U. S. 15, 25, 3 Sup. Ct. 495, 28 L. Ed. 52; Frost v. Spitley, 121 U. S. 552, 557, 7 Sup. Ct. 1129, 30 L. Ed. 1010.

It is frequently asserted that there is no common law of the United States in the sense that it is recognized as a rule of decision in the federal courts. This idea, which is found in varying forms of expression in opinions of the United States supreme court, seems to have had its origin in what has been characterized as a dictum of McLean, J., in Wheaton v. Peters, 8 Pet. (U. S.) 591, 8 L. Ed. 1055, where he said: "It is clear there can be no common law of the United States, the said government is composed of 24 sovereign and independent states; each of which may have its local usage, customs, and common law; there is no principle which pervades the Union and has the authority of law, that is not embodied in the constitution or laws of the Union. The common law could be made a part of our federal system only by legislative adoption." This was repeated in Kendall v. U. S., 12 Pet. (U. S.) 524, 9 L. Ed. 1181. But in Bucher v. R. Co., 125 U. S. 555, 8 Sup. Ct. 974, 31 L. Ed. 795, it is said that the common law of the United States rests on the principles derived from the common law of England. Of course this explanation might apply simply to the United States as a territorial explanation, and indeed that case referred to the common law as prevailing in the District of Columbia, as did also Ex parte Watkins, 7 Pet. (U. S.) 568, 8 L. Ed. 786. In Murray v. Ry. Co., 62 Fed. 24, Shiras, J., said: "To me it seems clear, beyond question, that neither in the constitution, nor in the statutes enacted by Congress nor in the judgments of the Supreme Court of the United States can there be found any substantial support for the proposition that, since the adoption of the constitution, the principles of the common law have been wholly abrogated touching such matters as are by that instrument placed within the exclusive control of the national government."

To the same effect, Kansas v. Colorado, 206 U. S. 46, 96, 27 Sup. Ct. 655, 51 L. Ed. 956.

And in an interesting article by Alton B. Parker on "The Common Law Jurisdiction of United States Courts," in 17 Yale L. J. 1, it is urged that the common law is recognized as a rule of decision in a majority of cases and that the contention to the contrary is due entirely to the unfortunate *obiter dictum* of Mr. Justice McLean, above quoted.

See COMMON LAW.

The original jurisdiction of the district court in certain cases, and the appellate jurisdiction of the supreme court to review the decisions of state courts, depend upon the existence in the case of what is termed a *federal question.* This is a question arising in a litigated case, and necessary to its decision, involving the construction of the constitution, or a law or treaty of the United States. See FEDERAL QUESTION.

Where such questions are clearly presented by the answer in that court, and the decree rendered could not have been made without adversely deciding them, and they are substantial as involving the jurisdiction of the circuit court over property in its possession and the effect to be given to its decree, the writ of error will not be dismissed; Wabash R. Co. v. Adelbert College, 208 U. S. 38, 28 Sup. Ct. 182, 52 L. Ed. 379.

Where the federal jurisdiction rests upon the fact that a federal question is involved, the right of the defendant to be sued in the district of which he is an inhabitant may be waived. The fact of residence is not jurisdictional; Logan & Bryan v. Postal Telegraph & Cable Co., 157 Fed. 570.

The jurisdiction over appeals and writs of error from state courts depends on whether a federal question is involved. See that title.

Decedents' Estates. Federal equity jurisdiction extends to the administration of decedents' estates, where it concerns citizens and residents of different states; but they will be governed and controlled by the statutory rules and regulations of the particular state; Newberry v. Wilkinson, 199 Fed. 673, 118 C. C. A. 111, citing Lawrence v. Nelson, 143 U. S. 215, 12 Sup. Ct. 440, 36 L. Ed. 130.

Matters of pure probate, in the strict sense of the words, are not within the jurisdiction of the federal courts. Where a state law, statutory or customary, gives to the citizens of the state, in an action or suit *inter partes*, the right to question or assail probate, at law or in equity, the federal courts, on behalf of citizens of other states, will enforce such remedies; but such suit must relate to independent controversies, and not to those arising on an application to probate, or a mere method of procedure ancillary to the original procedure; Farrell v. O'Brien, 199 U. S. 89, 25 Sup. Ct. 727, 50 L. Ed. 101.

See FEDERAL QUESTION; POLITICAL QUESTION; MOOT CASES; JUDICIAL POWER; JURISDICTION; APPEAL AND ERROR; CONFLICT OF LAWS; IMPAIRING THE OBLIGATION OF CONTRACTS; BANKRUPT LAWS; CONSULAR COURTS.

UNITED STATES OF AMERICA. The republic whose organic law is the constitution adopted by the people of the thirteen states which declared their independence of the government of Great Britain on the fourth day of July, 1776.

When they are said to constitute one nation, this must be understood with proper qualifications. Our motto, *E pluribus unum,* expresses the true nature of that composite body which foreign nations regard and treat with in all their communications with our people. No state can enter into a treaty, nor make a compact with any foreign nation. To foreigners we present a compact unity, an undivided sovereignty. No state can do a national act nor legally commit the faith of the Union.

In our interstate and domestic relations we are for some purposes one. We are, so far as our constitution makes us, one, and no further; and under this we are so far a unity that one state is not for-

eign to another. Art. 4, § 2. A constitution, according to the original meaning of the word, is an organic law. It includes the organization of the government, the grant of powers, the distribution of these powers into legislative, executive, and judicial, and the names of the officers by whom these are exercised. And with these provisions a constitution, properly so-called, terminates. But ours goes further. It contains restrictions on the powers of the government which it organizes.

The writ of *habeas corpus*, the great instrument in defence of personal liberty against the encroachment of the government, shall not be suspended but in case of rebellion or invasion, and when the public safety requires it. No bill of attainder or *ex post facto* law shall be passed; no money shall be drawn from the treasury where there is not a regular appropriation; no title of nobility shall be granted; and no person holding office shall receive a present from any foreign government. Art. 1, § 9. To these, which are in the original constitution, may be added the *eleven* first amendments. These, as their character clearly shows, had their origin in a jealousy of the powers of the general government. All are designed more effectually to guard the rights of the people, and would properly, together with the restrictions in the original constitution, have a place in a bill of rights. Any act or law of the United States in violation of these, with whatever formality enacted, would be null and void, as an *excess* of power.

The restrictions on state sovereignty, besides those which relate to foreign nations, are that no state shall coin money, emit bills of credit, make anything but gold and silver a tender in the payment of debts, pass any bill of attainder or *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility. These prohibitions are absolute. In addition to these restrictions, the results of the War of Secession of 1861-1865 caused the adoption of the 13th, 14th, and 15th amendments, which lay still further restrictions upon the power of the states, so far as relates to slavery and the regulation of the right of suffrage. The 13th amendment provides that neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to its jurisdiction, and confers power upon congress to enforce this article by appropriate legislation; the 14th amendment provides that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, and defines who shall be so considered; the 15th amendment specifically provides that the right of citizens of the United States to vote shall not be denied or abridged by the United States or any state on account of race, color, or previous condition of servitude. See CONSTITUTION OF UNITED STATES; FOURTEENTH AMENDMENT.

Without the consent of congress no state shall lay any duties on imports or exports, or any duty on tonnage, or keep troops or ships of war in time of peace, or enter into any agreement or compact with another state, or engage in war unless actually invaded, or in imminent danger of being so.

What constitutes a duty on exports or imports has been a matter of frequent litigation in the supreme court. It has been finally decided that the term "import" as used in the constitution does not refer to articles imported from one state to another, but only to articles imported from foreign states; Woodruff v. Parham, 8 Wall. (U. S.) 123, 19 L. Ed. 382; but the prohibition contained in those provisions of the constitution which ordain that congress shall have power to regulate commerce with foreign nations and among the several states; that no state shall levy any imposts or duties on imports or exports; that the citizens of each state shall be entitled to all the immunities and privileges of citizens of the several states, have been construed together by the supreme court; and various statutes of the different states have been declared unconstitutional because they violated them. Thus a statute allowing an additional fee to port-wardens for every vessel entering a port; Southern S. S. Co. v. Port-Wardens, 6 Wall. (U. S.) 31, 18 L. Ed. 749; a tax on passengers introduced from foreign countries; Smith v. Turner, 7 How. (U. S.) 286, 12 L. Ed. 702; a tax on passengers going out of a state; Crandall v. Nevada, 6 Wall. (U. S.) 35, 18 L. Ed. 745; a tax levied upon freight brought into or through one state into another; State Freight Tax Case, 15 Wall. (U. S.) 232, 21 L. Ed. 146; a tonnage tax on vessels entering the harbors of a state, either from foreign or domestic ports; State Tonnage Tax Cases, 12 Wall. (U. S.) 204, 20 L. Ed. 370; Peete v. Morgan, 19 Wall. (U. S.) 581, 22 L. Ed. 201; Cannon v. New Orleans, 20 Wall. (U. S.) 577, 22 L. Ed. 417; Guy v. Baltimore, 100 U. S. 434, 25 L. Ed. 743; have all been so decided. It is said that wherever subjects, in regard to which a power to regulate commerce is asserted, are in their nature national, or admit of one uniform system or plan of regulation, they are exclusively within the regulating control of congress. But the mere grant of the commercial power to congress does not forbid the states from passing laws to regulate pilotage. The power to regulate commerce includes various subjects, upon which there should be some uniform rule, and upon others different rules in different localities. The power is exclusive in congress in the former, but not so in the latter class; Achison v. Huddleson, 12 How. (U. S.) 297, 13 L. Ed. 993. See COMMERCE.

Whatever these restrictions are, they operate on all states alike, and if any state laws violate them, the laws are void; and without any legislation of congress the supreme court has declared them so; Sturges v. Crowninshield, 4 Wheat. (U. S.) 122, 4 L. Ed. 529; Dartmouth College v. Woodward, 4 Wheat. (U. S.) 518, 4 L. Ed. 629; cases *supra;* Cooley, Const. Lim. 729.

The United States have certain powers, the principal of which are enumerated in art. 1, § 8, running into seventeen specific powers. Others are granted to particular branches of the government: as, the treaty-making power to the president and senate. These have an equal effect in all the states, and so far as an authority is vested in the government of the Union or in any department of it, and so far as the states are prohibited from the exercise of certain powers, so far in our domestic affairs we are a unity.

The United States is a sovereign and independent nation vested with the entire control of international relations, and with all the powers of government necessary to maintain that control and make it effective; Fong Yue Ting v. U. S., 149 U. S. 698, 13 Sup. Ct. 1016, 37 L. Ed. 905; and see Chae Chan Ping v. U. S., 130 U. S. 606, 9 Sup. Ct. 623, 32 L. Ed. 1068.

Within these granted powers the sovereignty of the United States is supreme. The constitution, and the laws made in pursuance of it, and all treaties, are the supreme law of the land. Art. 6. And they not only govern in their words, but in their meaning. If the sense is ambiguous or doubtful, the United States, through their courts, in all cases where the rights of an individual are concerned, are the rightful expositors. For without the authority of explaining this meaning, the United States would not be sovereign.

In these matters, particularly in the limitation put on the sovereignty of the states, it has been sometimes said that the constitution executes itself. This expression may be allowed; but with as much propriety these may be said to be laws which the people have enacted themselves, and no laws of congress can either take from, add to, or confirm them. They are rights, privileges, or immunities which are granted by the people, and are beyond the power of congress or state legislatures; and they require no law to give them force or efficiency. The members of congress are exempted from arrest, except for treason, felony, and breach of the peace, in going to and returning from the seat of government. Art. 1, § 6. It is obvious that no law can affect this immunity. On these subjects all laws are purely nugatory, because if they go beyond or fall short of the provisions of the constitution, that may always be appealed to. An individual has just what

that gives him,—no less and no more. It may be laid down as a universal rule, admitting of no exception, that when the constitution has established a disability or immunity, a privilege or a right, these are precisely as that instrument has fixed them, and can be *neither augmented nor curtailed* by any act or law either of congress or a state legislature.

It has been justly thought a matter of importance to determine from what source the United States derive their authority. McCulloch v. Maryland, 4 Wheat. (U. S.) 402, 4 L. Ed. 579. When the constitution was framed, the people of this country were not an unformed mass of individuals. They were united into regular communities under state governments, and to these had confided the whole mass of sovereign power which they chose to intrust out of their own hands. The question here proposed is whether our bond of union is a compact entered into by the states, or the constitution is an organic law established by the people. To this question the preamble gives a decisive answer: *We, the people,* ordain and establish this constitution. The members of the convention which formed it were indeed appointed by the states. But the government of the states had only a *delegated power,* and, if they had an inclination, had no authority to transfer the allegiance of the people from one sovereign to another. The great men who formed the constitution were sensible of this want of power, and recommended it to the people themselves. They assembled in their own conventions and adopted it, acting in their original capacity as individuals, and not as representing states. The state governments are passed by in silence. They had no part in making it, and, though they have certain duties to perform, as, the appointment of senators [now by popular vote under the 17th amendment], are properly not parties to it. The people in their capacity as sovereign made and adopted it; and it binds the state goverments without their consent. The United States as a whole, therefore, emanates from the people, and not from the states, and the constitution and laws of the states, whether made before or since the adoption of that of the United States, are subordinate to it and the laws made in pursuance of it. See Fisher, Evolution of Const.

It has very truly been said that out of the mass of sovereignty intrusted to the states was carved a part and deposited with the United States. But this was taken by the people, and not by the states as organized communities. The people are the fountain of sovereignty. The whole was originally with them as their own. The state governments were but trustees acting under a derived authority, and had no power to delegate what was delegated to them. But the people, as the original fountain, might take away what they had lent and intrust it to whom they pleased. They had the whole title, and, as absolute proprietors, had the right of using or abusing, —*jus utendi et abutendi.*

A consequence of great importance flows from this fact. The laws of the United States act directly on individuals, and they are directly responsible and not mediately through the state governments. This is the most important improvement made by our constitution over all previous confederacies. As a corollary from this, if not more properly a part of it, the laws act only on states through individuals. They are supreme over persons and cases, but do not touch the state: they act through them; Martin v. Hunter, 1 Wheat. (U. S.) 368, 4 L. Ed. 97. If a state passes an *ex post facto* law, or passes a law impairing the obligation of contracts, or makes anything but gold or silver a tender in payment of debts, congress passes no law which touches the state: it is sufficient that these laws are void, and when a case is brought before the court, it, without any law of congress, will declare them void. They give no person an immunity, nor deprive any of a right. Again: should a state pass a law declaring war against a foreign nation, grant letters of marque and reprisal, arm troops or keep ships of war in time of peace, individuals acting under such laws would be responsible to the United States. They might be treated and punished as traitors or pirates. But congress would and could pass no law against the state; and for this simple reason, because the state is sovereign. And it is a maxim consecrated in public law as well as common sense and the necessity of the case, that a sovereign is answerable for his acts only to his God and to his own conscience.

The constitution and laws made in pursuance of it,—that is, laws within their granted powers,—and all treaties, are the supreme law of the land, art. 6; and the judicial power, art. 3, § 1, gives to the supreme court the right of interpreting them. But this court is but another name for the United States, and this power necessarily results from their sovereignty; for the United States would not be truly sovereign unless their interpretation as well as the letter of the law governed. But this power of the court is confined to cases brought before them, and does not embrace principles independent of these cases. They have no power analogous to that of the Roman prætor of declaring the meaning of the constitution by edicts. Any opinion, however strongly expressed, has no authority beyond the reasoning by which it is supported, and binds no one. But the point embraced in the case is as much a part of the law as though embraced in the letter of the law or constitution, and it binds public functionaries, whether of the states or United States, as well as private persons; and this of necessity, as there is no authority above a sovereign to which an appeal can be made.

Another question of great practical importance arose at an early period of our government. The natural tendency of all concentrated power is to augment itself. Limitations of authority are not to be expected from those to whom power is intrusted; and such is the infirmity of human nature that those who are most jealous when out of power and seeking office are quite as ready practically to usurp it as any other. A general abrogation commonly precedes a real usurpation, to lull suspicion if for no other purpose. When the constitution was new, and before it had been fully considered, this diversity of opinion was not unnatural, and was the subject of earnest argument, but is, we think, now settled, and rightly, both on technical reasoning and on that of expediency. The question is between incidental and constructive or implied powers. The government of the United States is one of delegated power. No general words are used from which a general power can be inferred. Incidental and implied are sometimes used as synonymous; but in accurate reasoning there is a plain distinction between them, and the latter, in common use, comes nearer to constructive than to incidental.

The interpretation of powers is familiar to courts of justice, as a great part of landed property in England and much in this country is held under powers. A more frequent example is that of common agency, as every agent is created by a power. Courts whose professed object is to carry into effect the intentions of parties have, on this subject, established general rules. Among these no one is more immovably fixed than this, that the interpretation is strict and not liberal. 2 Kent 617; 4 *id.* 330. But this strictness does not exclude incidental powers. These are included in a general and express power, both in the common and technical use of language. To take a familiar example. A merchant of Philadelphia or Boston has a cargo of tea arrive at New York, and by letter authorizes his correspondent to sell it. This is the whole extent of the power. But it necessarily and properly includes that of advertising, of removing and exhibiting the goods, etc. But it would not authorize the sale of sugar, a horse, and much less a store or real estate. These powers are not incidental to the general power, nor included in it. Or we may take an example directly from the constitution itself. The United States has power "to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States." This includes the power to create and appoint all inferior officers and to do all subordinate acts necessary and proper to execute the general power: as, to appoint assessors, collectors, keepers, and disbursers of the public treasures. Without the subordinate powers the general power could not be executed. And when there is more than one mode by which this general power may be executed, it includes all. The agent is not confined to any one, unless a particular mode is pointed out. Mc-

Culloch v. Maryland, 4 Wheat. (U. S.) 410, 4 L. Ed. 579. All that the constitution requires is that it should be necessary and proper. One consequence of this doctrine is that there must be a power expressly granted as a stock to bear this incidental power, or otherwise it would be ingrafted on nothing.

A constructive power is one that is inferred, not from an express power, but from the general objects to be obtained from the grant, and, perhaps, in private powers sometimes from the general language in which they are granted. The broad distinction between them may be illustrated by two cases that came before the United States Court. The first is McCulloch v. Maryland, 4 Wheat. (U. S.) 317, 4 L. Ed. 579. The question in that case was whether the act incorporating the Bank of the United States was constitutional, or whether it lay beyond the limits of the delegated powers and was, therefore, merely void as usurped or an excess of power. The authority to create a corporation is nowhere expressly given, and if it exists it must be sought as incidental to some power that is specifically granted. The court decided that it was incidental to that of laying taxes as a keeper and disburser of the public treasure. This power could be executed only by the appointment of agents; and the United States might as well create an agent for receiving, keeping, and disbursing the public money as appoint a natural person or an artificial one already created. In the case of Osborn v. Bank, 9 Wheat. (U. S.) 859, 6 L. Ed. 204, the general question was presented again, and reargued, and the court reaffirmed their former decision, but, more distinctly than before, adding an important qualification. They might not only create an artificial person, but clothe it with such powers and qualities as would enable it with reasonable convenience to perform its specific duties. The taxes are collected at one end of the country and paid out at another, and the bank instead of removing the specie might pay it where collected, and repay themselves by purchasing a bill of exchange in another place, and this could be conveniently and economically done only by a power of dealing in exchange generally, which when reduced to its last analysis is merely buying specie at one place and paying for it at another. It is in this way, and this only, that the bank got its general power of dealing in exchange,—that it is essential and proper to enable it to perform its principal duty, that of transferring the funds of the United States. Thus, the authority to create a bank is incidental to that of receiving, keeping, and paying out the taxes, and is comprehended under the specific power. The argument is principally derived from Hamilton's report on a bank, which proved satisfactory to Washington, as that of Chief-Justice Marshall has to the public at large.

This is very different from a constructive power which is inferred not as included in any special grant, but from the general tenor of the power and the general objects to be obtained. The objects of the constitution are stated in the preamble, and they are to promote the common weal. But this is followed by the grant of specific powers. And it is the dictate of common sense as well as technical reasoning that this object is to be obtained by the due exercise of these powers. Where these fall short, none are granted; and if they are inadequate, the same consequence follows. No one would infer from a power to sell a ship one to sell a store, though the interest of the principal would thereby be promoted. The general power to regulate commerce is useful, and it is given, and it may be carried to its whole extent by having incidental powers ingrafted upon it. A general power to regulate the descent and distribution of intestate estates and the execution and proof of wills would be on many accounts useful, but it is not granted. The utility of a power is never a question. It must be expressly granted, or incidental to an express power,—that is necessary and proper to carry into execution one expressly granted,—*or it does not exist.*

The other illustrative case is that of Prigg v. Pennsylvania, 16 Pet. (U. S.) 539, 10 L. Ed. 1060. It will be found on a careful examination that in this a constructive power only is claimed. The only point involved in the case was the constitutionality of the statute of Pennsylvania under which Prigg was indicted as a kidnapper. The court decided this to be unconstitutional; and here its judicial functions properly terminated. But to arrive at this conclusion it was deemed necessary to determine that the general power of arresting and returning fugitives from labor and service was intrusted to the United States. It was not pretended that this power was expressly given, nor that it was incidental to any that was expressly given,—that is, conducive or proper to the execution of such a power. The court say that "in the exposition of this part of the constitution we shall limit ourselves to the considerations which appropriately and exclusively belong to it, without laying down any rules of interpretation of a more general nature." Prigg v. Pennsylvania, 16 Pet. (U. S.) 610, 10 L. Ed. 1060. They do not, as in McCulloch's case, quote the express authority to which this is incidental; but a general argument is offered to prove that this power is most safely lodged with the United States, and that, therefore, it has been placed there *exclusively*. If the canon of criticism which we have endeavored to establish, and which is generally admitted, is correct, the existence of such a power cannot be inferred from its utility.

It will be seen, also, that this case stands in strong contrast with that of Martin v. Hunter's Lessee, 1 Wheat. (U. S.) 304, 4 L. Ed. 97, in which the opinion was delivered by the same judge. This was on the validity of the twenty-fifth section of the Judiciary Act, authorizing an appeal from a final judgment of a state court to the supreme court of the United States; and perhaps in no case has the extent of the powers granted by the constitution been more fully and profoundly examined. In this case the court say that "the government of the United States can claim no powers which are not granted by the constitution; and the powers actually granted must be such as are *expressly given, or given by necessary implication;*" that is to say, as the reasoning of the court in the whole opinion proves, such as are included in the express powers, and are necessary and proper to carry them into execution. Such was the uniform language of the court whenever the question was presented previously to the rebellion. The doctrine as now held, however, is somewhat broader, finding its exposition in the decision of the supreme court in the Legal Tender Cases, 12 Wall. (U. S.) 457, 20 L. Ed. 287. It is there said that it is not indispensable to the existence of any power claimed for the federal government that it can be found specified in the words of the constitution, or clearly and directly traceable to some one of the specified powers. Its existence may be deduced fairly from more than one of the substantial powers expressly defined, or from them all combined. It is allowable to group together any number of them and infer from them all that the power claimed has been conferred. Before any act of congress can be held to be unconstitutional, the court must be convinced that the means adopted were not appropriate or conducive to the execution of any or all of the powers of congress, or of the government,—not appropriate in any degree; and of the degree, the court is not to judge, but congress.

We have seen that the constitution and the laws and treaties made in pursuance of it are the supreme law of the land, and that of the true meaning of these the supreme court is the rightful expositor. This necessarily results from their sovereignty. But the United States government is one of delegated powers; and nothing is better established, both by technical reasoning and common sense, than this,—that a delegate can exercise only that power which is delegated to him. All acts beyond are simply void, and create no obligation. It is a maxim also of constitutional law that the powers of sovereignty not delegated to the United States are reserved to the states. But in so complex an affair as that of government, controversies will arise as to what is given and what is reserved,—doubts as to the dividing line. When this is the case, who is to decide? This is a difficulty which the convention did not undertake to settle.

To avoid all controversy as far as possible, the plainest words in granting powers to the United States were used which the language affords. Still further to preclude doubts, the convention added, at the close of the seventeen powers expressly given, this clause: "To make all laws which shall be necessary and proper for carrying into execution the

foregoing powers, and all other powers vested by this constitution in the government of the United States or in any department or officer thereof." Art. 1, § 8. This clause contains no grant of power. But in the Articles of Confederation, which was a compact between the states as independent sovereignties, the word EXPRESSLY was used; and a doubt troubled congress how far incidental powers were included. Articles of Confederation, art. 2. This clause was introduced to remove that doubt. It covered incidental, but not constructive, powers.

Strange as it may appear, both those who wished larger powers granted to the United States, and, in the language of that day, thought that things must be worse before they could be better, and those who honestly feared that too much power was granted, fixed their eyes on this clause; and perhaps no part of the constitution gave greater warmth to the controversy than this. To disarm the designing and counteract the fears of the timid, the tenth amendment was offered by the friends of the constitution. But so jealous were parties of each other that it was offered in the convention of Massachusetts by Governor Hancock, who favored and had the confidence of the opposition, though it was in the handwriting of Mr. Parsons, afterwards chief justice. Life of Chief Justice Parsons. That amendment is in these words: "The powers not delegated to the United States by the constitution, nor prohibited to the states, are reserved to the states respectively, or the people." Were the words of the original constitution and the amendment both stricken out, it would leave the true construction unaltered. Story, Const. § 1232. Both are equally nugatory in fact; but they have an important popular use. The amendment formally admits that certain rights are reserved to states, and these rights must be sovereign.

In Kansas v. Colorado, 206 U. S. 46, 89, 96, 97, 27 Sup. Ct. 655, 51 L. Ed. 956, it was said (Brewer, J., delivering the opinion): "The proposition that there are legislative powers affecting the nation as a whole which belong to, although not expressed in, the grant of powers, is in direct conflict with the doctrine that this is a government of enumerated powers. That this is such a government clearly appears from the constitution, independently of the amendment, for otherwise there would be an instrument granting certain specified things made operative to grant other and distinct things. This natural construction of the original body of the constitution is made absolutely certain by the tenth amendment. This amendment, which was seemingly adopted with prescience of just such contention as the present, disclosed the wide-spread fear that the national government might, under the pressure of a supposed general welfare, attempt to exercise powers which had not been granted. With equal determination the framers intended that no such assumption should ever find justification in the organic act, and that if in the future further powers seemed necessary they should be granted by the people in the manner they had provided for amending that act." It reads: "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." The argument of counsel ignores the principal factor in this article to wit, "the people." Its principal purpose was not the distribution of power between the United States and the states, but a reservation to the people of all powers not granted. The preamble of the constitution declares who framed it, "we, the people of the United States," not the people of one state, but the people of all the states, and article X reserves to the people of all the states the powers not delegated to the United States. The powers affecting the internal affairs of the states not granted to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, and all powers of a national character which are not delegated to the national government by the constitution are reserved to the people of the United States."

We have seen that, within their limited powers, the United States are the natural expositors of the constitution and laws; that when a case affecting individual rights arises, the supreme court stands for the United States, and that they have the sole right to explain and enforce the laws and constitution. But their power is confined to the facts before them, and they have no power to explain them in the form of an edict to effect other rights and cases. Beyond these powers the states are sovereign, and their acts are equally unexaminable. Of the separating line between the powers granted and the powers withheld, the constitution provides no judge. Between sovereigns there can be no common judge, but an arbiter mutually agreed upon. If that power is given to one party, that may draw all power to itself, and it establishes a relation not of equal sovereignties, but of sovereign and subject. On this subject the constitution is silent. The great men who formed it did not undertake to solve a question that in its own nature could not be solved. Between equals it made neither superior, but trusted to the mutual forebearance of both parties. A larger confidence was placed in an enlightened public opinion as the final umpire; and not until the war of the rebellion was this conflict between the two sovereignties finally settled by the *ultima ratio regum*. The status of the states and their political rights under the constitution have been considered at large by the supreme court in the case of Texas v. White, 7 Wall. (U. S.) 700, 19 L. Ed. 227. It is there held that authority to suppress rebellion is found in the constitutional power to suppress insurrection, and carry on war; authority to provide for the restoration of state governments under the constitution when suspended and overthrown is derived from the obligation of the United States to guarantee to every state in the Union a republican form of government. The unity of the states never was a purely artificial and arbitrary relation. It began among the colonies, and grew out of common origin, mutual sympathies, kindred principles, similar interests, and geographical relations. It was confirmed and strengthened by the necessities of war, and received definite form and character and sanction from the Articles of Confederation. By these the Union was solemnly declared to be perpetual; and when these articles were found to be inadequate to the exigencies of the country, the constitution was ordained "to form a more perfect union." But the perpetuity and indissolubility of the Union by no means imply the loss of distinct and and individual existence, or of the right of self-government by the states. On the contrary, it may, not unnecessarily, be said that the preservation of the states and the maintenance of their government are as much within the design and care of the constitution as the preservation of the Union and the maintenance of the national government. The constitution, in all its provisions, looks to an indestructible Union composed of indestructible states. See SECESSION.

"There is no body of federal common law separate and distinct from the common law existing in the several states, in the sense that there is a body of statute law enacted by congress separate and distinct from the body of statute law enacted by the several states. But it is an entirely different thing to hold that there is no common law in force generally throughout the United States, and that the countless multitude of interstate commercial transactions are subject to no rules and burdened by no restrictions other than those expressed in the statutes of congress. . . . Can it be that the great multitude of interstate commercial transactions are freed from the burdens created by the common law as so defined, and are subject to no rule except that to be found in the statutes of congress? We are clearly of opinion that this cannot be so, and that the principles of the common law are operative upon all interstate commercial transactions except so far as they are modified by congressional enactment." Western Union Tel. Co. v. Call Pub. Co., 181 U. S. 92, 101, 102, 21 Sup. Ct. 561, 45 L. Ed. 765, quoted in Kansas v. Colorado, 206 U. S. 46, 96, 27 Sup. Ct. 655, 51 L. Ed. 956.

In Kansas v. Colorado, 206 U. S. 97, 27 Sup. Ct. 655, 51 L. Ed. 956, it was said: "International law is no alien in this tribunal. In The Habana, 175 U. S. 677, 700, 20 Sup. Ct. 290, 44 L. Ed. 320, Mr. Justice Gray declared: 'International 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.' And in de-

livering the opinion on the demurrer in this case Chief Justice Fuller said (Kansas v. Colorado, 185 U. S. 146, 22 Sup. Ct. 552, 46 L. Ed. 838): 'Sitting, as it were, as an international, as well as a domestic tribunal, we apply federal law, state law, and international law, as the exigencies of the particular case may demand.' "

In a qualified sense and to a limited extent the separate states are sovereign and independent, and the relations between them partake something of the nature of international law; Kansas v. Colorado, 206 U. S. 46, 27 Sup. Ct. 655, 51 L. Ed. 956.

Where wrongs affect the public at large and are in respect of matters which by the constitution are entrusted to the care of the nation, and concerning which the nation owes a duty to all its citizens of securing to them their common rights, the nation may take measures to discharge those constitutional duties, though it has no pecuniary interest in the controversy; In re Debs, 158 U. S. 564, 15 Sup. Ct. 900, 39 L. Ed. 1092, cited in Louisiana v. Texas, 176 U. S. 1, 20 Sup. Ct. 251, 44 L. Ed. 347.

The government of the United States as a nation by its very nature benefits the citizen and his property wherever found, and no imaginary barrier shuts that government off from exercising the power which inherently belongs to it by reason of its sovereignty; U. S. v. Bennett, 232 U. S. 299, 34 Sup. Ct. 433 (here a foreign-built yacht which was never, during the tax year, used within United States territory).

Territories are instrumentalities created by congress for the government of the people within their respective borders, with authority to subdelegate the governmental power to the municipal corporations therein, and the latter are therefore instrumentalities of the federal government; Farmers' Bank v. Minnesota, 232 U. S. 516, 34 Sup. Ct. 354, 58 L. Ed. ——.

The United States is not, under the New York statutes, a corporation in the sense that it will be exempted from an inheritance tax on personal property bequeathed to it by will; U. S. v. Perkins, 163 U. S. 625, 16 Sup. Ct. 1073, 41 L. Ed. 287.

If the nation comes down from its position of sovereignty and enters the domain of commerce, it submits itself to the same laws that govern individuals therein. It assumes the position of an ordinary citizen and it cannot recede from the fulfilment of its obligations; U. S. v. Commercial Co., 74 Fed. 145, following Cooke v. U. S., 91 U. S. 398, 23 L. Ed. 237.

For analysis of the structure of a federal government, see Dicey, Constitution.

See SOVEREIGNTY; ARTICLES OF CONFEDERATION; STATE; TERRITORY; COMMERCE; SOVEREIGN; CONSTITUTIONAL; CONSTITUTION OF THE UNITED STATES; FOURTEENTH AMENDMENT; EXECUTIVE POWER; JUDICIAL POWER; LEGISLATIVE POWER; SECESSION.

UNITY. An agreement or coincidence of certain qualities in the title of a joint-estate or an estate in common.

In a joint-estate there must exist four unities: that of *interest*, that of *title*, and, therefore, their estates must be created by one and the same act; that of *time*, for their estates must be vested at one and the same period; and, lastly, the unity of *possession:* hence joint-tenants are seised *per my et per tout*, or by the *half* or *moiety* and by *all:* that is, each of them has an entire possession as well of every *parcel* as of the *whole;* 2 Bla. Com. 170. Coparceners must have the unities of interest, title, and possession. In tenancies in common, the unity of possession is alone required; 2 Bla. Com. 192. See ESTATE IN COMMON; ESTATE IN COPARCENARY; ESTATE OF JOINT-TENANCY; TENANT.

UNITY OF POSSESSION. This term is used to designate the possession by one person of several estates or rights. For example, a right to an estate to which an easement is attached, or the dominant estate, and to an estate which an easement incumbers, or the servient estate, in such case the easement is extinguished; see Cro. Jac. 121. But a distinction has been made between a thing that has its being by prescription, and one that has its being *ex jure naturæ:* in the former case unity of possession will extinguish the easement; in the latter, for example, the case of a watercourse, the unity will not extinguish it; Pothier, Contr. 166.

UNIVERSAL AGENT. One appointed to do all the acts which the principal can personally do, and which he may lawfully delegate the power to another to do. Such an agency may potentially exist; but it is difficult to conceive of its practical existence, since it puts the agent completely in the place of the principal; Story, Ag. § 21.

UNIVERSAL LEGACY. In Civil Law. A testamentary disposition by which the testator gives to one or several persons the whole of the property which he leaves at his decease. La. Civ. Code, art. 1606.

UNIVERSAL PARTNERSHIP. The name of a species of partnership by which all the partners agree to put in common all their property, *universorum bonorum*, not only what they then have, but also what they shall acquire. Pothier, *Du Contr. de Société*, n. 29. See PARTNERSHIP.

UNIVERSAL SUCCESSION. "A succession to a *universitas juris*. It occurs when one man is vested with the legal clothing of another, becoming at the same moment subject to all his liabilities and entitled to all his rights." Maine, Anc. L. 179.

UNIVERSITAS. In Civil Law. A *universitas* or corporate body existed when a number of persons were so united that the law takes no notice of their separate existence, but recognizes them only under a common name. Hunter, Rom. L. 314.

UNIVERSITAS JURIS (Lat.). **In Civil Law.** A quantity of things of various kinds, corporeal and incorporeal, taken together as a whole, *e. g.* an estate. It is used in contradistinction to *universitas facti*, which is a whole made up of *corporeal* units. Mackeldey, Civ. Law § 149.

A collection of rights and duties united by