

Sec. 8—Powers of Congress

Cl. 17—District of Columbia; Federal Property

both authorized the cession of territory¹⁶⁷⁸ and Congress accepted.¹⁶⁷⁹ Congress divided the District into two counties, Washington and Alexandria, and provided that the local laws of the two states should continue in effect.¹⁶⁸⁰ It also established a circuit court and provided for the appointment of judicial and law enforcement officials.¹⁶⁸¹

There seems to have been no consideration, at least none recorded, given at the Convention or in the ratifying conventions to the question of the governance of the citizens of the District.¹⁶⁸² Madison in *The Federalist* did assume that the inhabitants “will have had their voice in the election of the government which is to exercise authority over them, as a municipal legislature for all local purposes, derived from their own suffrages, will of course be allowed them. . . .”¹⁶⁸³ Although there was some dispute about the constitutional propriety of permitting local residents a measure of “home rule,” to use the recent term,¹⁶⁸⁴ almost from the first there were local elections provided for. In 1802, the District was divided into five divisions, in some of which the governing officials were elected; an elected mayor was provided in 1820. District residents elected some of those who governed them until this form of government was swept away in the aftermath of financial scandals in 1874¹⁶⁸⁵

¹⁶⁷⁸ Maryland Laws 1798, ch. 2, p. 46; 13 Laws of Virginia 43 (Hening 1789).

¹⁶⁷⁹ Act of July 16, 1790, 1 Stat. 130. In 1846, Congress authorized a referendum in Alexandria County on the question of retroceding that portion to Virginia. The voters approved and the area again became part of Virginia. Laws of Virginia 1845–46, ch. 64, p. 50; Act of July 9, 1846, 9 Stat. 35; Proclamation of September 7, 1846; 9 Stat. 1000. Constitutional questions were raised about the retrocession but suit did not reach the Supreme Court until some 40 years later and the Court held that the passage of time precluded the raising of the question. *Phillips v. Payne*, 92 U.S. 130 (1875).

¹⁶⁸⁰ Act of February 27, 1801, 2 Stat. 103. The declaration of the continuing effect of state law meant that law in the District was frozen as of the date of cession, unless Congress should change it, which it seldom did. For some of the problems, see *Tayloe v. Thompson*, 30 U.S. (5 Pet.) 358 (1831); *Ex parte Watkins*, 32 U.S. (7 Pet.) 568 (1833); *Stelle v. Carroll*, 37 U.S. (12 Pet.) 201 (1838); *Van Ness v. United States Bank*, 38 U.S. (13 Pet.) 17 (1839); *United States v. Eliason*, 41 U.S. (16 Pet.) 291 (1842).

¹⁶⁸¹ Act of March 3, 1801, 2 Stat. 115.

¹⁶⁸² The objections raised in the ratifying conventions and elsewhere seemed to have consisted of prediction of the perils to the Nation of setting up the National Government in such a place. 3 J. STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 1215, 1216 (1833).

¹⁶⁸³ THE FEDERALIST, No. 43 (J. Cooke ed. 1961), 289.

¹⁶⁸⁴ Such a contention was cited and rebutted in 3 J. STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 1218 (1833).

¹⁶⁸⁵ Act of May 3, 1802, 2 Stat. 195; Act of May 15, 1820, 3 Stat. 583; Act of February 21, 1871, 16 Stat. 419; Act of June 20, 1874, 18 Stat. 116. The engrossing story of the postwar changes in the government is related in W. WHYTE, THE UNCIVIL WAR: WASHINGTON DURING THE RECONSTRUCTION (1958).