the original, but they are included in construction by all respect­able authorities, as essential to its meaning; any other construc­tion would give Congress absolute power over whatever it thought to be for “the common defence or general welfare.” Duties, &c., are to be uniform throughout the United States. Other powers are—to borrow money; to regulate foreign and domestic commerce; to make rules for naturalization, and bankruptcy laws; to coin money, regulate the value of foreign coins, and fix the standard of weights and measures ; to punish the counterfeiting of Federal securities and current coin ; to establish post-offices and post-roads ; to establish patent and copyright systems ; to establish courts inferior to the supreme court ; to punish offences on the high seas or against international law; to declare war, grant letters of marque and reprisal, and make rales for captures; to raise and support armies, no appropriation to be for more than two years ; to provide and maintain a navy ; to make articles of war ; to use the militia of the States in executing Federal laws, suppressing insurrections, and repelling invasions ; to provide for organizing, arming, and disciplining this militia, leaving the States to appoint the officers and carry out the system ; to establish a national capital or Federal district (the District of Columbia, containing the city of Washington), and to exercise exclusive powers of legislation over it, and over sites for forts, dockyards, &c., bought by permission of the States; and, finally, “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 office thereof.” This last power has been the subject of most debate. It was urged that, unless an Act of Congress was strictly “ necessary ” for the execution of one of the granted powers, it was invalid. The Supremo Court has held that the Act need not be “absolutely necessary,” or even “very necessary,”—that it is enough if it is "necessary. ” As the decision of the necessity is with the legis­lative body, the word opens a wide sweep for construction ; but it has always furnished a barricade which the opponents of a bill have often found very strong.

1. The real sovereignty which made the constitution shows itself in a double series of prohibitions—on the Federal Govern­ment and on the States. The Federal Government shall not sus­pend the privilege of the writ of *habeas corpus* except in case of rebellion or invasion, when the public safety requires it. Since the Civil War the Supreme Court has decided that the writ itself can never be suspended while the courts are open, that the Federal Government may suspend the *privilege* of the writ as to classes of persons directly interested in the war, but that the writ is still to issue and the court to decide whether the applicant comes within the excepted classes or not. Congress must not pass any bill of attainder or *ex post facto* law, tax exports, give commercial prefer­ence to the ports of one State over those of another, lay direct taxes except in proportion to census population, or grant any title of nobility. Money is to be taken from the treasury only in con­sequence of appropriations made by law. And no person in the service of the United States may accept any gift or title from a foreign power without consent of Congress.
2. The States are absolutely forbidden to make treaties of any kind, to grant letters of marque and reprisal, to coin money, to emit bills of credit, to make anything but silver a legal tender, to grant any title of nobility, to pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts. It follows from the last clause that States cannot pass bankruptcy laws. The States are forbidden, except by consent of Congress, to lay any duties on imports or exports, except inspection charges, to be paid into the Federal treasury; to lay any tonnage duties; to keep troops (a word which does not cover militia) or ships in peace ; to make any agreement with another State or with a foreign power ; or to engage in war unless actually invaded.
3. The president is to be a native citizen, at least thirty-five years old, and at least fourteen years a resident within the United States. He is paid by the United States ; and his salary is not to be increased or diminished by Congress during his term : the Act must apply to the successors of the president who signs the Act. He is sworn to execute his office faithfully, and to “ preserve, pro­tect, and defend the constitution of the United States.” In case of his death, resignation, or inability (by impeachment or otherwise) the vice-president succeeds him ; and, in case of the inability of both, the members of the cabinet succeed in a prescribed order, according to the Presidential Succession Act of 1886. The president has the veto power already described, sends messages to Congress on the state of the Union or on special subjects, convenes either house or both on extraordinary occasions, receives foreign envoys, commissions officers of the United States, and oversees the execu­tion of the laws passed by Congress. He makes treaties ; but no treaty is valid unless passed by the senate by a two-thirds vote of those present. He appoints ministers and consuls, judges, and all other officers whose appointment Congress has not vested in other officers ; but presidential appointments must be confirmed by the senate, though the president may make temporary appointments during the recess of the senate, to hold until the end of their next session. He is commander-in-chief of the army and navy, and has power of pardon or reprieve for offences against Federal laws, except in case of impeachment. And he may call upon heads of departments for an opinion in writing on any subject relating to his department.
4. The last clause has evolved the “cabinet,” a term not known in the constitution. When Congress has by law organized a department, its leading officer is called its secretary. There are now (1887) seven departments,—those of state, of the treasury, of war, of the navy, of the post-office, of the interior, and of justice; and departments of agriculture and of labour have been proposed. The secretaries are selected by the president and are confirmed by the senate, but are not responsible to any one but the president. Nor is he bound by their individual opinions, or even by an unanimous opinion from one of their periodical meetings. They are his advisers only.
5. The people have no direct voice in the choice of president and vice-president : they choose electors, each State having as many electors as it has senators and representatives together ; and the electors choose the president and vice-president, meeting at their State capitals for that purpose, and sending separate certificates of their choice of president and of vice-president to the presiding officer of the senate at Washington. The electors are to be chosen in such manner as the legislature of each State shall direct ; and this plenary power of the legislatures was the source of the unhappy disputed election of 1876—77. By Acts of Congress, the electors are to be chosen on the Tuesday after the first Mon­day of November ; they meet in their States and vote on the first Wednesday of December ; and Congress meets on the second Wednesday of February to witness the counting of the electoral votes. The electors are legally State officers ; and the action of their States in regard to them was evidently intended to be final. Until 1887 Congress refused to provide for necessary proof of the State’s action, and claimed the power to provide from time to time for emergencies. Such emergencies were constantly occurring ; and Congress, which was meant to be merely a witness of the count by the presiding officer of the senate, had seized, before 1876, a general supervisory power over the electors and their votes. This illegitimate function of Congress broke down in 1876-77, for several Southern States sent different sets of certificates ; the two houses of Congress were controlled by opposite parties, and could agree on nothing ; and an extra-constitutional machine, the “electoral commission,” was improvised to tide over the difficulty. Now provision is made by the Electoral Count Act of 1887 for the State’s certification of its votes ; and the certificate which comes in legal form is not to be rejected but by a vote of both houses. If there is no majority of electoral votes for any person for vice- president, the senate, by a majority of its members, chooses from the two names highest on the list. If there is no majority for president, the house of representatives chooses one from the three names highest on the list, each State having one vote.

120. The electors were meant to exercise a perfect freedom of choice, and there are instances in early years of electors voting for personal friends of the opposite party. It was originally provided that each elector was to name two persons, without specifying which was to be president or vice-president. When the votes were counted, the highest name on the list, if it had a majority of all the votes, obtained the presidency, and the next highest became vice-president. It has been said that the convention cut out the office of president according to the measure of George Washington, and there was no difficulty while he served : each elector cast one of his votes for Washington, and he was chosen unanimously; the struggle was for the second office. When he went out of office in 1796 the parties began to name candidates in advance for the two offices ; the electors began to feel bound to vote for their party candidates ; and the individuality of the electors disappeared at once. In the election of 1800 the electors of the successful party voted together like a well-drilled army, and the result was that the two candidates of the successful party had an equal vote. The defeated party controlled the house of representatives, and their efforts to choose Burr president instead of Jefferson exasperated the Democrats and sealed the fate of the old system. An amendment to the constitution was adopted in 1804, changing the method of the electors in voting, so that each should vote separately for the two offices and thus prevent any tie vote from this cause.

121. The constitution provides for one Supreme Court, having original jurisdiction in cases affecting foreign ministers and con­suls, and those to which a State shall be a party, and appellate jurisdiction from such subordinate courts as Congress should from time to time establish. All judges were to hold office during good behaviour (§ 237), and their salaries were not to be diminished during their continuance in office. Criminal trials were to be by jury, except in impeachments, and were to be held within the State in which the offence had been committed, or in places assigned by law for the trial of offences committed outside the jurisdiction of any State. The whole jurisdiction of Federal courts, covering both