Pure Study Knowledge of:

Status, Appellation, and Nativity

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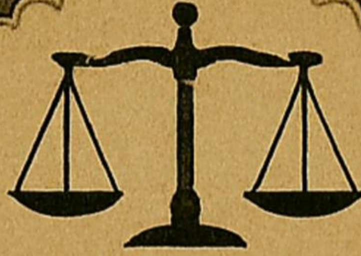

PURE 14TH AMENDMENT STUDY

FOR PROOF OF UNCONSTITUTIONALITY

UNITED STATES OF AMERICA

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groups from other nations. This bipartisan organization is doing something more than just talking about international understanding—it is doing something about it.

If mankind is ever to abolish war from the face of the earth, we first must break down the barriers of mistrust and suspicion among the peoples of the world. There is no better way to accomplish this than through just such programs as this one conducted by the American Council of Young Political Leaders.

These young people will be the leaders of the world in years to come. They will be better leaders, more understanding and tolerant leaders, if they are able to expand their knowledge of other nations, other peoples, and other political systems.

This is why, Mr. Speaker, I am so pleased with the work being done by the American Council of Young Political Leaders. They have my wholehearted support in their program to further world understanding.

THE 14TH AMENDMENT—EQUAL PROTECTION LAW OR TOOL OF USURPATION

Mr. PRYOR. Mr. Speaker, I ask unanimous consent that the gentleman from Louisiana [Mr. RARICK] may extend his remarks at this point in the RECORD and include extraneous matter.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arkansas?

There was no objection.

Mr. RARICK. Mr. Speaker, arrogantly ignoring clearcut expressions in the Constitution of the United States, the declared intent of its drafters notwithstanding, our unelected Federal judges read out prohibitions of the Constitution of the United States by adopting the fuzzy haze of the 14th amendment to legislate their personal ideas, prejudices, theories, guilt complexes, aims, and whims.

Through the cooperation of intellectual educators, we have subjected ourselves to accept destructive use and meaning of words and phrases. We blindly accept new meanings and changed values to alter our traditional thoughts.

We have tolerantly permitted the habitual misuse of words to serve as a vehicle to abandon our foundations and goals. Thus, the present use and expansion of the 14th amendment is a sham—serving as a crutch and hoodwink to precipitate a quasi-legal approach for overthrow of the tender balances and protections of limitation found in the Constitution.

But, interestingly enough, the 14th amendment—whether ratified or not—was but the expression of emotional outpouring of public sentiment following the War Between the States.

Its obvious purpose and intent was but to free human beings from ownership as a chattel by other humans. Its aim was no more than to free the slaves.

As our politically appointed Federal judiciary proceeds down their chosen path of chaotic departure from the peoples' government by substituting their personal law rationalized under the 14th amendment, their actions and verbiage brand them and their team as secessionists—rebels with pens instead of guns—seeking to divide our Union.

They must be stopped. Public opinion must be aroused. The Union must and shall be preserved.

Mr. Speaker, I ask to include in the RECORD, following my remarks, House Concurrent Resolution 208 of the Louisiana Legislature urging this Congress to declare the 14th amendment illegal. Also, I include in the RECORD an informative and well-annotated treatise on the illegality of the 14th amendment—the play toy of our secessionist judges—which has been prepared by Judge Leander H. Perez, of Louisiana.

The material referred to follows:

H. CON. RES. 208

A concurrent resolution to expose the unconstitutionality of the 14th admendment to the Constitution of the United States; to interpose the sovereignty of the State of Louisiana against the execution of said amendment in this State; to memorialize the Congress of the United States to repeal its joint resolution of July 28, 1868, declaring that said amendment had been ratified; and to provide for the distribution of certified copies of this resolution

Whereas the purported 14th Amendment to the United States Constitution was never lawfully adopted in accordance with the requirements of the United States Constitution because eleven states of the Union were deprived of their equal suffrage in the Senate in violation of Article V, when eleven southern states, including Louisiana, were excluded from deliberation and decision in the adoption of the Joint Resolution proposing said 14th Amendment; said Resolution was not presented to the President of the United States in order that the same should take effect, as required by Article 1, Section 7; the proposed amendment was not ratified by three-fourths of the states, but to the contrary fifteen states of the then thirty-seven states of the Union rejected the proposed 14th Amendment between the dates of its submission to the states by the Secretary of State on June 16, 1866 and March 24, 1868, thereby nullifying said Resolution and making it impossible for ratification by the constitutionally required three-fourths of such states; said southern states which were denied their equal suffrage in the Senate had been recognized by proclamations of the President of the United States to have duly constituted governments with all the powers which belong to free states of the Union, and the Legislatures of seven of said southern states had ratified the 13th Amendment which would have failed of ratification but for the ratification of said seven southern states; and

Whereas the Reconstruction Acts of Congress unlawfully overthrew their existing governments, removed their lawfully constituted legislatures by military force and replaced them with rump legislatures which carried out military orders and pretended to ratify the 14th Amendment; and

Whereas in spite of the fact that the Secretary of State in his first proclamation, on July 20, 1868, expressed doubt as to whether three-fourths of the required states had ratified the 14th Amendment, Congress nevertheless adopted a resolution on July 28, 1868, unlawfully declaring that three-fourths of the states had ratified the 14th Amendment and directed the Secretary of State to so proclaim, said Joint Resolution of Congress and the resulting proclamation of the Secretary of State included the purported ratifications of the military enforced rump legislatures of ten southern states whose lawful legislatures had previously rejected said 14th Amendment, and also included purported ratifications by the legislatures of the States of Ohio and New Jersey although they had withdrawn their legislative ratifications several months previously, all of which proves absolutely that said 14th Amendment was not adopted in accordance with the mandatory constitutional requirements set forth in Article V of the Constitution and therefore the Constitution itself strikes with nullity the purported 14th Amendment.

Now therefore be it resolved by the Legislature of Louisiana, the House of Representatives and the Senate concurring:

(1) That the Legislature go on record as exposing the unconstitutionality of the 14th Amendment, and interposes the sovereignty of the State of Louisiana against the execution of said 14th Amendment against the State of Louisiana and its people;

(2) That the Legislature of Louisiana opposes the use of the invalid 14th Amendment by the Federal courts to impose further unlawful edicts and hardships on its people;

(3) That the Congress of the United States be memorialized by this Legislature to repeal its unlawful Joint Resolution of July 28, 1868, declaring that three-fourths of the states had ratified the 14th Amendment to the United States Constitution;

(4) That the Legislatures of the other states of the Union be memorialized to give serious study and consideration to take similar action against the validity of the 14th Amendment and to uphold and support the Constitution of the United States which strikes said 14th Amendment with nullity; and

(5) That copies of this Resolution, duly certified, together with a copy of the treatise on "The Unconstitutionality of the 14th Amendment" by Judge L. H. Perez, be forwarded to the Governors and Secretaries of State of each state in the Union, and to the Secretaries of the United States Senate and House of Congress, and to the Louisiana Congressional delegation, a copy hereof to be published in the Congressional Record.

VAIL M. DELONY,
Speaker of the House of Representatives.
C. C. AYCOCK,
Lieutenant Governor and President of the Senate.

THE 14TH AMENDMENT IS UNCONSTITUTIONAL

The purported 14th Amendment to the United States Constitution is and should be held to be ineffective, invalid, null, void and unconstitutional for the following reasons:

1. The Joint Resolution proposing said Amendment was not submitted to or adopted by a Constitutional Congress. Article I, Section 3, and Article V of the U.S. Constitution.

2. The Joint Resolution was not submitted to the President for his approval. Article I, Section 7.

3. The proposed 14th Amendment was rejected by more than one-fourth of all the States then in the Union, and it was never ratified by three-fourths of all the States in the Union. Article V.

I. THE UNCONSTITUTIONAL CONGRESS

The U.S. Constitution provides:

Article I, Section 3. "The Senate of the United States shall be composed of two Senators from each State * * *"

Article V provides: "No State, without its consent, shall be deprived of its equal suffrage in the Senate."

The fact that 23 Senators had been unlawfully excluded from the U.S. Senate, in order to secure a two-thirds vote for adoption of the Joint Resolution proposing the 14th Amendment is shown by Resolutions of pro-

test adopted by the following State Legislatures:

The New Jersey Legislature by Resolution of March 27, 1868, protested as follows:

"The said proposed amendment not having yet received the assent of the three-fourths of the states, which is necessary to make it valid, the natural and constitutional right of this state to withdraw its assent is undeniable * * *."

"That it being necessary by the constitution that every amendment to the same should be proposed by two-thirds of both houses of congress, the authors of said proposition, for the purpose of securing the assent of the requisite majority, determined to, and did, exclude from the said two houses eighty representatives from eleven states of the union, upon the pretence that there were no such states in the Union; but, finding that two-thirds of the remainder of the said houses could not be brought to assent to the said proposition, they deliberately formed and carried out the design of mutilating the integrity of the United States senate, and without any pretext or justification, other than the possession of the power, without the right, and in palpable violation of the constitution, ejected a member of their own body, representing this state, and thus practically denied to New Jersey its equal suffrage in the senate, and thereby nominally secured the vote of two-thirds of the said houses." [1]

The Alabama Legislature protested against being deprived of representation in the Senate of the U.S. Congress.[2]

The Texas Legislature by Resolution on October 15, 1866, protested as follows:

"The amendment to the Constitution proposed by this joint resolution as Article XIV is presented to the Legislature of Texas for its action thereon, under Article V of that Constitution. This Article V, providing the mode of making amendments to that instrument, contemplates the participation by all the States through their representatives in Congress, in proposing amendments. As representatives from nearly one-third of the States were excluded from the Congress proposing the amendments, the constitutional requirement was not complied with; it was violated in letter and in spirit; and the proposing of these amendments to States which were excluded from all participation in their initiation in Congress, is a nullity." [3]

The Arkansas Legislature, by Resolution on December 17, 1866, protested as follows:

"The Constitution authorized two-thirds of both houses of Congress to propose amendments; and, as eleven States were excluded from deliberation and decision upon the one now submitted, the conclusion is inevitable that it is not proposed by legal authority, but in palpable violation of the Constitution." [4]

The Georgia Legislature, by Resolution on November 9, 1866, protested as follows:

"Since the reorganization of the State government, Georgia has elected Senators and Representatives. So has every other State. They have been arbitrarily refused admission to their seats, not on the ground that the qualifications of the members elected did not conform to the fourth paragraph, second section, first article of the Constitution, but because their right of representation was denied by a portion of the States having equal but not greater rights than themselves. They have in fact been forcibly excluded; and, inasmuch as all legislative power granted by the States to the Congress is defined, and this power of exclusion is not among the powers expressly or by implication, the assemblage, at the capitol, of representatives from a portion of the States, to the exclusion of the representatives of another portion, cannot be a constitutional Congress, when the representation of each State forms an integral part of the whole.

"This amendment is tendered to Georgia for ratification, under that power in the Constitution which authorizes two-thirds of the Congress to propose amendments. We have endeavored to establish that Georgia had a right, in the first place, as a part of the Congress, to act upon the question, 'Shall these amendments be proposed?' Every other excluded State had the same right.

"The first constitutional privilege has been arbitrarily denied. Had these amendments been submitted to a constitutional Congress, they never would have been proposed to the States. Two-thirds of the whole Congress never would have proposed to eleven States voluntarily to reduce their political power in the Union, and at the same time, disfranchise the larger portion of the intellect, integrity and patriotism of eleven co-equal States." [5]

The Florida Legislature, by Resolution of December 5, 1866, protested as follows:

"Let this alteration be made in the organic system and some new and more startling demands may or may not be required by the predominant party previous to allowing the ten States now unlawfully and unconstitutionally deprived of their right of representation to enter the Halls of the National Legislature. Their right to representation is guaranteed by the Constitution of this country and there is no act, not even that of rebellion, can deprive them of its exercise." [6]

The South Carolina Legislature by Resolution of November 27, 1866, protested as follows:

"Eleven of the Southern States, including South Carolina, are deprived of their representation in Congress. Although their Senators and Representatives have been duly elected and have presented themselves for the purpose of taking their seats, their credentials have, in most instances, been laid upon the table without being read, or have been referred to a committee, who have failed to make any report on the subject. In short, Congress has refused to exercise its Constitutional functions, and decide either upon the election, the return, or the qualification of these selected by the States and people to represent us. Some of the Senators and Representatives from the Southern States were prepared to take the test oath, but even these have been persistently ignored, and kept out of the seats to which they were entitled under the Constitution and laws.

"Hence this amendment has not been proposed by 'two-thirds of both Houses' of a legally constituted Congress, and is not, Constitutionally or legitimately, before a single Legislature for ratification." [7]

The North Carolina Legislature protested by Resolution of December 6, 1866 as follows:

"The Federal Constitution declares, in substance, that Congress shall consist of a House of Representatives, composed of members apportioned among the respective States in the ratio of their population, and of a Senate, composed of two members from each State. And in the Article which concerns Amendments, it is expressly provided that 'no State, without it consent, shall be deprived of its equal suffrage in the Senate.' The contemplated Amendment was not proposed to the States by a Congress thus constituted. At the time of its adoption, the eleven seceding States were deprived of representation both in the Senate and House, although they all, except the State of Texas, had Senators and Representatives duly elected and claiming their privileges under the Constitution. In consequence of this, these States had no voice on the important question of proposing the Amendment. Had they been allowed to give their votes, the proposition would doubtless have failed to command the required two-thirds majority. * * *

If the votes of these States are necessary to a valid ratification of the Amendment, they were equally necessary on the question of proposing it to the States; for it would be difficult, in the opinion of the Committee, to show by what process in logic, men of intelligence could arrive at a different conclusion." [8]

II. JOINT RESOLUTION INEFFECTIVE

Article I, Section 7 provides that not only every bill which shall have been passed by the House of Representatives and the Senate of the United States Congress, but that:

"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."

The Joint Resolution proposing the 14th Amendment [9] was never presented to the President of the United States for his approval, as President Andrew Johnson stated in his message on June 22, 1866.[10] Therefore, the Joint Resolution did not take effect.

III. PROPOSED AMENDMENT NEVER RATIFIED BY THREE-FOURTHS OF THE STATES

1. Pretermitting the ineffectiveness of said resolution, as above, fifteen (15) States out of the then thirty-seven (37) States of the Union rejected the proposed 14th Amendment between the date of its submission to the States by the Secretary of State on June 16, 1866 and March 24, 1868, thereby further nullifying said resolution and making it impossible for its ratification by the constitutionally required three-fourths of such States, as shown by the rejections thereof by the Legislatures of the following states:

Texas rejected the 14th Amendment on October 27, 1866.[11]

Georgia rejected the 14th Amendment on November 9, 1866.[12]

Florida rejected the 14th Amendment on December 6, 1866.[13]

Alabama rejected the 14th Amendment on December 7, 1866.[14]

North Carolina rejected the 14th Amendment on December 14, 1866.[15]

Arkansas rejected the 14th Amendment on December 17, 1866.[16]

South Carolina rejected the 14th Amendment on December 20, 1866.[17]

Kentucky rejected the 14th Amendment on January 8, 1867.[18]

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[1] New Jersey Acts, March 27, 1868.

[2] Alabama House Journal 1866, pp. 210–213.

[3] Texas House Journal, 1866, p. 577.

[4] Arkansas House Journal, 1866, p. 287.

[5] Georgia House Journal, November 9, 1866, pp. 66–67.

[6] Florida House Journal, 1866, p. 76.

[7] South Carolina House Journal, 1866, pp. 33 and 34.

[8] North Carolina Senate Journal, 1866–67, pp. 92 and 93.

[9] 14 Stat. 358 etc.

[10] Senate Journal, 39th Congress, 1st sessn. p. 563, and House Journal p. 889.

[11] House Journal 1866, pp. 578–584—Senate Journal 1866, p. 471.

[12] House Journal 1866, p. 68—Senate Journal 1866, p. 72.

[13] House Journal 1866, p. 76—Senate Journal 1866, p. 8.

[14] House Journal 1866, pp. 210–213—Senate Journal 1866, p. 183.

[15] House Journal 1866–1867, p. 183—Senate Journal 1866–1867, p. 138.

[16] House Journal 1866, pp. 288–291—Senate Journal 1866, p. 262.

[17] House Journal 1866, p. 284—Senate Journal 1866, p. 230.

[18] House Journal 1867, p. 60—Senate Journal 1867, p. 62.

Virginia rejected the 14th Amendment on January 9, 1867.[19]

Louisiana rejected the 14th Amendment on February 6, 1867.[20]

Delaware rejected the 14th Amendment on February 7, 1867.[21]

Maryland rejected the 14th Amendment on March 23, 1867.[22]

Mississippi rejected the 14th Amendment on January 31, 1867.[23]

Ohio rejected the 14th Amendment on January 15, 1868.[24]

New Jersey rejected the 14th Amendment on March 24, 1868.[25]

There was no question that all of the Southern states which rejected the 14th Amendment had legally constituted governments, were fully recognized by the federal government, and were functioning as member states of the Union at the time of their rejection.

President Andrew Johnson, in his Veto message of March 2, 1867,[26] pointed out that:

"It is not denied that the States in question have each of them an actual government with all the powers, executive, judicial and legislative, which properly belong to a free State. They are organized like the other States of the Union, and, like them, they make, administer, and execute the laws which concern their domestic affairs."

If further proof were needed that these States were operating under legally constituted governments as member States in the Union, the ratification of the 13th Amendment by December 8, 1865 undoubtedly supplies this official proof. If the Southern States were not member States of the Union, the 13th Amendment would not have been submitted to their Legislatures for ratification.

2. The 13th Amendment to the United States Constitution was proposed by Joint Resolution of Congress[27] and was approved February 1, 1865 by President Abraham Lincoln, as required by Article I, Section 7 of the United States Constitution. The President's signature is affixed to the Resolution.

The 13th Amendment was ratified by 27 states of the then 36 states of the Union, including the Southern States of Virginia, Louisiana, Arkansas, South Carolina, Alabama, North Carolina and Georgia. This is shown by the Proclamation of the Secretary of State December 18, 1965.[28] Without the votes of these 7 Southern State Legislatures the 13th Amendment would have failed. There can be no doubt but that the ratification by these 7 Southern States of the 13th Amendment again established the fact that their Legislatures and State governments were duly and lawfully constituted and functioning as such under their State Constitutions.

3. Furthermore, on April 2, 1866, President Andrew Johnson issued a proclamation that, "the insurrection which heretofore existed in the States of Georgia, South Carolina, Virginia, North Carolina, Tennessee, Alabama, Louisiana, Arkansas, Mississippi and Florida is at an end, and is henceforth to be so regarded." [29]

On August 20, 1866, President Andrew Johnson issued another proclamation[30] pointing out the fact that the House of Representatives and Senate had adopted identical Resolutions on July 22nd[31] and July 25th, 1861,[32] that the Civil War forced by disunionists of the Southern States, was not waged for the purpose of conquest or to overthrow the rights and established institutions of those States, but to defend and maintain the supremacy of the Constitution and to preserve the Union with all equality and rights of the several states unimpaired, and that as soon as these objects are accomplished, the war ought to cease. The President's proclamation on June 13, 1865, declared the insurrection in the State of Tennessee had been suppressed.[33] The President's proclamation on April 2, 1866,[34] declared the insurrection in the other Southern States, except Texas, no longer existed. On August 20, 1866,[35] the President proclaimed that the insurrection in the State of Texas had been completely ended; and his proclamation continued: "the insurrection which heretofore existed in the State of Texas is at an end, and is to be henceforth so regarded in that State, as in the other States before named in which the said insurrection was proclaimed to be at an end by the aforesaid proclamation of the second day of April, one thousand, eight hundred and sixty-six.

"And I do further proclaim that the said insurrection is at an end, and that peace, order, tranquility, and civil authority now exist, in and throughout the whole of the United States of America."

4. When the State of Louisiana rejected the 14th Amendment on February 6, 1867, making the 10th state to have rejected the same, or more than one-fourth of the total number of 36 states of the Union as of that date, thus leaving less than three-fourths of the states possibly to ratify the same, the Amendment failed of ratification in fact and in law, and it could not have been revived except by a new Joint Resolution of the Senate and House of Representatives in accordance with Constitutional requirement.

5. Faced with the positive failure of ratification of the 14th Amendment, both Houses of Congress passed over the veto of the President three Acts known as Reconstruction Acts, between the dates of March 2 and July 19, 1867, especially the third of said Acts, 15 Stat. p. 14 etc., designed illegally to remove with "Military force" the lawfully constituted State Legislatures of the 10 Southern States of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Arkansas, Louisiana and Texas. In President Andrew Johnson's Veto message on the Reconstruction Act of March 2, 1867,[36] he pointed out these unconstitutionalities:

"If ever the American citizen should be left to the free exercise of his own judgment, it is when he is engaged in the work of forming the fundamental law under which he is to live. That work is his work, and it cannot properly be taken out of his hands. All this legislation proceeds upon the contrary Assumption that the people of each of these States shall have no constitution, except such as may be arbitrararily dictated by Congress, and formed under the restraint of military rule. A plain statement of facts makes this evident.

"In all these States there are existing constitutions, framed in the accustomed way by the people. Congress, however, declares that these constitutions are not 'loyal and republican,' and requires the people to form them anew. What, then, in the opinion of Congress, is necessary to make the constitution of a State 'loyal and republican?' The original act answers the question: 'It is universal negro suffrage, a question which the federal Constitution leaves exclusively to the States themselves. All this legislative machinery of martial law, military coercion, and political disfranchisement is avowedly for that purpose and none other. The existing constitutions of the ten States conform to the acknowledged standards of loyalty and republicanism. Indeed, if there are degrees in republican forms of government, their constitutions are more republican now, than when these States—four of which were members of the original thirteen—first became members of the Union."

In President Andrew Johnson's Veto message on the Reconstruction Act on July 19, 1867,[37] he pointed out various unconstitutionalities as follows:

"The veto of the original bill of the 2d of March was based on two distinct grounds, the interference of Congress in matters strictly appertaining to the reserved powers of the States, and the establishment of military tribunals for the trial of citizens in time of peace.

"* * * * * *

"A singular contradiction is apparent here. Congress declares these local State governments to be illegal governments, and then provides that these illegal governments shall be carried on by federal officers, who are to perform the very duties on its own officers by this illegal State authority. It certainly would be a novel spectacle if Congress should attempt to carry on a legal State government by the agency of its own officers. It is yet more strange that Congress attempts to sustain and carry on an illegal State government by the same federal agency.

"* * * * *

"It is now too late to say that these ten political communities are not States of this Union. Declarations to the contrary made in these three acts are contradicted again and again by repeated acts of legislation enacted by Congress from the year 1861 to the year 1867.

"During that period, while these States were in actual rebellion, and after that rebellion was brought to a close, they have been again and again recognized as States of the Union. Representation has been apportioned to them as States. They have been divided into judicial districts for the holding of district and circuit courts of the United States, as States of the Union only can be districted. The last act on this subject was passed July 23, 1866, by which every one of these ten States was arranged into districts and circuits.

"They have been called upon by Congress to act through their legislatures upon at least two amendments to the Constitution of the United States. As States they have ratified one amendment, which required the vote of twenty-seven States of the thirty-six then composing the Union. When the requisite twenty-seven votes were given in favor of that amendment—seven of which votes were given by seven of these ten States—it was proclaimed to be a part of the Constitution of the United States, and slavery was declared no longer to exist within the United States or any place subject to their jurisdiction. If these seven States were not legal States of the Union, it follows as an inevitable consequence that in some of the States slavery yet exists. It does not exist

[19] House Journal 1866–1867, p. 108—Senate Journal 1866–1867, p. 101.

[20] McPherson, Reconstruction, p. 194; Annual Encyclopedia, p. 452.

[21] House Journal 1867, p. 223—Senate Journal 1867, p. 176.

[22] House Journal 1867, p. 1141—Senate Journal 1867, p. 808.

[23] McPherson, Reconstruction, p. 194.

[24] House Journal 1868, pp. 44–50—Senate Journal 1868, pp. 33–38.

[25] Minutes of the Assembly 1868, p. 743—Senate Journal 1868, p. 356.

[26] House Journal, 39th Congress, 2nd Session. p. 563 etc.

[27] 13 Stat. p. 567.

[28] 13 Stat. p. 774.

[29] Presidential Proclamation No. 153, General Records of the United States, G.S.A. National Archives and Records Service.

[30] 14 Stat. p. 814.

[31] House Journal, 37th Congress, 1st Sessn. p. 123 etc.

[32] Senate Journal, 37th Congress, 1st Sessn. p. 91 etc.

[33] 13 Stat. 763.

[34] 14 Stat. p. 811.

[35] 14 Stat. 814.

[36] House Journal, 39th Congress, 2nd Sessn. p. 563 etc.

[37] 40th Congress, 1st Sessn. House Journal p. 232 etc.

in these seven States, for they have abolished it also in their State constitutions; but Kentucky not having done so, it would still remain in that State. But, in truth, if this assumption that these States have no legal State governments be true, then the abolition of slavery by these illegal governments binds no one, for Congress now denies to these States the power to abolish slavery by denying to them the power to elect a legal State legislature, or to frame a constitution for any purpose, even for such a purpose as the abolition of slavery.

"As to the other constitutional amendment having reference to suffrage, it happens that these States have not accepted it. The consequence is, that it has never been proclaimed or understood, even by Congress, to be a part of the Constitution of the United States. The Senate of the United States has repeatedly given its sanction to the appointment of judges, district attorneys, and marshals for every one of these States; yet, if they are not legal States, not one of these judges is authorized to hold a court. So, too, both houses of Congress have passed appropriation bills to pay all these judges, attorneys, and officers of the United States for exercising their functions in these States. Again, in the machinery of the internal revenue laws, all these States are districted, not as 'Territories,' but as 'States.'

"So much for continuous legislative recognition. The instances cited, however, fall far short of all that might be enumerated. Executive recognition, as is well known, has been frequent and unwavering. The same may be said as to judicial recognition through the Supreme Court of the United States.

"* * * * *

"To me these considerations are conclusive of the unconstitutionality of this part of the bill now before me, and I earnestly commend their consideration to the deliberate judgment of Congress. [And now to the Court.]

"Within a period less than a year the legislation of Congress has attempted to strip the executive department of the government of some of its essential powers. The Constitution, and the oath provided in it, devolve upon the President the power and duty to see that the laws are faithfully executed. The Constitution, in order to carry out this power, gives him the choice of the agents, and makes them subject to his control and supervision. But in the execution of these laws the constitutional obligation upon the President remains, but the powers to exercise that constitutional duty is effectually taken away. The military commander is, as to the power of appointment, made to take the place of its President, and the General of the Army the place of the Senate; and any attempt on the part of the President to assert his own constitutional power may, under pretence of law, be met by official insubordination. It is to be feared that these military officers, looking to the authority given by these laws rather than to the letter of the Constitution, will recognize no authority but the commander of the district and the General of the army.

"If there were no other objection than this to this proposed legislation, it would be sufficient."

No one can contend that the Reconstruction Acts were ever upheld as being valid and constitutional.

They were brought into question, but the Courts either avoided decision or were prevented by Congress from finally adjudicating upon their constitutionality.

In Mississippi v. President Andrew Johnson, (4 Wall. 475–502), where the suit sought to enjoin the President of the United States from enforcing provisions of the Reconstruction Acts, the U.S. Supreme Court held that the President cannot be enjoined because for the Judicial Department of the government to attempt to enforce the performance of the duties by the President might be justly characterized, in the language of Chief Justice Marshall, as "an absurd and excessive extravagance." The Court further said that if the Court granted the injunction against enforcement of the Reconstruction Acts, and if the President refused obedience, it is needless to observe that the Court is without power to enforce its process.

In a joint action, the states of Georgia and Mississippi brought suit against the President and the Secretary of War, (6 Wall. 50–78, 154 U.S. 554).

The Court said that:

"The bill then sets forth that the intent and design of the Acts of Congress, as apparent on thier face and by their terms, are to overthrow and annul this existing state government, and to erect another and different government in its place, unauthorized by the Constitution and in defiance of its guaranties; and that, in furtherance of this intent and design, the defendants, the Secretary of War, the General of the Army, and Major-General Pope, acting under orders of the President, are about setting in motion a portion of the army to take military possession of the state, and threaten to subvert her government and subject her people to military rule; that the state is holding inadequate means to resist the power and force of the Executive Department of the United States; and she therefore insists that such protection can, and ought to be afforded by a decree or order of his court in the premises."

The applications for injunction by these two states to prohibit the Executive Department from carrying out the provisions of the Reconstruction Acts directed to the overthrow of their government, including this dissolution of their state legislatures, were denied on the grounds that the organization of the government into three great departments, the executive, legislative and judicial, carried limitations of the powers of each by the Constitution. This case when the same way as the previous case of Mississippi against President Johnson and was dismissed without adjudicating upon the constitutionality of the Reconstruction Acts.

In another case, ex parte William H. McCardle (7 Wall. 506–515), a petition for the writ of habeas corpus for unlawful restraint by military force of a citizen not in the military service of the United States was before the United States Supreme Court. After the case was argued and taken under advisement, and before conference in regard to the decision to be made, Congress passed an emergency Act, (Act March 27, 1868, 15 Stat. at L. 44), vetoed by the President and repassed over his veto, repealing the jurisdiction of the U.S. Supreme Court in such case. Accordingly, the Supreme Court dismissed the appeal without passing upon the constitutionality of the Reconstruction Acts, under which the non-military citizen was held by the military without benefit of writ of habeas corpus, in violation of Section 9, Article I of the U.S. Constitution which prohibits the suspension of the writ of habeas corpus.

That Act of Congress placed the Reconstruction Acts beyond judicial recourse and avoided tests of constitutionality.

It is recorded that one of the Supreme Court Justices, Grier, protested against the action of the Court as follows:

"This case was fully argued in the beginning of this month. It is a case which involves the liberty and rights, not only of the appellant but of millions of our fellow citizens. The country and the parties had a right to expect that it would receive the immediate and solemn attention of the court. By the postponement of this case we shall subject ourselves, whether justly or unjustly, to the imputation that we have evaded the performance of a duty imposed on us by the Constitution, and waited for Legislative interposition to supersede our action, and relieve us from responsibility. I am not willing to be a partaker of the eulogy or opprobrium that may follow. I can only say . . . I am ashamed that such opprobrium should be cast upon the court and that it cannot be refuted."

The ten States were organized into Military Districts under the unconstitutional "Reconstruction Acts," their lawfully constituted Legislature illegally were removed by "military force," and they were replaced by rump, so-called Legislatures, seven of which carried out military orders and pretended to ratify the 14th Amendment, as follows:

Arkansas on April 6, 1868;[38]

North Carolina on July 2, 1868;[39]

Florida on June 9, 1868;[40]

Louisiana on July 9, 1868;[41]

South Carolina on July 9, 1868;[42]

Alabama on July 13, 1868;[43] and Georgia on July 21, 1868.[44]

6. Of the above 7 States whose Legislatures were removed and replaced by rump, so-called Legislatures, six (6) Legislatures of the States of Louisiana, Arkansas, South Carolina, Alabama, North Carolina and Georgia had ratified the 13th Amendment, as shown by the Secretary of State's Proclamation of December 18, 1865, without which 6 States' ratifications, the 13th Amendment could not and would not have been ratified because said 6 States made a total of 27 out of 36 States or exactly three-fourths of the number required by Article V of the Constitution for ratification.

Furthermore, governments of the States of Louisiana and Arkansas had been re-established under a Proclamation issued by President Abraham Lincoln December 8, 1863.[45]

The government of North Carolina had been re-established under a Proclamation issued by President Andrew Johnson dated May 29, 1865.[46]

The government of Georgia had been re-established under a proclamation issued by President Andrew Johnson dated June 17, 1865.[47]

The government of Alabama had been re-established under a Proclamation issued by President Andrew Johnson dated June 21, 1865.[48]

The government of South Carolina had been re-established under a Proclamation issued by President Andrew Johnson dated June 30, 1865.[49]

These three "Reconstruction Acts"[50] under which the above State Legislatures were illegally removed and unlawful rump or puppet so-called Legislatures were substituted in a mock effort to ratify the 14th Amendment, were unconstitutional, null and void, ab initio, and all acts done thereunder were also null and void, including the purported ratification of the 14th Amendment by said 6 Southern puppet State Legislatures of

[38] McPherson, Reconstruction, p. 53.

[39] House Journal 1868, p. 15, Senate Journal 1868, p. 15.

[40] House Journal 1868, p. 9, Senate Journal 1868, p. 8.

[41] Senate Journal 1868, p. 21.

[42] House Journal 1868, p. 50, Senate Journal 1868, p. 12.

[43] Senate Journal, 40th Congress, 2nd Sessn. p. 725.

[44] House Journal, 1868, p. 50.

[45] Vol. I, pp. 288–306; Vol. II, pp. 1429–1448—"The Federal and State Constitutions," etc., compiled under Act of Congress on June 30, 1906, Francis Newton Thorpe, Washington Government Printing Office (1906).

[46] Same, Thorpe, Vol. V, pp. 2799–2800.

[47] Same, Thorpe, Vol. II, pp. 809–822.

[48] Same, Thorpe, Vol. I, pp. 116–132.

[49] Same, Thorpe, Vol. VI, pp. 3269–3281.

[50] 14 Stat. p. 428, etc. 15 Stat. p. 14, etc.

Arkansas, North Carolina, Louisiana, South Carolina, Alabama and Georgia.

Those Reconstruction Acts of Congress and all acts and things unlawfully done thereunder were in violation of Article IV, Section 4 of the United States Constitution, which required the United States to guarantee every State in the Union a republican form of government. They violated Article I, Section 3, and Article V of the Constitution, which entitled every State in the Union to two Senators, because under provisions of these unlawful Acts of Congress, 10 States were deprived of having two Senators, or equal suffrage in the Senate.

7. The Secretary of State expressed doubt as to whether three-fourths of the required states had ratified the 14th Amendment, as shown by his Proclamation of July 20, 1868.[51] Promptly on July 21, 1868, a Joint Resolution [52] was adopted by the Senate and House of Representatives declaring that three-fourths of the several States of the Union had ratified the 14th Amendment. That resolution, however, included purported ratifications by the unlawful puppet Legislatures of 5 States, Arkansas, North Carolina, Louisiana, South Carolina and Alabama, which had previously rejected the 14th Amendment by action of their lawfully constituted Legislatures, as above shown. This Joint Resolution assumed to perform the function of the Secretary of State in whom Congress, by Act of April 20, 1818, had vested the function of issuing such proclamation declaring the ratification of Constitutional Amendments.

The Secretary of State bowed to the action of Congress and issued his Proclamation of July 28, 1868,[53] in which he stated that he was acting under authority of the Act of April 20, 1818, but pursuant to said Resolution of July 21, 1868. He listed three-fourths or so of the then 37 states as having ratified the 14th Amendment, including the purported ratification of the unlawful puppet Legislatures of the States of Arkansas, North Carolina, Louisiana, South Carolina and Alabama. Without said 5 unlawful purported ratifications there would have been only 25 states left to ratify out of 37 when a minimum of 28 states was required for ratification by three-fourths of the States of the Union.

The Joint Resolution of Congress and the resulting Proclamation of the Secretary of State also included purported ratifications by the States of Ohio and New Jersey, although the Proclamation recognized the fact that the Legislatures of said states, several months previously, had withdrawn their ratifications and effectively rejected the 14th Amendment in January, 1868, and April, 1868.

Therefore, deducting these two states from the purported ratifications of the 14th Amendment, only 23 State ratifications at most could be claimed; whereas the ratification of 28 States, or three-fourths of 37 States in the Union, were required to ratify the 14th Amendment.

From all of the above documented historic facts, it is inescapable that the 14th Amendment never was validly adopted as an article of the Constitution, that it has no legal effect, and it should be declared by the Courts to be unconstitutional, and therefore null, void and of no effect.

THE CONSTITUTION STRIKES THE 14TH AMENDMENT WITH NULLITY

The defenders of the 14th Amendment contend that the U.S. Supreme Court has finally decided upon its validity. Such is not the case.

In what is considered the leading case, Coleman v. Miller, 307 U.S. 448, 59 S. Ct. 972, the U.S. Supreme Court did not uphold the validity of the 14th Amendment.

In that case, the Court brushed aside constitutional questions as though they did not exist. For instance, the Court made the statement that:

"The legislatures of Georgia, North Carolina and South Carolnia had rejected the amendment in November and December, 1866. New governments were erected in those States (and in others) under the direction of Congress. The new legislatures ratified the amendment, that of North Carolina on July 4, 1868, that of South Carolina on July 9, 1868, and that of Georgia on July 21, 1868."

And the Court gave no consideration to the fact that Georgia, North Carolina and South Carolina were three of the original states of the Union with valid and existing constitutions on an equal footing with the other original states and those later admitted into the Union.

What constitutional right did Congress have to remove those state governments and their legislatures under unlawful military power set up by the unconstitutional "Reconstruction Acts," which had for their purpose, the destruction and removal of these legal state governments and the nullification of their Constitutions?

The fact that these three states and seven other Southern States had existing Constitutions, were recognized as states of the Union, again and again; had been divided into judicial districts for holding their district and circuit courts of the United States; had been called upon by Congress to act through their legislatures upon two Amendments, the 13th and 14th, and by their ratifications had actually made possible the adoption of the 13th Amendment; as well as their state governments having been re-established under Presidential Proclamations, as shown by President Andrew Johnson's Veto message and proclamations, were all brushed aside by the Court in Coleman by the statement that: "New governments were erected in those States (and in others) under the direction of Congress," and that these new legislatures ratified the Amendment.

The U.S. Supreme Court overlooked that it previously had held that at no time were these Southern States out of the Union. White v. Hart, 1871, 13 Wall. 646, 654.

In Coleman, the Court did not adjudicate upon the invalidity of the Acts of Congress which set aside those state Constitutions and abolished their state legislatures,—the Court simply referred to the fact that their legally constituted legislatures had rejected the 14th Amendment and that the "new legislatures" had ratified the Amendment.

The Court overlooked the fact, too, that the State of Virginia was also one of the original states with its Constitution and Legislature in full operation under its civil government at the time.

The Court also ignored the fact that the other six Southern States, which were given the same treatment by Congress under the unconstitutional "Reconstruction Acts", all had legal constitutions and a republican form of government in each state, as was recognized by Congress by its admission of those states into the Union. The Court certainly must take judicial cognizance of the fact that before a new state is admitted by Congress into the Union, Congress enacts an Enabling Act to enable the inhabitants of the territory to adopt a Constitution to set up a republican form of government as a condition precedent to the admission of the state into the Union, and upon approval of such Constitution, Congress then passes the Act of Admission of such state.

All this was ignored and brushed aside by the Court in the Coleman case. However, in Coleman the Court inadvertently said this:

"Whenever official notice is received at the Department of State that any amendment proposed to the Constitution of the United States has been adopted, according to the provisions of the Constitution, the Secretary of State shall forthwith cause the amendment to be published, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as a part of the Constitution of the United States."

In Hawke v. Smith, 1920, 253 U.S. 221, 40 S. Ct. 227, the U.S. Supreme Court unmistakably held:

"The fifth article is a grant of authority by the people to Congress. The determination of the method of ratification is the exercise of a national power specifically granted by the Constitution; that power is conferred upon Congress, and is limited to two methods, by action of the Legislatures of three-fourths of the states, or conventions in a like number of states. Dodge v. Woolsey, 18 How. 331, 348, 15 L. Ed. 401. The framers of the Constitution might have adopted a different method. Ratification might have been left to a vote of the people, or to some authority of government other than that selected. The language of the article is plain, and admits of no doubt in its intrepretation. It is not the function of courts or legislative bodies, national or state, to alter the method which the Constitution has fixed."

We submit that in none of the cases, in which the Court avoided the constitutional issues involved in the composition of the Congress which adopted the Joint Resolution for the 14th Amendment, did the Court pass upon the constitutionality of the Congress which purported to adopt the Joint Resolution for the 14th Amendment, with 80 Representatives and 23 Senators, in effect, forcibly ejected or denied their seats and their votes on the Joint Resolution proposing the Amendment, in order to pass the same by a two-thirds vote, as pointed out in the New Jersey Legislature Resolution on March 27, 1868.

The constitutional requirements set forth in Article V of the Constitution permit the Congress to propose amendments only whenever two-thirds of both houses shall deem it necessary,—that is, two-thirds of both houses as then constituted without forcible ejections.

Such a fragmentary Congress also violated the constitutional requirements of Article V that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

There is no such thing as giving life to an amendment illegally proposed or never legally ratified by three-fourths of the states. There is no such thing as amendment by laches; no such thing as amendment by waiver; no such thing as amendment by acquiescence; and no such thing as amendment by any other means whatsoever except the means specified in Article V of the Constitution itself.

It does not suffice to say that there have been hundreds of cases decided under the 14th Amendment to supply the constitutional deficiencies in its proposal or ratification as required by Article V. If hundreds of litigants did not question the validity of the 14th Amendment, or questioned the same perfunctorily without submitting documentary proof of the facts of record which made its purported adoption unconstitutional, their failure cannot change the Constitution for the millions in America. The same thing is true of laches; the same thing is true of acquiescence; the same thing is true of ill considered court decisions.

To ascribe constitutional life to an alleged amendment which never came into being according to specific methods laid down in Article V cannot be done without doing violence to Article V itself. This is true, because the only question open to the courts is whether the alleged 14th Amendment became a part of the Constitution through a

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[51] 15 Stat. p. 706.

[52] House Journal, 40th Congress, 2nd Sessn. p. 1126 etc.

[53] 15 Stat. p. 708.

method required by Article V. Anything beyond that which a court is called upon to hold in order to validate an amendment, would be equivalent to writing into Article V another mode of the amendment which has never been authorized by the people of the United States.

On this point, therefore, the question is, was the 14th Amendment proposed and ratified in accordance with Article V?

In answering this question, it is of no real moment that decisions have been rendered in which the parties did not contest or submit proper evidence, or the Court assumed that there was a 14th Amendment. If a statute never in fact passed by Congress, through some error of administration and printing got into the published reports of the statutes, and if under such supposed statute courts had levied punishment upon a number of persons charged under it, and if the error in the published volume was discovered and the fact became known that no such statute had ever passed in Congress, it is unthinkable that the Courts would continue to administer punishment in similar cases, on a non-existent statute because prior decisions had done so. If that be true as to a statute we need only realize the greater truth when the principle is applied to the solemn question of the contents of the Constitution.

While the defects in the method of proposing and the subsequent method of computing "ratification" is briefed elsewhere, it should be noted that the failure to comply with Article V began with the first action by Congress. The very Congress which proposed the alleged 14th Amendment under the first part of Article V was itself, at that very time, violating the last part as well as the first part of Article V of the Constitution. We shall see how this was done.

There is one, and only one, provision of the Constitution of the United States which is forever immutable—which can never be changed or expunged. The Courts cannot alter it; the executives cannot change it; the Congress cannot change it; the States themselves—even all the States in perfect concert—cannot amend it in any manner whatsoever, whether they act through conventions called for the purpose or through their legislatures. Not even the unanimous vote of every voter in the United States could amend this provision. It is a perpetual fixture in the Constitution, so perpetual and so fixed that if the people of the United States desired to change or exclude it, they would be compelled to abolish the Constitution and start afresh.

The unalterable provision is this: "that no State, without its consent, shall be deprived of its equal suffrage in the Senate."

A state, by its own consent, may waive this right of equal suffrage, but that is the only legal method by which a failure to accord this immutable right of equal suffrage in the Senate can be justified. Certainly not by forcible ejection and denial by a majority in Congress, as was done for the adoption of the Joint Resolution for the 14th Amendment.

Statements by the Court in the Coleman case that Congress was left in complete control of the mandatory process, and therefore it was a political affair for Congress to decide if an amendment had been ratified, does not square with Article V of the Constitution which shows no intention to leave Congress in charge of deciding whether there has been a ratification. Even a constitutionally recognized Congress is given but one volition in Article V, that is, to vote whether to propose an Amendment on its own initiative. The remaining steps by Congress are mandatory. If two-thirds of both houses shall deem it necessary. Congress shall propose amendments; if the Legislatures of two-thirds of the States make application, Congress shall call a convention. For the Court to give Congress any power beyond that to be found in Article V is to write the new material into Article V.

It would be inconceivable that the Congress of the United States could propose, compel submission to, and then give life to an invalid amendment by resolving that its effort had succeeded—regardless of compliance with the positive provisions of Article V.

It should need no further citations to sustain the proposition that neither the Joint Resolution proposing the 14th Amendment nor its ratification by the required three-fourths of the States in the Union were in compliance with the requirements of Article V of the Constitution.

When the mandatory provisions of the Constitution are violated, the Constitution itself strikes with nullity the Act that did violence to its provisions. Thus, the Constitution strikes with nullity the purported 14th Amendment.

The Courts, bound by oath to support the Constitution, should review all of the evidence herein submitted and measure the facts proving violations of the mandatory provisions of the Constitution with Article V, and finally render judgment declaring said purported Amendment never to have been adopted as required by the Constitution.

The Constitution makes it the sworn duty of the judges to uphold the Constitution which strikes with nullity the 14th Amendment.

And, as Chief Justice Marshall pointed out for a unanimous Court in Marbury v. Madison (1 Cranch 136 @ 179):

"The framers of the constitution contemplated the instrument as a rule for the government of courts, as well as of the legislature."

* * * * *

"Why does a judge swear to discharge his duties agreeably to the constitution of the United States, if that constitution forms no rule for his government?"

* * * * *

"If such be the real state of things, that is worse than solemn mockery. To prescribe, or to take this oath, becomes equally a crime."

* * * * *

"Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions * * * courts, as well as other departments, are bound by that instrument."

The federal courts actually refuse to hear argument on the invalidity of the 14th Amendment, even when the issue is presented squarely by the pleadings and the evidence as above.

Only an aroused public sentiment in favor of preserving the Constitution and our institutions and freedoms under constitutional government, and the future security of our country, will break the political barrier which now prevents judicial consideration of the unconstitutionality of the 14th amendment.

THE MIDEAST CRISIS—NOT BACKWARD TO BELLIGERENCY BUT FORWARD TO PEACE

Mr. PRYOR. Mr. Speaker, I ask unanimous consent that the gentleman from New York [Mr. TENZER] may extend his remarks at this point in the RECORD and include extraneous matter.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arkansas?

There was no objection.

Mr. TENZER. Mr. Speaker, the distinguished Foreign Minister of the State of Israel, Abba Eban, in his address to the United Nations Security Council on June 6, 1967, set the theme for a lasting peace in the Middle East so much desired by all the peace-loving nations of the world. His address was entitled, "Not Backward to Belligerency but Forward to Peace."

On June 7, 1967, following the first United Nations resolution calling for a cease-fire in the Middle East, I stated to a distinguished group of Americans who visited me in Washington as follows:

I deem it most imperative that the terms of the agreement to follow the cease fire provide effective guarantees, to the end that permanent peace may be established in the Middle East.

The interests of world peace would best be served if the terms provide:

1. For *recognition* of the validity of the sovereignty of the State of Israel by the U.A.R. and other Arab states.
2. A *reaffirmation* that the Gulf of Aqaba is an international waterway and will remain open for free passage to shipping of all nations through the Straits of Tiran.
3. An opening of the Suez Canal to shipping of *all* nations.
4. An ending of terrorism and border raids so that Israel may carry out its desire to live in peace with its neighbors.
5. For direct negotiations between Israel and her Arab neighbors for the resolution of other pending issues.

Indeed, it is within the province of the sovereign State of Israel to speak its mind on the terms of the agreement to follow the cease-fire—the terms which in its view will best insure permanent peace in the Middle East. We on the other hand take the opportunity to make suggestions which in our opinion will best secure the peace of the world—thereby also serving the best interests of the United States.

An elaboration of the five points suggested on June 7, 1966, is accordingly in order.

I. THE STATE OF ISRAEL A SOVEREIGN NATION

The State of Israel is a member of the United Nations—a full-fledged member of the family of nations. Though the integrity of her borders were guaranteed by the major powers—three times in 20 years—the State of Israel was obliged to go to war to put a stop to the violation of her boundary lines.

It is therefore basic to any plan for permanent peace in the Middle East that the sovereignty of the State of Israel be recognized by her neighbors. This fact cannot be questioned—this truth is and should not be negotiable because its import was underlined by the events of the past 10 days.

The foundation for a permanent peace in the Middle East must be the absolute and unqualified recognition by the Arab States of the right of the State of Israel to exist as a sovereign state among other sovereign states. When this foundation is laid, then Israel and her Arab neighbors can, through direct negotiations, begin to build the structure leading to permanent peace.

II. STRAIT OF TIRAN AN INTERNATIONAL WATERWAY

Since 1950, Egypt has repeatedly given assurances that the Strait of Tiran would remain open for "innocent passage

STATE OF GEORGIA

The Georgia Archives, University System of Georgia

I, Christopher M. Davidson, J.D., Director of The Georgia Archives, do hereby certify that the three (3) page document hereto attached and made part of this certificate is a true and correct copy of the entire file for Act No. 45 (SR 39), approved March 8, 1957, "A memorial to the Congress of the United States of America urging them to enact such legislation as they deem fit to declare that the 14th and 15th amendments to the Constitution of the United States were never validly adopted..." and I further certify that the described act is on file and of official record in the Archives of the State of Georgia.

IN TESTIMONY WHEREOF, I have set my hand and affixed the Official Seal of the State of Georgia this twelfth day of April, 2016

Director, The Georgia Archives

A RESOLUTION

A memorial to the Congress of the United States of America urging them to enact such legislation as they may deem fit to declare that the 14th. and 15th. amendments to the Constitution of the United States were never validly adopted and that they are null and void and of no effect.

WHEREAS, the State of Georgia together with the ten other Southern States declared to have been lately in rebellion against the United States, following the termination of hostilities in 1865, met all the conditions laid down by the President of the United States, in the exercise of his Constitutional powers to recognize the governments of states, domestic as well as foreign, for the resumption of practical relations with the Government of the United States, and at the direction of the President did elect Senators and Representatives to the 39th Congress of the United States, as a State and States in proper Constitutional relation to the United States; and

WHEREAS, when the duly elected Senators and Representatives appeared in the Capitol of the United States to take their seats at the time for the opening of the 39th Congress, and again at the times for the openings of the 40th and the 41st Congresses, hostile majorities in both Houses refused to admit them to their seats in manifest violation of Articles I and V of the United States Constitution: and

WHEREAS, the said Congresses, not being constituted of Senators and Representatives from each State as required by the Supreme Law of the Land, were not, in Constitutional contemplation, anything more than private assemblages unlawfully attempting to exercise the Legislative Power of the United States; and

WHEREAS, the so-called 39th Congress, which proposed to the Legislatures of the several States an amendment to the Constitution of the United States, known as the 14th Amendment, and the so-called 40th Congress, which proposed an amendment known as the 15th Amendment, were without lawful power to propose any amendment whatsoever to the Constitution; and

WHEREAS, two-thirds of the Members of the House of Representatives and of the Senate, as they should have been constituted, failed to vote for the submission of these amendments, and,

WHEREAS, all proceedings subsequently flowing from these invalid proposals, purporting to establish the so-called 14th and 15th Amendments as valid parts of the Constitution, were null and void and of no effect from the beginning, and

WHEREAS, furthermore, when these invalid proposals were rejected by the General Assembly of the State of Georgia and twelve other Southern States, as well as of sundry Northern States, the so-called 39th and 40th Congresses, in flagrant disregard of the United States Constitution, by the use of military force, dissolved the duly recognized State Governments in Georgia and nine of the other Southern States and set up military occupation or puppet state governments, which compliantly ratified the invalid proposals, thereby making (at the point of the bayonet) a mockery of Section 4, Article IV of the Constitution, guaranteeing "to every State in

this Union a Republican Form of Government," and guaranteeing protection to "each of them against invasion," and

WHEREAS, further, the pretended ratification of the so-called 14th and 15th Amendments by Georgia and other States whose sovereign powers had been unlawfully seized by force of arms against the peace and dignity of the people of those States, were necessary to give color to the claim of the so-called 40th and 41st Congresses that these so-called amendments had been ratified by three-fourths of the States; and

WHEREAS, it is a well-established principle of law that the mere lapse of time does not confirm by common acquiesence an invalidly-enacted provision of law just as it does not repeal by general desuetude a provision validly enacted; and

WHEREAS, the continued recognition of the 14th and 15th Amendments as valid parts of the Constitution of the United States is incompatible with the present day position of the United States as the World's champion of Constitutional governments resting upon the consent of the people given through their lawful representatives;

NOW, THEREFORE, BE IT RESOLVED BY THE GENERAL ASSEMBLY OF THE STATE OF GEORGIA:

The Congress of the United States is hereby memorialized and respectfully urged to declare that the exclusions of the Southern Senators and Representatives from the 39th, 40th and 41st Congresses were malignant acts of arbitrary power and rendered those Congresses invalidly constituted; that the forms of law with which those invalid Congresses attempted to clothe the submission of the 14th and 15th Amendments and to clothe the subsequent acts to compel unwilling States to ratify these invalidly proposed amendments, imparted no validity to these acts and amendments; and that the so-called 14th and 15th Amendments to the Constitution of the United States are null and void and of no effect.

BE IT FURTHER RESOLVED that copies of this memorial be transmitted forthwith by the Clerk of the House and the Secretary of the Senate of the State of Georgia to the President of the United States, the Chief Justice of the United States, the President of the Senate and the Speaker of the House of Representatives of Congress of the United States, and the Senators and Representatives in the Congress from the State of Georgia.

ENROLLMENT

2-22-1957

The Committee of the Senate Administrative Affairs has examined the within and finds the same properly enrolled.

Chairman

President of the Senate

Secretary of the Senate

Speaker of the House

Clerk of the House

Received Ben Y. Wiggins
Secretary, Executive Department

This 4 day of March 1957

Approved

Governor

This 8 day of March 1957

Act No. 45

S. R. No. 39

General Assembly

A RESOLUTION

Memorializing the Congress of United States to enact such Legislation as they deem fit to declare that the 14th and 15th amendments to the Constitution of the United States are null and void.

IN SENATE

Read 1st time Feb. 8, 1957
Read 2nd time
Read 3rd time

And Adopted

Ayes Nays

Secretary of the Senate

IN HOUSE

Read 1st time Feb. 13, 1957
Read 2nd time
Read 3rd time

And Adopted

Ayes Nays

Clerk of the House

By: Senator Bass of the 30th

JOURNAL

A Hamilton

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1866.

regulate the same," have carefully examined the same, and find them correctly engrossed.

M. S. DUNN, One of Committee.

Accepted.

Mr. Hallonquist introduced a Joint Resolution authorizing the Comptroller to issue his warrant on the Treasurer to pay each and every county in the State their respective School Fund.

Read and referred to Committee on Judiciary.

Message from the Senate received, announcing the passage of the following bill, originating in that body:

A bill to be entitled "An act to prevent judgments from becoming dormant, and to create and preserve judgment liens."

Also, a bill entitled "An act to provide for the support, maintenance and education of indigent children of deceased Confederate soldiers."

Also, a bill entitled "An act to amend an act concerning proceedings in the District Courts," approved March 16th, 1848.

Mr. Smith of Harris made the following report from Committee on Federal relations:

COMMITTEE ROOM,
October 13, 1866.

Hon. N. M. Burford, Speaker of the House of Representatives:

SIR: The Committee on Federal Relations, to which was referred the communication of the Hon. Wm. H. Seward, Secretary of State for the United States to his Excellency the Governor of the State of Texas, dated June 16, 1866, covering a resolution of Congress proposing to the Legislatures of the several States a fourteenth article to the Constitution of the United States, have the honor to report as follows:

The amendment to the Constitution proposed by this joint resolution as Article XIV is presented to the Legislature of Texas for its action thereon, under Article V., of that Constitution. This Article V., providing the mode of making amendments to that instrument, contemplates the participation by all the States through their representatives in Congress, in proposing amendments. As representatives from nearly one-third of the States were excluded from the Congress proposing the amendments, the constitutional requirement was not complied with; it was violated in letter and in spirit; and the proposing of these amendments to States which were excluded from all participation in their initiation in Congress, is a nullity.

Your committee might rest the whole matter here, but they will not propose the rejection of the amendments on the denial

of the right to participate in originating them, but will consider the substance of the amendments submitted.

The first section proposes to deprive the States of the right which they have possessed since the revolution of 1776 to determine what shall constitute citizenship of a State, and to transfer that right to the Federal Government. Its object is, provided the section shall become a part of the Constitution, under the color of a generality, to declare negroes to be citizens of the United States, and therefore, citizens of the several States, and as such entitled to all "the privileges and immunities" of white citizens; in these privileges would be embraced the exercise of suffrage at the polls, participation in jury duty in all cases, bearing arms in the militia, and other matters which need not be here enumerated. It is unnecessary to appeal to the fact that in most of the original free States, negroes have been by law, and in all of them by immemorial usage, excluded from these "privileges and immunities," now sought to be forced on the Southern States, to show that the amendment proposed in this section contemplates and intends a violation not only of justice, but of the common instincts of our nature. In the opinion of your committee it is not desirable, it is not fitting, it is not demanded by the smallest show of right, that the broad, comprehensive principles which have pervaded the Constitution of the United States since its adoption more than three-fourths of a century since, should be abandoned, sacrificed and become a burlesque to gratify the vanity, the malice, the fanaticism of rivals and imitators of Anacharis Klootz.

There is scarcely any limit to the power sought to be transferred by this section from the States to the United States. Congress might declare almost any right or franchise whatever, to be the privilege or immunity of a citizen of the United States and it would immediately attach to every citizen of every State, whether white man or descendant of African. To estimate the comprehensive scope of the power herein sought for Congress—that body might declare miscegenation a 'privilege or immunity.'

The second section is in some degree the counterpart and complement of the first, in its object to force negro suffrage on the Southern States. As a punishment for refusing suffrage to the negro, it proposes to deprive these States of their rightful share in the Electoral Colleges and in the representation in Congress. To appreciate the full scope of this second section, it must be considered in connection with the third section which is a sweeping disfranchisement of the white inhabitants of the Southern States. The two sections together appear in the light of a nefarious con-

spiracy to transfer, so far as crafty and iniquitous legislation can effect the object, the government, the civilization of these States from the white race to negroes. Your committee will not characterize as it deserves the pretence that this section has been dictated by a spirit of justice towards negroes; for a majority of the States proposing these amendments to the Constitution have from the foundation of the government to the present time, in their State Constitutions, denied to the free negroes among them the identical franchise now sought to be wrested from the Southern States. This injustice is more palpable from the fact that the free negroes are a most inconsiderable element of their population, while their numbers with us, if these amendments shall be adopted and become the law of the land, would profoundly modify if not destroy our political and even our social institutions. To effect this wrong, it is now proposed to change the basis of representation of the States in Congress and in the Electoral College, which was established by the framers of the Constitution, and acquiesced in without a murmur to the present time, and in such manner as to deprive the South of a portion of their just representation as now guaranteed in the Constitution, and to give to the North a still more overwhelming preponderance in the National councils than they already possess.

The third section is designed to effect the disfranchisement of the white inhabitants of these States. Its provision is so sweeping as to embrace every individual in the State who may, at any time of his life, either in Texas or any other State, have taken an oath to support the Constitution of the United States, and who shall also have engaged in the late war, or given aid and comfort to persons so engaged. It embraces all persons holding civil offices; however inconsiderable; all soldiers, whether volunteers or conscripts; every person who may have given a blanket, or even a meal of victuals to a Confederate soldier. The very charities of life are made a crime by this joint resolution. It is idle to attempt to draw any distinction between the practical effects of a denial of the right to vote and that of holding office. Under the sweeping exclusion, whom would you have to vote for? It establishes what might, by a perversion of terms, be called an aristocracy; but it would be an aristocracy the most hideous and revolting ever imagined; it would be an aristocracy founded on baseness and incapacity. Under the sweeping provisions of this act, there would be a comparatively small number eligible to offices of trust and honor, except those who, from want of virtue and want of capacity, have never been deemed worthy by their fellow-cititizens to fill even the humblest public

office. This third section, if it shall become a part of the organic law, will be nothing less than the disfranchisement of the citizens of this State; it proposes to stigmatize and degrade all that is most elevated and most worthy, and it coolly asks us to be the executioners, the instruments of the degradation of our own people. Few men among us may care to hold office, but no one, with the spirit of his fathers in him, will willingly submit to be held up as unworthy, and least of all will he be the tool, and plead guilty to the infamy sought to be inflicted on us. The right of representation has ever been deemed an inestimable inheritance; but it would be weak as well as wicked to barter our birthight for the empty shadow of representation offered in these amendments.

The fourth section is sufficiently provided for by the action of the late Convention of this State.

The fifth section is the fitting completion of the legislation proposed in the preceding sections. Adopt this section, invest Congress with this hitherto unthought-of control over State legislation, over State courts, over all State action, and you lay your State and its citizens, without the shadow scarcely of protection, at the foot of any majority of Congress which may rule the hour, however vindictive or malignant that majority may be. This Legislature does not need to be admonished what evil and unrelenting passions may sway majorities; our own history, the history of the world, is full of these examples. You are herein called on to shear the last lock of your strength; to throw away the armor which is yet furnished you in the Constitution of the United States. Let these proposed amendments, with this section, be engrafted into the Constitution, and it is a virtual repeal of that Article which declares, "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." As the first sections embrace every thing touching citizenship, what right, what franchise can the citizens possess that may not be disposed of, destroyed, abrogated under this "appropriate legislation?" To so abuse power would indeed be monstrous; but your Committee are not permitted to ignore the threats solemnly made and often repeated by the acknowledged leader of the House of Representatives, and of the Radical abolition party. If there be any one who, in weariness of soul, would yield over this fatal and irrecoverable power in exchange for a shadowy, an unsubstantial and curtailed representation in Congress, we adjure him, in behalf of the freedom and honor of his fellow-citizens, to pause.

We have been warned by the Radical Press of the North; we have been warned by letters written by gentlemen, who are avowed members of the Radical party, to hide from the threatened wrath of the Radical party in Congress, by ratifying these amendments to the Constitution. Mr. Thaddeus Stevens, the leader of that party in Congress, in his place in the House of Representatives, and more recently in his speech at Bedford, has proclaimed what the punishment shall be, which is in store for our contumacy. Radical gentlemen have, in their letters, told us of the consequences. Conspicuous among the consequences are abrogation of our State Government; the restoration of martial law with a military Governor; the confiscation of the balance of our property, and the granting of freehold homesteads to negroes on the plantations whereon they had been slaves; the impeachment of the President; the abrogation of all pardons granted by authority of the President, and trials for treason before military commissions, which may ensue on such abrogation; the sweeping disfranchisement of our people, and the passage by Congress of an Enabling Act to authorize certain classes, which means the black race and a fraction of our own people, to create a new State Government on the ruins of our existing Constitution, and with such new State Government for Texas to re-enter the American Union! These are threats, not made by implication, but in express terms, under which your committee have considered the amendments referred to them; and they are stated at some length by your committee, that the House may know that we are not unmindful of the solemn circumstances under which we are acting. Our own experience, the history of human passion, do not permit us to consider these threats as unmeaning; the Northern press foreshadows the success of the Radicals; the telegraphic wires are already heralding their success in the first Northern elections.

In determining the action which your Committee shall herein recommend, touching the proposed amendments, they have not been guided by considerations of momentary expediency; they base their action on principle. But as it has been insidiously intimated, both by a certain portion of the Northern press, and in the letters of members of the radical party just alluded to, that the adoption of these amendments would save for us our State government, your Committee will simply remark that no pledge has been given—no party is authorized to make such pledge; that your State government so preserved, and at the cost of principle, would not be worth the having.

If the proposed amendments to the Constitution shall be rati-

fied by a sufficient number of States to become a portion of the organic law of the country, notwithstanding our refusal to ratify them, we shall then yield to them full obedience as a law-abiding people. If we reject them, we can appeal from the passions engendered by the late civil war, to the sense of justice, to the love of right, to the principles of free, representative government, which, we believe, are deeply and firmly implanted in the hearts of the American people; we will "appeal from Philip drunk to Philip sober." But, if with willing and ignominious submission, if in very poverty of manly spirit; if in delusive hope of momentary ease, we sacrifice the inestimable inheritance of American citizenship, and declare all who have been most honored and esteemed among us, to be unworthy and infamous, we shall incur the contempt, or at best, but the sneering pity of our enemies, who would humiliate and disfranchise us; we shall take the first, fatal step in that rapid career of abasement of spirit, so often witnessed in the history of peoples, that abasement of spirit which developed the cunning Greek of the middle ages out of the conqueror of Marathon, and which engendered the Italian of the dark ages out of the Roman, once the mighty master of the world. Nor have your committee, on the most careful and unimpassioned review of the circumstances surrounding us, found the least reason to hope that any improper concession on our part, that any humiliation or abasement, however ample or however abject, would obtain for us the abatement of one jot or one tittle from the malignant purposes of our enemies. Nay, such course on our part would stimulate them rather.

On the other hand, if we reject their amendments, if we refuse willingly to transfer our State Government and our representative rights in the electoral colleges and in Congress, from the great master race of the races constituting the Caucasian family of nations, to "Africans and the descendants of Africans;" if amid the ruins of our property, we stand undaunted, unappalled by the dangers which gird us, and refuse willingly to sacrifice for an empty shadow, delusively promising present quiet, the rights of the State, whose representatives we are, the priceless rights of American citizenship, rights declared in the Constitution itself to be inalienable, we shall preserve our national spirit as an integral portion of the American people, we shall retain our own self-respect, we shall command the respect of the civilized world and of our enemies; we shall have the honorable sympathies of the great masses and of the good men of the Northern States; and when the passions of the day are past, they will do us justice, and thank us for the stand we here make.

Cowardice, baseness of spirit never wins; justice is often tardy, but eventually triumphs; the people of other States will eventually say of much abused Texas, her people are worthy.

Your committee are then of opinion that submitting to our situation in good faith, having frankly yielded up the issues decided in the late war, with a full purpose to yield an honest obedience to the laws now in force and to those which may hereafter be established, however distasteful to us, relying on the eventual justice of the great American people, it is our bounden duty to reject the amendments to the Constitution of the United States, proposed as Article XIV. in the Joint Resolution of Congress; and they have accordingly reported the following resolution:

RESOLUTION.

Be it resolved, That the Legislature of the State of Texas do not ratify the amendments to the Constitution of the United States, proposed as Article XIV. in the Joint Resolution of the Congress of the United States.

ASHBEL SMITH, Chairman.
D. M. SHORT,
N. THOMAS of Fayette,
R. H. BELLAMY,
J. J. MONCURE,
G. W. DIAMOND,
E. CHAMBERS.

Mr. Shaw moved the adoption of the report.

Mr. Short moved a call of the House. Seconded, and ordered.

ABSENTEES—Messrs. Chavis, Munson, Richardson and Worsham.

Absentees sent for.

Mr. Thomas of Fayette moved a suspension of the call. Lost.

Messrs. Chavis, Munson and Worsham, being announced, on motion of Mr. King, call of the House suspended; and the question recurring upon the adoption of the report, yeas and nays being ordered, stood:

YEAS — Messrs. Speaker, Anderson, Armstrong, Atkinson, Baker, Barmore, Barrett, Beauchamp, Bellamy, Blount, Bonner, Bradley, Brady, Cochran of Dallas, Daniel, Damron, Dashiell, Davis, Doom, Dunn, Durand, Durst, Evans, Foster, Garrett, Giddings, Gaston. Glasscock, Glasco, Gurley, Holford, Hallonquist, Hanks, Hancock, Harmon, Hendley, Hooks, Hume, Jackson, Jones of Titus, Kendall, King, Kyle, Lewter, Lund, McKee, Merriman, Munson, Phelps, Reeves, Richardson, Shaw,

Short, Simonds, Smith of Harris, Smith of Houston, Stroud, Tate, Thomas of Fayette, Thompson, Thurmond, Trowell, Tyus, Weaver, Wheelock, Whitsett, Whitton, Wiley and Worsham—70.

NAYS—Messrs. Black, Chavis, Deavalon, Murchison and Tegener—5.

Report adopted.

Mr. Kyle moved the adoption of the resolution offered by the Committee.

Yeas and nays being ordered, stood:

YEAS—Messrs. Speaker, Anderson, Armstrong, Atkinson, Baker, Barmore, Barrett, Beauchamp, Bellamy, Blount, Bonner, Bradley, Brady, Cochran of Dallas, Daniel, Damron, Dashiell, Davis, Doom, Dunn, Durand, Durst, Estis, Foster, Garrett, Garcia, Giddings, Gaston, Glasscock, Glasco, Gurley, Holford, Hallonquist, Hanks, Hancock, Harmon, Hendley, Hooks, Hume, Jackson, Jones of Titus, Kendall, King, Kyle, Lewter, Lund, McKee, Merriman, Munson, Phelps, Reeves, Richardson, Shaw, Short, Simonds, Smith of Harris, Smith of Houston, Stroud, Tate, Thomas of Fayette, Thompson, Thurmond, Trowell, Tyus, Weaver, Wheelock, Whitsett, Whitton, Wiley, Worsham—70.

NAYS—Messrs. Black, Chavis, Deavalon, Murchison and Tegener—5.

Resolution adopted.

Mr. Bonner moved that two thousand copies of the Report of Committee on Federal Relations, together with Resolution offered by said Committee, as well as the proposed amendment to the Constitution of the United States, be printed.

Mr. Short offered the following resolution as a substitute to the amendment offered by Mr. Bonner:

Resolved, That the Committee on Printing and Contingent Expenses be required to cause to be published five thousand copies of the report and resolutions of the Committee on Federal Relations on the proposed 14th amendment of the Federal Constitution, and that the yeas and nays upon the adoption of the same be appended thereto.

Resolution accepted as substitute by Mr. Bonner to his motion.

Mr. Bradley moved to amend by striking out "five thousand," and insert "two thousand."

Mr. Whitsett moved to strike out "two thousand," and insert "twenty-five hundred."

Mr. Kyle moved to amend the amendment by striking out "two thousand," and insert "three thousand."

Mr. Bradley accepted amendment.

The question recurring on the adoption of the amendment of Mr. Bradley, the same was put and carried.

Mr. Bonner moved to amend by inserting after the word "Constitution," "together with the said proposed amendments to the Constitution of the United States."

Adopted.

Resolution from the Senate with regard to appointing a joint committee to correspond with the Postmaster-General of the United States on the subject of mail service, taken up, and Messrs. Wheelock and Barrett appointed as committee on part of the House.

The House appointed Messrs. Hume, Thompson and Bonner as Committee of Conference to confer with like committee on part of the Senate on the disagreement of the two Houses to the Senate's amendment to the bill incorporating the Trinity River Slack-Water Navigation Company.

Mr. Kyle moved a reconsideration of the vote taken yesterday, sustaining the Governor's veto message in relation to a bill declaring A. J. and J. C. Davis citizens of Denton county.

Lost.

By leave, Mr. Hanks introduced a bill prohibiting the sale of ardent spirits within certain boundaries around the Stovall Academy.

Read first time, and referred to Committee on State Affairs.

House bill concerning alien passengers, taken up, with amendments offered by the Senate, and amendments concurred in.

Senate bill incorporating the Tyler Manufacturing Company, taken up, read first time.

On motion of Mr. Brady, rules suspended, bill read third time.

On motion, rules further suspended, bill read third time, and passed by the following two-third vote:

YEAS—Messrs. Armstrong, Baker, Barmore, Beauchamp, Bellamy, Black, Blount, Bonner, Brady, Daniel, Damron, Dashiell, Davis, Deavalon, Doom, Dunn, Durand, Durst, Estis, Garcia, Giddings, Gaston, Glasscock, Glasco, Gurley, Hallonquist, Hanks, Hancock, Harmon, Hendley, Hooks, Hume, Jackson, Jones of Titus, Kendall, King, Kyle, Lewter, Lund, McKee, Munson, Murchison, Phelps, Reeves, Richardson, Shaw, Short, Simonds, Smith of Harris, Stroud, Tegener, Thomas of Fayette, Thompson, Thurmond, Trowell, Weaver, Wheelock, Whitsett, Whitton, Wiley, Worsham—61.

NAYS—None.

Senate bill, amending the 56th Section of an act entitled "An act to regulate proceedings in the County Court pertaining to

CONSTITUTIONAL LAW

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VOLUME VI

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by railroad companies,[20] and the fact that not all the surviving soldiers and sailors of the civil war and their immediate relatives are in indigent circumstances.[1] In passing on the validity of laws regulating the conditions of employment the courts have noticed the fact that more than half of the states have enacted laws on the same subject.[2]

Effect of Unconstitutional Statutes

117. General Principles.—The general rule is that an unconstitutional statute, though having the form and name of law, is in reality no law,[3] but is wholly void,[4] and in legal contemplation is as inoperative as if it had never been passed.[5] Since an unconstitutional law is void, it imposes no duties[6] and confers no power or authority on any one;[7] it affords protection to no one,[8] and no one is bound to obey it,[9] and no courts are bound to enforce it.[10] When a judgment

20. People *v.* Detroit United Ry., 134 Mich. 682, 97 N. W. 36, 104 A. S. R. 626, 63 L.R.A. 746.

1. Beach *v.* Bradstreet, 85 Conn. 344, 82 Atl. 1030, Ann. Cas. 1913B 946.

2. People *v.* Elerding, 254 Ill. 579, 98 N. E. 982, 40 L.R.A.(N.S.) 893.

3. *Ex parte* Siebold, 100 U. S. 371, 25 U. S. (L. ed.) 717; Huntington *v.* Worthen, 120 U. S. 97, 7 S. Ct. 469, 30 U. S. (L. ed.) 588; Threadgill *v.* Cross, 26 Okla. 403, 109 Pac. 558, 138 A. S. R. 964; *Ex p.* Hollman, 79 S. C. 9, 60 S. E. 19, 14 Ann. Cas. 1105, 21 L.R.A.(N.S.) 242; State *v.* Candland, 36 Utah 406, 104 Pac. 285, 140 A. S. R. 834, 24 L.R.A.(N.S.) 1260; Bonnett *v.* Vallier, 136 Wis. 193, 116 N. W. 885, 128 A. S. R. 1061, 17 L.R.A.(N.S.) 486.
Note: 3 Ann. Cas. 581.

4. Cohen *v.* Virginia, 6 Wheat. 264, 5 U. S. (L. ed.) 257; *Ex parte* Siebold, 100 U. S. 371, 25 U. S. (L. ed.) 717; Michigan State Bank *v.* Hastings, 1 Doug. (Mich.) 225, 41 Am. Dec. 549; State *v.* Tufly, 20 Nev. 427, 22 Pac. 1054, 19 A. S. R. 374 and note; State *v.* Williams, 146 N. C. 618, 61 S. E. 61, 14 Ann. Cas. 562, 17 L.R.A.(N.S.) 299; *Ex parte* Hollman, 79 S. C. 9, 60 S. E. 19, 14 Ann. Cas. 1105, 21 L.R.A.(N.S.) 242; Servonitz *v.* State, 133 Wis. 231, 113 N. W. 277, 126 A. S. R. 955.
Note: 22 A. S. R. 649.

5. Gunn *v.* Barry, 15 Wall. 610, 21 U. S. (L. ed.) 212; Louisiana *v.* Pilsbury, 105 U. S. 278, 26 U. S. (L. ed.) 1090; State *v.* Candland, 36 Utah 406, 104 Pac. 285, 140 A. S. R. 834, 24 L.R.A.(N.S.) 1260; Bonnett *v.* Vallier, 136 Wis. 193, 116 N. W. 885, 128 A. S. R. 1061, 17 L.R.A.(N.S.) 486.

6. State *v.* Candland, 36 Utah 406, 104 Pac. 285, 140 A. S. R. 834, 24 L.R.A.(N.S.) 1260.

7. Felix *v.* Wallace County Board of Com'rs, 62 Kan. 832, 62 Pac. 667, 84 A. S. R. 424.

8. Huntington *v.* Worthen, 120 U. S. 97, 7 S. Ct. 469, 30 U. S. (L. ed.) 588; Board of Highway Com'rs *v.* Bloomington, 253 Ill. 164, 97 N. E. 280, Ann. Cas. 1913A 471; State *v.* Williams, 146 N. C. 618, 61 S. E. 61, 14 Ann. Cas. 562, 17 L.R.A.(N.S.) 299; State *v.* Candland, 36 Utah 406, 104 Pac. 285, 140 A. S. R. 834; Bonnett *v.* Vallier, 136 Wis. 193, 116 N. W. 885, 128 A. S. R. 1061, 17 L.R.A.(N.S.) 486. See *infra*, par. 118.

9. State *v.* Williams, 146 N. C. 618, 61 S. E. 61, 14 Ann. Cas. 562, 17 L.R.A.(N.S.) 299.

10. U. S. *v.* Realty Co., 163 U. S. 427, 16 S. Ct. 1120, 41 U. S. (L. ed.) 215; Chicago, I. & L. R. Co. *v.* Hackett, 228 U. S. 559, 33 S. Ct. 581, 57 U. S. (L. ed.) 966; Hammond *v.* Clark, 136 Ga. 313, 71 S. E. 479, 38 L.R.A.

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of any court is based on an unconstitutional law, it has been said that it has no legitimate basis at all, and is not to be treated as a judgment of a competent tribunal,[11] and courts of other states are not required to give to it the full faith and credit commanded by the provisions of the United States constitution as to the public acts, records and judicial proceedings of other states.[12] An unconstitutional law cannot operate to supersede any existing valid law;[13] and accordingly where a clause repealing a prior law is inserted in an act, which act is unconstitutional and void, the provision for the repeal of prior laws will fall with it and will not be permitted to operate as repealing such prior laws.[14] A contract which rests on an unconstitutional statute is void,[15] and creates no obligation to be impaired by subsequent legislation.[16] These general principles apply to the constitutions as well as to the laws of the several states in so far as they are repugnant to the constitution and laws of the United States.[17]

118. Protection of Rights under Unconstitutional Laws.—The general rule is that an unconstitutional act of the legislature protects no one.[18] It is said that all persons are presumed to know the law, meaning that ignorance of the law excuses no one. Consequently, if any person acts under an unconstitutional statute, the general rule is that he does so at his peril, and must take the consequences.[19] It has been declared that an unconstitutional act cannot operate to create an office,[20] and any department of government exceeding the limits of its constitutional power acts wholly without authority, and can confer no authority on others;[1] but this doctrine is not enforced rigorously, and it is generally recognized that until a statute has been declared unconstitutional, it is sufficient to confer on an officer acting under it such color of title as will constitute him an officer de facto.[2] Whether an unconstitutional act of the legislature is sufficient to form

(N.S.) 77; State *v.* Williams, 146 N. C. 618, 61 S. E. 61, 14 Ann. Cas. 562, 17 L.R.A.(N.S.) 299.

11. Servonitz *v.* State, 133 Wis. 231, 113 N. W. 277, 126 A. S. R. 955.

12. Vanuxem *v.* Hazlehursts, 4 N. J. L. 192, 7 Am. Dec. 582. See JUDGMENTS.

13. Chicago, I. & L. R. Co. *v.* Hackett, 228 U. S. 559, 33 S. Ct. 581, 57 U. S. (L. ed.) 966.

14. State *v.* Rice, 115 Md. 317, 80 Atl. 1026, Ann. Cas. 1913A 1247, 36 L.R.A.(N.S.) 344. As to the effect of partial unconstitutionality in general, see *infra*, par. 121 *et seq.*

15. Note: 64 Am. Dec. 51.

16. Thomas *v.* State, 76 Ohio St. 341, 81 N. E. 437, 118 A. S. R. 884, 10 L.R.A.(N.S.) 1112.

17. Cohen *v.* Virginia, 6 Wheat. 264, 5 U. S. (L. ed.) 257; Gunn *v.* Barry, 15 Wall. 610, 21 U. S. (L. ed.) 212.

18. See *supra*, par. 117.

19. Sumner *v.* Beeler, 50 Ind. 341, 19 Am. Rep. 718.

Note: 64 Am. Dec. 53.

20. State *v.* Candland, 36 Utah 406, 104 Pac. 285, 140 A. S. R. 834; Bonnett *v.* Vallier, 136 Wis. 193, 116 N. W. 885, 128 A. S. R. 1061, 17 L.R.A. (N.S.) 486.

1. Kelley *v.* Bemis, 4 Gray (Mass.) 83, 64 Am. Dec. 50 and note.

2. State *v.* Carroll, 38 Conn. 449, 9

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the basis for a corporation de facto is a question as to which the courts are not entirely agreed.[3] The courts also appear to be divided on the question as to the extent to which moral obligations may be recognized as arising out of unconstitutional laws. Some hold that persons acting under such a statute are recognized as having moral obligations sufficient to sustain appropriation for their payment from the public treasury,[4] while others take the opposite view.[5] One result of the unconstitutionality of a statute is to relieve a person from the obligation of complying with provisions inserted in a contract merely to comply with the requirements of such law. In cases of that sort the binding force of the stipulations and provisions so inserted depends on the validity of the statute requiring their insertion, and if this statute is unconstitutional these stipulations, although incorporated in the contract, are not considered as of binding force upon the parties to such contract.[6] Similarly the acceptance of a license under a state law does not impose on the holder any obligation to comply with any provisions of the statute or regulations prescribed by the state which in fact are repugnant to the constitution.[7]

119. Effect in Criminal Cases.—The general principle that legal effect should not be given to unconstitutional laws [8] has been applied to criminal statutes which are in violation of the constitution. It has been decided that an offense created by an unconstitutional law is not a crime. A conviction under it is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment, and the courts must liberate a person imprisoned under it just as if there had never been the form of a trial, conviction and sentence.[9] It has been said that if a state legislature pass an ex post facto law, or a law impairing the obligation of contracts, it remains a harmless enactment on the statute book.[10] There are, however, certain apparent limitations and exceptions to the general principle, occasioned either by the interests of the community or the rights of individuals.

Am. Rep. 409; Miller *v.* Dunn, 72 Cal. 462, 14 Pac. 27, 1 A. S. R. 67; State *v.* Pooler, 105 Me. 224, 74 Atl. 119, 134 A. S. R. 543, 24 L.R.A.(N.S.) 408; Lang *v.* Bayonne, 74 N. J. L. 455, 68 Atl. 90, 122 A. S. R. 391, 12 Ann. Cas. 961, 15 L.R.A.(N.S.) 93. See also PUBLIC OFFICERS.

3. See CORPORATIONS.

4. U. S. *v.* Realty Co., 163 U. S. 427, 16 S. Ct. 1120, 41 U. S. (L. ed.) 215; Miller *v.* Dunn, 72 Cal. 462, 14 Pac. 27, 1 A. S. R. 67.

5. Michigan Sugar Co. *v.* Auditor General, 124 Mich. 674, 83 N. W. 625, 83 A. S. R. 354, 56 L.R.A. 329.

6. Cleveland *v.* Clements Bros. Const. Co., 67 Ohio St. 197, 65 N. E. 885, 93 A. S. R. 670, 59 L.R.A. 775.

7. W. W. Cargill Co. *v.* Minnesota, 180 U. S. 452, 21 S. Ct. 423, 45 U. S. (L. ed.) 619.

8. See *supra*, par. 117.

9. *Ex parte* Siebold, 100 U. S. 371, 25 U. S. (L. ed.) 717; State *v.* Williams, 146 N. C. 618, 61 S. E. 61, 14 Ann. Cas. 562, 17 L.R.A.(N.S.) 299; *Ex p.* Hollman, 79 S. C. 9, 60 S. E. 19, 14 Ann. Cas. 1105, 21 L.R.A.(N.S.) 242.

Note: 3 Ann. Cas. 581.

10. Craig *v.* Missouri, 4 Pet. 410, 7 U. S. (L. ed.) 903.

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16A Am. Jur. 2d Constitutional Law § 195

American Jurisprudence, Second Edition | August 2017 Update
Constitutional Law
George Blum, J.D., James Buchwalter, J.D., Paul M. Coltoff, J.D., Jefferson James Davis, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Tracy Farrell, J.D., J.S., Richard Link, J.D., Lucas Martin, J.D., Thomas Muskas, J.D., Jeffrey J. Shampo, J.D., Eric C. Surette, J.D., Susan L. Thomas, and Eleanor L. Grossman, J.D., Glenda K. Harnad, and Anne E. Melley, J.D., LL.M. of the staff of the National Legal Research Group, Inc.

V. Determination of Constitutionality of Legislation
D. Effect of Totally or Partly **Unconstitutional** Statutes
1. Total **Unconstitutionality**

§ 195. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

- West's Key Number Digest, Constitutional Law 1045 to 1047
- West's Key Number Digest, Statutes 63

Model Codes and Restatements

- Unif. Statute and Rule Construction **Act** (1995) § 9

The general rule is that an **unconstitutional** statute, whether federal or state, though having the form and name of law, is in reality no law[1] but is wholly void[2] and ineffective for any purpose.[3] Since **unconstitutionality** dates from the time of its enactment and not merely from the date of the decision so branding it,[4] an **unconstitutional** law, in legal contemplation, is as inoperative as if it had never been passed[5] and never existed;[6] that is, it is void ab initio.[7] Such a statute leaves the question that it purports to settle just as it would be had the statute not been enacted.[8]

Since an **unconstitutional** law is void, it follows that generally the statute imposes no duties,[9] confers no rights,[10] creates no office[11] or liabilities,[12] bestows no power or authority on anyone,[13] affords no protection,[14] is incapable of creating any rights or obligations,[15] does not allow for the granting of any relief,[16] and justifies no **acts** performed under it.[17]

Once a statute is determined to be **unconstitutional**, no private citizen or division of the state may take any further action pursuant to its provisions.[18] A contract that rests on an **unconstitutional** statute creates no obligation to be impaired by subsequent legislation.[19] No one is bound to obey an **unconstitutional** law,[20] and no courts are bound to enforce it.[21] A law contrary to the United States Constitution may not be enforced.[22] Once a statute has been declared **unconstitutional**, courts thereafter have no jurisdiction over alleged violations.[23] Persons convicted and fined under a statute subsequently held **unconstitutional** may recover the fines paid.[24]

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which he is entitled, and which is now or may hereafter be withheld by reason of such omission, but where nothing appears on the muster-roll or of record to show that a colored soldier was not a freeman at the date aforesaid, under the provision of the fourth section of the "Act making appropriations for the support of the army, for the year ending the thirtieth of June, eighteen hundred and sixty-five," the presumption shall be that the person was free at the time of his enlistment.

was a freeman at the time of enlistment, when nothing to the contrary appears.
1864, ch. 124, § 4. Vol. xiii. p. 129.

Sec. 2. *And be it further resolved*, That in determining who is or was the wife, widow, or heirs of any colored soldier, evidence that he and the woman claimed to be his wife or widow were joined in marriage by some ceremony deemed by them obligatory, followed by their living together as husband and wife up to the time of enlistment, shall be deemed sufficient proof of such marriage for the purpose of securing any arrears of pay, pension or other allowances due any colored soldier at the time of his death; and the children born of any such marriage shall be held and taken to be the lawful children and heirs of such soldier.

What to be sufficient proof of marriage of colored soldier, to secure arrears of pay, &c. due at his death.
Issue of such marriage to be lawful heirs.

Approved, June 15, 1866.

June 15, 1866. [No. 47.] *A Resolution making an Appropriation to enable the President to negotiate Treaties with certain Indian Tribes.*

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That one hundred and twenty-one thousand seven hundred and eighty-five dollars and seventy-seven cents, or so much thereof as may be necessary, be, and the same is hereby, appropriated, to be paid out of any money in the Treasury not otherwise appropriated, to enable the President to negotiate treaties with the Indian tribes of the Upper Missouri, and the Upper Platte rivers; said sum to be expended by the commissioner of Indian affairs, under the direction of the Secretary of the Interior.

Appropriation for negotiating treaties with certain Indian tribes.

Approved, June 15, 1866.

June 16, 1866. [No. 48.] *Joint Resolution proposing an Amendment to the Constitution of the United States.*

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two thirds of both Houses concurring.) That the following article be proposed to the legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three fourths of said legislatures, shall be valid as part of the Constitution, namely: —

Proposed amendment to the Constitution of the United States.

Article xiv.

Article XIV.

Sec. 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.

Who are citizens of the United States and of the States; their privileges and immunities.

Sec. 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

Apportionment of representatives.

the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SEC. 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.

Certain persons disqualified from holding office.

How disability may be removed.

SEC. 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.

The validity of the public debt not to be questioned.

Certain debts and obligations not to be assumed or paid.

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

This article may be enforced by legislation.

SCHUYLER COLFAX,
Speaker of the House of Representatives.
LA FAYETTE S. FOSTER,
President of the Senate pro tempore.

Attest:
EDW. MCPHERSON,
Clerk of the House of Representatives.
J. W. FORNEY,
Secretary of the Senate.

Received at Department of State June 16, 1866.

[No. 49.] *Joint Resolution relative to Appointments to the Military Academy of the United States.*

June 16, 1866.

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the age for the admission of cadets to the United States Military Academy shall hereafter be between seventeen and twenty-two years; but any person who has served honorably and faithfully not less than one year as an officer or enlisted man in the army of the United States, either as a volunteer or in the regular service, in the late war for the suppression of the rebellion, and who possesses the other qualifications prescribed by law, shall be eligible to appointment up to the age of twenty-four years.

Age for admission of cadets to United States Military Academy.

SEC. 2. *And be it further resolved,* That cadets at the Military Academy shall hereafter be appointed one year in advance of the time of their admission, except in cases where, by reason of death or other cause, a vacancy occurs which cannot be thus provided for by such appointment in advance; but no pay or allowance shall be made to any such appointee until he shall be regularly admitted on examination as now provided by law; nor shall this provision apply to appointments to be made in the present year. And in addition to the requirements necessary for admission as provided by the third section of the "Act making further provisions for the corps of engineers," approved April twenty-nine, eighteen hundred and twelve, candidates shall be required to have a knowledge of the elements of English grammar, of descriptive geography, particularly of our own country, and of the history of the United States.

Cadets to be appointed one year in advance of their admission, except, &c.

Pay to commence after admission.

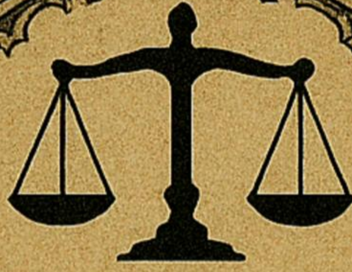
New requirements for admission.

1812, ch. 72. Vol. ii. p. 720.

SEC. 3. *And be it further resolved,* That, in all appointments of cadets to the military academy after those who enter the present year, the person authorized to nominate shall nominate not less than five candidates for each vacancy, all of whom shall be actual residents of the Con-

Mode of appointments.

[Repealed. 1867, ch. 170, § 3. *Post*, p. 487.]



PURE ENS LEGIS STUDY

FOR LEGAL FICTIONS AND NATURAL PERSONS WITH CORRECT SPELLING OF APPELLATIONS

MANUAL OF STYLE

BEING A COMPILATION OF THE TYPOGRAPHICAL RULES
IN FORCE AT THE UNIVERSITY OF CHICAGO PRESS

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SPECIMENS OF TYPES IN USE

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CAPITALIZATION

CAPITALIZE—

1. Proper nouns and adjectives:

   George, America, Englishman; Elizabethan, French (see **46**).

2. Generic terms forming a part of geographical names:

   Atlantic Ocean, Dead Sea, Baffin's Bay, Gulf of Mexico, Strait of Gibraltar, Straits Settlements, Mississippi River, Three Rivers, Laughing Brook, Rocky Mountains, Blue Hills, Pike's Peak, Mount of Olives, Great Desert, Death Valley, Prince Edward Island, Sea (Lake) of Galilee.

   But *do not* capitalize words of this class when simply added, by way of description, to the specific name, without forming an organic part of such name:

   the river Elbe, the desert of Sahara, the island of Madagascar.

3. Adjectives and nouns, used singly or in conjunction, to distinguish definite regions or parts of the world:

   Old World, Western Hemisphere, North Pole, Equator, the North (=Scandinavia), the Far East, Orient, Levant; the North, South, East, West (United States).

   But *do not*, as a rule, capitalize adjectives derived from such names, even if used substantively; nor nouns simply designating direction or point of compass:

   oriental customs, the orientals, southern states, a southerner (but: Northman = Scandinavian); an invasion of barbarians from the north, traveling through the south of Europe.

4. Generic terms for political divisions: (1) when the term is an organic part of the name, following the proper name directly; (2) when, with the preposition "of," it is used in direct connection with the proper name to indicate certain minor administrative subdivisions in the United States; (3) when used singly as the accepted designation for a specific division; (4) when it is part of a fanciful or popular appellation used as if a real geographical name:

(1) Holy Roman Empire, German Empire (=*Deutsches Reich*), French Republic (=*République Française*), United Kingdom, Northwest Territory, Cook County, Evanston Township, Kansas City (New York City—exception); (2) Department of the Lakes, Town of Lake, Borough of Manhattan; (3) the Union, the States, the Republic (=United States), [the Confederacy], the Dominion (=Canada); (4) Celestial Empire (Celestials), Holy (Promised) Land, Badger State, Eternal City, Garden City.

But *do not* (with the exceptions noted) capitalize such terms when standing alone, nor when, with "of," preceding the specific name:

the empire, the state; empire of Russia, kingdom of Belgium, [kingdom of God, or of heaven], duchy of Anhalt, state of Illinois, county of Cook, city of Chicago.

5. Numbered political divisions:

Eleventh Congressional District, First Ward, Second Precinct.

6. The names of thoroughfares, parks, squares, blocks, buildings, etc.:

Drexel Avenue, Ringstrasse, Via Appia, Chicago Drainage Canal; Lincoln Park; Trafalgar Square; Monadnock Block; Lakeside Building, Capitol, White House, County Hospital, Boston Public Library, New York Post-Office, British Museum, Théâtre Français, Lexington Hotel, Masonic Temple, [Solomon's temple, but, when standing alone: the Temple].

But *do not* capitalize such general designations of buildings as "courthouse," "post-office," "library," etc., except in connection with the name of the place in which they are located.

7. The names of political parties, religious denominations or sects, and philosophical, literary, and artistic schools, and their adherents:

Republican, Conservative, National Liberal, Social Democracy (where, as in continental Europe, it is organized as a distinct parliamentary faction); Christian, Protestantism, Evangelical Lutheran, Catholic (Papist, Ultramontane), Reformed, Greek Orthodox, Methodism, Anabaptist, Seventh-Day Adventists, the Establishment, High Church (High Churchman), Christian Science, Theosophist, Jew (but: gentile), Pharisee (but: scribe); Epicurean, Stoic, Gnosticism, Neoplatonism, Literalist; the Romantic movement; the Symbolic school of painters.

But *do not* capitalize any of the above or similar words, or their derivatives, when used in their original or acquired general sense of pervading spirit, point of view, trend of thought, attitude of mind, or mode of action:

republican form of government, a true democrat and a conservative statesman, socialism as an economic panacea, the

TENTH EDITION

THE Gregg Reference Manual

WILLIAM A. SABIN

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THE Gregg Reference Manual

A Manual of Style, Grammar, Usage, and Formatting

Tenth Edition

William A. Sabin

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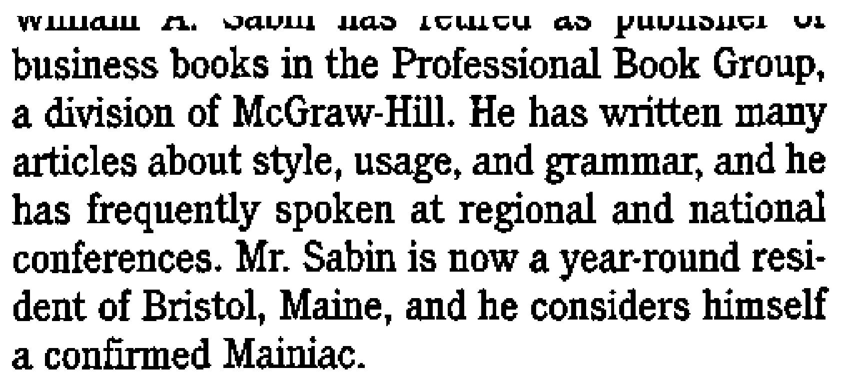

William A. Sabin has retired as publisher of business books in the Professional Book Group, a division of McGraw-Hill. He has written many articles about style, usage, and grammar, and he has frequently spoken at regional and national conferences. Mr. Sabin is now a year-round resident of Bristol, Maine, and he considers himself a confirmed Mainiac.

About the Name *Gregg*

John Robert Gregg was the inventor of Gregg shorthand, which was considered a major improvement over other speedwriting systems then in use. He was born in Ireland in 1867, and his ideas on this subject first appeared in 1888 in a short pamphlet published in Liverpool when he was 21. In 1893 he came to Chicago and founded the Gregg Publishing Company. The first edition of *Gregg Shorthand* was released that same year. Because Gregg shorthand was relatively easy to learn, it soon was taught in schools around the world, and in an age when there were no electronic recording devices, it became an essential skill for reporters, scholars, authors, and even political figures. Mr. Gregg died in 1948 at the age of 81.

When McGraw-Hill acquired the Gregg Publishing Company in 1948, the Gregg name had come to stand for the highest-quality materials designed for academic programs in business education. It is for that reason that *The Gregg Reference Manual* continues to bear the Gregg name, even though the manual is no longer aimed exclusively at an academic audience. Indeed, *The Gregg Reference Manual* now serves as the primary reference for professionals in all fields who are looking for authoritative guidance on matters of style, grammar, usage, and formatting.

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Section 3

Capitalization

Basic Rules (¶¶301–310)

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Days of the Week, Months, Holidays, Seasons, Events, Periods (¶¶342–345)
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➢ *For definitions of grammatical terms, see the appropriate entries in the Glossary of Grammatical Terms (Appendix D).*

The function of capitalization is to give distinction, importance, and emphasis to words. Thus the first word of a sentence is capitalized to indicate distinctively and emphatically that a new sentence has begun. Proper nouns like *George, Chicago, Dun & Bradstreet, the Parthenon, January,* and *Friday* are capitalized to signify the special importance of these words as the official names of particular persons, places, and things. A number of words, however, may function either as proper nouns or as common nouns—for example, terms like *the company* or *the board of directors*. For words like these, capitalization practices vary widely, but the variation merely reflects the relative importance each writer assigns to the word in question.

Despite disagreements among authorities on specific rules, there is a growing consensus against overusing capitalization—a practice that could properly be considered a capital offense. Indeed, the use of all-capital letters in e-mail messages is considered the equivalent of shouting. Those who are forced to read messages typed that way would be justified in considering this a form of capital punishment.

When too many words are emphasized, none stand out. The current trend, then, is to use capitalization more sparingly—to give importance, distinction, or emphasis only when and where it is warranted.

The following rules of capitalization are written with ordinary situations in mind. If you work or study in a specialized field, you may find it necessary to follow a different style.

➤ *For a perspective on the rules of capitalization, see the essay in Appendix A, pages 591–593.*

NOTE: In the guidelines throughout this manual, the verb *capitalize* means to treat only the first letter of a word as a capital letter (for example, *Society*). The verb *lowercase* means that none of the letters in a word are to appear as capital letters (for example, *society*). A word in which every letter is capitalized is said to appear in *all-capital letters* or *all-caps* (for example, *SOCIETY*); if this word is executed in boldface type, it is said to appear in *bold caps* (for example, ***SOCIETY***). A phrase in which the first letter of each key word is capitalized is said to appear in *caps and lowercase* (for example, *the American Society for Training and Development*).

Basic Rules

First Words

301 Capitalize the first word of:

a. Every sentence. (See ¶302 for exceptions.)

Try to limit each of your e-mail messages to one screen.
Will you be able to pull everything together by then?
The deadline we have been given is absolutely impossible!

b. An expression used as a sentence. (See also ¶¶101b–c, 111, 119a, 120.)

So much for that.	Really?	No!
Enough said.	How come?	Congratulations!

c. A quoted sentence. (See also ¶¶272–273.)

Mrs. Eckstein herself said, "We surely have not heard the complete story."

Continued on page 94

d. An independent question within a sentence. (See also ¶¶115–117.)

The question is, Whose version of the argument shall we believe?

BUT: Have you approved the divisional sales forecasts? the expense projections? the requests for staff expansion? (See ¶117.)

e. Each item displayed in a list or an outline. (See also ¶¶107, 1357c, 1424e, 1725d.)

Here is a powerful problem-solving tool that will help you:

- Become an effective leader.
- Improve your relations with subordinates, peers, and superiors.
- Cope with stressful situations on the job.

f. Each line in a poem. (Always follow the style of the poem, however.)

From wrong to wrong the exasperated spirit
Proceeds, unless restored by that refining fire
Where you must move in measure, like a dancer.
—T. S. Eliot

g. The salutation and the complimentary closing of a letter. (See also ¶¶1348, 1359.)

Dear Mrs. Pancetta: Sincerely yours,

302 **a.** When a sentence is set off by *dashes* or *parentheses* within another sentence, do not capitalize the first word following the opening dash or parenthesis unless it is a proper noun, a proper adjective, the pronoun *I*, or the first word of a quoted sentence. (See ¶¶214, 224–225 for examples.)

b. Do not capitalize the first word of a sentence following a colon except under certain circumstances. (See ¶¶196–199.)

Proper Nouns

303 Capitalize every *proper noun*, that is, the official name of a particular person, place, or thing. Also capitalize the pronoun *I*.

William H. Gates III	Wednesday, February 8
Baton Rouge, Louisiana	the Great Depression
Sun Microsystems	the Civil Rights Act of 1964
the Red Cross	the Japanese
the Internet (OR: the Net)	Jupiter and Uranus
the University of Chicago	French Literature 212
the Statue of Liberty	a Xerox copy
the Center for Science in the Public Interest	*Gone With the Wind*
	the Smithsonian Institution
a Pulitzer Prize	United Farm Workers of America
Microsoft Word	Flight 403
Google and Yahoo!	the House of Representatives

NOTE: Prepositions (like *of, for,* and *in*) are not capitalized unless they have four or more letters (like *with* and *from*). (See also ¶¶360–361.) The articles *a* and *an* are not capitalized; the article *the* is capitalized only under special circumstances. (See ¶324.) Conjunctions (like *and* and *or*) are also not capitalized. However, follow the capitalization style used by the owner of the name.

Book of the Month Club	3-In-One oil
Books In Print	One-A-Day vitamins
Books on Tape	SpaghettiOs

Chock full o' Nuts	Diet Pepsi
Etch A Sketch	diet Coke
Easy-Off oven cleaner	GLAD bags
Snap-on tools	NeXT

304 Capitalize adjectives derived from proper nouns.

America (n.), American (adj.)	Machiavelli (n.), Machiavellian (adj.)
Glasgow (n.), Glaswegian (adj.)	Hemingway (n.), Hemingwayesque (adj.)

EXCEPTIONS: Congress, congressional; the Senate, senatorial; the Constitution (U.S.), constitutional (see also ¶306)

305 Capitalize imaginative names and nicknames that designate particular persons, places, or things. (See ¶¶333–335 for imaginative place names; see ¶344 for imaginative names of historical periods.)

the Founding Fathers	Smokey Bear
the First Lady	Whoopi Goldberg
the White House	a Big Mac
the Oval Office	the Establishment
the Stars and Stripes	the Lower 48
Air Force One	El Niño and La Niña
the Black Caucus	the Western Wall
the Gopher State (Minnesota)	Generation X (the generation born in the 1960s and 1970s)
Mother Nature	Amber Alert
the Queen Bee	Ground Zero (the site of the World Trade Center)
Mr. Nice Guy	the Big Enchilada
a Good Samaritan	the Big Kahuna
every state in the Union	Big Brother (intrusive big government)
Fannie Mae (see ¶524b)	
the Middle Ages	
BUT: the space age	BUT: my big brother

306 Some expressions that originally contained or consisted of proper nouns or adjectives are now considered common nouns and should not be capitalized. (See ¶309b.)

charley horse	napoleon	ampere	texas leaguer
plaster of paris	boycott	watt	arabic numbers
manila envelope	diesel	joule	roman numerals
bone china	macadam	kelvin	BUT: Roman laws

NOTE: Check an up-to-date dictionary or style manual to determine capitalization for words of this type.

Common Nouns

307 A *common noun* names a class of things (for example, *books*), or it may refer indefinitely to one or more things within that class *(a book, several books)*. Nouns used in this way are considered general terms of classification and are often modified by indefinite words such as *a, any, every,* or *some*. Do not capitalize nouns used as general terms of classification.

a company	every board of directors
any corporation	some senators

308 A common noun may also be used to name a *particular* person, place, or thing. Nouns used in this way are often modified (a) by *the, this, these, that,* or *those* or (b) by possessive words such as *my, your, his, her, our,* or *their.* Do not capitalize a general term of classification, even though it refers to a particular person, place, or thing.

COMMON NOUN: our doctor	the hotel	the river
PROPER NOUN: Dr. Tsai	Hotel Algonquin	the Colorado River

NOTE: Do not confuse a general term of classification with a formal name.

Logan Airport (serving Boston)	the U.S. Postal Service
BUT: the Boston airport	BUT: the post office

309 a. Capitalize a common noun when it is part of a proper name but not when it is used alone in place of the full name. (For exceptions, see ¶310.)

Professor Perry	BUT: the professor
the Goodall Corporation	the corporation
the Easton Municipal Court	the court
Sunset Boulevard	the boulevard
the Clayton Antitrust Act	the act

NOTE: Also capitalize the plural form of a common noun in expressions such as *the Republican and the Democratic Parties, Main and Tenth Streets, the Missouri and Ohio Rivers,* and *the Atlantic and Pacific Oceans.*

b. In a number of compound nouns, the first element is a proper noun or a proper adjective and the second element is a common noun. In such cases capitalize only the first element, since the compound as a whole is a common noun.

a Rhodes scholar	a Dutch oven	Wedgwood blue	Canada geese
a Ferris wheel	Danish pastry	Prussian blue	(NOT: Canadian geese)
Labrador retriever	French doors	BUT: Deep Blue (IBM's chess-playing computer)	Botts dots (highway lane markers)
Tex-Mex cooking	BUT: french fries		

NOTE: Check an up-to-date dictionary or style manual for words of this type. After extensive usage the proper noun or adjective may become a common noun and no longer require capitalization. (See ¶306.)

310 Some *short forms* (common-noun elements replacing the complete proper name) are capitalized when they are intended to carry the full significance of the complete proper name. It is in this area, however, that the danger of overcapitalizing most often occurs. Therefore, do not capitalize a short form unless it clearly warrants the importance, distinction, or emphasis that capitalization conveys. The following kinds of short forms are commonly capitalized:

PERSONAL TITLES: Capitalize titles replacing names of high-ranking national, state, and international officials (but not ordinarily local officials or company officers). (See ¶313.)

ORGANIZATIONAL NAMES: Do not capitalize short forms of organizational names except in formal or legal writing. (See ¶321.)

GOVERNMENTAL NAMES: Capitalize short forms of names of national and international bodies (but not ordinarily state or local bodies). (See ¶¶326-327, 334-335.)

PLACE NAMES: Capitalize only well-established short forms. (See ¶¶332, 335.)

NOTE: Do not use a short form to replace a full name unless the full name has been mentioned earlier or will be understood from the context.

Special Rules

Personal Names

311 **a.** Treat a person's name—in terms of capitalization, spelling, punctuation, and spacing—exactly as the person does.

Alice Mayer	Charles Burden Wilson
Alyce Meagher	L. Westcott Quinn
Steven J. Dougherty, Jr.	R. W. Ferrari
Stephen J. Dockerty Jr.	Peter B. J. Hallman

➢ *For the treatment of initials such as* FDR, *see* ¶516b–c; *for the use or omission of commas with terms such as* Jr., *see* ¶156.

b. Respect individual preferences in the spelling of personal names.

Katharine Hepburn	Alan Greenspan	Ginger Rogers
Katherine Mansfield	Edgar Allan Poe	Richard Rodgers
Catherine T. MacArthur	Allen Ginsberg	Mister Rogers
Nicolas Cage	Kate Winslet	Dolly Parton
St. Nicholas	Cate Blanchett	Dolley Madison
Ann Landers	Steven Spielberg	Marian Anderson
Anne Frank	Stephen Sondheim	Marianne Moore

c. In names containing the prefix *O'*, always capitalize the *O* and the letter following the apostrophe; for example, *O'Brian* or *O'Brien.*

d. Watch for differences in capitalization and spacing in names containing prefixes like *d', da, de, del, della, di, du, l', la, le, van,* and *von.*

D'Amelio, d'Amelio, Damelio — deLaCruz, DeLacruz, Dela Cruz, DelaCruz

LaCoste, Lacoste, La Coste — VanDeVelde, Van DeVelde, vandeVelde

e. When a surname with an uncapitalized prefix stands alone (that is, without a first name, a title, or initials preceding it), capitalize the prefix to prevent a misreading.

Paul de Luca   Mr. de Luca   P. de Luca   BUT: Is De Luca leaving?

NOTE: If there is no risk of misreading (for example, when the person's name is well known), it is not necessary to capitalize the prefix except at the beginning of a sentence.

Charles *de Gaulle* served for many years as . . . When he retired, *de Gaulle* . . .

BUT: De Gaulle served for many years as . . .

f. When names that contain prefixes are to be typed in all-caps, follow these principles: If there is no space after the prefix, capitalize only the initial letter of the prefix. If space follows the prefix, capitalize the entire prefix.

NORMAL FORM:	MacDonald	Mac Donald
ALL-CAPS FORM:	MacDONALD	MAC DONALD

g. When a nickname or a descriptive expression precedes or replaces a person's first name, simply capitalize it. However, if the nickname or descriptive expression

falls between a person's first and last names, enclose it either in quotation marks or in parentheses.

Ol' Blue Eyes **BUT:** Frank "Ol' Blue Eyes" Sinatra **OR:** Frank (Ol' Blue Eyes) Sinatra

➢ *For the plurals of personal names, see ¶¶615–616; for the possessives of personal names, see ¶¶630–633.*

Titles With Personal Names

312 a. Capitalize all official titles of honor and respect when they *precede* personal names.

PERSONAL TITLES:

Mrs. Norma Washburn (see ¶517)	Miss Popkin
Ms. Terry Fiske	Mr. Benedict

EXECUTIVE TITLES:

President Julia McLeod	Vice President Saulnier

PROFESSIONAL TITLES:

Professor Henry Pelligrino	Dr. Khalil (see ¶517)
Professor Emerita Ann Marx (see page 323)	Dean Aboud

CIVIC TITLES:

Governor Samuel O. Bolling	Ambassadors Ross and Perez
Mayor-elect Louis K. Uhl (see ¶317)	ex-Senator Hausner (see ¶317)

MILITARY TITLES:

Colonel Perry L. Forrester	Commander Comerford

RELIGIOUS TITLES:

the Reverend William F. Dowd	Rabbi Gelfand
Sister Marianne McGuire	Bishop Ellington

b. Do not capitalize such titles when the personal name that follows is in apposition and is set off by commas. (Some titles, like that of the President of the United States, are usually capitalized. See ¶313 for examples of such exceptions.)

Yesterday the *president,* Julia McLeod, revealed her plans to retire next June.

BUT: Yesterday *President* Julia McLeod revealed her plans to retire next June.

c. Do not capitalize occupational titles (such as *author, surgeon, publisher,* and *lawyer*) preceding a name.

The reviews of *drama critic* Simon Ritchey have lost their bite.
(**NOT:** The reviews of *Drama Critic* Simon Ritchey have lost their bite.)

NOTE: Occupational titles can be distinguished from official titles in that only official titles can be used with a last name alone. Since one would not address a person as "Author Mailer" or "Publisher Johnson," these are not official titles and should not be capitalized.

d. Do not confuse a true title preceding a name (such as *Judge*) with a generic expression (such as *federal judge*).

Judge Ann Bly **OR:** federal judge Ann Bly (**BUT NOT:** federal Judge Ann Bly)

President Julia McLeod **OR:** company president Julia McLeod
(**BUT NOT:** company President Julia McLeod)

e. Always capitalize titles used with personal names when they appear in an inside address, in a complimentary closing, on an envelope, or on a business card.

313 a. In general, do not capitalize titles of honor and respect when they *follow* a personal name or are used *in place of* a personal name.

Julia McLeod, *president* of McLeod Inc., has revealed her plans to retire next June. During her sixteen years as *president*, the company grew . . .

Henry Fennel, *emeritus professor of English history*, will lead a tour of Great Britain this summer. (For a usage note on *emeritus*, see page 323.)

However, exceptions are made for important officials and dignitaries, as indicated in the following paragraphs.

b. Retain the capitalization in the titles of high-ranking national, state, and international officials when they *follow* or *replace* a specific personal name. Below are examples of titles that remain capitalized.

NATIONAL OFFICIALS: the *President*, the *Vice President*, Cabinet members (such as the *Secretary of State* and the *Attorney General*), the heads of government agencies and bureaus (such as the *Director* or the *Commissioner*), the *Ambassador*, the *Speaker* (of the House), the *Representative*, the *Senator*, the *Chief Justice of the United States* (NOT: of the Supreme Court)

STATE OFFICIALS: the *Governor*, the *Lieutenant Governor* (BUT: the *attorney general*, the *senator*)

FOREIGN DIGNITARIES: the *Queen of England*, the *King*, the *Prime Minister*

INTERNATIONAL FIGURES: the *Pope*, the *Secretary-General of the United Nations* (see ¶808a)

NOTE: Many authorities now recommend that even these titles not be capitalized when they follow or replace the names of high-ranking officials. For example:

During her tour of the United States, the *queen* will visit the *president* in Washington.

When using this style, try to give the parties equal treatment. Refer to them both by using their titles alone (as in the example above) or by using each title with a name *(Queen Elizabeth* and *President Bush)*. Try to avoid treating each party differently; for example, *a meeting of Queen Elizabeth and the president*.

c. Titles of local governmental officials and those of lesser federal and state officials are not usually capitalized when they follow or replace a personal name. However, these titles are sometimes capitalized in writing intended for a limited readership (for example, in a local newspaper, in an organization's internal communications, or in correspondence coming from or directed to the official's office), when the intended reader would consider the official to be of high rank.

The *Mayor* promised only last fall to hold the city sales tax at its present level. (Excerpt from an editorial in a local newspaper.)

BUT: Francis Fahey, *mayor* of Coventry, Rhode Island, appeared before a House committee today. The *mayor* spoke forcefully about the need to maintain federal aid to . . . (Excerpt from a national news service release.)

I would like to request an appointment with the *Attorney General*. (In a letter sent to the state attorney general's office.)

BUT: I have written for an appointment with the *attorney general* and expect to hear from his office soon.

d. Titles of *organizational officials* (for example, the *president*, the *general manager*) should not be capitalized when they follow or replace a personal name. Exceptions are made in formal minutes of meetings (see page 548) and in rules and bylaws.

The *president* will visit thirteen countries in a tour of company installations abroad. (Normal style.)

The *Secretary's* minutes were read and approved. (In formal minutes.)

Continued on page 100

GPO

Style Manual

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The Director of the Government Publishing Office shall determine the form and style in which the printing or binding ordered by a department is executed, and the material and the size of type used, having proper regard to economy, workmanship, and the purposes for which the work is needed.

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2014—Pub. L. 113–235 substituted "Director of the Government Publishing Office" for "Public Printer".

About This Manual

The GPO Style Manual, as it is popularly known, is issued under the authority of section 1105 of title 44 of the U.S. Code, which requires the Director of the GPO to "determine the form and style in which the printing . . . ordered by a department is executed, . . . having proper regard to economy, workmanship, and the purposes for which the work is needed." The Manual is prepared by the GPO Style Board, composed of proofreading, printing, and Government documents specialists from within GPO, where all congressional publications and many other key Government documents are prepared.

The first GPO Style Manual appeared in 1894. It was developed originally as a printer's stylebook to standardize word and type treatment, and it remains so today. Through successive editions, however, the Manual has come to be widely recognized by writers and editors both within and outside the Federal Government as one of the most useful resources in the editorial arsenal. And now in the 21st century, writers and editors are using the Manual in the preparation of the informational content of Government publications that appear in digital formats.

Writers and editors whose disciplines have taught them aspects of style different from those found in the GPO Style Manual will appreciate the difficulty of establishing a single standard. Users of this Manual should consider it instead as a general guide. Its rules cannot be regarded as rigid, for the printed word assumes many shapes and variations in final presentation, and usage changes over time as language evolves. Periodically the Manual is updated, as this edition has been, to eliminate obsolete standards, update form and usage, and adjust the guidance for document preparation and appearance to current custom.

Comments and suggestions from users of the GPO Style Manual are welcomed. All such correspondence may be emailed to the GPO Style Board at gpostyle@gpo.gov.

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3. Capitalization Rules

(See also Chapter 4 "Capitalization Examples" and Chapter 9 "Abbreviations and Letter Symbols")

3.1. It is impossible to give rules that will cover every conceivable problem in capitalization, but, by considering the purpose to be served and the underlying principles, it is possible to attain a considerable degree of uniformity. The list of approved forms given in chapter 4 will serve as a guide. Obviously such a list cannot be complete. The correct usage with respect to any term not included can be determined by analogy or by application of the rules.

Historic or documentary accuracy

3.2. Where historic, documentary, technical, or scientific accuracy is required, capitalization and other features of style of the original text should be followed.

Proper names

3.3. Proper names are capitalized.

Rome	John Macadam	Italy
Brussels	Macadam family	Anglo-Saxon

Derivatives of proper names

3.4. Derivatives of proper names used with a proper meaning are capitalized.

Roman (of Rome)	Johannean	Italian

3.5. Derivatives of proper names used with acquired independent common meaning, or no longer identified with such names, are set lowercased. Since this depends upon general and long-continued usage, a more definite and all-inclusive rule cannot be formulated in advance.

roman (type)	macadam (crushed rock)	italicize
brussels sprouts	watt (electric unit)	anglicize
venetian blinds	plaster of paris	pasteurize

Common nouns and adjectives in proper names

3.6. A common noun or adjective forming an essential part of a proper name is capitalized; the common noun used alone as a substitute for the name of a place or thing is not capitalized.

Massachusetts Avenue; the avenue
Washington Monument; the monument
Statue of Liberty; the statue
Hoover Dam; the dam
Boston Light; the light
Modoc National Forest; the national forest
Panama Canal; the canal
Soldiers' Home in Holyoke; the soldiers' home
Johnson House (hotel); Johnson house (residence)
Crow Reservation; the reservation
Cape of Good Hope; the cape
Jersey City
Washington City
but city of Washington; the city
Cook County; the county
Great Lakes; the lakes
Lake of the Woods; the lake
North Platte River; the river
Lower California
but lower Mississippi
Charles the First; Charles I
Seventeenth Census; the 1960 census

3.7. If a common noun or adjective forming an essential part of a name becomes separated from the rest of the name by an intervening common noun or adjective, the entire expression is no longer a proper noun and is therefore not capitalized.

Union Station: union passenger station
Eastern States: eastern farming States
United States popularly elected government

3.8. A common noun used alone as a well-known short form of a specific proper name is capitalized.

the Capitol building in Washington, DC; *but* State capitol building
the Channel (English Channel)
the Chunnel (tunnel below English Channel)
the District (District of Columbia)

3.9. The plural form of a common noun capitalized as part of a proper name is also capitalized.

Seventh and I Streets
Lakes Erie and Ontario
Potomac and James Rivers
State and Treasury Departments
British, French, and United States Governments
Presidents Washington and Adams

3.10. A common noun used with a date, number, or letter, merely to denote time or sequence, or for the purpose of reference, record, or temporary convenience, does not form a proper name and is therefore not capitalized. (See also rule 3.39.)

abstract B
amendment 5
apartment 2
appendix C
article 1
book II
chapter III
chart B
class I
collection 6
column 2
drawing 6
exhibit D
figure 7
first district (not congressional)
flight 007
graph 8
group 7
mile 7.5
page 2
paragraph 4
part I
phase 3
plate IV
region 3
room A722
rule 8
schedule K
section 3
signature 4
spring 1926
station 27
table 4
title IV
volume X
ward 2

3.11. The following terms are lowercased, even with a name or number.

aqueduct
breakwater
buoy
chute
dike
dock
drydock
irrigation project
jetty
levee
lock
pier
reclamation project
ship canal
shipway
slip
spillway
turnpike
watershed
weir
wharf

Definite article in proper place names

3.12. To achieve greater distinction or to adhere to the authorized form, the word *the* (or its equivalent in a foreign language) is capitalized when used as a part of an official name or title. When such name or

WRITING STYLE GUIDE AND PREFERRED USAGE FOR DOD ISSUANCES

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SECTION 1: GENERAL PRINCIPLES

1.1. GENERAL PRINCIPLES. Write DoD issuances clearly and concisely, applying the following general principles of effective writing.

a. When drafting your document, use an outline. This will help you organize your issuance and keep it focused and on track.

b. Use short, simple words. Limit sentences to one thought and keep them brief (an average of 20 or fewer words).

c. Use the correct words. (See Sections 2 and 3 for the glossary of preferred usage and a list of hyphenated modifiers used in DoD issuances.)

d. Write in the active voice instead of the passive voice; name an actor with the action being taken immediately after the noun. See Table 1 for characteristics and examples.

Table 1. Characteristics and Examples of Passive and Active Voice

PASSIVE VOICE	ACTIVE VOICE
Frequently omits the doer of the action.	**Identifies the doer.**
An information copy of the board meeting minutes must be forwarded to the members.	The Chair must forward an information copy of the board meeting minutes to the members.
A military chaplain of a particular religious organization may be appointed as a consultant.	The Board may appoint a military chaplain of a particular religious organization as a consultant.
Frequently is longer and less direct; frequently includes a "by" phrase.	**Gets to the point.**
A written agreement will be executed by the parties.	The parties execute a written agreement.
Implementing instructions will be issued by the DoD Components.	The DoD Components issue implementing instructions.

e. Use parallel construction (i.e., the same grammatical structure for similar or related ideas). See Table 2 for examples.

f. Avoid long, rambling paragraphs. If a paragraph is longer than 10 lines, it should probably be restructured to include subparagraphs.

g. Organize the material. Where the issuance templates don't provide a specific structure, organize sections and appendices so that earlier paragraphs serve to make later paragraphs clear. When possible, use paragraph headings to highlight important concepts so the reader can see at a glance what the paragraph is about.

Table 2. Examples of Parallel Construction

EXAMPLE 1
Not Parallel 1.1. The physical review of the ID card must verify that the identification matches the beneficiary, the correct entitlement dates, whether medical care for the beneficiary is authorized, and that no one has tampered with the card. **Parallel** 1.1. The physical review of the ID card must verify that the identification matches the beneficiary, the entitlement dates are correct, the beneficiary is authorized to receive medical care, and the card hasn't been tampered with.
EXAMPLE 2
Not Parallel This instruction: a. Reissues DoD Directive 1234.56 to establish policy and assign responsibilities for the authorization and support of private organizations located on DoD installations. b. DoD Manual 9876.54 is hereby cancelled. c. DoD Instruction 2345.67 will continue to be authorized to establish procedures that implement this instruction. **Parallel** This instruction: a. Reissues DoD Directive 1234.56 to establish policy and assign responsibilities for the authorization and support of private organizations located on DoD installations. b. Cancels DoD Manual 9876.54. c. Continues to authorize the publication of DoD Instruction 2345.67 to establish procedures to implement this instruction.

1.2. RULES SPECIFIC TO DOD ISSUANCES.

a. Referencing and References.

(1) Citing Authorities. **Always** reference:

(a) The issuance that provides the purpose of (i.e., reason for) the issuance being drafted and any other issuances that inform its content.

(b) For issuances approved by anyone other than the Secretary or the Deputy Secretary of Defense, the instrument that provides that position the authority to sign it. This is

typically the chartering DoD directive of the OSD Component head or Principal Staff Assistant approving the issuance.

(2) Copying, Quoting, Paraphrasing. **Don't** copy from, quote from, or paraphrase material in a reference. Do explain the relationship between the issuance and each reference cited; e.g., (emphasis added):

(a) "All proposals to construct new or modify existing DoD urban training facilities must be evaluated **in accordance with** DoD Instruction 1322.27."

(b) "Civilian manpower requirements must be sourced and designated **in accordance with** the manpower policy and procedures in DoD Instruction 1100.22."

(c) "The Assistant Secretary of Defense for Homeland Defense and Global Security will serve as the Domestic Crisis Manager among other defense-wide crisis management responsibilities **assigned in** DoD Directive 3020.44."

(3) Referring to and Referencing Volumes in Multi-volume Issuances.

(a) Within the text itself, you will always say "...this volume" if you are just referring to the volume itself. If you use the phrase "...this [instruction/manual]," you are referring to the entire work (i.e., all the volumes).

(b) Cite each volume(s) individually in References (e.g., if you cite Volumes 2000 and 2003 of DoD Instruction 1400.25, they will both be included in References, rather than simply listing DoD Instruction 1400.25). This will make the subject of the volume(s) immediately clear to the reader rather than requiring him or her to go to the Directives Division Website. The complete instruction or manual will only be referenced if you are referring the reader to the document as a whole.

b. Helping Verbs. Use the following helping verbs as necessary to clarify the actor's level of obligation.

(1) Use "must" to denote a mandatory action.

(2) Use "will" to denote a required action in the future.

(3) Use "may" or "can" to denote an optional action that the actor is authorized to perform (a right, privilege, or power that the actor may exercise at his or her discretion).

c. Generic Pronouns. Don't use "he" or "she" or "his" or "her" separately as generic (possessive) pronouns; use "he or she" or "his or her." If possible, avoid gender specificity by using "they" or "their."

d. Personal Pronouns and Point of View. Don't use the personal pronouns "I," "we," and "you." Always write in the third person, using "he or she," "it," and "they."

e. Abbreviations and Acronyms. Write terms out the first time they appear in the text and place the abbreviation or acronym in parenthesis following it. Use the acronym consistently thereafter: don't repeat the term. A glossary of acronyms and abbreviations is mandatory for issuances over 2 pages using acronyms other than "DoD," "OSD," or "U.S." In accordance with the Plain Writing Act of 2010, consider not using acronyms if the term is used infrequently in your issuance. Do not establish acronyms if the term would be used fewer than three times in the issuance, not including items in the table of contents or reference list.

(1) Acronym as Adjective Only. The acronym "U.S." may be used in the adjective form only. Spell out "United States" when using the noun form.

(2) Acronyms That Don't Need to be Established. The acronyms "DoD," "OSD," and "U.S." don't need to be established upon first use.

(3) Combatant Command Acronyms.

(a) The Combatant Commands are legally named "United States Central Command," "United States European Command," etc. The acronyms are: USAFRICOM, USCENTCOM, USCYBERCOM, USEUCOM, USINDOPACOM, USNORTHCOM, USSOCOM, USSOUTHCOM, USSTRATCOM, and USTRANSCOM.

(b) The abbreviation for "Combatant Command" is "CCMD" – **not** "COCOM." See the *DoD Dictionary of Military and Associated Terms*; "COCOM" refers to "(combatant command) command authority" and not to the Combatant Command itself.

(c) According to the *DoD Dictionary of Military and Associated Terms*, the abbreviation for "Combatant Commander" is "CCDR."

(4) Military Terms. Use the approved abbreviations and acronyms in the *DoD Dictionary of Military and Associated Terms*.

(5) Article Usage Use of the articles "the," "a," and "an" before abbreviations and acronyms will be determined by basic rules of grammar. The use of "a" and "an" depends on the *sound* of the acronym that follows, not on the first letter. For example, the vowel sound at the beginning of the acronym "MP" (pronounced "em-pea") requires that "an" be used. However, "a" is used before "MOOTW," since the acronym is pronounced "moo-twah."

f. Footnotes, Endnotes, and Use of the Term "Note." Don't use the term "NOTE" in DoD issuances. Don't use endnotes in DoD issuances. Use footnotes only to indicate in the References section where the reader may obtain a reference that isn't readily available on a government website.

g. Use of the Term "See" and of Parenthetical Remarks. When the term "see" is used as directional material, place the phrase in parentheses at the end of the sentence as a stand-alone sentence, as in the following parenthetical remark. (See Paragraph 1.2.f. for use of the term "note.") Avoid the use of other parenthetical remarks. If the information's important to the issuance, incorporate it into the appropriate sentence or paragraph.

h. Use of Directional Terms. Don't use directional terms or phrases (e.g., "above," or "below") when referring to a part of the issuance. Refer to the paragraphs being discussed by number.

i. Names of Ships and Exercises. Always use all caps for the names of ships (e.g., "USS AGILE," "USNS IMPECCABLE" – not "USS Agile," "USNS Impeccable") and military exercises (e.g. "Operation SOUTHERN WATCH" – not "Operation Southern Watch").

j. Address Blocks in DoD Issuances. In accordance with DoD issuance standards, mailing addresses are the exception to the rule for paragraph numbering and indentation; they may stand alone outside of a figure or table. The address block will be indented from the left margin equal to the first line indent of the paragraph to which the address block belongs; e.g., if an address block followed this paragraph, each line would be .25" from the left margin.

1.3. RESOURCES FOR WRITING DOD ISSUANCES.

Use the resources in priority order below when you have questions on English usage, writing style, format, content, and organization of DoD issuances.

a. DoD Issuance Website

(1) Issuance Standards.

(2) This guide.

(3) Frequently Asked Questions.

(4) Common Mistakes.

(5) DoDM 5110.04, "DoD Manual for Written Material."

(6) The *DoD Dictionary of Military and Associated Terms*.

b. Other Resources

(1) *United States Government Printing Office Style Manual* (current edition including supplements), available online.

(2) *Webster's New Collegiate Dictionary* (current edition), available online.

(3) *The Chicago Manual of Style*.

BLACK'S LAW DICTIONARY

Definitions of the Terms and Phrases of
American and English Jurisprudence,
Ancient and Modern

By

HENRY CAMPBELL BLACK, M. A.

Author of Treatises on Judgments, Tax Titles, Intoxicating Liquors,
Bankruptcy, Mortgages, Constitutional Law, Interpretation
of Laws, Rescission and Cancellation of Contracts, Etc.

REVISED FOURTH EDITION

BY

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PREFACE
REVISED FOURTH EDITION

THE sustained and growing popularity of BLACK'S LAW DICTIONARY since its appearance more than seventy five years ago is a strikiig tribute to the scholarship and learning of Henry Campbell Black, and to the essential soundness of the plan adopted by him for the compilation of a legal lexicon.

In accordance with the original plan of this work, consistently adhered to in all subsequent editions, the law student, confronted in his casebooks with reports from the Year Books, or with extracts from Glanvil, Bracton, Littleton, or Coke, will find in this dictionary an unusually complete collection of definitions of terms used in old English, European, and feudal law. The student will also find in this volume, on page 1795, a useful Table of British Regnal Years, listing the sovereigns of England for more than 900 years, together with the date of accession to the throne, and the length of reign.

BLACK'S LAW DICTIONARY has proven its value through the years to the busy practitioner, judge and law student who requires quick and convenient access to the meanings of legal terms and phrases found in statutes or judicial opinions, as well as to the special legal meanings of standard English words—meanings which frequently cannot be found in the ordinary English language dictionaries.

In the period of more than thirty five years since the publication of the Third Edition, the law has undergone substantial changes and developments. The vocabulary of the law has shown corresponding change and growth. A word, in the often quoted dictum of Mr. Justice Holmes, is "the skin of a living thought," and the words of statutes and judicial opinions reflect the contemporary thinking of legislators and jurists. In order adequately to represent this thinking in the fourth edition, a patient examination was made of the thousands of opinions handed down by the appellate courts each year. Some revisions and additions have been included in this Revised Fourth Edition

Abbreviations of common words and phrases likely to be encountered by the user are explained in appropriate places throughout the main body of the work. A Table of Abbreviations of the titles of law reports, textbooks, and other legal literature is contained in the back of the volume and a Guide to Pronunciation is included in the front of the volume.

New features in this Revised Fourth Edition include the following:

Code of Professional Responsibility
Canons of Judicial Ethics
An Outline of the Minimum Requirements for
Admission to Legal Practice in the United States

PREFACE—REVISED FOURTH EDITION

In order that BLACK'S LAW DICTIONARY should continue to be a handy one-volume work of ready reference, the enlarged contents of the Fourth Edition necessitated an improved typographical style. The type for the Fourth Edition was accordingly completely reset and arranged in wider columns, in a more attractive and readable manner.

The Publisher has drawn freely on its wide experience to make the present edition of BLACK'S LAW DICTIONARY superior to any of the earlier editions. It is confidently believed that this edition, both in content and format, sets new standards of excellence among law dictionaries.

THE PUBLISHER

ST. PAUL, MINN.
June, 1968

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ENLARGING. Extending, or making more comprehensive; as an enlarging statute, which is a remedial statute enlarging or extending the. common law. 1 Bl.Comm. 86, 87.

ENLISTMENT. The act of one who voluntarily enters the military or naval service of the government, contracting to serve in a subordinate capacity. Morrissey v. Perry, 137 U.S. 157, 11 Sup. Ct. 57, 34 L.Ed. 644; Babbitt v. U. S., 16 Ct.C1. 213.

The words "enlist" and "enlistment," in law, as in common usage, may signify either the complete fact of entering into the military service, or the first step taken by the recruit towards th4 end. When used in the former sense, as In statutes conferring a right to compel the military service of enlisted men, the enlistment is not deemed completed until the man has been mustered into the service. Tyler v. Pomeroy, 8 Allen, Mass., 480.

Enlistment does not include the entry of a person into the military service under a commission as an officer. Hilliard v. Stewartstown, 48 N.H. 280.

Enlisted applies to a drafted man as well as a volunteer, whose name is duly entered on the military rolls. Sheffield v. Otis, 107 Mass. 282.

ENORMIA. In old practice and pleading. Unlawful or wrongful acts; wrongs. *Et alia enormia,* and other wrongs. This phrase constantly occurs in the old writs and declarations of trespass.

ENORMOUS. Aggravated. "So enormous a trespass." Vaughan, 115. Written "enormious," in some of the old books. *Enormious* is where a thing is made without a rule or against law. Brownl. pt. 2, p. 19.

ENPLEET. Anciently used for implead. Cowell.

ENQUtTE, or ENQUEST. In canon law. An examination of witnesses, taken down in writing, by or before an authorized judge, for the purpose of gathering testimony to be used on a trial.

ENREGISTREMENT. In French law. Registration. A formality which consists in inscribing on a register, specially kept for the purpose by the government, a summary analysis of certain deeds and documents. At the same time that such analysis is inscribed upon the register, the clerk places upon the deed a memorandum indicating the date upon which it was registered, and at the side of such memorandum an impression is made with a stamp. Arg.Fr.Merc.Law, 558.

ENROLL. To register; to make a record; to enter on the rolls of a court; to transcribe. Ream v. Corn., 3 Serg. & R. (Pa.) 209; Anderson v. Commonwealth, 275 Ky. 232, 121 S.W.2d 46, 47.

ENROLLED BILL. In legislative practice, a bill which has been duly introduced, finally passed by both houses, signed by the proper officers of each, approved by the governor (or president) and filed by the secretary of state. Sedgwick County Com'rs v. Bailey, 13 Kan. 608.

ENROLLMENT. The act of putting upon a roll. A record made. Anderson v. Commonwealth, 275 Ky. 232, 121 S.W.2d 46, 47.

In English law. The registering or entering on the rolls of chancery, king's bench, common pleas, or exchequer, or by the clerk of the peace in the records of the quarter sessions, of any lawful act; as a recognizance, a deed of bargain and sale, and the like. Jacob.

ENROLLMENT OF VESSELS. In the laws of the United States on the subject of merchant shipping, the recording and certification of vessels employed in coastwise or inland navigation; as distinguished from the "registration" of vessels employed in foreign commerce. U. S. V. Leetzel, 3 Wall. 566, 18 L.Ed. 67.

ENROLLMENT RECORDS. All the testimony and exhibits tending to establish age that were in evidence before the Commission to the Five Civilized Tribes and the conclusions of the Commission based thereon from the date of the application for enrollment of any particular individual up to the date of the ascertainment by the Commission as to whether the name of such person was intended to be included upon the final roll of the nation in which he claimed citizenship. Duncan v. Byars, 44 Okl. 538, 144 P. 1053, 1054.

ENS LEGIS. L. Lat. A creature of the law; an artificial being, as contrasted with a natural person. Applied to corporations, considered as deriving their existence entirely from the law.

ENSCHEDULE. To insert in a list, account, or writing.

ENSEAL. To seal. *Ensealing is* still used as a formal word in conveyancing.

ENSERVER. L. Fr. To make subject to a service or servitude. Britt. c. 54.

ENSUE. To follow after; to follow in order or train of events. Agricultural Publishers' Ass'n v. Homestead Co., 197 Iowa, 380, 197 N.W. 314.

ENTAIL, .v. To settle or limit the succession to real property; to create an estate tail.

ENTAIL, n. A fee abridged or limited to the issue, or certain classes of issue, instead of descending to all the heirs. 1 Washb. Real Prop. 66; Cowell; 2 Bl.Comm. 112, note.

Entail, in legal treatises, is used to signify an estate tail, especially with reference to the restraint which such an estate imposes upon its owner, or, in other words, the points wherein such an estate differs from an estate in fee-simple. And this is often its popular sense; but sometimes it is, in popular language, used differently, so as to signify a succession of life-estates, as when it is said that "an entail ends with A.," meaning that A. is the first person who is entitled to bar or cut off the entail, being in law the first tenant in tail. Mozley & Whiteley.

Break or Bar an Entail

To free an estate from the limitations imposed by an entail, and permit its free disposition, anciently by means of a fine or common recovery, but now by deed in which the tenant and next heir join.

FIARS PRICES. The value of grain in the different counties of Scotland, fixed yearly by the respective sheriffs, in the month of February, with the assistance of juries. These regulate the prices of grain stipulated to be sold at the fiar prices, or when no price has been stipulated. Ersk. 1, 4, 6.

FIAT. (Lat. "Let it be done.") In English practice, a short order or warrant of a judge or magistrate directing some act to be done; an authority issuing from some competent source for the doing of some legal act. See 1 Tidd Pr. 100.

One of the proceedings in the English bankrupt practice, being a power, signed by the lord chancellor, addressed to the court of bankruptcy, authorizing the petitioning creditor to prosecute his complaint before it. 2 Steph.Comm. 199. By the statute 12 & 13 Vict. c. 116, fiats were abolished.

Joint fiat. In English law, a fiat in bankruptcy, issued against two or more trading partners.

FIAT JUSTITIA. Let justice be done. On a petition to the king for his warrant to bring a writ of error in parliament, he writes on the top of the petition, *"Fiat justitia,"* and then the writ of error is made out, etc. Jacob.

FIAT JUSTITIA, RUAT C(ELUM. Let right be done, though the heavens should fall. Branch, Princ. 161.

FIAT PROUT FLERI CONSUEVIT, (NIL TEMERE NOVANDUM.) Let it be done as it hath used to be done, (nothing must be rashly innovated.) Jenk. Cent. 116, case 39; Branch, Princ.

FIAT UT PETITUR. Let it be done as it is asked. A form of granting a petition.

FLAUNT. An order; command. See Fiat.

FICTIO. In Roman law, a fiction; an assumption or supposition of the law.

"Fictio" in the old Roman law was properly a term of pleading, and signified a false averment on the part of the plaintiff which the defendant was not allowed to traverse; *as* that the plaintiff was a Roman citizen, when in truth he was a foreigner. The object of the fiction was to give the court jurisdiction. Maine, Anc.Law, 25.

FICTIO CEDIT VERITATI. FICTIO JURIS NON EST UBI VERITAS. Fiction yields to truth. Where there is truth, fiction of law exists not 11 Co. 51.

FICTIO EST CONTRA VERITATEM, SED PRO VERITATE HABETUR. Fiction is against the truth, but it is to be esteemed truth.

FICTIO JURIS NON EST UBI VERITAS. Where truth is, fiction of law does not exist.

FICTIO LEGIS INIQUE OPERATUR ALICUI DAMNUM VEL INJURIAM. A legal fiction does not properly work loss or injury. 2 Coke, 35; 3 Coke, 36; Broom, Max. 129; Gilb. 223. Fiction of law is wrongful if it works loss or injury to anyone.

FICTIO LEGIS NEMINEM L/EDIT. A fiction of law injures no one. 2 Rolle, 502: 3 Bl.Comm. 43; Low v. Little, 17 Johns. N.Y. 348.

FICTION. An assumption or supposition of law that something which is or may be false is true, or that a state of facts exists which has never really taken place. New Hampshire Strafford Bank v. Cornell, 2 N.H. 324; Hibberd v. Smith, 67 Cal. 547, 4 P. 473, 56 Am.Rep. 726; Murphy v. Murphy, 190 Iowa 874, 179 N.W. 530, 533. An assumption, for purposes of justice, of a fact that does not or may not exist. Dodo v. Stocker, 74 Colo. 95, 219 P. 222, 223.

A rule of law which assumes as true, and will not allow to be disproved, something which is false, but not impossible. Best, Ev. 419.

These assumptions are of an innocent or even beneficial character, and are made for the advancement of the ends of justice. They secure this end chiefly by the extension of procedure from cases to which it is applicable to other cases to which it is not strictly applicable, the ground of inapplicability being some difference of an immaterial character. Brown.

Fictions are to be distinguished from presumptions of law. By the former, something known to be false or unreal is assumed as true ; by the latter, an inference is set up, which may be and probably is true, but which, at any rate, the law will not permit to be controverted. It may also be said that a presumption is a rule of law prescribed for the purpose of getting at a certain conclusion, though arbitrary, where the subject is intrinsically liable to doubt from the remoteness, discrepancy, or actual defect of proofs.

Fictions are also to be distinguished from estoppels; an estoppel being the rule by which a person is precluded from asserting a fact by previous conduct inconsistent therewith on his own part or the part of those under whom he claims, or by an adjudication upon his rights which he cannot be allowed to question.

Best distinguishes legal fictions from presumptions juris *et de jure,* and divides them into three kinds,—affirmative or positive fictions, negative fictions, and fictions by relation. Best, Pres. p. 27, 24.

FICTION OF LAW. Something known to be false is assumed to be true. Ryan v. Motor Credit Co., 130 N.J.Eq. 531, 23 A.2d 607, 621.

FICTITIOUS. Founded on a fiction; having the character of a fiction; pretended; counterfeit. People v. Carmona, 79 Cal.App. 159, 251 P. 315, 317; State v. Tinnin, 64 Utah 587, 232 P. 543, 545, 43 A.L.R. 46. Feigned, imaginary, not real, false, not genuine, nonexistent. Bill alleging that amount of mortgage sought to be canceled was "fictitious" held to allege that mortgage was without consideration. Kinney v. Kinney, 230 Ala. 558, 161 So. 798, 800. Arbitrarily invented and set up, to accomplish an ulterior object. West Virginia Mortgage & Discount Corporation v. Newcomer, 101 W.Va. 292, 132 S.E. 748, 749.

FICTITIOUS ACTION. An action brought for the sole purpose , of obtaining the opinion of the court on a point of law, not for the settlement of any actual controversy between the parties. Smith v. Junction Ry. Co., 29 Ind. 551.

FICTITIOUS NAME. A counterfeit, feigned, or pretended name taken by a person, differing in some essential particular from his true name, (consisting of Christian name and patronymic,)

IN FAVORABILIBUS MAGIS ATTENDITUR QUOD PRODEST QUAM QUOD NOCET. In things favored, what profits is more regarded than what prejudices. Bac. Max. p. 57, in reg. 12.

IN FAVOREM LIBERTATIS. In favor of liberty.

IN FAVOREM VITAE. In favor of life.

IN FAVOREM LIBERTATIS, ET INNOCENTI1E, OMNIA PRIESUMUNTUR. In favor of life, liberty, and innocence, every presumption is made. Lofft, 125.

IN FEODO. In fee. Bract. fol. 207; Fleta, lib. 2, c. 64, § 15. *Seisitus in feodo,* seised in fee. Fleta, lib. 3, c. 7, § 1.

IN FICTIONE JURIS SEMPER)EQUITAS EXISTIT. In the fiction of law there is always equity; a legal fiction is always consistent with equity. 11 Coke 51a; Broom, Max. 127, 130.

IN FIERI. In being made; in process of formation or development; hence, incomplete or inchoate. Legal proceedings are described as *in fieri* until judgment is entered.

IN FINE. Lat. At the end. Used, in references, to indicate that the passage cited is at the *end* of a book, chapter, section, etc.

IN FORMA PAUPERIS. In the character or manner of a pauper. Describes permission given to a poor person to sue without liability for costs.

IN FORO. In a (or the) forum, court, or tribunal.

IN FORO CONSCIENTIIE. In the tribunal of conscience; conscientiously; considered from a moral, rather than a legal, point of view.

IN FORO CONTENTIOSO. In the forum of contention or litigation.

IN FORO ECCLESIASTICO. In an ecclesiastical forum; in the ecclesiastical court. Fleta, lib. 2, c. 57, § 13.

IN FORO SIECULARI. In a secular forum or court. Fleta, lib. 2, c. 57, § 14; 1 Bl.Comm. 20.

IN FRAUDEM CREDITORUM. In fraud of creditors; with intent to defraud creditors. Inst. 1, 6, pr. 3.

IN FRAUDEM LEGIS. In fraud of the law. 3 Bl.Comm. 94. With the intent or view of evading the law. Jackson v. Jackson, 1 Johns. (N. Y.) 424, 432.

IN FULL. Relating to the whole or *full* amount., as a receipt in full. Complete; giving all details. Bard v. Wood, 3 Mete. (Mass.) 75.

IN FULL LIFE. Continuing in both physical and civil existence; that is, neither actually dead nor *civiliter mortuus.*

IN FUTURO. In future; at a future time; the opposite of *in prcesenti.* 2 Bl.Comm. 166, 175.

IN GENERALI PASSAGIO. In the general passage; that is, on the journey to Palestine with the general company or body of Crusaders. This term was of frequent occurrence in the old law of essoins, as a means of accounting for the absence of the party, and was distinguished *from simplex passagium,* which meant that he was performing a pilgrimage to the Holy Land alone.

IN GENERALIBUS VERSATUR ERROR. Error dwells in general expressions. Pitman v. Hooper, 3 Sumn. 290, Fed. Cas. No. 11,186; Underwood v. Carney, 1 Cush. (Mass.) 292.

IN GENERE. In kind; in the same *genus* or class; the same in quantity and quality, but not individually the same. In the Roman law, things which may be given or restored in *genere are* distinguished from such as must be given or restored *in specie;* that is, identically. Mackeld. Rom. Law, § 161.

IN GREMIO LEGIS. In the bosom of the law; in the protection of the law; in abeyance. 1 Coke, 131a; T. Raym. 319; Hooper v. Farmers' Union Warehouse Co., 21 Ala.App. 91, 105 So. 725, 726.

IN GROSS. In a large quantity or sum; without division or particulars; by wholesale. Green v. Taylor, 10 Fed.Cas.No.1,126. At large; not annexed to or dependent upon another thing. Common in gross is such as is neither appendant nor appurtenant to land, but is annexed to a man's person. 2 Bl.Comm. 34.

IN HAC PARTE. In this behalf; on this side.

IN VERBA. In these words; in the same words.

IN HIEREDES NON SOLENT TRANSIRE ACTIONES QUIE PCENALES EX MALEFICIO SUNT. 2 Inst. 442. Penal actions arising from anything of a criminal nature do not pass to heirs.

IN HIS ENIM QU)E SUNT FAVORABILIA ANI- QUAMVIS SUNT DAMNOSA REBUS, FIAT ALIQUANDO EXTENTIO STATUTI. In things that are favorable to the spirit, though injurious to property, an extension of the statute should sometimes be made. 10 Coke, 101.

IN HIS QUIE DE JURE COMMUNI OMNIBUS CONCEDUNTUR, CONSUETUDO ALICUJUS PATRIIE VEL LOCI NON EST ALLEGENDA. 11 Coke, 85. In those things which by common right are conceded to all, the custom of a particular district or place is not to be alleged.

IN HOC. In this; in respect to this.

IN IIS QUIE SUNT MERZE FACULTATIS NUNQUAM PR4ESCRIBITUR. Prescription does not run against a mere power or faculty to act. Tray. Leg. Max.

IN IISDEM TERMINIS. In the same terms. 9 East, 487.

IN INDIVIDUO. In the distinct, identical, or individual form; *in specie.* Story, Bailm. § 97.

ward, 69 Colo. 181, 192 P. 657, 658; People ex rel. Kerner v. Huls, 355 Ill. 412, 189 N.E. 346, 348.

SUBMORTGAGE. When a person who holds a mortgage as security for a loan which he has made, procures a loan to himself from a third person, and pledges his mortgage as security, he effects what is called a "submortgage."

SUBNERVARE. To ham-string by cutting the sinews of the legs and thighs.

It was an old custom *meretrices et impudicas mulieres subnervare.* Wharton.

SUBNOTATIONS. In the civil law. The answers of the prince to questions which had been put to him respecting some obscure or doubtful point of law.

SUBORDINATE. Placed in a lower order, class, or rank; occupying a lower position in a regular descending series; inferior in order, nature, dignity, power, importance, or the like; belonging to an inferior order in classification, and having a lower position in a recognized scale; secondary, minor. In re Fidelity Union Title & Mortgage Guaranty Co., 118 N.J.Eq. 155, 177 A. 449, 452.

SUBORDINATE OFFICER. One who performs duties imposed on him under direction of a principal or superior officer or he may be an independent officer subject only to such directions as the statute lays on him. State ex rel. Landis v. Blake, 110 Fla. 178, 148 So. 566, 570.

SUBORN. To prepare. provide, or procure especially in a secret or underhand manner. United States v. Silverman, C.C.A.Pa., 106 F.2d 750, 751.

In criminal law. To procure another to commit perjury. Steph.Crim.Law, 74.

SUBORNATION OF PERJURY. In criminal law. The offense of procuring another to take such a false oath as would constitute perjury in the principal. Stone v. State, 118 Ga. 705, 45 S.E. 630, 98 Am.St.Rep. 145; State v. Fahey, 3 Pennewill, Del., 594, 54 A. 690; State v. Richardson, 248 Mo. 563, 154 S.W. 735, 737, 44 L.R.A.,N.S., 307.

SUBORNER. One who suborns or procures another to commit any crime, particularly to commit perjury.

SUBPOENA. (Lat. Sub, under, poena, penalty). A process to cause a witness to appear and give testimony, commanding him to lay aside all pretenses and excuses, and appear before a court or magistrate therein named at a time therein mentioned to testify for the party named under a penalty therein mentioned. Alexander v. Harrison, 2 Ind.App. 47, 28 N.E. 119, 121.

This is called distinctively a subpcena ad testificandum.

Chancery Practice

A mandatory writ or process directed to and requiring one or more persons to appear at a time to come and answer the matters charged against him or them. Gondas v. Gondas, 99 N.J.Eq. 473, 134 A. 615, 618,

The writ of subpcena was originally proceeding in courts of common law to enforce attendance of witness, but was used in chancery for same purpose as citation in courts of civil and canon law, to compel appearance of defendant and to require him to answer plaintiff's allegations on oath. Gondas v. Gondas, 99 N.J.Eq. 473, 134 A. 615, 618.

SUBPCENA AD TESTIFICANDUM. Lat. Subpoena to testify. A technical and descriptive term for the ordinary subpcena. Catty v. Brockelbank, 124 N.J.Law 360, 12 A.2d 128, 129. See Subpoena.

SUBP4ENA DUCES TECUM. A process by which the court, at the instances of a suitor, commands a witness who has in his possession or control some document or paper that is pertinent to the issues of a pending controversy, to produce it at the trial. State ex rel. Everglades Cypress Co. v. Smith, 104 Fla. 91, 139 So. 794; Ex parte Hart, 240 Ala. 642, 200 So. 783, 785.

SUBREPTIO. Lat. In the civil law. Obtaining gifts of escheat, etc., from the king by concealing the truth. Bell; Calvin.

SUBREPTION. In French law. The fraud committed to obtain a pardon, title, or grant, by alleging facts contrary to truth.

SUBROGATION. The substitution of one person in the place of another with reference to a lawful claim, demand or right, Whyel v. Smith, 101 Fla. 971, 134 So. 552, 554; so that he who is substituted succeeds to the rights of the other in relatio.p to the debt or claim, and its rights, remedies, or securities. Home Owners' Loan Corporation v. Baker, 299 Mass. 158, 12 N.E.2d 199, 201; Gerken v. Davidson Grocery Co., 57 Idaho 670, 69 P.2d 122, 126. A legal fiction through which a person who, not as a volunteer or in his own wrong, and in absence of outstanding and superior equities, pays debt of another, is substituted to all rights and remedies of the other, and the debt is treated in equity as still existing for his benefit, and the doctrine is broad enough to include every instance in which one party pays the debt for which another is primarily answerable, and which in equity and good conscience should have been discharged by such other. Home Owners' Loan Corporation v. Sears, Roebuck & Co., 123 Conn. 232, 193 A. 769, 772. The principle which lies at the bottom of the doctrine is that the person seeking it must have paid the debt under grave necessity to save himself a loss. The right is never accorded to a volunteer. Callan *Court* Co. v. Citizens & Southern Nat. Bank, 184 Ga. 87, 190 S.E. 831, 856.

"Subrogation" is equitable remedy borrowed from civil law. Ierardi v. Farmers' Trust Co. of Newark, 4 W.W. Harr. Del., 246, 151 A. 822, 825. And as a matter of right, independently of agreement, takes place only for the benefit of insurers ; or of one who, being himself a creditor, has satisfied the lien of a prior creditor ; or for the benefit of a purchaser who has extinguished an incumbrance upon the estate which he has purchased; or of a co-obligor or surety who has paid the debt which ought, in whole or in part, to have been met by another. The doctrine of "subrogation" is not applied for the mere stranger or volunteer who has paid the debt of another without any assignment or agreement for subrogation, without being under any legal obligation to make the payment, and without being compelled to do so for the preservation of any

rights or property of his own. Harford Bank of Bel Air v. Hopper's Estate, 169 Md. 314, 181 A. 751, 755.

It is also said that its elements are: (1) That party claiming it shall have paid debt; (2) that he was not a volunteer, but had a direct interest in discharge of debt or lien; (3) that he was secondarily liable for debt or discharge of lien; (4) that no injustice would be done to the other party by allowance of the equity. Hampton Loan & Exchange Bank v. Lightsey, 155 S.C. 222, 152 S.E. 425, 427.

Subrogation is of two kinds, either *conventional* or *legal;* the former being where the subrogation is express, by the acts of the creditor and the third person; the latter being (as in the case of sureties) where the subrogation is effected or implied by the operation of the law. Gordon v. Stewart, 4 Neb., Unof., 852, 96 N.W. 628; Connecticut Mut. L. Ins. Co. v. Cornwell, 72 Hun, 199, 25 N.Y.S. 348; French v. Grand Beach Co., 239 Mich. 575, 215 N.W. 13, 14; Meyer v. Florida Home Finders, 90 Fla. 128, 105 So. 267, 268; Combs v. Agee, 148 Va. 471, 139 S.E. 265, 266.

SUBROGEE. A person who is subrogated; one who succeeds to the rights of another by subrogation.

SUBSCRIBE. Literally to write underneath, as one's name; sub, under; scribere, to write; or, to write below a documentary statement, and in its popular meaning is usually limited to a signature at the end of a printed or written instrument. Corporation Commission of North Carolina v. Wilkinson, 201 N.C. 344, 160 S.E. 292, 294. In re Arcowsky's Will, 171 Misc. 41, 11 N.Y.S.2d 853, 854. Also to agree in writing to furnish money or its equivalent. Jefferson County Farm Bureau v. Sherman, 208 Iowa 614, 226 N.W. 182, 185.

SUBSCRIBER. One who writes his name under a written instrument; one who affixes his signature to any document, whether for the purpose of authenticating or attesting it, of adopting its terms as his own expressions, or of binding himself by an engagement which it contains.

One who becomes bound by a subscription to the capital stock of a corporation. Latimer v. Bennett, 37 Ga.App. 246, 139 S.E. 570, 572. A "subscriber" is one who has agreed to take stock from the corporation on the original issue of such stock. Jones v. Rankin, 19 N.M. 56, 140 P. 1120, 1121. "Subscriber," as used in the Workmen's Compensation Act, means an employer who has become a member of the association or insured under the act. In re Cox, 225 Mass. 220, 114 N.E. 281, 283.

SUBSCRIBING WITNESS. He who witnesses or attests the signature of a party to an instrument, and in testimony thereof subscribes his own name to the document.

One who sees a writing executed, or hears it acknowledged, and at the request of the party thereupon signs his name as a witness.

SUBSCRIPTIO. Lat. In the civil law. A writing under, or under-writing; a writing of the name under or at the bottom of an instrument by way of attestation or ratification; subscription.

That kind of imperial constitution which was granted in answer to the prayer of a petitioner who was present. Calvin.

SUBSCRIPTION. The act of writing one's name under a written instrument; the affixing one's signature to any document, whether for the purpose of authenticating or attesting it, of adopting its terms as one's own expressions, or of binding one's self by an engagement which it contains.

Subscription is the act of the hand, while attestation is the act of the senses. To subscribe a paper published as a will is only to write on the same paper the name of the witness; to attest a will is to know that it was published as such, and to certify the facts required to constitute an actual and legal publication. In re Downie's Will, 42 Wis. 66, 76.

A written contract by which one engages to take and pay for capital stock of a corporation, or to contribute a sum of money for a designated purpose, either gratuitously, as in the case of subscribing to a charity, or in consideration of,' an equivalent to be rendered, as a subscription to a periodical, a forthcoming book, a series of entertainments, or the like. Davis v. Roney, 124 Kan. 132, 257 P. 746, 747; First Caldwell Oil Co. v. Hunt, 100 N.J.L. 308, 127 A. 209, 210.

SUBSCRIPTION LIST. A list of subscribers to some agreement with each other or a third person.

SUBSELLIA. Lat. In Roman law. Lower seats or benches, occupied by the *judices* and by inferior magistrates when they sat in judgment, as distinguished from the *tribunal* of the prEetor. Calvin.

SUBSEQUENS MATRIMONIUM TOLLIT PECCATUM PRIECEDENS. A subsequent marriage [of the parties] removes a previous fault, *e.,* previous illicit intercourse, and legitimates the offspring. A rule of Roman law.

SUBSEQUENT. Following in time; coming or being later than something else; succeeding. Commonwealth v. Ellett, 174 Va. 403, 4 S.E.2d 762, 765.

SUBSEQUENT CONDITION. See Condition.

SUBSEQUENT CREDITOR. One who becomes a creditor after a transfer sought to be impeached as fraudulent is made. Edwards v. Monning, 63 Ohio App. 449, 27 N.E.2d 156, 158.

SUBSIDIARY CORPORATION. One in which another corporation owns at least a majority of the shares, and thus has control. Wheeler v. New York, N. H. & H. R. Co., 112 Conn. 510, 153 A. 159, 160.

See, also, Corporation.

SUBSIDY. Something, usually money, donated or given or appropriated by the government through its proper agencies, in this country by the Congress. Kennecott Copper Corp. v. State Tax Commission, D.C.Utah, 60 F.Supp. 181, 182.

In American law. A grant of money made by government in aid of the promoters of any enter-

PURE BIRTH CERTIFICATE STUDY

FOR PROOF OF HUMAN TRAFFICKING UNDER UNITED STATES STATUTES AT LARGE AND INTERNATIONAL LAW

items to other countries, aside from Iran, that may be seeking nuclear and other weapons of mass destruction, other defense technologies, or other capabilities for terrorist support.

Section 305 clarifies and reinforces the statutory law enforcement authority for agents of the enforcement division of the Commerce Department's Bureau of Industry and Security, so that they can fully carry out the expanded duties required by enactment of this legislation.

TITLE IV. GENERAL PROVISIONS

Sunset. The House-passed bill contained a "sunset" provision specifying the conditions for termination of petroleum-specific sanctions. The Senate contained no such provision. Adopting the House approach, section 105(a) provides that—except for several provisions—the provisions of the Act shall terminate if the President determines and certifies to the appropriate congressional committees that Iran: (1) has ceased providing support for acts of international terrorism and is no longer a state sponsor of terrorism; and (2) has ceased the pursuit, acquisition, and development of nuclear, biological, and chemical weapons and ballistic missiles and ballistic missile launch technology.

Waiver. Subsection (b) provides that the President may waive the application of sanctions under section 103(b), the requirement to impose or maintain sanctions with respect to a person under section 105(a), the requirement to include a person on the list required by section 105(b), the application of the prohibition under section 106(a), or the imposition of the licensing requirement under section 303(c) with respect to a country designated as a Destination of Diversion Concern under section 303(a) if the President determines that such a waiver is in the national interest of the United States. If the President does elect to use the waiver of 303(c) rather than delay imposition of export restrictions, he must provide an assessment to Congress of the steps being taken by the country to institute or strengthen an export control system; to interdict the diversion of goods, services, or technologies described in section 302(b) through the country to Iranian end-users or Iranian intermediaries; and to comply with and enforce appropriate U.N. Security Council Resolutions. The Conferees intend that the waiver authority in this section shall be case by case and shall not be used as a general waiver.

Authorization of Appropriations. Subsection (c) provides that there are authorized to be appropriated to the Secretary of State and the Secretary of the Treasury such sums as may be necessary to carry out Titles I and III of this Act. Further, the Act authorizes to be appropriated to the Secretary of Commerce such sums as may be necessary to carry out Title III.

COMPLIANCE WITH CLAUSE 9 OF RULE XXI

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, neither this conference report nor the accompanying joint statement of managers contains any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

CBO ESTIMATE OF THE STATUTORY PAY-AS-YOU-GO EFFECTS FOR THE CONFERENCE REPORT TO ACCOMPANY H.R. 2194, THE COMPREHENSIVE IRAN SANCTIONS, ACCOUNTABILITY, AND DIVESTMENT ACT OF 2010, AS PROVIDED TO CBO ON JUNE 23, 2010 (FILENAME MAR10519)

	By fiscal year in millions of dollars—												
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010–2015	2010–2020
	NET INCREASE OR DECREASE ( ) IN THE DEFICIT												
Statutory Pay-As-You-Go Impact	0	0	0	0	0	0	0	0	0	0	0	0	0

Note: H.R. 2194 would ban certain imports from Iran and impose sanctions on certain entities that conduct business with Iran. The act would reduce customs duties and impose civil and criminal penalties, but CBO estimates those effects would not be significant in any year.

From the Committee on Foreign Affairs, for consideration of the House bill and the Senate amendment, and modifications committed to conference:

HOWARD L. BERMAN,
GARY L. ACKERMAN,
BRAD SHERMAN,
JOSEPH CROWLEY,
DAVID SCOTT,
JIM COSTA,
RON KLEIN,
ILEANA ROS-LEHTINEN,
DAN BURTON,
EDWARD R. ROYCE,
MIKE PENCE,

From the Committee on Financial Services, for consideration of secs. 3 and 4 of the House bill, and secs. 101–103, 106, 203, and 401 of the Senate amendment, and modifications committed to conference:

BARNEY FRANK,
GREGORY W. MEEKS,
SCOTT GARRETT,

From the Committee on Ways and Means, for consideration of secs. 3 and 4 of the House bill, and secs. 101–103 and 401 of the Senate amendment, and modifications committed to conference:

SANDER M. LEVIN,
JOHN S. TANNER,
DAVE CAMP,

Managers on the Part of the House.

CHRISTOPHER J. DODD,
JOHN F. KERRY,
JOSEPH I. LIEBERMAN,
ROBERT MENENDEZ,
RICHARD C. SHELBY,
ROBERT F. BENNETT,
RICHARD G. LUGAR,

Managers on the Part of the Senate.

BROKEN PROMISES

The SPEAKER pro tempore (Ms. MARKEY of Colorado). Under the Speaker's announced policy of January 6, 2009, the gentleman from Iowa (Mr. KING) is recognized for 60 minutes.

Mr. KING of Iowa. Madam Speaker, it's an honor to have the opportunity to address you here on the floor of the House of Representatives, and picking up where my colleagues left off, they have given, I think, a good presentation over the last 60 minutes that covered a lot of important territory with regard to the budget and the spending. I think they've made the point that since the rules of the House required a budget resolution, this House has never before failed to pass a budget. There are political reasons for that.

I happen to see a quote over on the wall that I hadn't picked up before, and it didn't attribute it to anyone, but I am pretty sure it wasn't a Republican, Madam Speaker. It was a quote that, generally speaking, was this, that, well, until the deficit reduction commission would meet and produce a decision, we couldn't possibly pass a budget here in the House. And that would be—oh, let me see, a week or two or so after the election in November. Imagine, Congress can't do its work unless the President appoints a deficit commission, and that deficit commission couldn't possibly return a recommendation to this Congress until after the people have spoken.

It's amazing to me, Madam Speaker. The people have spoken. The people in this country have elected their Representatives that serve on this side of the aisle over here in the majority, on this side of the aisle over here in the minority. We have a responsibility to step forward and bring a budget, and that budget needs to be the reflection of spending discipline and the spending priorities of the House of Representatives.

According to the Constitution, all spending starts here—not in the Senate. It starts here. And traditionally, the House has received the President's budget, his budget recommendation. We've evaluated that budget in the process of moving a budget resolution here in the House—in a responsible fashion when Republicans were in charge at least. I think in a less responsible fashion, but at least it got done before when Democrats were in charge, until now.

□ 1930

But the spending has been so irresponsible that even the irresponsible overspending Democrats don't have enough will to bring a budget to the floor and allow it to be debated and voted upon here on the floor of the House, where the rules require us to do so. Because why? Because the President has appointed a Deficit Reduction Commission, after spending trillions of dollars irresponsibly, and now he has put these brains to work to figure out how to solve an unsolvable problem.

I know what that feels like, Madam Speaker. I remember going through the farm crisis in the eighties. I remember when asset values were going in a downward spiral and opportunities for increasing revenue were also going in a downward spiral, and the customer base that I had was doing what was happening to me. My bank was closed down by the FDIC. All accounts were frozen. Commerce came to a halt. I had two pennies in my pocket, a payroll to meet, kids to feed, a business to run, bank loans to pay even though the bank was closed by the FDIC, opened up next Monday by new owners. I know how that thing works.

You set your priorities. You step up to your responsibilities. But I have sat there at my desk during those years with my legal pad and my calculator trying to figure out how to make it work. And I know what it feels like when you think that there is something wrong with your brain because you can't solve a problem.

Well, there is something wrong with the people's brains that spent all this money all right. And now the problem they can't solve is how to present a budget to the Congress because they have created an intractable, unsolvable budget problem not by being caught in an economic downward spiral exclusively, but by going into a downward spiral where Federal revenues are being reduced in proportion to the downward economic spiral while they are increasing the spending like they are in an upward economic spiral. These two things are going opposite directions. Federal revenues are going down; Federal spending is going up.

The divergence of these two lines, the income and the outgo, have gotten so far apart that even the people without a conscience towards balancing a budget, and I mean the Democrats in this Congress, they are having a little trouble selling the idea to the Blue Dogs. Yes, Blue Dogs have gone underground. They have been quiet. They haven't been as active as they were in the past. They are certainly not as bold as they have been when I used to stand here and take lectures from the Blue Dogs that said, We want to balance the budget. What's wrong with Republicans that they can't balance the budget?

Well, nothing wrong with me, because I voted for every balanced budget that's been offered on the floor of this House since I came here. And I don't know why I wouldn't continue to do that. And we are looking for a chance to bring a balanced budget to the floor again, and we will. We will if we can break the mold here.

But this House, led by the Speaker, NANCY PELOSI, has so kowtowed to the President's spending priorities and spent trillions unnecessarily. The number that I had added up in my head standing on the floor here a week or two ago was $2.34 trillion of unnecessary spending, $2.34 trillion.

And the President's budget as he presented it, it's the only budget we've got to go with. No conscience to try to balance it. No conscience to try to limit it. Today a baby born in America, their share of the national debt—you just might say that here's the IOU that that little old baby, when their footprint goes down on the birth certificate is an acknowledgement that their share of the national debt that they owe Uncle Sam is $44,000. And we worry about that little child, all the money that it takes to provide health care and education and clothing and housing and nurture and love to bring that child up into responsible adulthood. That little old child that grows into responsible adulthood, we worry about them carrying a student loan debt that might be, oh, let's say—pick a number in the ballpark. It's not a statistical number. It's a ballpark number. Maybe $40,000 worth of student loans when they finish college.

That burden of servicing the interest and the principal on a $40,000 student loan, we worry about that. Well, I would be happy to take that $40,000 loan and a guarantee of a college degree and think that child could pay that off.

But for nothing. They don't get a college degree. They don't get an education. They just get access to citizenship of the United States of America for their $44,000 that's their share of the national debt, a little baby with ink on their foot stamped right there on the birth certificate. There is one in this country we haven't seen, but the footprint on those we have seen, those little babies owe Uncle Sam $44,000.

And, Madam Speaker, when that little child enters into fifth grade, and I picked fifth grade because that's the budget cycle. We do 10-year budget cycles, and we calculate our revenue stream. We calculate our outgo over a 10-year period of time. We put a number figure on something like, oh, let's say ObamaCare, what does that cost? That's over a 10-year period of time. So when that little child, from 10 years to the time they are born, they will be starting fifth grade. When they start fifth grade, that little child that owes Uncle Sam $44,000 that was born today owes Uncle Sam at that point, starting in the fifth grade, $88,000 under President Obama's budget. Doubles the individual national debt share just projecting the President's budget. And that, Madam Speaker, is with the President's own numbers. It's that bad.

There isn't going to be a solution coming out of the deficit commission because there is an intractable problem that's been created by irresponsible overspending and a myopic, wrong-headed view that John Maynard Keynes had the right idea when he came up with this cooked-up theory back before the Great Depression began that if you wanted to recover from an economic downward trend you would just take a lot of government money and borrow it from somewhere and dump it into the economy, give it to people, and get them to spend it. That's the Keynesian economic theory.

Government would put money into the hands of people; people would go spend the money, and spending that money would stimulate the economy. That was his plan coming into the thirties. When FDR was elected, that's what they did. They overspent. They spent the country into more deficit than they had seen before, and borrowed money and put it into the economy in all kinds of programs. The WPA, the CCC come to mind as some of those programs.

Now, that was nice for the people there that got the government jobs, and it was nice to have the soup lines. But here's what I know. When government is putting out borrowed money to pay people to do something else that's in competition with the private sector or pay people not to work, it's awfully hard to recover economically, because it takes the private sector to bring us out of this economy.

So this White House now has taken a look at the model of the thirties, and the President of the United States, his lesson, his takeaway from the whole lesson of the Great Depression was this: FDR lost his nerve. That's what the President said, February 10, 2009, before our conference, ten feet away from me, said FDR lost his nerve. He should have spent a lot more money. If he had spent more money, the President's opinion, this country would have come out of the Great Depression almost before it—he didn't say this word—but you know, before we got into the depths of it. And he argued that FDR lost his nerve, should have spent more money. If he had done that, we would not have had the depression that lasted a full decade and more.

And he argued that because FDR lost his nerve and failed to spend enough government money, what we had was—and this is according to the President's words—a recession within a depression, and unemployment numbers that went up during that period of time instead of down. And then he said along came World War II, which was the greatest economic stimulus plan ever.

I would even take issue with that statement. But I am going to concede his point there and not make an argument about it, Madam Speaker, because there is some basis for that statement. It's not completely off base at all. There is just a different perspective that I would emphasize.

But I would argue that sending this Nation into debt and borrowing money and putting it into the hands of people not in exchange for production, but just in exchange sometimes for make-work or doing something was not the right way to come out of a depression or a recession. What we need to do is increase productivity. We need to get the private sector more competitive. And he has done everything but let the private sector get more competitive.

But this Keynesian economist on steroids, which is our President, has not made what he considered to be the same mistake that Franklin Delano Roosevelt made. Remember, Roosevelt lost his nerve. He didn't spend enough money. The President hasn't lost his nerve. He spent a lot more money than FDR would have thought of spending. He spent a lot more money than John Maynard Keynes would have thought of spending.

Keynes's argument was this. He said, I will solve all the unemployment in America for you, and here is how I will do it. We will go get a whole bunch of American cash—now, I am paraphrasing here; there is an exact quote that does take this message out—a

whole bunch of American cash, American dollars, and I will find an abandoned coal mine. And we will go out and we will drill holes with a drill rig all over into that abandoned coal mine, and we will stuff these holes full of cash. And then we will haul garbage in there and fill that abandoned coal mine up with garbage—this is before the EPA, you might remember—and then we will just turn the entrepreneurs loose to go in and dig up the money. We will solve all the unemployment problem.

People will go in and dig up the money. There will be a whole industry involved, almost like mining it for gold. I am adding an embellishment here, because I have included Keynes's image of this and I am adding the embellishment beyond. So his idea was, though, that people would go in, dig through the garbage, dig up the money out of the holes in the abandoned coal mine, and it would become an industry. And they would probably need some equipment. They would need shovels at least, and there would be people industriously digging through garbage and pulling the cash out and taking it to town. It wouldn't even be like gold where they had to go to the assay office. Cash was just as good.

It reminds me of the movie that was produced that had the Beatles in it years and years ago called "The Magic Christian." And in "The Magic Christian" movie, they wanted to emphasize that there were a lot of greedy people in the world. And they filled this swimming pool full of all kinds of sewage and garbage and junk and things that would be revolting to jump into. And then there is a scene in the movie where doctors and lawyers and professionals and probably gangsters and every character that you can think of that they wanted to denigrate—they filled it full of garbage and junk and sewage and then dumped a bunch of cash in there. They had people diving into that, fighting over the cash. That image in "The Magic Christian" is the same image, a similar image that's created by John Maynard Keynes. But those things don't produce an economy. They don't produce wealth.

We have to be an economy that produces goods and services that are essential first for the survival of humanity and then essential to improve the productivity of humanity. And the next level is so that there is a savings or disposable income component to this so that we can go do the things we enjoy doing. But if an economy compresses down to the essentials, it will be a survivalist economy where our effort and our industry goes towards staying alive.

The next level is the level of productivity where our endeavor increases our productivity so that we can be competitive and we can compile wealth and use that wealth to increase our productivity that then increases our standard of living and our quality of life. And if the survival component of the economy and the increased productivity component of the economy gets high enough, then there is disposable wealth for us to spend to enjoy life, like go to the ball game, go on a vacation, take the kids fishing, go to Disney World, take the family out to Washington, D.C., see the monuments, go to the National Archives and to Arlington Cemetery. Those things, that's from disposable income that comes out, the recreational travel, the nonessential things that we spend money on, and that creates another industry.

But as you chase those industries down, you will chase them down to those components that are essential for the survival of Homo sapiens on this planet. That's the real economy. That's the economy we've got to stimulate. That's the one we have to let grow. It's stimulated by low taxes; it's stimulated by low regulation, and it's stimulated by entrepreneurs that understand the idea that they can invest some money or create an endeavor that will produce a profit for them that feeds their family and builds up some capital that can be used to increase their productivity so that the business can grow and they can hire employees and people have jobs. That's the economy we are supposed to support.

I think it's completely outside the understanding of the White House. I look around and I wonder who in the White House has actually signed the front side of the paycheck. Who's had employees? Who's started a business? Who's bought a business? Who's maintained and expanded an existing business that's in the White House circle? Who thinks like a free enterprise capitalist or like an entrepreneur? Is there anybody there that has an instinctive understanding of what it's like to start with something or maybe even start with nothing and create jobs and wealth? That's what America has done.

We have had the scenario that lets us do that. We have had the entrepreneurs. We have had the people with the dream that came to the United States because they knew this was a place where they could be allowed to succeed, and no one could come and take away the fruit of their labor and their endeavor. That's been the American Dream and it's been the American guarantee.

And now, now the White House can go in and order the terms of a bankruptcy for Chrysler or General Motors and direct that 17.5 percent of the shares of General Motors be handed over to the labor unions, the United Auto Workers who didn't have skin in the game except the potential for a future job. And yes, they had a benefits package out there, but their skin in the game wasn't conceded. They didn't concede a single point. Maybe some outside claims on insurance that could come in later years that all of them at the table believed was going to be replaced by ObamaCare anyway. There was no risk on UAW. They got handed 17.5 percent of the ownership of General Motors at what, the expense of the secured creditors, the stockholders, the bondholders that had the first mortgage on the asset values of General Motors taken out by the White House.

□ 1945

Never before in America have we seen a scenario like that where it was testified under oath by the Treasurer of the State of Indiana that in the case of Chrysler, the Obama White House went into the bankruptcy court and dictated terms going in, and the terms that came out after chapter 11 were exactly the terms dictated by the White House. Of the testimony that took place in the chapter 11 bankruptcy hearings, there wasn't one jot or tittle that was changed as a result of the testimony because the White House dictated the terms.

The Obama administration were the only ones that were evaluating the assets of Chrysler going into chapter 11. And who is the only buyer on the other side? Well, the White House. Never before in a bankruptcy court. That is unjust. You can't get justice out of a scenario of a chapter 11 bankruptcy court that allows the same entity that is setting the terms to be the entity that is buying.

The White House is saying here is what the value of Chrysler is and here is what we are willing to pay and nobody else gets to be a bidder. And in the case of General Motors, take these shares away from the shareholders, take the assets away from the secured bond holders, push them over there and turn them over to the United Auto Workers.

So what, so they can run the business of General Motors for the benefit of the people affected by it. Doesn't that sound good. Doesn't that sound great, Madam Speaker. Run a Fortune 500 company for the benefit of the people affected by it. Where have I heard that language before? Run a business for the benefit of the people affected by it. Oh, yes, I know where I have heard that language before, Madam Speaker. I read it on the Socialist Web site. You can go read it yourself, dsausa.org. They want to nationalize the Fortune 500 companies which would include General Motors and Chrysler. I don't know if it includes BP, but I imagine they are in their sights today.

And they say we are not Communists; we are Socialists. We don't want to nationalize every business in America; we just want to nationalize the Fortune 500 companies and a few others that catch our attention. And we want to manage them for the benefit of the people affected by them. That is a quote: manage them for the benefit of the people affected by them. Dsausa.org, it is the Socialist Web site, who, by the way, tell us they don't run candidates on the Socialist ticket as if they were Democrats, Republicans, Libertarians or Communists. They run candidates on the Democrat ticket as

Progressives, and they say the Progressives are the legislative arm of the Socialists.

So I read this and I am thinking, all right, but why would I take that seriously? They are attaching themselves to the Progressives in Congress, so I research a little more. I find out that there is a Web site for the Progressives here in Congress. The gentleman from Arizona (Mr. GRIJALVA), it is a Web site that has his name on it now. It is often up here on a blue board with white letters that is presented by KEITH ELLISON of Minnesota. I see him constantly advertising the Progressives.

So I go back and do a little research, and I find out that the Socialists were the ones that managed the Progressive Web site until 1999. Yes, they are an offshoot. They are joined together at the hip. They are Siamese twins. The Progressives here in Congress are the Siamese twin of the Socialists of America. The Socialists ran their Web site until they took a little heat in 1999, and then they decided the Socialists running the Progressive Web site was a little too obvious a link, so the Progressives took over their own Web site and started to run it from there. But the Socialists still have on their Web site the proud bond between them and the Progressives in the United States Congress.

The last time I looked at the list of the Progressives on the Progressive Web site, there were 77 Members of Congress that were listed. Of these 77 Members, they would be obviously among the most liberal left wing Members of Congress. But the people in America don't think of liberal left wing Democrats as Socialists. They think of them as people who are for a little more social justice, but they don't think of them as Socialists. If they would read the Socialist Web site, I think that would be a pretty good description of what a Socialist is.

When you read on the Web site that they want to nationalize the Fortune 500 companies, and then you can minimize your dsausa.org Web site, and then open up the Progressive Web site and read on there what they want to do. Well, let me see. They want to nationalize the energy industry in America. They want to nationalize the oil refinery in America. Those would be statements written and said, stated by MAXINE WATERS of California and MAURICE HINCHEY of New York respectively. I read those statements through the press, and I hear them make them. I go back and look at the Progressive Web site, and it says on there: Proud Member of the Progressive Caucus, MAXINE WATERS, MAURICE HINCHEY. And then I go over to the Socialist Web site and I read on there, We want to nationalize the Fortune 500 companies. We want to nationalize the energy industry. We want to nationalize the oil refinery industry.

You see the pattern here, Madam Speaker. What is on the Socialist Web site is an agenda. It is on the Progressive Members of Congress caucus Web site as an agenda. And this agenda is being carried out by the White House and people are proudly advocating for these ideas while never admitting that they are a Siamese twin of the Socialists, who brought this out, and they have done this for a couple of decades or more and made this advocacy.

Senator BERNIE SANDERS of Vermont is the one member of the Progressive Caucus, at least on the list, he is not in the House but he is in the Senate, Madam Speaker, Senator BERNIE SANDERS. He is a self-avowed Socialist. I know of no one who has tried to rebut his statement that he is a Socialist. He is a proud Socialist United States Senator. He remains, I believe, a member in good standing as a member of the Progressive Caucus over here. BERNIE SANDERS advocates many of the things that are on the Progressive Web site, and certainly they are tied together. I have explained how that works. He is the highest profile Socialist in the United States of America, and no one has challenged his position that he is a Socialist. That would be like someone saying STEVE KING is not a Republican, Madam Speaker. And so I take him at his word. Senator SANDERS from Vermont is a Socialist. They have elected him; that is how it goes. I don't like it, but that is how it goes. I don't dislike him; I just disagree with him philosophically. But that is how it goes in America.

So he is a Progressive and a Socialist, and we have 77 Progressives in this Congress. Well, are they Socialists? I think many are. I don't know if all are. But I know this: if you look at the voting records of President Obama when he was in the United States Senate serving with BERNIE SANDERS, it is clear that President Obama voted to the left of Socialist Senator SANDERS of Vermont, consistently to the left.

So, Madam Speaker, the argument is not what is the ideology of our President. It is what is to the left of a Socialist. That is the argument that is out there and what we need to consider and contemplate. I believe this, that if you want to declare something not to be Socialism, however it is Socialism, you have to figure out how to redefine something to the American people. They are smart enough to know what words mean. They know what Socialism is. They know what irresponsible overspending is.

They know when a President and a Congress, led by Speaker PELOSI and Majority Leader REID, disagree with the will of the American people. They understand that it is free enterprise that has driven the economy of this Nation to success, and economically has been the component that allowed for the United States of America to be the unchallenged greatest Nation in the world. They understand that the bogged down economies, managed economies, whether it was central planning in the Soviet Union that finally collapsed in 1991, or whether it is the unstimulating economy that has bogged down Western Europe for a long time, that the vitality in this American economy that keeps chugging along is rooted in the individual entrepreneurs that are the invisible hands that are making decisions every day that turns this economy and makes it move.

We are not about to give up on free enterprise even though we have people that don't believe in it that own the gavels today, even though we have a President of the United States and a White House staff and a lot of the Cabinet that don't understand, nor do they appreciate or believe in free enterprise capitalism. I doubt if there is anybody out there in the White House that can say, Yes, I read "Wealth of Nations." I understand it. I understand the division of labor. I understand the comparative advantage that Adam Smith wrote about. No, they understand Karl Marx, but they don't understand Adam Smith.

This is where we are, and it is why we have to push the reset button in November. This Nation is resilient. We can come back from this. We have a lot of debt and deficit that we have to pay off. We have a lowering national image abroad. We have a military that took a serious reset today, and I pray that it gets turned out for the best.

I think that some of our tasks are very difficult, but finding our soul is going to be the most difficult one. America will produce and bring us to a greater level of greatness yet if we find our soul, if we redefine and identify the pillars of American exceptionalism and chart ourselves down that path that goes beyond the shining city on the hill that Ronald Reagan so well spoke of and take us to the level that we can achieve, that we can see just beyond our horizons now.

Truthfully, I didn't come here to speak about any of the things I have spent the last half hour discussing. I wrote a number of subject matters down on a piece of paper, and I would like to refer over. I mentioned, Madam Speaker, the ObamaCare issue. And here is where we are. Whether it was 2 months or 3 months ago today that ObamaCare passed, I think this is a monthly anniversary of that tragic day when this Congress refused to use its common sense and refused to listen to the will of the people. Somehow they seem to be shut up here in Washington, and the constituents couldn't get to them and they hammered through and force fed an ObamaCare bill on the American people that today is the law of the land.

There was a cry that went out for almost a year from this country of the people that said I don't want my health care taken over and nationalized by the Federal Government. And bills that came in, 1,994 pages dropped on us near the end of October. It was a Thursday, 1,994 pages. We held a quick meeting a couple of hours after the bill was out. We didn't get a warning. Nobody is

working with our side of the aisle. This is all drop the ambush on them if you can. Don't give them time to regroup their forces. We are going to bring this ObamaCare bill and try to turn it into law.

Well, a couple of hours after it was electronically available, our very astute staff put together an analysis of ObamaCare. And after that 2 hours, they presented us in the period of about an hour what they thought was in it in a quick cursory example. They broke it apart in titles and went down through the titles and told us what they thought we had. I thought they did a very good job of it, and it was very accurate. I appreciate the work that was done. We understood this: we had to kill the bill. We put all kinds of effort into that. People from every State came to this city to lend their voices in trying to kill ObamaCare because they wanted to keep their freedom.

□ 2000

I want to keep my freedom, and I joined with them.

We came very, very close in November, December, right down to Christmas Eve when HARRY REID, the old scrooge, put the bitter pill out there on the floor of the Senate and America was force-fed that bitter pill that took away the liberty of the American people and nationalized our skin and everything inside it. That passed the Senate on Christmas Eve, and then it still had to face a cloture vote in the Senate. The people from Massachusetts rose up and decided they were going to do the improbable and the impossible, and they elected Scott Brown to the United States Senate, who said, I will oppose ObamaCare, and he came here to do just that. And in an unusual and in an unexpected and a unique tactic, they circumvented the vote in the Senate and shoved a vote here on the floor of the House on a promise that there would be another package passed through the Senate.

So we had this scenario that happened. When ObamaCare passed—and I'm talking about the bill, not the recissions package that came along afterwards—at the moment that ObamaCare passed, it could not have passed the Senate. When it passed the House and went to the President's desk, it could not have passed the Senate. And it did not enjoy a majority support here in the House unless there was a promise that they would pass a recissions bill afterwards that would give some of the holdouts the things that they thought they needed to amend the bill.

So they toyed with the idea of actually amending a bill that hadn't become law. That was the effort. There couldn't be an honest effort to put together a bill that was debated and perfected and amended in committee and on the floor so that it could become the will of the House or the will of the Senate. Neither the will of the House nor the Senate was passed that day when ObamaCare was passed. Maybe that's inside baseball, Madam Speaker, but here's where the American people are today. Wherever I go in this country I hear people say, ‘‘I want my country back.’’ They have seen this administration—and, yes, some of it started in the previous administration—but it had everything that I'm about to list, it had 100 percent support of Barack Obama whether he was a United States Senator, whether he was the President-elect, or whether he was the President of the United States, had most of it under his guidance as President of the United States.

Here's what happened. This Federal Government took over, nationalized—and when I say nationalized, I mean ownership, management, or control of—three large investment banks, AIG, Fannie Mae, Freddie Mac, General Motors, Chrysler—where am I going? There's more to this. All the student loan programs in America, all of that swallowed up by the Obama administration. And I'm going to go through that, that's one-third of the private sector activity according to Professor Boyles at Arizona State University, one-third.

And then, along came ObamaCare, which passed. The gentleman earlier talked about that being 17 percent of our economy. The number I see is 17.5 percent. Well, we're close, we're within half a percentage point, who really knows? But when I add it up, I added 18 to 31 percent, that takes us to 51 percent. The question is, whether it's 50.5 percent or 51 percent of the private sector activity taken over by this Federal Government—three large investment banks, AIG, Fannie Mae, Freddie Mac, General Motors, Chrysler, all the student loans in America, now the nationalization of our bodies, of our health care, taking away a person's individual choices on how they will manage their health care, what insurance policies they will buy because, after all, the Health Choices Administration czar—they call him a commissioner, I call him a ‘‘commizarissioner’’—will write the rules later.

There isn't a single health care policy in America that the President of the United States can say I guarantee that this policy will be available to you when ObamaCare is implemented, not one. Remember, he promised America that if you like your health insurance policy, you get to keep it. He promised that over and over again. It was no guiding light, it was no promise, except a broken one. And I began to wonder—there's a Web site out there that's a whole list of all of the broken Obama promises. It goes on and on and on. I wonder if he doesn't have a czar that's charged with keeping track of all of the Obama promises and making sure that he can break every single one of them in his first term. He's got a great start. But I know the American people don't see a guarantee and a promise from the President anymore.

If you like your health insurance policy, you get to keep it, I promise. Well, so what? Your promise means nothing because what we know today is there isn't a single policy in America that anybody believes that they get to keep on the other side of the implementation of ObamaCare.

And so if I'd stitch this back together, the list that I've gone through—the banks, AIG, Fannie and Freddie, General Motors, Chrysler, student loans, all of that, a third of private sector activity—ObamaCare, 17.5 percent of the private sector activity of the health care swallowed up, taken over by the time this is implemented in 2014. And so now we're at 51 percent of the former private sector activity now nationalized, taken over, under the ownership, management, or control of the Federal Government.

The gentleman earlier talked about Hugo Chavez. I remember seeing a picture of the President glad handing his handshake with Hugo Chavez almost a year ago. And I said at the time, when it comes to nationalizing companies—Hugo Chavez had just taken over a Cargill rice plant in Venezuela, but when it comes to nationalizing companies, Hugo Chavez is a piker; he cannot hold a candle to the President of the United States. And that's just a fact, Madam Speaker, it's not an embellished fact, it's just a fact.

So today we've lost 51 percent of our private sector activity to the nationalization of this Federal Government. They have nationalized, under ObamaCare, our skin and everything inside it. The most sovereign thing that we have, now we can't manage it the way we managed it before. It will be that we can only manage our health care in the future under the permission of the Federal Government. And by the way, nationalize our skin and everything inside it. And let's just say that if your daughter is getting ready for the prom or a wedding and she wants to go to the tanning salon, ObamaCare taxes the outside of your skin too, to the tune of 10 percent. What is that about? Couldn't they restrain themselves? Why do something that's so blatant as that that it embellishes the argument that the nanny state is going to prevail? Are they really worried about somebody's health?

They wanted to tax a non-diet pop. They want to manage behavior, they want to control diets. They're involved in an effort to take 1.5 trillion calories out of the diet of kids because one-third of our youth are obese. And Secretary Gates, I believe, has spoken about this, our Secretary of Defense, that there is a higher percentage of young people that don't qualify to go into the military because they've got too much blubber around their belt, so they can't qualify. I would say this then: If they're healthy otherwise, bring them in. If they meet all other standards but they're a little too fat, bring them into basic training, just keep them there a while longer. By the

time you run them around the field in combat boots a few more times and put them on a diet and exercise plan, you'll get them where you want them to be. They're still good shells of physical specimens, they just need to be cracked into shape. It doesn't mean we have a national security problem because too many kids are fat. I think we do have a problem, though, a nanny security program if this Federal Government is going to try to control the diets of our kids in this country. Taking away our liberty, taking away our freedom, disregarding the vitality of America that comes from our individualism, from being able to make choices, being held responsible for choices.

So ObamaCare has got to go, Madam Speaker. And there are those who think, oh, we can't get it done. It's hopeless now, the bill is passed, let's move on. We need to look ahead, not backwards. Well, listen, if we're going to look ahead, we have to look backwards and determine that ObamaCare is a terrible idea. It's an unconstitutional thing, it's an unconscionable thing to do to a free people.

□ 2110

America, with its vitality, loses a chunk of its vitality when you take away our individualism and our liberty, and if people think we can't repeal ObamaCare, let me lay out this scenario. It works like this:

Every single Republican voted "no" on ObamaCare. There were 34 Democrats who voted "no" on ObamaCare. There was only one thing bipartisan about ObamaCare, and that was the opposition to ObamaCare—in the House and in the Senate. So ObamaCare is the law of the land, but the implementation of it doesn't get completed until 2014. That's when we are really saddled with the juggernaut of this "taking our decisions away from us and creating the dependency on people so that they no longer think about the freedom and liberty of making their own choices." So here is how we repeal ObamaCare.

First of all, there is MICHELE BACHMANN, PARKER GRIFFITH, BOB INGLIS, I believe, JERRY MORAN—and there may be TODD AKIN—and I. Those people I can think of have all introduced legislation to repeal ObamaCare, a standalone repeal of ObamaCare that is simply this: A 100 percent repeal of ObamaCare. Pull it out by the roots. Pull it out root and branch and lock, stock and barrel so there is not one particle of ObamaCare DNA left behind. This has become a toxic stew that we have ingested now, and it is turning into a malignant tumor that will start to metastasize in 2014 when ObamaCare is fully implemented. So here is what we do:

Of my bill and others' bills, we have 90-some cosponsors on this legislation. I have introduced a discharge petition. I think it's discharge petition No. 11. I'm not certain of the number. I think that's the number. I've signed it. A lot of others have signed it. A lot more need to sign it because of this: If a discharge petition gets 218 signatures on it here in the well of the House, it has to come to the floor for a vote unamended. That means we can force a vote even over the will of the Speaker of the House, who, surely, would do everything she could do to resist the repeal of ObamaCare. We could force a vote, but the process of getting to 218 signatures on a discharge petition identifies—separates, let's say—the men from the boys and the women from the girls.

Now, if you really were sincerely against ObamaCare, it's one thing to vote against it, and 34 Democrats did. NANCY PELOSI let them off the hook because they were afraid they would lose their seats in their districts, but who knows how many of them were serious. When we actually had the motion to recommit on no mandates, on no Federal mandates to buy insurance, there were only 21 Democrats who voted with that as opposed to the 34 who voted "no" on ObamaCare. So you've seen the conviction drop by 13 just in that little exchange.

How many of those 21 really have conviction?

We'll find out because the discharge petition is here, and I challenge those 21. In fact, I challenge those 34—and everybody else who is opposed to ObamaCare—to sign the discharge petition. Let's bring that discharge petition to the floor and repeal ObamaCare. Let's pull it out by the roots. Let's send it over to the Senate. Let's see what JIM DEMINT and others can get done over there. That's what we need to do here in the House of Representatives.

Now, maybe that doesn't get itself accomplished and get ObamaCare repealed, because people in America, Mr. Speaker, can think in sequences, in logical, multiple sequences. All of the solutions are out there in America. I trust the judgment of our voters. They know this: If we are successful in getting 218 signatures on a discharge petition and if we pass the repeal of ObamaCare and if it goes down the hallway and across, through the Rotunda and over to HARRY REID, of course he'll do everything he can to kill it.

Maybe they'll find a way to get that done over in the Senate. Then it would go to the President, and we know what would happen. He would veto the bill. So it would come back to the House or to the Senate for an opportunity to override the Presidential veto.

It's not something you would consider to be politically possible today. Maybe there is an outside chance that it could be possible by the time we get to November. I doubt it, too—I'm skeptical about that—but we'll have put the marker down, Mr. Speaker. We will have separated the women from the girls and the men from the boys with the discharge petition. We'll have set the stage for the other side of November, the other side into the next Congress, when, I believe, the gavels will come into different hands from our side of the aisle, in which case we can move a repeal of ObamaCare as a standalone, a 100 percent repeal of ObamaCare as a standalone. We can do that. When that would happen, we would recognize President Obama would veto that, and we would have to figure out how to come up with a two-thirds majority to overturn the Presidential veto.

Again, that's a very, very high bar, but this Constitution here in my jacket pocket tells me all spending has to start here in the House, Mr. Speaker. All spending has to start here in the House. So a House controlled with a gavel in the hands of Republicans would simply refuse to fund any dollars. Any American taxpayer dollars would be prohibited to be used to implement ObamaCare. That could work really well in a Republican majority in 2011 and in 2012. So ObamaCare wouldn't be implemented. It would be sitting there without implementation, and Republicans would have passed a repeal of ObamaCare at least once during that period of time, maybe more times. Then we elect a President in 2012 who takes, as a matter of his campaign and his oath, his number one priority, which is to sign the repeal of ObamaCare. Pull it out by the roots.

So I have this vision of a President of the United States taking the oath of office, Mr. Speaker, with pen in hand: I swear to the best of my ability to preserve, protect, and defend the Constitution of the United States, so help me God. Pen in hand.

Normally, the President will turn and shake hands with the Chief Justice and with the outgoing President, and there will be a great celebration up there on the west portico of the Capitol. I would like to see him interrupt that for one thing. I'd like to see that pen in his hand when he takes the oath. I'd like to see the repeal of ObamaCare right there at the podium on the west portico, right by the bible that he chooses to take the oath on, and I'd like to hear him take that oath "so help me God" and bring his hand right down to the document that is the repeal of ObamaCare and sign the repeal of ObamaCare right there in the first instant of the new administration that begins on January 20, 2013.

Don't tell me we can't repeal ObamaCare. Yes, we can. We have to move a discharge petition now. We have to separate the women from the girls and the men from the boys on that subject. We've got to identify it so the voters know what to do when they go to the polls in November. When the time comes that the new majority is here and is being sworn in in January, probably on January 3 of 2011, we will refuse to fund ObamaCare, because the funding has to start here, and you can't get around that. No President can get around that. No Senator can get around that. The Constitution says it starts here. We control all spending in this House. There will be no funding to

fund the implementation of ObamaCare. We hold the line in 2011 and 2012, and we elect a President who will sign the repeal of ObamaCare on January 20, 2013, right there on the podium at the west portico of the Capitol. It's right through those doors. Take a left. It's out on the portico where great events takes place.

That's what needs to happen—the full repeal of ObamaCare. Move this discharge petition now so we can separate those who are for a standalone, 100 percent repeal of ObamaCare and those who seem to lack the will to put their markers down and to be clear with the voters in America. That has got to happen.

Now, I didn't leave a lot of time for some of the other subject matters that I felt the urge to address, but I'll go through a list of them. A lot of them have to do with immigration, Mr. Speaker.

One of them is regarding the Secretary of Labor, who is using our tax dollars to run ads to tell people: Call this number. If you're legal or illegal, it doesn't matter. You deserve a reasonable wage, so we'll protect you with our labor laws. If you're working in the United States illegally, we're not going to ask you for your Social Security number or where you were born or what your lawful present status is or whether you are legal to work in America. If you're illegal and if your boss isn't paying you a going wage or is not treating you right under America's labor laws, call us. We'll keep you confidential, and we'll go punish the employer.

They're spending—it has to be millions of dollars—out of the Department of Labor budget to tell people who have broken into this country, who have unlawfully entered the United States or who have unlawfully overstayed their visas and who cannot lawfully work in America, that they are going to use the law to punish the employers if they don't treat them right.

Now, I don't say that an employer should be able to abuse their employees, but I do say the Secretary of Labor gets this way wrong if she thinks that she is going to use my tax dollars, Mr. Speaker, or is going to use your tax dollars to advertise to people working in America illegally, who are taking jobs away from Americans and from people who can work legally in this country, and reward them with the objective of their crimes by bringing the force of the Department of Labor against their employers.

□ 2020

I tell you, I don't know where they find these people to appoint them to the Cabinet. This is one. I want to look at the full text of her remarks and come on tomorrow with a decision on what position I want to take. But this is a marker that needs to be down. We don't use American tax dollars to advertise and reward illegals for coming into this country. That is a form of amnesty being advertised in the television airwaves across America, with American tax dollars, at the direction of the Secretary of Labor; her face up there saying, Trust me. I will protect you. I won't enforce the law against you.

Amnesty. To grant amnesty is to pardon immigration lawbreakers and award them with the objective of their crimes. That's what she's saying. She's saying, We're not going to bring the law against you. We won't enforce the law. We'll keep your name confidential. Trust us. If your objective is a good job, we'll make sure we come down on your employer, not on you. But all the while she knows that anybody working in the United States illegally had to falsify their identification to get the job in the first place. And they probably did an identity theft or purchased the theft product from someone's identity in order to work in America. That is a serious crime. When someone's identity is stolen, they never get it back again. It is being implicitly encouraged by the Secretary of Labor. And that's got to stop, Mr. Speaker.

Now, Arizona law. Let's just say Arizona. Fox News today ran a story—I think they started it last night in some text that I read—about the spotters down in Arizona that occupy the mountaintops along the transportation routes coming up through Arizona. Now what is going on is drug smugglers, people smugglers, contraband smugglers, occupy these locations on top of the mountains in Arizona. A lot of mountains in Arizona are shaped like volcanoes. Some is volcanic, as I notice, anyway. They come to a point. They're a cone.

And up on top of them—or whether it's a ridge—they will pick a spot where they can see an intersection of highways coming from two or three different directions or more, and the employees—these are paramilitary armed personnel that are organized as a military force taking position, strategic positions on top of mountaintops in Arizona, and they will take the stones and they'll stack them around like a gun emplacement and hunker down with optical equipment and they will watch the traffic.

And they have communications equipment with scramblers and descramblers in it so they can talk to their people and we can't listen in on them. We know the frequencies. I've heard it on the radio. I've flown over there in a helicopter and listened to the excited chatter as we fly toward some of those mountaintops to try to pick those spotters off of there before they come off the mountaintop and go hide in the desert. You can hear the chatter intensify up to a fever pitch and then all of a sudden it goes dark. Silent. That's because they come off the mountain right before you get there and they go down and hide.

I have pictures. I have hundreds of pictures from the top of these spotter locations. These are tactical positions in America. They're used to facilitate the smuggling of drugs and people, all kinds of contraband, and some of those people may well be terrorist suspects. They're from nations that we should be concerned about.

That traffic is going on through Arizona and other States. And these locations aren't just sitting along the border. These locations go all the way up the highway. Not just to Tucson. All the way to Phoenix. They control the transportation routes there. They tell them when to go, when to stop. They run decoys with a small amount of drugs in them. When the Border Patrol and other law enforcement officers converge on a vehicle, they sacrifice one of their people for the means of bringing a truckload through while they're diverted. That happens. It happens regularly.

We have a massive number of illegal border crossings. We have backpackers that are marching through the desert. We have 110-pound guys with 50-pound packs or more on their back and they march for a hundred or more miles sometimes. You look at some of those guys with calves like that on them. They're in shape because that's what they do—they walk back and forth in the desert and get paid to smuggle drugs in and out of the United States. And we sit here and we allow drug smugglers to occupy tactical positions on the tops of mountains, controlling the transportation routes in America, all the way up to Phoenix, and we're not able to go snap those people off those mountains and lock them up or put them through the shakedown and find out who they're affiliated with.

And we can listen in on the radio, but we can't understand it because it's a scrambled chatter and their equipment is at least as good as ours—and maybe better. And they supply them and they bring them food and drink and other things they need, as well as weapons. And I've been there to see these locations and optical equipment.

Mr. Speaker, we've got to take the spotters off the top of these lookout mountains. We cannot have the drug smugglers in tactical positions that control our transportation routes, however difficult it is. And there are tactical ways to do this. Our Special Forces know how. A lot of our law enforcement officers know how. They just need a mission. And last year I was able to get an appropriations amendment that directed a million dollars to take the spotters off of the lookouts in Arizona. And that appropriation went over to the Senate, where it was killed and died, Mr. Speaker.

So we've got to wake up. We've got to defend this country. We've got to shut off this border; build a wall; build a fence; stop the bleeding at the border; take the lookouts, the spotters off the lookout mountains in Arizona; shut off the magnet on jobs; get back to the rule of law. Let's reward people that respect the law and punish the people

that violate the law without regard to race, creed, color, ethnicity, or national origin. Take it right out of title 7 of the Civil Rights Act. By the way, without violating Arizona law or Arizona's Constitution or the United States Constitution or any other State Constitution, for that matter.

Those are a number of the things on my mind, Mr. Speaker. And I'm very well aware that within the next 60 seconds I will have reached the balance of my time. And so I want to acknowledge and appreciate being recognized to address you here on the floor of the House of Representatives.

And I would yield back the balance of my time.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. YOUNG of Florida (at the request of Mr. BOEHNER) for June 22 and today until 2 p.m. on account of a death in the family.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. DEFAZIO) to revise and extend their remarks and include extraneous material:)

Ms. WOOLSEY, for 5 minutes, today.

Mr. DEFAZIO, for 5 minutes, today.

Mrs. MALONEY, for 5 minutes, today.

(The following Members (at the request of Mr. POE of Texas) to revise and extend their remarks and include extraneous material:)

Mr. POE of Texas, for 5 minutes, June 30.

Mr. JONES, for 5 minutes, June 30.

Mr. MORAN of Kansas, for 5 minutes, June 25, 29, and 30.

Mr. PAULSEN, for 5 minutes, today and June 24.

ADJOURNMENT

Mr. KING of Iowa. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 8 o'clock and 25 minutes p.m.), the House adjourned until tomorrow, Thursday, June 24, 2010, at 10 a.m.

BUDGETARY EFFECTS OF PAYGO LEGISLATION

Pursuant to Public Law 111–139, Mr. SPRATT hereby submits, prior to the vote on passage, the attached estimate of the costs of the bill H.R. 5569, the National Flood Insurance Program Extension Act of 2010, for printing in the CONGRESSIONAL RECORD.

CBO ESTIMATE OF THE STATUTORY PAY-AS-YOU-GO EFFECTS FOR H.R. 5569, THE NATIONAL FLOOD INSURANCE PROGRAM EXTENSION ACT OF 2010, AS INTRODUCED ON JUNE 22, 2010

	By fiscal year, in millions of dollars—												
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010–2015	2010–2020
	Net Increase or Decrease ( ) in the Deficit												
Statutory Pay-As-You-Go Impact [a]	50	0	0	50	0	0	0	0	0	0	0	0	0

[a] H.R. 5569 would authorize the Federal Emergency Management Agency to pay flood insurance claims that would otherwise go unpaid during the lapse in the National Flood Insurance Program's authority to write and renew policies by making the new authorization retroactive. The bill also would reduce the program's ability to borrow funds from the Treasury in years where program expenses exceeded premium income. CBO estimates that the enacting these provisions would have no net effect on the federal budget over the 2010–2015 and 2010–2020 periods.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XIV, executive communications were taken from the Speaker's table and referred as follows:

8025. A letter from the Under Secretary, Department of Defense, transmitting letter addressing the acquisition strategy, requirements, and cost estimates for the Army tactical ground network program, pursuant to Public Law 110-84 section 218; to the Committee on Armed Services.

8026. A letter from the Assistant Secretary, Employee Benefits Security Administration, Department of Labor, transmitting the Department's ''Major'' final rule — Interim Final Rules for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan Under the Patient Protection and Affordable Care Act (RIN: 1210-AB42) received June 22, 2010, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and Labor.

8027. A letter from the Director, Office of Workers' Compensation Programs, Department of Labor, transmitting annual report on Operations of the Office of Workers' Compensation Programs for Fiscal year 2008; to the Committee on Education and Labor.

8028. A letter from the Director, Office of Workers' Compensation Programs, Department of Labor, transmitting annual report on Operations of the Office of Workers' Compensation Programs for Fiscal year 2007; to the Committee on Education and Labor.

8029. A letter from the Deputy Director, OSHA Standards and Guidance, Department of Labor, transmitting the Department's final rule — Revising the Notification Requirements in the Exposure Determination Provisions of the Hexavalent Chromium Standards [Docket No.: OSHA-H054a-2006-0064] (RIN: 1218-AC43) received June 3, 2010, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and Labor.

8030. A letter from the Program Manager, Department of Health and Human Services, transmitting the Department's ''Major'' final rule — Interim Final Rules for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan under the Patient Protection and Affordable Care Act (RIN: 0991-AB68) received June 17, 2010, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

8031. A letter from the Director, Office of Congressional Affairs, Nuclear Regulatory Commission, transmitting the Commission's ''Major'' final rule — Revision of Fee Schedules; Fee Recovery for FY 2010 [NRC-2009-0333] (RIN: 3150-AI70) received June 17, 2010, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

8032. A letter from the Assistant Secretary for Export Administration, Department of Commerce, transmitting the Department's final rule — Implementation of Changes from the 2009 Annual Review of the Entity List [Docket No.: 100311137-0138-01] (RIN: 0694-AE88) received June 3, 2010, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Foreign Affairs.

8033. A letter from the Assistant Secretary for Export Administration, Department of Commerce, transmitting the Department's final rule — Export Administration Regulations: Technical Corrections [Docket No.: 0907271167-91198-01] (RIN: 0694-AE69) received June 3, 2010, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Foreign Affairs.

8034. A letter from the Assistant Secretary, Legislative Affairs, Department of State, transmitting a proposed removal from the United States Munitions List of infrasound sensors that have both military and civil applications, pursuant to Section 38(f)(1) of the Arms Export Control Act; to the Committee on Foreign Affairs.

8035. A letter from the Assistant Secretary, Legislative Affairs, Department of State, transmitting Transmittal No. DDTC 10-002, certification of a proposed technical assistance agreement to include the export of technical data, and defense services, pursuant to section 36(c) of the Arms Export Control Act; to the Committee on Foreign Affairs.

8036. A letter from the Assistant Attorney General, Department of Justice, transmitting the Department's fiscal year 2009 annual report prepared in accordance with Section 203(a) of the Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002 (No FEAR Act), Public Law 107-174; to the Committee on Oversight and Government Reform.

8037. A letter from the Chairman and President, Export-Import Bank, transmitting the semiannual report of the Inspector General for the period ending September 30, 2009, pursuant to 5 U.S.C. app. (Insp. Gen. Act) section 5(b); to the Committee on Oversight and Government Reform.

8038. A letter from the Director, Office of Personnel Management, transmitting the Office's Annual Privacy Activity Report to Congress for 2009, pursuant to Public Law 108-447, section 522; to the Committee on Oversight and Government Reform.

42 USC 1994: Peonage abolished
Text contains those laws in effect on May 16, 2023

From Title 42-THE PUBLIC HEALTH AND WELFARE
CHAPTER 21-CIVIL RIGHTS
SUBCHAPTER I-GENERALLY

Jump To:
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Miscellaneous
Codification

§1994. Peonage abolished

The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in any Territory or State of the United States; and all acts, laws, resolutions, orders, regulations, or usages of any Territory or State, which have heretofore established, maintained, or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, are declared null and void.

(R.S. §1990.)

Editorial Notes

Codification

R.S. §1990 derived from act Mar. 2, 1867, ch. 187, §1, 14 Stat. 546 .
Section was formerly classified to section 56 of Title 8, Aliens and Nationality.

March 2, 1867. CHAP. CLXXXVII. — *An Act to abolish and forever prohibit the System of Peonage in the Territory of New Mexico and other Parts of the United States.*

Peonage declared unlawful, and abolished.

Acts establishing it, &c. void.

Penalty for holding, &c. a person in peonage.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the holding of any person to service or labor under the system known as peonage is hereby declared to be unlawful, and the same is hereby abolished and forever prohibited in the Territory of New Mexico, or in any other Territory or State of the United States; and all acts, laws, resolutions, orders, regulations, or usages of the Territory of New Mexico, or of any other Territory or State of the United States, which have heretofore established, maintained, or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, be, and the same are hereby, declared null and void; and any person or persons who shall hold, arrest, or return, or cause to be held, arrested, or returned, or in any manner aid in the arrest or return of any person or persons to a condition of peonage, shall, upon conviction, be punished by fine not less than one thousand nor more than five thousand dollars, or by imprisonment not less than one nor more than five years, or both, at the discretion of the court.

Foregoing section to be enforced.

Penalty for obstructing its enforcement.

Sec. 2. *And be it further enacted,* That it shall be the duty of all persons in the military or civil service in the Territory of New Mexico to aid in the enforcement of the foregoing section of this act; and any person or persons who shall obstruct or attempt to obstruct, or in any way interfere with, or prevent the enforcement of this act, shall be liable to the pains and penalties hereby provided; and any officer or other person in the military service of the United States who shall so offend, directly or indirectly, shall, on conviction before a court-martial, be dishonorably dismissed the service of the United States, and shall thereafter be ineligible to reappointment to any office of trust, honor, or profit under the government.

Approved, March 2, 1867.

March 2, 1867. CHAP. CLXXXVIII. — *An Act to regulate the Disposition of the Proceeds of Fines, Penalties, and Forfeitures incurred under the Laws relating to the Customs, and for other Purposes.*

From proceeds of fines, penalties, &c. under customs laws, deductions to be made of charges, &c.;

of an amount equal to the duties in coin.

Residue, how distributed;

one half to United States;

one fourth to informer;

one fourth to collector, naval officer, and surveyor, equally.

Where officer of revenue ent-

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from the proceeds of fines, penalties, and forfeitures incurred under the provisions of the laws relating to the customs, there shall be deducted such charges and expenses as are by law in each case authorized to be deducted; and in addition, in case of the forfeiture of imported merchandise of a greater value than five hundred dollars on which duties have not been paid, or in case of a release thereof, upon payment of its appraised value, or of any fine or composition in money, there shall also be deducted an amount equivalent to the duties in coin upon such merchandise, (including the additional duties, if any,) which shall be credited in the accounts of the collector as duties received, and the residue of the proceeds aforesaid shall be paid into the treasury of the United States, and distributed, under the direction of the Secretary of the Treasury, in the manner following, to wit; one half to the United States; one fourth to the person giving the information which has led to the seizure, or to the recovery of the fine or penalty, and if there be no informer other than the collector, naval officer, or surveyor, then to the officer making the seizure; and the remaining one fourth to be equally divided between the collector, naval officer, and surveyor, or such of them as are appointed for the district in which the seizure has been made, or the fine or penalty incurred, or, if there be only a collector, then to such collector. But where any fine, penalty, or forfeiture, incurred by virtue of the laws relating to customs, shall be recovered in

U.S. Department of Justice, Office of Justice Programs, National Institute of Justice - NIJ.gov

Human Trafficking

On this page find:

- Overview of Human Trafficking
- NIJ's Role in Human Trafficking Research

Funded Research
View a list of NIJ-funded research on trafficking in persons.

Overview of Human Trafficking

The United Nations defines **human trafficking** as the recruitment, transportation, transfer, harboring, or receipt of persons by improper means (such as force, abduction, fraud, or coercion) for an improper purpose including forced labor or sexual exploitation. [1] **Human smuggling,** a related but different crime, generally involves the consent of the person(s) being smuggled. These people often pay large sums of money to be smuggled across international borders. Once in the country of their final destination, they are generally left to their own devices. Smuggling becomes trafficking when the element of force or coercion is introduced.

The U.S. Government defines human trafficking as:

- Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age.
- The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

This modern slave trade is a threat to all nations. A grave human rights abuse, it promotes breakdown of families and communities, fuels organized crime, deprives countries of human capital, undermines public health, creates opportunities for extortion and subversion among government officials, and imposes large economic costs.

NIJ's Role in Human Trafficking Research

Through the funding of rigorous research, NIJ is committed to assisting with the detection and prosecution of human traffickers. NIJ-funded research projects focus on:

- The nature and extent of human trafficking
- Detecting and investigating traffickers
- Prosecuting traffickers
- Services for trafficking victims.

Human trafficking is a largely hidden crime that has only recently gained the attention of law enforcement, human rights advocates, and policymakers. Research in the field continues to evolve and has focused almost exclusively on the victims. Reliable data are needed, especially about the characteristics of victims and perpetrators, the mechanism of operations, and assessments of trends. In addition, law enforcement officials must overcome substantial legal, cultural, and organizational barriers to investigating and prosecuting trafficking cases. These barriers, and strategies to overcome them, are still being identified.

Review a list of NIJ-funded research and evaluation projects.

Read the following articles on NIJ.gov to learn more about select research findings:

- A Screening Tool for Identifying Trafficking Victims
- Estimating the Underground Commercial Sex Economy in the U.S.
- Evaluating Services for Young Victims of Human Trafficking
- Gangs and Sex Trafficking in San Diego

State of Human Trafficking Research

- How Does Labor Trafficking Occur in U.S. Communities and What Becomes of the Victims?
- Reducing Demand for Prostitution in San Francisco With a "John School" Program
- Improving the Investigation and Prosecution of State and Local Human Trafficking Cases
- Labor Trafficking in San Diego County: Looking for a Hidden Population
- Stabilizing Foreign-Born Adult Survivors of Human Trafficking in the U.S

Read a summary (pdf, 34 page) from an NIJ-convened working group that explored the current state of human trafficking research, identified persistent challenges, brainstorm solutions, and discussed priority topics for future research.

Notes

[1] UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, summary Web page at http://www.unodc.org/unodc/en/treaties/CTOC/index.html, accessed March 27, 2007. Exit Notice

Date Modified: March 30, 2017

all human rights for all

FIFTIETH ANNIVERSARY OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

1948-1998

Universal Declaration of Human Rights

(other language versions)

Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948

On December 10, 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights the full text of which appears in the following pages. Following this historic act the Assembly called upon all Member countries to publicize the text of the Declaration and "to cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories."

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF

HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1.

All human beings are born free and equal in dignity and rights.They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3.

Everyone has the right to life, liberty and security of person.

Article 4.

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5.

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6.

Everyone has the right to recognition everywhere as a person before the law.

Article 7.

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8.

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9.

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10.

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12.

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13.

(1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14.

(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15.

(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16.

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17.

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

Article 18.

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19.

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20.

(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

Article 21.

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22.

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23.

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24.

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25.

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26.

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27.

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28.

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29.

(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30.

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

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630 F.2d 876

Dolly M. E. FILARTIGA and Joel Filartiga, Plaintiffs-Appellants,
v.
Americo Norberto PENA-IRALA, Defendant-Appellee.

No. 191, Docket 79-6090.

**United States Court of Appeals,
Second Circuit.**

*Argued Oct. 16, 1979.
Decided June 30, 1980.*

Peter Weiss, New York City (Rhonda Copelon, John Corwin and Jose Antonio Lugo, Center for Constitutional Rights, New York City, and Michael Maggio, Goren & Maggio, Washington, D. C., of counsel), for plaintiffs-appellants.

Murry D. Brochin, Newark, N. J. (Lowenstein, Sandler, Brochin, Kohl, Fisher & Boylan, P. C., Newark, N. J., of counsel), for defendant-appellee.

Irving Gornstein, Atty., Dept. of Justice, Washington, D. C. (Drew S. Days, III, Asst. Atty. Gen., John E. Huerta, Deputy Asst. Atty. Gen., Roberts B. Owen, Legal Advisor, William T. Lake, Deputy Legal Advisor, Stefan A. Riesenfeld, Charles Runyon and Linda A. Baumann, Attys., Dept. of State, Washington, D. C.), for the U. S. as amicus curiae.

Donald L. Doernberg, New York City, and David S. Weissbrodt, Minneapolis, Minn., for Amnesty International-U. S. A., Intern. League for Human Rights, and the Lawyers' Committee for Intern. Human Rights as amici curiae.

Allan Abbot Tuttle, and Steven M. Schneebaum, Washington, D. C., for The Intern. Human Rights Law Group, The Council on Hemispheric Affairs and the Washington Office on Latin America as amici curiae.

Before FEINBERG, Chief Judge, KAUFMAN and KEARSE* , Circuit Judges.

IRVING R. KAUFMAN, Circuit Judge:

1 Upon ratification of the Constitution, the thirteen former colonies were fused into a single nation, one which, in its relations with foreign states, is bound both to observe and construe the accepted norms of international law, formerly known as the law of nations. Under the Articles of Confederation, the several states had interpreted and applied this body of doctrine as a part of their common law, but with the founding of the "more perfect Union" of 1789, the law of nations became preeminently a federal concern.

2 Implementing the constitutional mandate for national control over foreign relations, the First Congress established original district court jurisdiction over "all causes where an alien sues for a tort only (committed) in violation of the law of nations." Judiciary Act of 1789, ch. 20, § 9(b), 1 Stat. 73, 77 (1789), codified at 28 U.S.C. § 1350. Construing this rarely-invoked provision, we hold that deliberate torture perpetrated under color of official authority violates universally accepted norms of the international law of human rights, regardless of the nationality of the parties. Thus, whenever an alleged torturer is found and served with process by an alien within our borders, § 1350 provides federal

jurisdiction. Accordingly, we reverse the judgment of the district court dismissing the complaint for want of federal jurisdiction.

3 * The appellants, plaintiffs below, are citizens of the Republic of Paraguay. Dr. Joel Filartiga, a physician, describes himself as a longstanding opponent of the government of President Alfredo Stroessner, which has held power in Paraguay since 1954. His daughter, Dolly Filartiga, arrived in the United States in 1978 under a visitor's visa, and has since applied for permanent political asylum. The Filartigas brought this action in the Eastern District of New York against Americo Norberto Pena-Irala (Pena), also a citizen of Paraguay, for wrongfully causing the death of Dr. Filartiga's seventeen-year old son, Joelito. Because the district court dismissed the action for want of subject matter jurisdiction, we must accept as true the allegations contained in the Filartigas' complaint and affidavits for purposes of this appeal.

4 The appellants contend that on March 29, 1976, Joelito Filartiga was kidnapped and tortured to death by Pena, who was then Inspector General of Police in Asuncion, Paraguay. Later that day, the police brought Dolly Filartiga to Pena's home where she was confronted with the body of her brother, which evidenced marks of severe torture. As she fled, horrified, from the house, Pena followed after her shouting, "Here you have what you have been looking for for so long and what you deserve. Now shut up." The Filartigas claim that Joelito was tortured and killed in retaliation for his father's political activities and beliefs.

5 Shortly thereafter, Dr. Filartiga commenced a criminal action in the Paraguayan courts against Pena and the police for the murder of his son. As a result, Dr. Filartiga's attorney was arrested and brought to police headquarters where, shackled to a wall, Pena threatened him with death. This attorney, it is alleged, has since been disbarred without just cause.

6 During the course of the Paraguayan criminal proceeding, which is apparently still pending after four years, another man, Hugo Duarte, confessed to the murder. Duarte, who was a member of the Pena household,[1] claimed that he had discovered his wife and Joelito in flagrante delicto, and that the crime was one of passion. The Filartigas have submitted a photograph of Joelito's corpse showing injuries they believe refute this claim. Dolly Filartiga, moreover, has stated that she will offer evidence of three independent autopsies demonstrating that her brother's death "was the result of professional methods of torture." Despite his confession, Duarte, we are told, has never been convicted or sentenced in connection with the crime.

7 In July of 1978, Pena sold his house in Paraguay and entered the United States under a visitor's visa. He was accompanied by Juana Bautista Fernandez Villalba, who had lived with him in Paraguay. The couple remained in the United States beyond the term of their visas, and were living in Brooklyn, New York, when Dolly Filartiga, who was then living in Washington, D. C., learned of their presence. Acting on information provided by Dolly the Immigration and Naturalization Service arrested Pena and his companion, both of whom were subsequently ordered deported on April 5, 1979 following a hearing. They had then resided in the United States for more than nine months.

8 Almost immediately, Dolly caused Pena to be served with a summons and civil complaint at the Brooklyn Navy Yard, where he was being held pending deportation. The complaint alleged that Pena had wrongfully caused Joelito's death by torture and sought compensatory and punitive damages of $10,000,000. The Filartigas also sought to enjoin Pena's deportation to ensure his availability for testimony at trial.[2] The cause of action is stated as arising under "wrongful death statutes; the U. N. Charter; the Universal Declaration on

Human Rights; the U. N. Declaration Against Torture; the American Declaration of the Rights and Duties of Man; and other pertinent declarations, documents and practices constituting the customary international law of human rights and the law of nations," as well as 28 U.S.C. § 1350, Article II, sec. 2 and the Supremacy Clause of the U. S. Constitution. Jurisdiction is claimed under the general federal question provision, 28 U.S.C. § 1331 and, principally on this appeal, under the Alien Tort Statute, 28 U.S.C. § 1350.[3]

9

Judge Nickerson stayed the order of deportation, and Pena immediately moved to dismiss the complaint on the grounds that subject matter jurisdiction was absent and for forum non conveniens. On the jurisdictional issue, there has been no suggestion that Pena claims diplomatic immunity from suit. The Filartigas submitted the affidavits of a number of distinguished international legal scholars, who stated unanimously that the law of nations prohibits absolutely the use of torture as alleged in the complaint.[4] Pena, in support of his motion to dismiss on the ground of forum non conveniens, submitted the affidavit of his Paraguayan counsel, Jose Emilio Gorostiaga, who averred that Paraguayan law provides a full and adequate civil remedy for the wrong alleged.[5] Dr. Filartiga has not commenced such an action, however, believing that further resort to the courts of his own country would be futile.

10

Judge Nickerson heard argument on the motion to dismiss on May 14, 1979, and on May 15 dismissed the complaint on jurisdictional grounds.[6] The district judge recognized the strength of appellants' argument that official torture violates an emerging norm of customary international law. Nonetheless, he felt constrained by dicta contained in two recent opinions of this Court, Dreyfus v. von Finck, 534 F.2d 24 (2d Cir.), cert. denied, 429 U.S. 835, 97 S.Ct. 102, 50 L.Ed.2d 101 (1976); IIT v. Vencap, Ltd., 519 F.2d 1001 (2d Cir. 1975), to construe narrowly "the law of nations," as employed in § 1350, as excluding that law which governs a state's treatment of its own citizens.

11

The district court continued the stay of deportation for forty-eight hours while appellants applied for further stays. These applications were denied by a panel of this Court on May 22, 1979, and by the Supreme Court two days later. Shortly thereafter, Pena and his companion returned to Paraguay.

II

12

Appellants rest their principal argument in support of federal jurisdiction upon the Alien Tort Statute, 28 U.S.C. § 1350, which provides: "The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." Since appellants do not contend that their action arises directly under a treaty of the United States,[7] a threshold question on the jurisdictional issue is whether the conduct alleged violates the law of nations. In light of the universal condemnation of torture in numerous international agreements, and the renunciation of torture as an instrument of official policy by virtually all of the nations of the world (in principle if not in practice), we find that an act of torture committed by a state official against one held in detention violates established norms of the international law of human rights, and hence the law of nations.

13

The Supreme Court has enumerated the appropriate sources of international law. The law of nations "may be ascertained by consulting the works of jurists, writing professedly on public law; or by the general usage and practice of nations; or by judicial decisions recognizing and enforcing that law." United States v. Smith, 18 U.S. (5 Wheat.) 153, 160-61, 5 L.Ed. 57 (1820); Lopes v. Reederei Richard Schroder, 225 F.Supp. 292, 295 (E.D.Pa.1963). In Smith, a statute proscribing "the crime of piracy (on the high seas) as defined by the law

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of nations," 3 Stat. 510(a) (1819), was held sufficiently determinate in meaning to afford the basis for a death sentence. The Smith Court discovered among the works of Lord Bacon, Grotius, Bochard and other commentators a genuine consensus that rendered the crime "sufficiently and constitutionally defined." Smith, supra, 18 U.S. (5 Wheat.) at 162, 5 L.Ed. 57.

14 The Paquete Habana, 175 U.S. 677, 20 S.Ct. 290, 44 L.Ed. 320 (1900), reaffirmed that

15 where there is no treaty, and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations; and, as evidence of these, to the works of jurists and commentators, who by years of labor, research and experience, have made themselves peculiarly well acquainted with the subjects of which they treat. Such works are resorted to by judicial tribunals, not for the speculations of their authors concerning what the law ought to be, but for trustworthy evidence of what the law really is.

16 Id. at 700, 20 S.Ct. at 299. Modern international sources confirm the propriety of this approach.[8]

17 Habana is particularly instructive for present purposes, for it held that the traditional prohibition against seizure of an enemy's coastal fishing vessels during wartime, a standard that began as one of comity only, had ripened over the preceding century into "a settled rule of international law" by "the general assent of civilized nations." Id. at 694, 20 S.Ct. at 297; accord, id. at 686, 20 S.Ct. at 297. Thus it is clear that courts must interpret international law not as it was in 1789, but as it has evolved and exists among the nations of the world today. See Ware v. Hylton, 3 U.S. (3 Dall.) 198, 1 L.Ed. 568 (1796) (distinguishing between "ancient" and "modern" law of nations).

18 The requirement that a rule command the "general assent of civilized nations" to become binding upon them all is a stringent one. Were this not so, the courts of one nation might feel free to impose idiosyncratic legal rules upon others, in the name of applying international law. Thus, in Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 84 S.Ct. 923, 11 L.Ed.2d 804 (1964), the Court declined to pass on the validity of the Cuban government's expropriation of a foreign-owned corporation's assets, noting the sharply conflicting views on the issue propounded by the capital-exporting, capital-importing, socialist and capitalist nations. Id. at 428-30, 84 S.Ct. at 940-41.

19 The case at bar presents us with a situation diametrically opposed to the conflicted state of law that confronted the Sabbatino Court. Indeed, to paraphrase that Court's statement, id. at 428, 84 S.Ct. at 940, there are few, if any, issues in international law today on which opinion seems to be so united as the limitations on a state's power to torture persons held in its custody.

20 The United Nations Charter (a treaty of the United States, see 59 Stat. 1033 (1945)) makes it clear that in this modern age a state's treatment of its own citizens is a matter of international concern. It provides:

21 With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations . . . the United Nations shall promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinctions as to race, sex, language or religion.

Id. Art. 55. And further:

22 All members pledge themselves to take joint and separate action in

cooperation with the Organization for the achievement of the purposes set forth in Article 55.

23 Id. Art. 56.

24 While this broad mandate has been held not to be wholly self-executing, Hitai v. Immigration and Naturalization Service, 343 F.2d 466, 468 (2d Cir. 1965), this observation alone does not end our inquiry.[9] For although there is no universal agreement as to the precise extent of the "human rights and fundamental freedoms" guaranteed to all by the Charter, there is at present no dissent from the view that the guaranties include, at a bare minimum, the right to be free from torture. This prohibition has become part of customary international law, as evidenced and defined by the Universal Declaration of Human Rights, General Assembly Resolution 217 (III)(A) (Dec. 10, 1948) which states, in the plainest of terms, "no one shall be subjected to torture."[10] The General Assembly has declared that the Charter precepts embodied in this Universal Declaration "constitute basic principles of international law." G.A.Res. 2625 (XXV) (Oct. 24, 1970).

25 Particularly relevant is the Declaration on the Protection of All Persons from Being Subjected to Torture, General Assembly Resolution 3452, 30 U.N. GAOR Supp. (No. 34) 91, U.N.Doc. A/1034 (1975), which is set out in full in the margin.[11] The Declaration expressly prohibits any state from permitting the dastardly and totally inhuman act of torture. Torture, in turn, is defined as "any act by which severe pain and suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as . . . intimidating him or other persons." The Declaration goes on to provide that "(w)here it is proved that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed by or at the instigation of a public official, the victim shall be afforded redress and compensation, in accordance with national law." This Declaration, like the Declaration of Human Rights before it, was adopted without dissent by the General Assembly. Nayar, "Human Rights: The United Nations and United States Foreign Policy," 19 Harv.Int'l L.J. 813, 816 n.18 (1978).

26 These U.N. declarations are significant because they specify with great precision the obligations of member nations under the Charter. Since their adoption, "(m)embers can no longer contend that they do not know what human rights they promised in the Charter to promote." Sohn, "A Short History of United Nations Documents on Human Rights," in The United Nations and Human Rights, 18th Report of the Commission (Commission to Study the Organization of Peace ed. 1968). Moreover, a U.N. Declaration is, according to one authoritative definition, "a formal and solemn instrument, suitable for rare occasions when principles of great and lasting importance are being enunciated." 34 U.N. ESCOR, Supp. (No. 8) 15, U.N. Doc. E/cn.4/1/610 (1962) (memorandum of Office of Legal Affairs, U.N. Secretariat). Accordingly, it has been observed that the Universal Declaration of Human Rights "no longer fits into the dichotomy of 'binding treaty' against 'non-binding pronouncement,' but is rather an authoritative statement of the international community." E. Schwelb, Human Rights and the International Community 70 (1964). Thus, a Declaration creates an expectation of adherence, and "insofar as the expectation is gradually justified by State practice, a declaration may by custom become recognized as laying down rules binding upon the States." 34 U.N. ESCOR, supra. Indeed, several commentators have concluded that the Universal Declaration has become, in toto, a part of binding, customary international law. Nayar, supra, at 816-17; Waldlock, "Human Rights in Contemporary International Law and the Significance of the European Convention," Int'l & Comp. L.Q., Supp. Publ. No. 11 at 15 (1965).

27 Turning to the act of torture, we have little difficulty discerning its universal renunciation in the modern usage and practice of nations. Smith, supra, 18 U.S. (5 Wheat.) at 160-61, 5 L.Ed. 57. The international consensus surrounding torture has found expression in numerous international treaties and accords. E. g., American Convention on Human Rights, Art. 5, OAS Treaty Series No. 36 at 1, OAS Off. Rec. OEA/Ser 4 v/II 23, doc. 21, rev. 2 (English ed., 1975) ("No one shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment"); International Covenant on Civil and Political Rights, U.N. General Assembly Res. 2200 (XXI)A, U.N. Doc. A/6316 (Dec. 16, 1966) (identical language); European Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 3, Council of Europe, European Treaty Series No. 5 (1968), 213 U.N.T.S. 211 (semble). The substance of these international agreements is reflected in modern municipal i. e. national law as well. Although torture was once a routine concomitant of criminal interrogations in many nations, during the modern and hopefully more enlightened era it has been universally renounced. According to one survey, torture is prohibited, expressly or implicitly, by the constitutions of over fifty-five nations,[12] including both the United States[13] and Paraguay.[14] Our State Department reports a general recognition of this principle:

28 There now exists an international consensus that recognizes basic human rights and obligations owed by all governments to their citizens . . . . There is no doubt that these rights are often violated; but virtually all governments acknowledge their validity.

29 Department of State, Country Reports on Human Rights for 1979, published as Joint Comm. Print, House Comm. on Foreign Affairs, and Senate Comm. on Foreign Relations, 96th Cong. 2d Sess. (Feb. 4, 1980), Introduction at 1. We have been directed to no assertion by any contemporary state of a right to torture its own or another nation's citizens. Indeed, United States diplomatic contacts confirm the universal abhorrence with which torture is viewed:

30 In exchanges between United States embassies and all foreign states with which the United States maintains relations, it has been the Department of State's general experience that no government has asserted a right to torture its own nationals. Where reports of torture elicit some credence, a state usually responds by denial or, less frequently, by asserting that the conduct was unauthorized or constituted rough treatment short of torture.[15]

31 Memorandum of the United States as Amicus Curiae at 16 n.34.

32 Having examined the sources from which customary international law is derived the usage of nations, judicial opinions and the works of jurists[16] we conclude that official torture is now prohibited by the law of nations. The prohibition is clear and unambiguous, and admits of no distinction between treatment of aliens and citizens. Accordingly, we must conclude that the dictum in Dreyfus v. von Finck, supra, 534 F.2d at 31, to the effect that "violations of international law do not occur when the aggrieved parties are nationals of the acting state," is clearly out of tune with the current usage and practice of international law. The treaties and accords cited above, as well as the express foreign policy of our own government,[17] all make it clear that international law confers fundamental rights upon all people vis-a-vis their own governments. While the ultimate scope of those rights will be a subject for continuing refinement and elaboration, we hold that the right to be free from torture is now among them. We therefore turn to the question whether the other requirements for jurisdiction are met.

III

33 Appellee submits that even if the tort alleged is a violation of modern international law, federal jurisdiction may not be exercised consistent with the dictates of Article III of the Constitution. The claim is without merit. Common law courts of general jurisdiction regularly adjudicate transitory tort claims between individuals over whom they exercise personal jurisdiction, wherever the tort occurred. Moreover, as part of an articulated scheme of federal control over external affairs, Congress provided, in the first Judiciary Act, § 9(b), 1 Stat. 73, 77 (1789), for federal jurisdiction over suits by aliens where principles of international law are in issue. The constitutional basis for the Alien Tort Statute is the law of nations, which has always been part of the federal common law.

34 It is not extraordinary for a court to adjudicate a tort claim arising outside of its territorial jurisdiction. A state or nation has a legitimate interest in the orderly resolution of disputes among those within its borders, and where the lex loci delicti commissi is applied, it is an expression of comity to give effect to the laws of the state where the wrong occurred. Thus, Lord Mansfield in Mostyn v. Fabrigas, 1 Cowp. 161 (1774), quoted in McKenna v. Fisk, 42 U.S. (1 How.) 241, 248, 11 L.Ed. 117 (1843) said:

35 (I)f A becomes indebted to B, or commits a tort upon his person or upon his personal property in Paris, an action in either case may be maintained against A in England, if he is there found . . . . (A)s to transitory actions, there is not a colour of doubt but that any action which is transitory may be laid in any county in England, though the matter arises beyond the seas.

36 Mostyn came into our law as the original basis for state court jurisdiction over out-of-state torts, McKenna v. Fisk, supra, 42 U.S. (1 How.) 241, 11 L.Ed. 117 (personal injury suits held transitory); Dennick v. Railroad Co., 103 U.S. 11, 26 L.Ed. 439 (1880) (wrongful death action held transitory), and it has not lost its force in suits to recover for a wrongful death occurring upon foreign soil, Slater v. Mexican National Railroad Co., 194 U.S. 120, 24 S.Ct. 581, 48 L.Ed. 900 (1904), as long as the conduct complained of was unlawful where performed. Restatement (Second) of Foreign Relations Law of the United States § 19 (1965). Here, where in personam jurisdiction has been obtained over the defendant, the parties agree that the acts alleged would violate Paraguayan law, and the policies of the forum are consistent with the foreign law,[18] state court jurisdiction would be proper. Indeed, appellees conceded as much at oral argument.

37 Recalling that Mostyn was freshly decided at the time the Constitution was ratified, we proceed to consider whether the First Congress acted constitutionally in vesting jurisdiction over "foreign suits," Slater, supra, 194 U.S. at 124, 24 S.Ct. at 582, alleging torts committed in violation of the law of nations. A case properly "aris(es) under the . . . laws of the United States" for Article III purposes if grounded upon statutes enacted by Congress or upon the common law of the United States. See Illinois v. City of Milwaukee, 406 U.S. 91, 99-100, 92 S.Ct. 1385, 1390-91, 31 L.Ed.2d 712 (1972); Ivy Broadcasting Co., Inc. v. American Tel. & Tel. Co., 391 F.2d 486, 492 (2d Cir. 1968). The law of nations forms an integral part of the common law, and a review of the history surrounding the adoption of the Constitution demonstrates that it became a part of the common law of the United States upon the adoption of the Constitution. Therefore, the enactment of the Alien Tort Statute was authorized by Article III.

38 During the eighteenth century, it was taken for granted on both sides of the Atlantic that the law of nations forms a part of the common law. 1 Blackstone, Commentaries 263-64 (1st Ed. 1765-69); 4 id. at 67.[19] Under the Articles of Confederation, the Pennsylvania Court of Oyer and Terminer at Philadelphia,

per McKean, Chief Justice, applied the law of nations to the criminal prosecution of the Chevalier de Longchamps for his assault upon the person of the French Consul-General to the United States, noting that "(t)his law, in its full extent, is a part of the law of this state . . . ." Respublica v. DeLongchamps, 1 U.S. (1 Dall.) 113, 119, 1 L.Ed. 59 (1784). Thus, a leading commentator has written:

39 It is an ancient and a salutary feature of the Anglo-American legal tradition that the Law of Nations is a part of the law of the land to be ascertained and administered, like any other, in the appropriate case. This doctrine was originally conceived and formulated in England in response to the demands of an expanding commerce and under the influence of theories widely accepted in the late sixteenth, the seventeenth and the eighteenth centuries. It was brought to America in the colonial years as part of the legal heritage from England. It was well understood by men of legal learning in America in the eighteenth century when the United Colonies broke away from England to unite effectively, a little later, in the United States of America.

40 Dickenson, "The Law of Nations as Part of the National Law of the United States," 101 U.Pa.L.Rev. 26, 27 (1952).

41 Indeed, Dickenson goes on to demonstrate, id. at 34-41, that one of the principal defects of the Confederation that our Constitution was intended to remedy was the central government's inability to "cause infractions of treaties or of the law of nations, to be punished." 1 Farrand, Records of the Federal Convention 19 (Rev. ed. 1937) (Notes of James Madison). And, in Jefferson's words, the very purpose of the proposed Union was "(t)o make us one nation as to foreign concerns, and keep us distinct in domestic ones." Dickenson, supra, at 36 n. 28.

42 As ratified, the judiciary article contained no express reference to cases arising under the law of nations. Indeed, the only express reference to that body of law is contained in Article I, sec. 8, cl. 10, which grants to the Congress the power to "define and punish . . . offenses against the law of nations." Appellees seize upon this circumstance and advance the proposition that the law of nations forms a part of the laws of the United States only to the extent that Congress has acted to define it. This extravagant claim is amply refuted by the numerous decisions applying rules of international law uncodified in any act of Congress. E. g., Ware v. Hylton, 3 U.S. (3 Dall.) 198, 1 L.Ed. 568 (1796); The Paquete Habana, supra, 175 U.S. 677, 20 S.Ct. 290, 44 L.Ed. 320; Sabbatino, supra, 376 U.S. 398, 84 S.Ct. 923, 11 L.Ed.2d 804 (1964). A similar argument was offered to and rejected by the Supreme Court in United States v. Smith, supra, 18 U.S. (5 Wheat.) 153, 158-60, 5 L.Ed. 57 and we reject it today. As John Jay wrote in The Federalist No. 3, at 22 (1 Bourne ed. 1901), "Under the national government, treaties and articles of treaties, as well as the laws of nations, will always be expounded in one sense and executed in the same manner, whereas adjudications on the same points and questions in the thirteen states will not always accord or be consistent." Federal jurisdiction over cases involving international law is clear.

43 Thus, it was hardly a radical initiative for Chief Justice Marshall to state in The Nereide, 13 U.S. (9 Cranch) 388, 422, 3 L.Ed. 769 (1815), that in the absence of a congressional enactment,[20] United States courts are "bound by the law of nations, which is a part of the law of the land." These words were echoed in The Paquete Habana, supra, 175 U.S. at 700, 20 S.Ct. at 299: "(i) nternational law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination."

44 The Filartigas urge that 28 U.S.C. § 1350 be treated as an exercise of Congress's power to define offenses against the law of nations. While such a reading is possible, see Lincoln Mills v. Textile Workers, 353 U.S. 488, 77 S.Ct. 912, 1 L.Ed.2d 972 (1957) (jurisdictional statute authorizes judicial explication of federal common law), we believe it is sufficient here to construe the Alien Tort Statute, not as granting new rights to aliens, but simply as opening the federal courts for adjudication of the rights already recognized by international law. The statute nonetheless does inform our analysis of Article III, for we recognize that questions of jurisdiction "must be considered part of an organic growth part of an evolutionary process," and that the history of the judiciary article gives meaning to its pithy phrases. Romero v. International Terminal Operating Co., 358 U.S. 354, 360, 79 S.Ct. 468, 473, 3 L.Ed.2d 368 (1959). The Framers' overarching concern that control over international affairs be vested in the new national government to safeguard the standing of the United States among the nations of the world therefore reinforces the result we reach today.

45 Although the Alien Tort Statute has rarely been the basis for jurisdiction during its long history,[21] in light of the foregoing discussion, there can be little doubt that this action is properly brought in federal court.[22] This is undeniably an action by an alien, for a tort only, committed in violation of the law of nations. The paucity of suits successfully maintained under the section is readily attributable to the statute's requirement of alleging a "violation of the law of nations" (emphasis supplied) at the jurisdictional threshold. Courts have, accordingly, engaged in a more searching preliminary review of the merits than is required, for example, under the more flexible "arising under" formulation. Compare O'Reilly de Camara v. Brooke, 209 U.S. 45, 52, 28 S.Ct. 439, 441, 52 L.Ed. 676 (1907) (question of Alien Tort Statute jurisdiction disposed of "on the merits") (Holmes, J.), with Bell v. Hood, 327 U.S. 678, 66 S.Ct. 773, 90 L.Ed. 939 (1946) (general federal question jurisdiction not defeated by the possibility that the averments in the complaint may fail to state a cause of action). Thus, the narrowing construction that the Alien Tort Statute has previously received reflects the fact that earlier cases did not involve such well-established, universally recognized norms of international law that are here at issue.

46 For example, the statute does not confer jurisdiction over an action by a Luxembourgeois international investment trust's suit for fraud, conversion and corporate waste. IIT v. Vencap, 519 F.2d 1001, 1015 (1975). In IIT, Judge Friendly astutely noted that the mere fact that every nation's municipal law may prohibit theft does not incorporate "the Eighth Commandment, 'Thou Shalt not steal' . . . (into) the law of nations." It is only where the nations of the world have demonstrated that the wrong is of mutual, and not merely several, concern, by means of express international accords, that a wrong generally recognized becomes an international law violation within the meaning of the statute. Other recent § 1350 cases are similarly distinguishable.[23]

47 IIT adopted a dictum from Lopes v. Reederei Richard Schroder, 225 F.Supp. 292 (E.D.Pa.1963) to the effect that "a violation of the law of nations arises only when there has been 'a violation by one or more individuals of those standards, rules or customs (a) affecting the relationship between states or between an individual and a foreign state and (b) used by those states for their common good and/or in dealings inter se.' " IIT, supra, 519 F.2d at 1015, quoting Lopes, supra, 225 F.Supp. at 297. We have no quarrel with this formulation so long as it be understood that the courts are not to prejudge the scope of the issues that the nations of the world may deem important to their interrelationships, and thus to their common good. As one commentator has noted:

48 the sphere of domestic jurisdiction is not an irreducible sphere of rights which are somehow inherent, natural, or fundamental. It does not create an

impenetrable barrier to the development of international law. Matters of domestic jurisdiction are not those which are unregulated by international law, but those which are left by international law for regulation by States. There are, therefore, no matters which are domestic by their 'nature.' All are susceptible of international legal regulation and may become the subjects of new rules of customary law of treaty obligations.

49

Preuss, "Article 2, Paragraph 7 of the Charter of the United Nations and Matters of Domestic Jurisdiction," Hague Receuil (Extract, 149) at 8, reprinted in H. Briggs, The Law of Nations 24 (1952). Here, the nations have made it their business, both through international accords and unilateral action,[24] to be concerned with domestic human rights violations of this magnitude. The case before us therefore falls within the Lopes/IIT rule.

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Since federal jurisdiction may properly be exercised over the Filartigas' claim, the action must be remanded for further proceedings. Appellee Pena, however, advances several additional points that lie beyond the scope of our holding on jurisdiction. Both to emphasize the boundaries of our holding, and to clarify some of the issues reserved for the district court on remand, we will address these contentions briefly.

IV

51

Pena argues that the customary law of nations, as reflected in treaties and declarations that are not self-executing, should not be applied as rules of decision in this case. In doing so, he confuses the question of federal jurisdiction under the Alien Tort Statute, which requires consideration of the law of nations, with the issue of the choice of law to be applied, which will be addressed at a later stage in the proceedings. The two issues are distinct. Our holding on subject matter jurisdiction decides only whether Congress intended to confer judicial power, and whether it is authorized to do so by Article III. The choice of law inquiry is a much broader one, primarily concerned with fairness, see Home Insurance Co. v. Dick, 281 U.S. 397, 50 S.Ct. 338, 74 L.Ed. 926 (1930); consequently, it looks to wholly different considerations. See Lauritzen v. Larsen, 345 U.S. 571, 73 S.Ct. 921, 97 L.Ed. 1254 (1954). Should the district court decide that the Lauritzen analysis requires it to apply Paraguayan law, our courts will not have occasion to consider what law would govern a suit under the Alien Tort Statute where the challenged conduct is actionable under the law of the forum and the law of nations, but not the law of the jurisdiction in which the tort occurred.[25]

52

Pena also argues that "(i)f the conduct complained of is alleged to be the act of the Paraguayan government, the suit is barred by the Act of State doctrine." This argument was not advanced below, and is therefore not before us on this appeal. We note in passing, however, that we doubt whether action by a state official in violation of the Constitution and laws of the Republic of Paraguay, and wholly unratified by that nation's government, could properly be characterized as an act of state. See Banco Nacionale de Cuba v. Sabbatino, supra, 376 U.S. 398, 84 S.Ct. 923, 11 L.Ed.2d 804; Underhill v. Hernandez, 168 U.S. 250, 18 S.Ct. 83, 42 L.Ed. 456 (1897). Paraguay's renunciation of torture as a legitimate instrument of state policy, however, does not strip the tort of its character as an international law violation, if it in fact occurred under color of government authority. See Declaration on the Protection of All Persons from Being Subjected to Torture, supra note 11; cf. Ex parte Young, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908) (state official subject to suit for constitutional violations despite immunity of state).

53

Finally, we have already stated that we do not reach the critical question of forum non conveniens, since it was not considered below. In closing, however,

we note that the foreign relations implications of this and other issues the district court will be required to adjudicate on remand underscores the wisdom of the First Congress in vesting jurisdiction over such claims in the federal district courts through the Alien Tort Statute. Questions of this nature are fraught with implications for the nation as a whole, and therefore should not be left to the potentially varying adjudications of the courts of the fifty states.

54 In the twentieth century the international community has come to recognize the common danger posed by the flagrant disregard of basic human rights and particularly the right to be free of torture. Spurred first by the Great War, and then the Second, civilized nations have banded together to prescribe acceptable norms of international behavior. From the ashes of the Second World War arose the United Nations Organization, amid hopes that an era of peace and cooperation had at last begun. Though many of these aspirations have remained elusive goals, that circumstance cannot diminish the true progress that has been made. In the modern age, humanitarian and practical considerations have combined to lead the nations of the world to recognize that respect for fundamental human rights is in their individual and collective interest. Among the rights universally proclaimed by all nations, as we have noted, is the right to be free of physical torture. Indeed, for purposes of civil liability, the torturer has become like the pirate and slave trader before him hostis humani generis, an enemy of all mankind. Our holding today, giving effect to a jurisdictional provision enacted by our First Congress, is a small but important step in the fulfillment of the ageless dream to free all people from brutal violence.

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* The late Judge Smith was a member of the original panel in this case. After his unfortunate death, Judge Kearse was designated to fill his place pursuant to Local Rule § 0.14(b)

1 Duarte is the son of Pena's companion, Juana Bautista Fernandez Villalba, who later accompanied Pena to the United States

2 Several officials of the Immigration and Naturalization Service were named as defendants in connection with this portion of the action. Because Pena has now been deported, the federal defendants are no longer parties to this suit, and the claims against them are not before us on this appeal

3 Jurisdiction was also invoked pursuant to 28 U.S.C. §§ 1651, 2201 & 2202, presumably in connection with appellants' attempt to delay Pena's return to Paraguay

4 Richard Falk, the Albert G. Milbank Professor of International Law and Practice at Princeton University, and a former Vice President of the American Society of International Law, avers that, in his judgment, "it is now beyond reasonable doubt that torture of a person held in detention that results in severe harm or death is a violation of the law of nations." Thomas Franck, professor of international law at New York University and Director of the New York University Center for International Studies offers his opinion that torture has now been rejected by virtually all nations, although it was once commonly used to extract confessions. Richard Lillich, the Howard W. Smith Professor of Law at the University of Virginia School of Law, concludes, after a lengthy review of the authorities, that officially perpetrated torture is "a violation of international law (formerly called the law of nations)." Finally, Myres MacDougal, a former Sterling Professor of Law at the Yale Law School, and a past President of the American Society of International Law, states that torture is an offense against the law of nations, and that "it has long been recognized that such offenses vitally affect relations between states."

5 The Gorostiaga affidavit states that

a father whose son has been wrongfully killed may in addition to commencing a criminal proceeding bring a civil action for damages against the person responsible. Accordingly, Mr. Filartiga has the right to commence a civil action against Mr. Duarte and Mr. Pena-Irala since he accuses them both of responsibility for his son's death. He may commence such a civil action either simultaneously with the commencement of the criminal proceeding, during the time that the criminal proceeding lasts, or within a year after the criminal proceeding has terminated. In either event, however, the civil action may not proceed to judgment until the criminal proceeding has been disposed of. If the defendant is found not guilty because he was not the author of the case under investigation in the criminal proceeding, no civil action for indemnity for damages based upon the same deed investigated in the criminal proceeding, can prosper or succeed.

6 The court below accordingly did not consider the motion to dismiss on forum non conveniens grounds, which is not before us on this appeal

7 Appellants "associate themselves with" the argument of some of the amici curiae that their claim arises directly under a treaty of the United States, Brief for Appellants at 23 n.*, but nonetheless primarily rely upon treaties and other international instruments as evidence of an emerging norm of customary international law, rather then independent sources of law

8 The Statute of the International Court of Justice, Arts. 38 & 59, June 26, 1945, 59 Stat. 1055, 1060 (1945) provides:

Art. 38

1 The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

(a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;

(b) international custom, as evidence of a general practice accepted as law;

(c) the general principles of law recognized by civilized nations;

(d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of the rules of law.

2 This provision shall not prejudice the power of the Court to decide a case ex aequo et bono, if the parties agree thereto

Art. 59

The decision of the Court has no binding force except between the parties and in respect of that particular case.

9 We observe that this Court has previously utilized the U.N. Charter and the Charter of the Organization of American States, another non-self-executing agreement, as evidence of binding principles of international law. United States v. Toscanino, 500 F.2d 267 (2d Cir. 1974). In that case, our government's duty under international law to refrain from kidnapping a criminal defendant from within the borders of another nation, where formal extradition procedures existed, infringed the personal rights of the defendant, whose international law claims were thereupon remanded for a hearing in the district court

10 Eighteen nations have incorporated the Universal Declaration into their own

constitutions. 48 Revue Internationale de Droit Penal Nos. 3 & 4, at 211 (1977)

Article 1

1 For the purpose of this Declaration, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent or incidental to lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners

2 Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment

Article 2

Any act of torture or other cruel, inhuman or degrading treatment or punishment is an offense to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights.

Article 3

No state may permit or tolerate torture or other cruel, inhuman or degrading treatment or punishment. Exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Article 4

Each state shall, in accordance with the provisions of this Declaration, take effective measures to prevent torture and other cruel, inhuman or degrading treatment or punishment from being practiced within its jurisdiction.

Article 5

The training of law enforcement personnel and of other public officials who may be responsible for persons deprived of their liberty shall ensure that full account is taken of the prohibition against torture and other cruel, inhuman or degrading treatment or punishment. This prohibition shall also, where appropriate, be included in such general rules or instructions as are issued in regard to the duties and functions of anyone who may be involved in the custody or treatment of such persons.

Article 6

Each state shall keep under systematic review interrogation methods and practices as well as arrangements for the custody and treatment of persons deprived of their liberty in its territory, with a view to preventing any cases of torture or other cruel, inhuman or degrading treatment or punishment.

Article 7

Each state shall ensure that all acts of torture as defined in Article I are offenses under its criminal law. The same shall apply in regard to acts which constitute participation in, complicity in, incitement to or an attempt to commit torture.

Article 8

Any person who alleges he has been subjected to torture or other cruel, inhuman or degrading treatment or punishment by or at the instigation of a public official shall have the right to complain to, and to have his case impartially examined by, the competent authorities of the state concerned.

Article 9

Wherever there is reasonable ground to believe that an act of torture as defined in Article I has been committed, the competent authorities of the state concerned shall promptly proceed to an impartial investigation even if there has been no formal complaint.

Article 10

If an investigation under Article 8 or Article 9 establishes that an act of torture as defined in Article I appears to have been committed, criminal proceedings shall be instituted against the alleged offender or offenders in accordance with national law. If an allegation of other forms of cruel, inhuman or degrading treatment or punishment is considered to be well founded, the alleged offender or offenders shall be subject to criminal, disciplinary or other appropriate proceedings.

Article 11

Where it is proved that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed by or at the instigation of a public official, the victim shall be afforded redress and compensation, in accordance with national law.

Article 12

Any statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment or punishment may not be invoked as evidence against the person concerned or against any other person in any proceeding.

12 48 Revue Internationale de Droit Penal Nos. 3 & 4 at 208 (1977)

13 U.S.Const., Amend. VIII ("cruel and unusual punishments" prohibited); id. Amend. XIV.

14 Constitution of Paraguay, Art. 45 (prohibiting torture and other cruel treatment)

15 The fact that the prohibition of torture is often honored in the breach does not diminish its binding effect as a norm of international law. As one commentator has put it, "The best evidence for the existence of international law is that every actual State recognizes that it does exist and that it is itself under an obligation to observe it. States often violate international law, just as individuals often violate municipal law; but no more than individuals do States defend their violations by claiming that they are above the law." J. Brierly, The Outlook for International Law 4-5 (Oxford 1944)

16 See note 4, supra: see also Ireland v. United Kingdom, Judgment of Jan. 18, 1978 (European Court of Human Rights), summarized in (1978) Yearbook, European Convention on Human Rights 602 (Council of Europe) (holding that Britain's subjection of prisoners to sleep deprivation, hooding, exposure to hissing noise, reduced diet and standing against a wall for hours was "inhuman and degrading," but not "torture" within meaning of European Convention on Human Rights)

17 E. g., 22 U.S.C. § 2304(a)(2) ("Except under circumstances specified in this section, no security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights."); 22 U.S.C. § 2151(a) ("The Congress finds that fundamental political, economic, and technological changes have resulted in the interdependence of nations. The Congress declares that the individual liberties, economic prosperity, and security of the people of the United States are best sustained and enhanced in a community of nations which respect individual civil

and economic rights and freedoms")

18 Conduct of the type alleged here would be actionable under 42 U.S.C. § 1983 or, undoubtedly, the Constitution, if performed by a government official

19 As Lord Stowell said in The Maria, 165 Eng.Rep. 955, 958 (Adm.1807): "In the first place it is to be recollected, that this is a Court of the Law of Nations, though sitting here under the authority of the King of Great Britain. It belongs to other nations as well as to our own; and what foreigners have a right to demand from it, is the administration of the law of nations, simply, and exclusively of the introduction of principles borrowed from our own municipal jurisprudence, to which it is well known, they have at all times expressed no inconsiderable repugnance."

20 The plainest evidence that international law has an existence in the federal courts independent of acts of Congress is the long-standing rule of construction first enunciated by Chief Justice Marshall: "an act of congress ought never to be construed to violate the law of nations, if any other possible construction remains . . . ." The Charming Betsy, 6 U.S. (2 Cranch), 34, 67, 2 L.Ed. 208 (1804), quoted in Lauritzen v. Larsen, 345 U.S. 571, 578, 73 S.Ct. 921, 926, 97 L.Ed. 1254 (1953)

21 Section 1350 afforded the basis for jurisdiction over a child custody suit between aliens in Adra v. Clift, 195 F.Supp. 857 (D.Md.1961), with a falsified passport supplying the requisite international law violation. In Bolchos v. Darrell, 3 Fed.Cas. 810 (D.S.C.1795), the Alien Tort Statute provided an alternative basis of jurisdiction over a suit to determine title to slaves on board an enemy vessel taken on the high seas

22 We recognize that our reasoning might also sustain jurisdiction under the general federal question provision, 28 U.S.C. § 1331. We prefer, however, to rest our decision upon the Alien Tort Statute, in light of that provision's close coincidence with the jurisdictional facts presented in this case. See Romero v. International Terminal Operating Co., 358 U.S. 354, 79 S.Ct. 468, 3 L.Ed.2d 368 (1959)

23 Dreyfus v. von Finck, 534 F.2d 24 (2d Cir.), cert. denied, 429 U.S. 835, 97 S.Ct. 102, 50 L.Ed.2d 101 (1976), concerned a forced sale of property, and thus sought to invoke international law in an area in which no consensus view existed. See Sabbatino, supra, 376 U.S. at 428, 84 S.Ct. at 940. Similarly, Benjamins v. British European Airways, 572 F.2d 913 (2d Cir. 1978), cert. denied, 439 U.S. 1114, 99 S.Ct. 1016, 59 L.Ed.2d 72 (1979), held only that an air disaster, even if caused by "wilful" negligence, does not constitute a law of nations violation. Id. at 916. In Khedivial Line, S. A. E. v. Seafarers' International Union, 278 F.2d 49 (2d Cir. 1960), we found that the "right" to free access to the ports of a foreign nation was at best a rule of comity, and not a binding rule of international law

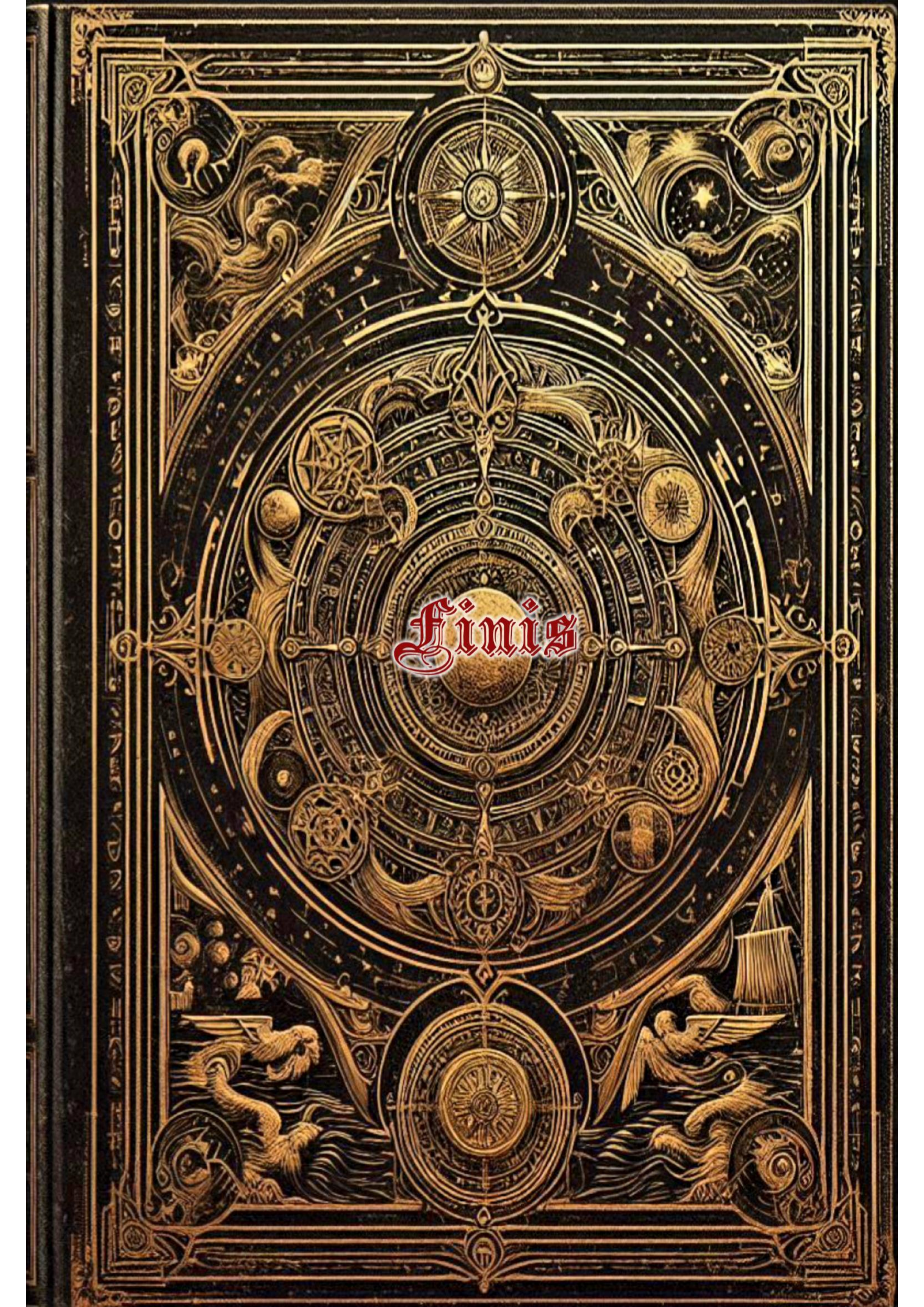
The cases from other circuits are distinguishable in like manner. The court in Huynh Thi Anh v. Levi, 586 F.2d 625 (6th Cir. 1978), was unable to discern from the traditional sources of the law of nations "a universal or generally accepted substantive rule or principle" governing child custody, id. at 629, and therefore held jurisdiction to be lacking. Cf. Nguyen Da Yen v. Kissinger, 528 F.2d 1194, 1201 n.13 (9th Cir. 1975) ("the illegal seizure, removal and detention of an alien against his will in a foreign country would appear to be a tort . . . and it may well be a tort in violation of the 'law of nations' ") (§ 1350 question not reached due to inadequate briefing). Finally, the district court in Lopes v. Reederei Richard Schroder, 225 F.Supp. 292 (E.D.Pa.1963) simply found that the doctrine of seaworthiness, upon which the plaintiff relied, was a uniquely American concept, and therefore not a part of the law of nations.

24 As President Carter stated in his address to the United Nations on March 17, 1977:

All the signatories of the United Nations Charter have pledged themselves to observe and to respect basic human rights. Thus, no member of the United Nations can claim that mistreatment of the citizens is solely its own business. Equally, no member can avoid its responsibilities to review and to speak when torture or unwarranted deprivation occurs in any part of the world.

Reprinted in 78 Department of State Bull. 322 (1977); see note 17, supra.

25 In taking that broad range of factors into account, the district court may well decide that fairness requires it to apply Paraguayan law to the instant case. See Slater v. Mexican National Railway Co., 194 U.S. 120, 24 S.Ct. 581, 48 L.Ed. 900 (1904). Such a decision would not retroactively oust the federal court of subject matter jurisdiction, even though plaintiff's cause of action would no longer properly be "created" by a law of the United States. See American Well Works Co. v. Layne & Bowler Co., 241 U.S. 257, 260, 36 S.Ct. 585, 586, 60 L.Ed. 987 (1916) (Holmes, J.). Once federal jurisdiction is established by a colorable claim under federal law at a preliminary stage of the proceeding, subsequent dismissal of that claim (here, the claim under the general international proscription of torture) does not deprive the court of jurisdiction previously established. See Hagans v. Lavine, 415 U.S. 528, 94 S.Ct. 1372, 39 L.Ed.2d 577 (1974); Romero v. International Terminal Operating Co., 358 U.S. 354, 79 S.Ct. 468, 3 L.Ed.2d 368 (1959); Bell v. Hood, 327 U.S. 678, 66 S.Ct. 773, 90 L.Ed. 939 (1946). Cf. Huynh Thi Ahn, supra, 586 F.2d at 633 (choice of municipal law ousts § 1350 jurisdiction when no international norms exist)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