, to look at numerous things, through numerous perspectives. A rights based perspective for property, enables the law to not only understand the important element of control that is critical to understanding property, but also provides it with the tool to expand the scope of property to areas that are of critical importance to society (such as intellectual property, future interests, and non possessory interests) which have no tangential physicality. Merely breaking this rights based perspective into its component parts only enhances that understanding

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358. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pgs. 4-7.

359. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pgs. 4-7.

360. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pgs. 4-7.

361. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pgs. 4-7.

362. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pgs. 4-7.

363. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pgs. 4-7.

364. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pgs. 4-7.

365. Margaret Radin, Market Inalienability, (Harvard Law Review, Vol 100, No. 8, 1987), Pgs. 1849-1937; it should also be noted that although certain transfers, such as bodily organs are considered "Market Inalienable" for purpose of sale, public policy and the law do not prohibit their "transfer" by gift. Additionally, as technology progresses, and with human body parts starting to be able to either be manufactured synthetically, or grown in a laboratory with a minimal donation from the human host (such as a DNA sample), this public policy, and the law which enforces it, may well see a significant change.

366. John Sprankling, Understanding Property Law, 2d Edition, (Lexis Nexis Publishing, Albany, New York, 2007), Chapter 1: "What is Property", Pgs. 4-7.

367. Jeanne Schroeder, Chix Nix Bundle-O-Stix: A Feminist Critique of the Disaggregation of Property, Michigan Law Review, (Vol 93, No. 2, 2006), Pgs. 238-319.

368. Jeanne Schroeder, Chix Nix Bundle-O-Stix: A Feminist Critique of the Disaggregation of Property, Michigan Law Review, (Vol 93, No. 2, 2006), Pgs. 239-244.

369. Jeanne Schroeder, Chix Nix Bundle-O-Stix: A Feminist Critique of the Disaggregation of Property, Michigan Law Review, (Vol 93, No. 2, 2006), Pgs. 238-319.

370. Jeanne Schroeder, Chix Nix Bundle-O-Stix: A Feminist Critique of the Disaggregation of Property, Michigan Law Review, (Vol 93, No. 2, 2006), Pg. 242..

Accordingly, viewing property as a collection of rights, rather than a collection of things, and breaking down those rights into their component parts, serves three purposes in the advancement of legal understanding of property.

First, we have seen that a definition of the term "right" is "the legally recognized ability to exercise power and control over an action or object". Since the essential element which gives property its value, is not the item itself, but rather the ability to control the item, then understanding this issue of control, is best reflected by an analysis of rights.

Second, in order to develop a more comprehensive understanding of property, which includes many of the more abstract property interests of great value to modern society, we need to broaden our concept of what property actually is.

Concepts such as intellectual property, future interests, and non possessory interests, do not lend themselves to be easily considered as "tangible items". This understanding can be best performed through a perspective of rights.

Third, by viewing and analyzing property rights through their component parts, a more complete and in depth understanding can be had of property rights and how they function under the law.

As a result, by employing this "collection of rights" perspective, a more inclusive and accurate picture of what property actually is, and means, can be truly had.

Part Three: Conclusion

In the attempt to discover the meaning of property rights under our American legal system, four postulates have been devised to provide perspective and enlightenment. Examining property rights through the prism of these four postulates allows for a understanding of the legal foundations of property rights as well as their evolution.

Property is a concept we all can understand. It is both a foundational basis in the law as well as a reflection of it. It is unquestionably linked to society and to its needs.

In an attempt to gain a true understanding of property, we have examined it through the prism of four postulates. These postulates help us to define property law. They help us to gain a perspective of its meaning, and an understanding of its application. Each of these postulates work with each other to develop a global appreciation of modern property law.

These postulates:

1. **That Property Must be Viewed as a Collection of Rights not a Collection of Things;**
2. **That Property Rights are those Recognized by Law, the Law evolved from Property Rights, and they are intertwined;**
3. **That Property Rights are Inherent to our Humanity; and**
4. **That Property Rights Include the Rights of Exclusion, Possession, Use and Transfer;**

help us to put into perspective the true nature and legal significance of property.

They help us to understand that property is among the oldest and most fundamental of all legal concepts, and how it has influenced relations among people and their societies.

They help us to understand that property is a critical element of every person's existence, and represents so much of what is necessary for the preservation and quality of human life.

They help us comprehend that it is the right to exercise control over property, and not the item itself, that gives property its value, and that property is most usefully viewed in terms of a collection of "rights", and not in terms of a collection of "things".

They help us appreciate, that with people's concerns, and society's demands, focused on property, the ever present need to protect property rights has led to the development of the law itself. They help us understand that reciprocally, the development of the law, has shaped our concept of property. Accordingly, they bring enlightenment to the fact that a great deal of the law is derived from, and devoted to, property, its protection, and the rights surrounding it.

These postulates allow us to comprehend the recognition of property rights under natural law. They permit us to understand that our society, and its laws, view property rights, not as privileges granted by the state, but instead, as rights that are intrinsic to our very existence as human beings. Accordingly, they give appreciation to the fact that under our American system of laws, private property rights are inherent to our humanity, and it is government's sacred duty to respect and protect them. Government recognizes these rights, but it did not give them, and it can not take them away.

They provide us with a perspective that allows us to see that our societal respect for the value of private property rights, and their accepted recognition under law, have helped the western world in general, and America in particular, to grow and prosper to the highest status in human history. They help us to discover that the very nature of private property rights is reflective in one's ability to excise those rights through the element of control. That control is the fundamental element of a property right.

Perhaps most importantly, however, these postulates help us to understand the overall legal concept of property. That having the right to control property, by exclusion, possession, use and transfer, has become a fundamental pillar of modern civilization.