The Constitution in Congress: The First Congress, 1789-1791

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"The Constitution in Congress: The First Congress, 1789-1791" is a condensed version of a more comprehensive study, portions of which will soon appear in the University of Chicago Law Review under the title "The Constitution in Congress: Substantive Issues in the First Congress, 1789-91," copyright © 1994, by The University of Chicago; and in the University of Chicago Roundtable, copyright © 1994, by The University of Chicago. Remaining portions of this paper are copyright © 1994 by David P. Currie.

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Judicial review of legislative and executive action has been such a success in the United States that we tend to look exclusively to the courts for guidance in interpreting the Constitution. The stock of judicial precedents is rich, accessible, and familiar, but it does not exhaust the relevant materials. Members of Congress and executive officers, no less than judges, swear to uphold the Constitution, and they interpret it every day in making and applying the law. Like judges, they often engage in extensive and enlightening debates over the constitutional issues that confront them. Like judges, they also leave voluminous records of their deliberations—from statutes and legislative hearings, reports, and debates to presidential messages, proclamations, and opinions of the Attorneys General, to mention only a few.¹

Legislative and executive opinions respecting some of the great controversies are widely known. The President's right to remove executive officers and Congress's power to establish a bank are two early examples. In the main, however, legislative and executive precedents are less familiar than judicial ones. The aim of this study is to begin to remedy that deficiency, in the conviction that both Congress and the Executive have a great deal to tell us about the Constitution.

New Hampshire, the decisive ninth state under Article VII, ratified the Philadelphia Constitution

¹Most of the debates reported in this paper are taken from volumes 1 and 2 of the Annals of Congress, which were gleaned from contemporaneous newspaper reports by Gales and Seaton and published in 1834. Other sources have recently been collected by the First Federal Congress Project in Washington, D.C. and are being published under the title Documentary History of the First Federal Congress (Johns Hopkins University Press, 1988- ) [hereafter cited as Doc Hist].
on June 21, 1788. Elections were held pursuant to rules specified by the outgoing Confederation Congress, and the new House and Senate convened in New York on March 4, 1789. It took a month and more than one stern summons to produce a Senate quorum, and neither North Carolina nor Rhode Island had yet signed on. By April, however, both Houses were in business; and their business was to set up the government of the United States.

For the Constitution, as Chief Justice Marshall would later remind us, laid down only the “great outlines” of the governmental structure; translating the generalities of this noble instrument into concrete and functioning institutions was deliberately left to Congress. The task was one partly of interpretation and partly of interstitial creation, for the Framers had been too wise to attempt to regulate all the details themselves—although for obvious reasons the structural provisions are among the most specific in the entire document. Thus, in a very real sense it can be said that the First Congress was a sort of continuing constitutional convention—and not simply because so many of its members—James Madison, Oliver Ellsworth, Elbridge Gerry, Rufus King, Robert Morris, and William Paterson being only the most conspicuous examples—had helped to compose or to ratify the Constitution itself.

On April 6 the votes of the presidential electors were counted before a joint session of both Houses, as Article II prescribed. In accord with that provision, each of the sixty-nine electors had cast two votes. As expected, each had given one vote to George Washington; John Adams was second with thirty-four votes and thus became Vice-President. Acutely aware that everything he or Congress did would set a precedent, Washington urged the legislators to permit “no local prejudices or attachments, no separate views, nor party animosities” to distract them from laying the foundations of national policy “in the pure and immutable principles of private morality.”

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2 See Washington’s letter of May 5, 1789, asking Madison to draft a response to the House’s reply to his inaugural address: “As the first of everything, in our situation will serve to establish a Precedent, it is devoutly wished on my part, that these precedents may be fixed on true principles.” W. Abbott, ed., 2 The Papers of George Washington (Presidential Series) 216-17 (University Press of Virginia, 1987).
3 He did not mention Pareto optimality. Tsk, tsk.
With that he left them to do their work; and work they did.

The First Congress determined its own procedures, established the great executive departments, and set up the federal judiciary. It enacted a system of taxation, provided for payment of Revolutionary debts, and erected a national bank. It made provision for national defense, regulated relations with Indian tribes, and (in the Senate) advised the President on foreign affairs. It passed statutes respecting naturalization, patents and copyrights, and federal crimes. It regulated relations among existing states and admitted new ones while providing for the administration of territories and the establishment of a permanent seat of government.

In doing all this Congress interpreted a surprising number of provisions of the Constitution, finding time along the way to propose not ten but twelve additional articles to improve the document itself. By the time the First Congress adjourned in 1791 the country had a much clearer idea of what the Constitution meant than when that body had first met in 1789.

I have selected only a few of the myriad constitutional issues that arose in the First Congress for discussion in this paper.

I. The New Government

A. Congress

1. Oaths

A constitutional issue of considerable jurisprudential significance was raised at the very outset when the First Congress confronted the humble question how to comply with Article VI's requirement that its members be "bound by oath or affirmation to support this Constitution," for Article VI said nothing about how or when the oath should be administered.

Five days after achieving a quorum, the House adopted a resolution spelling out the form of the oath to be taken by its members. Two days later, at the House's request, the Chief Justice of New York administered the oath in the form the resolution had prescribed.
So far, so good; if the constitutional provision was to take effect, someone had to figure out the details of its implementation, and it made sense to conclude that the bodies to whose officers the requirement applied had implicit authority to do so—especially in light of the general rulemaking authority given to each House by Article I, § 5. At the same time it prescribed the form of the oath by resolution, however, the House appointed a committee to draft legislation on the same subject.

Insofar as legislators and legislative employees were concerned, such a statute could be explained as necessary and proper to the exercise of congressional powers, since neither members nor staff could function without taking the oath. Nor could there have been any constitutional objection to regulating the oath that Article VI required of federal executive and judicial officers, as the bill also did as it emerged from the House—for the necessary and proper clause empowered Congress to enact legislation carrying into effect not only its own powers but also those vested in any other federal officer or department, and the regulation was as necessary for other officials as for members of Congress themselves.

The difficulty arose when the Senate amended the bill to prescribe the details of the oath to be taken by state officers, who were also subject to the requirement of Article VI. It was Elbridge Gerry of Massachusetts who raised the constitutional objection when the bill returned to the House, and it was a good one. No clause of the Constitution, he argued, gave Congress authority to regulate the oath to be taken by state officers. It was therefore up to the states themselves to do so, and if they did not federal judges would annul their acts for want of constitutional authority to adopt them.

John Laurance of New York replied that Congress had power to make “all laws necessary or proper to carry the declarations of the constitution into effect” and thus to implement Article VI, but he was mistaken. As Gerry had already noted, Article I spoke only of laws needed to carry out the powers vested in some federal body. New Jersey’s Elias Boudinot had a better justification:

The constitution said only that the officers of Government should be bound by oath, leaving to Congress to say what oath. In short it was the
duty of the House . . . to detail the general principles laid down in the constitution, and reduce them to practice.

In other words, Article VI itself implicitly authorized Congress to implement its provisions.

This was not a necessary conclusion. The principle that had justified the House in prescribing the form of the oath for its own personnel would have justified the states in doing the same for theirs. Indeed Article IV’s explicit provision authorizing Congress to effectuate the full faith and credit clause arguably strengthens the inference that when the Framers wanted Congress to implement constitutional provisions they said so. On the other hand, as Chief Justice Marshall would later tell us, the last thing the necessary and proper clause was meant to do was to limit the authority implicit in other constitutional provisions. Like the sweeping clause itself, the power to flesh out full faith and credit may have been inserted out of an abundance of caution.

In any event, the statute as enacted regulated the oath to be taken by state as well as federal officers. Four years later this action served as precedent for the far more significant Fugitive Slave Act, which implemented a clause of Article IV that was as silent with respect to congressional authority as the oath provision of Article VI. It was in the emotionally charged context of fugitive slaves that the Supreme Court would ultimately accept Boudinot’s argument of implied authority in the great case of Prigg v. Pennsylvania.

2. Enumeration

A basic question regarding the extent of congressional authority to acquire information arose when Congress turned to implementing the command of Article I, § 2 that a census be taken within three years after its first meeting.

In contrast to the oath requirement of Article VI, the census provision explicitly provided for congressional implementation: The enumeration was to be

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4McCulloch v. Maryland, 17 US 316, 420 (1819).
51 Stat 23 (June 1, 1789).
6Id at 302 (Feb 12, 1793).
741 US 539 (1842).
made “in such manner as [Congress] shall by law direct.” The interesting question was the permissible scope of the information that was to be obtained.

The purpose of the enumeration, according to Article I, was to provide the basis for apportioning both congressional seats and direct taxes among the states “according to their respective numbers.” Those numbers, the Constitution further provided, were to be determined by counting the number of “free persons,” excluding “Indians not taxed,” and adding “three fifths of all other persons”—that is, of the slaves. As enacted, however, the census bill required that the population be further broken down by sex and by age—although neither of these characteristics was relevant to the purposes for which the Constitution required the enumeration to be made. Indeed, at one point the bill had been even broader, requiring the census-takers to classify the population by occupation as well. This requirement was later deleted, but both the earlier version and the statute itself raised the question whether Congress was not seeking more information than it had any right to demand.

It was the ubiquitous Madison who had promoted the idea of a census of occupations, and he had waxed enthusiastic over the utility of the information it would produce. Several members objected, arguing among other things that the inquiry would serve no legitimate purpose and might lead the public to suspect ulterior congressional designs.

Commendably, Madison made no effort to defend his additional questions on the basis of the census provision. His position was that knowledge of individual occupations would be useful to Congress in devising later substantive legislation:

I take it, sir, that in order to accommodate our laws to the real situation of our constituents, we ought to be acquainted with that situation. . . . If gentlemen have any doubts with respect to [the] utility [of this information], I cannot satisfy them in a better manner, than by referring them to the debates which took place on the bills intended collaterally to benefit the agricultural, commer-

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8 US Const, Art I, § 2. See also id, Art I, § 9: “No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.”

9 1 Star 101, § 1 (March 1, 1790).
cial, and manufacturing parts of the community. Did they not wish then to know the relative proportion of each, and the exact number of every division, in order that they might rest their arguments on facts, instead of assertions and conjectures? Will any gentleman pretend to doubt but our regulations would have been better accommodated to the real state of society than they are?

In short, the information that went beyond what was required for the apportionment of representatives and taxes was necessary and proper to the informed enactment of legislation on various subjects within the express authority of Congress. Similar arguments were later to support a broad power of congressional investigation. The inclusion of questions concerning age and sex in the original census suggests that Congress was already persuaded by the essence of Madison’s position.

B. The Special Role of the Senate

Apart from impeachment, the functions of the House of Representatives were restricted to those incident to legislation and to the quasi-legislative process of constitutional amendment. The Senate, on the other hand, was given a role to play in two important functions otherwise entrusted to the executive: the appointment of officers and the making of treaties. For Article II, § 2 empowered the President to make both appointments and treaties “by and with the advice and consent of the Senate”—requiring a two-thirds majority in the latter case. The President and the Senate devoted considerable efforts during the First Congress to defining their respective roles with respect to executive affairs.

1. The French Consular Convention

In July 1789, the Senate requested John Jay—who, as Secretary of Foreign Affairs under the Confederation, was still in office—to appear and inform the Senators about a consular agreement that Jefferson had concluded with France in November 1788. The Secretary appeared and argued that the

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treaty should be approved. The Senators agreed, unanimously resolving "[t]hat the Senate do consent to the said convention, and advise the President of the United States to ratify the same."

This episode passed without recorded friction, but it set several interesting precedents. First, the consular agreement had been concluded before the first meeting of the new Congress; both the President and the Senate assumed that the advice and consent provision nevertheless applied. Second, the Senate explicitly gave advice as well as consent, imparting not only its own imprimatur but also an unequivocal suggestion as to how the President should exercise his authority to perform the distinct act of final ratification. The form of the resolution thus illustrates both the imprecision of the common reference to Senate “ratification” of treaties and the original understanding that the President retained discretion to withhold ratification after the Senate had given its consent.

Finally, the consular incident demonstrates that the Senate understandably interpreted its treaty responsibilities to give it implicit power to acquire the information needed for their intelligent exercise and to confer in person with executive officers in order to obtain it. Indeed, although the order respecting Jay’s appearance was cautiously phrased as a “request[,]” the cruder terms employed a few days earlier in “order[ing]” that the Secretary furnish copies of relevant documents and report on the accuracy of a translation appeared to assert the additional right to employ compulsory process against a high executive official. Nevertheless the failure of either Jay or Washington to raise any objection based upon executive privilege cannot be taken to concede this important principle, since the President had directed the Secretary in advance to provide “whatever official Papers and information on the subject” the Senate might require.

2. The Southern Indians

Not long afterward, President Washington peremptorily informed the Senators that he would meet them in their chamber at 11:30 the next morning “to advise with them on the Terms of the Treaty to be negotiated with the Southern Indians.” He appeared as scheduled with War Secretary Henry
Knox in tow and laid before the Senate a detailed written statement of facts and questions in which he solicited the Senate’s advice on what position to take in the coming negotiations.

This intricate document was read aloud twice over the din of passing carriages, and then Vice-President Adams began to ask for yes or no answers to the questions the President had posed. Maclay rose to object: “The business is new to the Senate, it is of importance, it is our duty to inform ourselves as well as possible on the subject.” When he moved to refer the questions to a committee for that purpose, Washington “started up in a Violent fret” and remonstrated that “[t]his defeats every purpose of my coming here.” Ultimately, however, he agreed to postpone the remaining consultation until the following Monday, when after debating the merits of each question in Washington’s presence the Senate gave him the requested advice.

This famous confrontation resolved three critical questions regarding the Senate’s authority with respect to treaties. First, both the President and the Senate plainly interpreted the power to advise and consent to include not merely approval of the finished product but also discussion in advance of the course of action to be pursued. Thus, the original understanding seems to have been that at least with regard to treaties the Senate would function as a true advisory council, not simply as a check on the arbitrary exercise of power.

Second, as seemed to follow from their shared conception of the Senate’s role as an advisory council, both parties plainly thought it appropriate for the President to consult with the Senate in person. Even when nothing was wanted beyond simple consent, as an earlier incident had shown, there was ample room for misunderstanding if the matter was handled entirely in writing; it seemed to go without saying that the flexibility of oral discussion would facilitate the giving of actual advice.

At the same time, however, Washington’s method of seeking advice in the case of the

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11 “I could tell it was something about indians,” Senator Maclay wrote in his diary after the first reading, “but was not master of one Sentence of it.” 9 Doc Hist at 128. This diary is the only more or less comprehensive account of the debates in the Senate during the First Congress, since the Senate did not open its doors to the public until 1795.
Southern Indians posed a patent threat to the independence of the Senate in performing its advisory function. If the Senate was to participate meaningfully in the exercise, it required an opportunity both to study the President's proposals and to discuss them when the President was not around. "I saw no chance of a fair investigation," Maclay had whispered at one point to Morris, "while the President of the U.S. sat there with his Secretary at War, to support his Opinions and overawe the timid and neutral part of the Senate."

In insisting on postponing their answers until they could study the President's inquiries on their own, the senators assured themselves the autonomy without which they could hardly have performed the checking function contemplated by Article II; and thus the third result of the confrontation over the Southern Indians was to resolve apparently for all time a major issue of the balance of power between the two organs of government. The price of the Senate's victory was high, however, for Washington responded to his procedural defeat by resolving never to ask the Senate for advice in person again.

C. The Executive Branch

1. Emoluments and Titles

Article II, § 1 provided that the President should "receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected," and that he should "not receive within that period any other emolument from the United States, or any of them." Alexander Hamilton had explained the reasons for these provisions in the *Federalist*. "[A] power over a man's support" was "a power over his will"; the salary guarantee meant that Congress could "neither weaken [the President's] fortitude by operating upon his necessities; nor corrupt his integrity, by appealing to his avarice;" the ban on other emoluments assured that he would have "no pecuniary inducement to renounce or desert the independence intended for him by the Constitution."12

Washington caused something of a stir in his first

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12 *The Federalist*, No 73.
inaugural address by disclaiming his constitutional compensation. His sense of duty, he announced, had always required him to serve his country without remuneration; and thus he requested Congress in making "estimates for the station in which I am placed" to provide only for payment of "such actual expenditures as the public good may be thought to require."

Undeterred, Congress proceeded to debate and enact a statute providing the President with a $25,000 annual salary. John Page of Virginia began the House discussion by denying that Washington had the right to refuse his pay: "[T]he constitution requires that he shall receive a compensation, and it is our duty to provide it." This was not a frivolous argument, for the salary provision was not designed for the President's benefit. If the constitutional premise was that financial independence was a crucial barrier to corruption, an officer who impoverished himself by declining his wages endangered the public interest. Moreover, if Washington was right that he need not accept his money, there would always be the risk that a President's waiver was not truly voluntary; reading the Constitution to mean what it said would obviate the need for inquiry on this unpromising score. Thus, Congress determined that Washington would be compensated whether he liked it or not, and he ended up by accepting his salary.

The controversy over the practical question of whether the President should be paid, however, was pallid in comparison to the dispute that had raged at the very beginning over the purely formal question of how he should be addressed. In April 1789, apparently at the instigation of Vice-President Adams, a joint committee was appointed to consider "what style or titles [if any] it will be proper to annex to the offices of President and Vice-President of the United States." The committee recommended that no titles be added to those specified in the Constitution, and the House agreed. The Senate balked, and a Senate committee then proposed that the President be addressed as "His Highness, the President of the United States of America, and Protector of their Liberties."

Maclay argued that any such title would be
unconstitutional. The Constitution had “designated our Chief Magistrate by the Appellation of The President of the U.S. of America,” and Congress could neither “add to [n]or diminish it, without infringing the Constitution.” Moreover, Article I, § 9 expressly provided that “no title of nobility sh[ould] be granted by the United States”; “the appellations & Terms given to Nobility in the old World” were “contraband language” in this country.

This quarrel may seem petty, but in adopting the nobility provision the Framers themselves had plainly recognized the importance of symbols. One thing both the Revolution and the Constitution were all about was to substitute a republic for an aristocracy, and to abjure exalted forms of address served to underline our commitment to that decision. When the House refused to recede from its disagreement, the Senate passed a resolution sulkily affirming the desirability of additional titles in order “to assure a due respect for the majesty of the people of the United States” in intercourse with other nations but yielding for the moment in the interest of “preserving harmony with the House of Representa-tives.” That was the last that was heard about His Highness the Protector of our Liberties; ever since the President has been simply “the President of the United States,” as Article II provides.

3. Ambassadors

Recognizing that the President could not carry out his executive responsibilities all by himself, Congress in 1789 passed statutes establishing the great offices of Secretary of the Treasury, Secretary of War, and Secretary of Foreign Affairs. The debates concerning the President’s power to remove these officers are well known and were heavily relied on by the Supreme Court in the famous case of Myers v. United States. Less familiar but no less intriguing were the provisions made the next year with respect to ambassadors, public ministers, and consuls.

Article II plainly contemplates that Congress may create executive offices necessary and proper to

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15 Adams at one point in the debate reminded the Senate that “there were Presidents of Fire Companies & of a Cricket Club.”

16 272 US 52 (1926).
the execution of various federal powers, for it expressly authorizes the President, with Senate consent, to appoint "all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law." Yet when Congress turned to providing for intercourse with other nations it conspicuously refrained from creating any offices at all, simply authorizing the President to draw up to $40,000 per year from the Treasury "for the support of such persons as he shall commission to serve the United States in foreign parts" and to pay their expenses.17

A closer look at the Constitution may suggest why. Article II empowers the President not only to nominate functionaries whose offices have been created by legislation, but to nominate "ambassadors, other public ministers and consuls, [and] judges of the Supreme Court" as well. The text thus gives some support to Smith's argument that the President and Senate should "determine when and where to send ambassadors and other public ministers; all that the House has to do is to make provision for their support."

The textual argument applies to justices as well as to diplomats, and Congress fixed the number of the former at six.18 It may be that Congress thought it had the power but not the duty to fix the number of offices in both cases and chose to exercise its authority only in the case of the judges. The contrast may also suggest, however, that the constitutional principle that dissuaded Congress from creating particular diplomatic offices was found not in the second section of Article II but in the third.

For buried near the end of that section was an apparently innocuous provision directing the President to "receive ambassadors and other public ministers." This duty could have been construed in a purely ceremonial sense, but it was not. It has long been understood that the decision to receive a foreign diplomat embodies a decision to recognize the government that dispatched him, and thus that the reception clause empowers the President to decide with which governments the United States shall have diplomatic relations.19 For Congress to create

17 1 Stat 128, §1 (July 1, 1790).
18 1 Stat 73, §1 (Sept 24, 1789).
19 United States v Belmont, 301 US 324, 330 (1937).
an embassy to Lower Slobbovia would appear to conflict with this presidential responsibility.

Yet congressional reticence in this case was not confined to the question of what diplomatic offices should be established. The statute did not even prescribe what salary was to be paid to such envoys as the President with Senate consent might decide to appoint; it merely set upper limits to the sums that could be paid to individual officers and to the total that could be expended in a single year.

The arguments on this provision had been largely a reprise of the controversy over presidential removal, ranging from the suggestion that the determination of salaries was incident to appointment or to treaty-making and thus could be made only by the President with Senate consent to the position that it was an executive function entrusted to the President alone. Thomas Scott of Pennsylvania, however, put forward a new argument that had not been available in the removal debate:

I think disposing of, or giving away sums of public money, is a Legislative, not an Executive act, and cannot be performed in any other way than with all the formalities of Legislative authority.

Thus, there was no point in arguing over whether salaries should be set by the President alone or with Senate consent, because "it would be improper to give it to either"; the setting of salaries being a legislative responsibility, Congress could not constitutionally delegate it to anyone else.

This argument was given credence by the provision of Article 1, § 9 that no money should be drawn from the Treasury "but in consequence of appropriations made by law." Of course it was true that the bill did authorize the withdrawal of funds from the Treasury, but the Constitution arguably required Congress to determine not only how much to spend but also how to spend it. Sedgwick replied that Congress had already recognized the necessity for discretionary spending authority in providing for military supply. This exchange was an opening salvo in a continuing battle over the proper degree of specificity in congressional appropriations.

As in the removal debate, Laurance took the position that the Constitution did not answer the ques-
tion, and this time the majority evidently agreed. In prescribing ceilings for the remuneration of various types of officers Congress rejected the thesis that the Constitution reserved the matter to the President with or without consent of the Senate; in leaving it to the President to determine the appropriate compensation within those limits it rejected the argument that salaries could be set only by statute. The bottom line seemed to be that Congress could decide one way or another under its authority to enact laws necessary and proper to the execution of powers granted by the Constitution to various officers and departments of the federal government.\textsuperscript{20}

II. Substantive Legislation

A. Taxes and Trade

1. Tariffs and Tonnage

No government can run without money, and the dependence of the old Congress on contributions from the states had been a principal source of discontent with the Articles of Confederation. One of the central innovations of the Philadelphia Convention was the general federal tax power conferred by the first clause of Article I, § 8: “The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States.” Congress thus had a wide choice of means for supporting the operations of the new Government. It decided to rely principally on customs duties on imported goods and tonnage duties on foreign and domestic vessels.\textsuperscript{21}

The most striking feature of the tariff law was the candid admission in its first section that its purposes included not only the support of government and the payment of debts but also “the encouragement and protection of manufactures.” In April 1789, as the House began debating the revenue question, it received a petition from a long list of Baltimore

\textsuperscript{20} Consistently with this analysis, Congress now regulates the salaries of diplomats while still leaving it to the President to determine where to send them. Foreign Service Act of 1980, 94 Stat 2071, title I, chs 3-4.

\textsuperscript{21} 1 Stat 24 (tariffs), 27 (tonnage).
tradesmen complaining of the tendency of their fellow citizens to fritter away the nation's wealth "in the purchase of those articles, from foreigners, which our citizens, if properly encouraged, were fully competent to furnish" and urging Congress to impose "on all foreign articles, which can be made in America, such duties as will give a just and decided preference to the labors of American artisans and "discountenance that trade which tends so materially to injure them, and impoverish their country."

These sentiments found many adherents in the House. Thomas Fitzsimons of Pennsylvania began by proposing specific duties on a long list of imported items from beer to nuts with the avowed purpose, among others, "to encourage the productions of our country, and protect our manufactures." Other members scrambled for a piece of the action. Clymer sought protection for steel and paper, Moore and Heister for hemp, Carroll for glass, Bland and Parker for Virginia coal. Fisher Ames made quite a touching little oration on the virtues of cottage industries in advocating a protective tariff on nails. Roger Sherman pleaded for a six-cent tariff on manufactured tobacco on the express ground that "the duty ought to amount to a prohibition," and he got it.

There were objections to several of these suggestions, but no one denied that Congress could constitutionally impose tariffs in order to stimulate domestic production, and it did so. Fitzsimons suggested a plausible basis for this authority in urging a discriminatory duty on tea shipped in foreign vessels "not only as a revenue but as a regulation of a commerce highly advantageous to the United States."

Fitzsimons's argument that differential duties for the promotion of American shipping constituted a regulation of foreign commerce suggested two interesting conclusions respecting the commerce power. The first was that a measure could qualify as a regulation of commerce even though it took the shape of a tax; not form but purpose and effect were determinative. The second was that the power to regulate commerce included the power to restrict it. In the immediate context this was hardly surprising, since one justification for giving Congress authority to regulate foreign commerce had been to permit it to retaliate against and therefore to deter foreign restrictions. But the decision of the First Congress with respect to foreign commerce seemed likely also
to have an impact on the interpretation of the parallel clause regarding commerce among the several states, although the specific reason for giving this latter authority to Congress had been to enable it to remove obstacles to freedom of trade.

A further step would be necessary to find a commerce-power justification for duties designed to promote production, since neither agriculture nor industry was "commerce" within the ordinary meaning of the term. In one sense that step would not be difficult to take, since protective tariffs restrict commerce itself by increasing the price of exchange; but acceptance of this position would mean that Congress could regulate foreign commerce in order to encourage conduct it presumably could not regulate directly. That in itself would be a significantly broad interpretation of congressional power, and it would later be hotly disputed; but it would be less threatening to reserved state powers than the alternative explanation that the essentially unlimited tax power might likewise be used for ulterior ends.

Many of the members who spoke during the debate on the tariff and tonnage laws seemed to think it entirely appropriate to use the tax power itself for the promotion of goals unrelated to revenue. Fitzsimons himself, the exponent of the commerce-clause thesis, bolstered his plea for high duties on liquor with an argument based entirely on health and morals: If the result was to discourage the consumption of alcoholic beverages, so much the better, because alcohol was "a luxury of the most mischievous kind." Finally, in adopting a duty on tobacco products that had explicitly been justified as a prohibition Congress seemed to lend strength to the extreme position that taxes might be levied even when they served no revenue purpose at all.

Of course, as Justice Robert Jackson would later observe, economic incentives are inseparable from taxation: "[A]ll taxation has a tendency . . . to discourage the activity taxed." Indeed, so far as the text was concerned, Article I could easily be read to

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22 See Champion v. Ames (the Lottery Case), 188 US 321 (1903); Hammer v. Dagenhart, 247 US 251 (1918); United States v. Darby, 312 US 100 (1941).


permit Congress to levy taxes in order not only to pay the debts and provide for defense but also to promote "the general welfare"—in other words, for any reason that was good for the nation as a whole. On the other hand, indifference to the purpose and effect of measures cast in the form of taxes could obliterate the limitations on federal regulatory powers that were implicit in the initial enumeration and confirmed by the First Congress in proposing the Tenth Amendment.

Because all the incentive provisions of the tariff and tonnage laws can be explained on the narrower ground that they effectively regulated interstate or foreign commerce, neither of these statutes proves that the legislators believed they could accomplish by taxation that which they could not do directly. At the very least, however, they demonstrate that the First Congress took a broad view of the purposes for which it could regulate commerce; and those who would later argue that the tax power could be exercised only for revenue purposes would have a good deal of explaining to do.

2. Whiskey

Before Congress had been in business two years, it felt obliged to tap additional sources of revenue. As several speakers had emphasized during the 1789 debates, there were limits to how high customs duties could be raised without provoking widespread smuggling. Convinced that direct taxation "would be contrary to the sentiments of the majority of the people," Madison accordingly proposed an excise on the domestic production of ardent spirits as "the least exceptionable" option.

Whiskey producers were not so sure, and as usual some of their arguments took constitutional shape. Jackson objected that the burden of the tax fell unequally on the South, which had "no breweries or orchards to furnish a substitute" for whiskey. Hugh Williamson of North Carolina tied this argument to Article I's requirement that excises be "uniform throughout the United States" and urged the House "to equalise them, by proposing a tax on beer and cider."

Similar arguments had been raised and rejected in the tariff debate, and they were rejected again as the whiskey tax was adopted. Since the tariffs could be
justified as regulations of commerce, rejection of the inequality argument in that context might be explained on the unappetizing ground that Congress could evade the uniformity requirement by invoking some power other than that of taxation. No such argument was available, however, in the case of the whiskey excise; Congress seems to have concluded both that the Constitution required only geographical uniformity (as suggested by the term “uniform throughout the United States”) and that the tax was uniform because it was nondiscriminatory on its face.

To require that the actual burden of taxation be distributed equally throughout the nation would have posed formidable accounting difficulties, but Justice Nelson’s later example of a New York tax impartially imposed on domestic and out-of-state cotton suggests the possibilities of abuse invited by limiting the inquiry to facial discrimination.\(^2\) We had by no means heard the last of arguments that various constitutional guarantees required \textit{de facto} as well as \textit{de jure} equality.\(^6\)

Other objections to the whiskey tax implicated provisions of the new Bill of Rights, which Congress had proposed in 1789 and which was ratified the same year the excise was adopted. Parker zeroed in on “the mode of collecting the tax,” which he argued would “let loose a swarm of harpies” who would “range through the country, prying into every man’s house and affairs.” The modern reader will take this argument as a reminder to measure the enforcement provisions of the statute against the Fourth Amendment’s prohibition of “unreasonable searches and seizures.”

In fact the act raised interesting questions in this regard, for in addition to authorizing the issuance of warrants to search any place where spirits were suspected of being fraudulently concealed it empowered revenue agents without any ground for suspicion and without procuring a warrant to enter any registered distillery or warehouse “at all times in the daytime” in order to sample and measure the inventory. Whether it was the regulated nature of the business or the voluntary act of distilling or storing liquor in the face of the registration and inspection provisions that made this requirement reasonable no one both-

ered to say, but Congress evidently thought there was no constitutional problem.

Jackson perceived a distinct threat in the dreaded host of federal tax collectors and proposed to meet it "by adding a clause to prevent Inspectors, or any officers under them, from interfering, either directly or indirectly, in elections, further than giving their own votes." Sherman and Livermore made clear that the objection was to "electioneering" by federal agents whose duties would afford them "such a knowledge of persons and characters, as will give them great advantages, and enable them to influence elections to a great degree." Jackson added that his proposal was made more imperative by "the dangerous influence that some future Presidents would acquire, by virtue of the power which [they] will possess of removing these officers."

John Vining of Delaware responded that Jackson's proposal was unconstitutional, as it would deprive revenue officers of the right "of speaking and writing their minds." Maryland's Joshua Seney replied that no rights would be infringed because "it would be optional to accept the offices or not," but Jackson's motion to muzzle the revenuers was decisively rejected.

Thus, the First Congress gave us a concise but cogent preview of the arguments that were to be made many years later with respect to the constitutionality of the Hatch Act.27 While there were plenty of other objections to stripping civil servants of rights fundamental to the operation of republican government, Vining provided us at the outset with powerful ammunition based on the speech and press guarantees that Congress itself had recently proposed.

3. Seamen

Possibly the most ambitious exercise of the commerce power during the First Congress was the enactment in July 1790 of a comprehensive labor law for merchant seamen.28 On the one hand, this Act provided stringent sanctions against sailors who deserted or failed to report and those who harbored them. On the other, it guaranteed crew members a written contract, prompt payment of wages, ade-

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28 1 Stat 131 (July 20, 1790).
quate medicines and provender, and the right to require a leaky vessel to put into port for repairs.

Unfortunately, the Annals report no debate on these provisions. Their most plausible source of support was the commerce clause, and that was the basis on which they were subsequently explained. It was not obvious, however, that a regulation of the care and feeding of seamen was a regulation of commerce. Transportation was commerce, as the ship licensing law implied, and crew members were engaged in transportation. Yet the law regulated not transportation itself but the labor relations of those who did the transporting.

On the other hand, both the duties and the rights created by this law obviously promoted commerce by assuring that ships would be properly manned. If the bill did not regulate commerce itself it could easily be found necessary and proper to the commerce power. In the early twentieth century, when Congress for similar reasons attempted to give railroad workers the right to join unions and to receive pensions, the Supreme Court held it had exceeded its powers. The First Congress plainly took a broader view of its commerce clause authority.

4. The Slave Trade

The clouds of future storms darkened the halls of Congress in February 1790, when Representative Fitzsimons presented an address from an assembly of Quakers urging Congress to do something about the slave trade. South Carolina's William Smith protested that the House should not even consider the petition because Article I, § 9 deprived Congress of the power to ban importation of slaves into existing states before 1808. Madison appropriately responded that the same provision expressly permitted a federal tax not exceeding ten dollars a head and suggested that Congress might also have authority to outlaw the transportation of slaves from Africa to the West Indies in American ships—thus implying both that the transportation of slaves was commerce and that trade “with foreign nations” included trade by Americans between them.

Jackson of Georgia protested that anything done to suppress the slave trade might threaten slavery itself, and the very next day a memorial signed by no less a personage than Benjamin Franklin urged Congress to take steps under unspecified powers to free the slaves. Representatives from the deep South began to squeal like stuck pigs. Smith warned that emancipation would offend the constitutional ban on ex post facto legislation, and Tucker warned that it would bring about "civil war." Madison responded that Congress had authority to regulate slavery in the western territory and even the introduction of slaves into new states that might be formed there. Gerry suggested that Congress might raise money to purchase slaves and set them free by selling lands in the western territories. The protesters were noisy but badly outnumbered; both petitions were referred to a committee for consideration.

Predictably, the committee reported that Congress had no power to interfere with slavery itself, or to forbid importation of additional slaves to the original states before 1808. It added, however, that Congress did have authority to impose a ten-dollar tax on each slave imported, to forbid citizens to transport slaves between foreign countries, and "to make provision for the humane treatment of slaves" during the course of importation. The report concluded by urging that Congress exercise all these powers "for the humane objects of the memorialists, so far as they can be promoted on the principles of justice, humanity, and good policy."

This committee report provoked another five days of heated debate. Aedanus Burke of South Carolina insisted that slavery was good for slaves and vilified the Quakers. Smith enlarged upon Burke's remarks, trumpeted states' rights, and disparaged blacks in general. Boué dit expatiated at length on the evils of slavery, acknowledged that there were serious limits to what Congress could do about it, and stood up for the petitioners. The upshot was a report of the Committee of the Whole House restating the original committee's conclusions concerning the extent of congressional powers but omitting any reference to the desirability of their exercise.

With that the House dropped the subject for the time being, but the spirit of dissension it had awakened had come to stay.
B. Spending

1. Lighthouses

In August 1789, Congress authorized construction of a lighthouse near the mouth of Chesapeake Bay, as well as the expenditure of federal funds for the maintenance and repair of all "lighthouses, beacons, buoys and public piers" previously erected for navigational purposes at "any bay, inlet, harbor, or port of the United States" pending their prompt cession to the United States. Thus, the aim of this enactment was to put the federal government in the business of constructing, operating, and financing a nationwide system of aids to navigation. The interesting question from the constitutional point of view is where it got the authority to do so.

Observers in the late twentieth century are likely to think at once of the first clause of Article I, § 8, which empowers Congress "to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States." Acknowledging that the enumeration of congressional powers precludes interpreting this provision to support all legislation that promotes the general welfare, the modern Supreme Court has read it to justify taxation to acquire and expend funds for any such purpose—and thus to confer a power that, as experience has taught, goes far to break down the Constitution's carefully crafted limitations on federal authority.

It would be remarkable if the First Congress had entertained any such view of its powers, and in fact the most obvious source of authority for federal navigational aids was the commerce clause. Navigation is commerce, as Congress had earlier concluded in enacting a ship licensing law; buoys, beacons, and lighthouses promote interstate and foreign trade and, thus, are necessary and proper to carry out the purposes for which the commerce power was granted. This seemed to be Madison's theory in advocating that tonnage duties be imposed in order to sup-

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30 1 Stat 53, 53-54, §§ 1, 2 (Aug 7, 1789).
31 United States v Butler, 297 US 1, 64 (1936).
32 See South Dakota v Dole, 483 US 203 (1987) (upholding a statute withholding federal highway funds from states that permitted the sale of alcoholic beverages to persons under 21 years of age).
port lighthouses, marine hospitals, "and other establish-
ments incidental to commerce"; and Fitzsimons ex-
pressly embraced it in opposing Tucker's sug-
gestion that the entire subject be left to the states.

The immediate objection to this line of reasoning
is that the construction and operation of these estab-
lishments is not itself regulation of commerce, and
not obviously necessary or proper for its regulation,
which is what the Constitution seems literally to
require. In light of the patent relation between navi-
gation aids and the purposes of the commerce provi-
sion, however, it may be appropriate not to parse the
necessary and proper clause with all the ferocity of a
medieval conveyancer. As Chief Justice Marshall
would soon admonish us, it was a constitution we
were expounding.

2. Other Spending Proposals

Three spending suggestions that could not be so
easily justified were made to the First Congress.
Their fate illustrates the diversity of views as to the
extent of congressional authority to spend.

The first was the argument of two Virginia
representatives that Congress should underwrite a
private voyage to Baffin's Bay in search of a better
understanding of the magnetic pole. Neither explicit-
ly identified the source of Congress's alleged authori-
ty. Page seemed to believe in a broad power to spend
for the general welfare, for he said only that the
knowledge to be obtained "would do honor to the
American name." In suggesting that the voyage
might contribute to "improving the science of navi-
gation," Madison appeared to conjure up the ubiqui-
tous commerce clause once again—though the rela-
tion to commerce seemed more attenuated here than
in the case of an honest-to-goodness lighthouse. Ig-
noring the commerce power, Tucker expressed doubt
whether the patent clause authorized Congress "to go
further in rewarding the inventors of useful
machines, or discoveries in sciences, than merely to
secure to them for a time the right of making, pub-
lishing and vending them"—a doubt solidly support-
ed by the text of the provision. In the face of these
uncertainties the House agreed with the committee
recommendation not to subsidize the voyage "in the
present deranged state of our finances"; the constitu-
tional question did not have to be decided.
The second spending suggestion was Washington's startling invitation in his Annual Message in 1790 to promote "science and literature" either "by affording aids to seminaries of learning already established" or "by the institution of a national university." Like Page and Madison, the President did not discuss the issue of congressional authority. His reference to the promotion of science suggests the same reliance on the patent clause that Tucker had so tellingly refuted a few months before, and any argument that support for education might produce information that would facilitate commerce seems even more attenuated here than in the chilly context of Baffin's Bay. Washington's additional observation that knowledge was conducive to stability and good government might seem to imply that support for education was necessary and proper to the intelligent exercise of all federal powers, but he seemed to be discussing policy rather than authority. More probably he gave a broad reading to the general welfare clause, if he thought about the problem of power at all. In any event Congress put the proposal on the back burner; its constitutionality would be seriously debated a few years later.

The final example of proposed federal spending was a committee recommendation in June 1790 that Congress authorize a loan of federal funds to rescue a glass factory that found itself in straitened circumstances. In tones reminiscent of the famous Report on Manufactures that Hamilton was to file a year and a half later, Vining argued that Congress possessed "a general power to encourage the arts and manufactures of the United States." His terminology suggested he too had not looked closely enough at the actual terms of the patent clause.

Smith and Sherman doubted that Congress could "loan the money of their constituents," but as Boudinot said their objection seemed too broad. Loans, no less than outright grants, might well be necessary and proper to the execution of some express federal authority; the difficulty lay in finding any power to which the support of a glass factory could fairly be deemed incidental. Of course glass was useful for commercial and military purposes, as well as to provide windows in all sorts of govern-

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33 1 American State Papers (Finance) 123; 10 Hamilton Papers at 230 (Dec 5, 1791).
ment buildings; but such an argument would leave little room for the powers that both the enumeration and the Tenth Amendment clearly acknowledged to be reserved only to the states. Ames's policy argument respecting the national interest in encouraging manufactures seemed to reflect a more straightforward reliance on the general welfare clause, which Boudinot, Seney, and Stone expressly invoked. 34

The committee's recommendation was rejected, but not all of the objections to the loan were on constitutional grounds. The question of the extent of federal spending powers had been raised and debated, but it had not yet been resolved.

3. Assumption of State Debts

The Revolution had been fought in substantial part on credit, and many creditors had not been paid. When a group of public creditors from Pennsylvania petitioned for relief, the House adopted a resolution declaring that "an adequate provision for the support of public credit" was "a matter of high importance to the national honor and prosperity" and directed the Secretary of the Treasury to propose an appropriate plan.

The Secretary was Alexander Hamilton. His response was a lengthy Report on Public Credit, 35 the first in a remarkable series of reports in which the Secretary set forth his comprehensive and ambitious economic program.

The United States, wrote Hamilton, would need to borrow money in the future (as Article 1, § 8 authorized Congress to do). They could borrow only if their credit was good; and their credit would be good only if they paid their debts. Thus, satisfaction of existing claims was required not only by justice but by self-interest as well. Money loaned by foreign-

34 Hamilton would be unequivocal in his recommendations to the Second Congress with respect to manufactures: "Apart from the uniformity and apportionment requirements and the ban on export duties, the power to raise money is plenary, and indefinite; and the objects to which it may be appropriated are no less comprehensive, than the payment of the public debts and the providing for the common defense and 'general Welfare.' The terms 'general Welfare,' were doubtless intended to signify more than was expressed or imported in those which Preceded; otherwise numerous exigencies incident to the affairs of a Nation would have been left without a provision."

35 6 Hamilton Papers at 65; 1 American State Papers (Finance) 15; 2 Annals (Appendix) at 2041.
ers, he argued, should be paid back in full. The
domestic debt, in contrast, should be refinanced
rather than retired. Finally, Congress should also
provide for paying off existing debts of individual
states since it was in a better position to raise
money—and since after all many state obligations
had been incurred in the interest of common
defense.

Congress wrestled with Hamilton’s proposals for
nearly six months and ultimately adopted the
essence of his suggestions. In the process
Washington’s closest confidant became the leader of
the opposition and the future capital was fixed on
the banks of the Potomac. For present purposes,
however, the most important aspect of the contro-
versy is the interesting constitutional questions that
it raised.

In both political and constitutional terms, the
most fascinating controversy respecting public credit
was that concerning Hamilton’s proposal that
Congress assume the debts of the several states.
Predictably, those states which had already dis-
charged the bulk of their obligations tended to be
less than eager to help discharge the obligations of
others. Moreover, several Representatives recog-
nized—as Hamilton is said to have intended—that
federal assumption would enhance the power of the
federal government relative to that of the states by
reducing the necessity for state taxation.

At the constitutional level, Stone began by
observing that Article I empowered Congress to pay
only the “debts . . . of the United States,” not those
of individual states. Once state debts were assumed,
of course, they would become debts of the United
States; but that did not prove that Congress had the
power to assume them. Nor was Article VI of much
assistance in this regard, for it made debts good
against the new Congress only to the extent they
had been good against the old; it too seemed to
apply only to obligations of the United States.

Sedgwick found authority for the assumption of
state debts in a broad reading of the general welfare
clause of Article I, § 8, which he said authorized
Congress “to levy money in all instances where, in
their opinion, the expenditure shall be for the ‘gen-

36 1 Stat 138 (Aug 4, 1790).
eral welfare'[: . . . [I]f prudence, policy, and justice dictated the assumption of the State debts it must be for the general welfare that they should be assumed." Even before Sedgwick spoke, however, Stone had branded as "dangerous" any argument that Congress could tax and spend for a purpose that might be deemed "salutary" but that was "not a constitutional object of their power"; and most defenders of assumption espoused a narrower justification.

The debts in question, Sherman argued, had been incurred for the most part (as Hamilton had noted) "for the common defense." That defense had been the responsibility of Congress, but Congress had been unable to raise the requisite funds. Consequently, the states had contracted obligations as agents of Congress; from the beginning the state debts had been "debts . . . of the United States." Two former members of the constitutional convention relied on their recollection of its proceedings in support of their conflicting interpretations. Madison insisted that the Convention had decided not to assume state debts, Gerry that it had taken for granted Congress would have power to do so.

The House initially voted against assumption. At that point Secretary of State Jefferson arranged an informal meeting between Hamilton and Madison, who as representative of a state that had paid most of its own debts had opposed assumption tooth and nail. The result was a compromise whereby in exchange for assumption of debts actually incurred for the common defense Virginia was given both assurance of reimbursement for the sums it had already expended and the future seat of the national government, but the breach between Madison and the Administration was never to be mended.

Conclusion

It should be plain from this summary that both

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37 During the Bank debate the following year, Madison would insist that the general welfare clause was not an authorization at all but only a limitation on the tax power. The terms of this provision, he reminded the House, had been "copied from the articles of Confederation; had it ever been pretended, that they were to be understood otherwise than as here explained?" See the Articles of Confederation, Art VIII: "All charges of war, and all other expenses that shall be incurred for the common defense or general welfare, . . . shall be defrayed out of a common treasury, which shall be supplied by the several States . . . ."
the first President and the First Congress took the Constitution very seriously. Constitutional questions cropped up in the House and Senate every time somebody sneezed, and one proposal after another was subjected to intensive debate to determine its compatibility with relevant constitutional provisions. Members of Congress plainly thought it necessary to demonstrate that the Constitution supported their actions, and thus everything they did as well as everything they said helps to inform our understanding of particular constitutional provisions.

The arguments employed during the First Congress helped also to develop an understanding of the techniques of constitutional interpretation. Most of the tools of construction we recognize today were employed in the debates: text, structure, history, purpose, practice, the avoidance of absurd consequences. Despite the deliberate decision of the Convention not to publish an official record of its proceedings, various members invoked their recollection of events at Philadelphia to illuminate the meaning of particular provisions; they were met with very modern arguments for ignoring them.

The quality of the constitutional debates in the First Congress was impressively high. To begin with, the members exhibited an intimate knowledge of what the Constitution actually said. Moreover, they had obviously devoted considerable effort to trying to figure out what its various provisions might mean. In the great controversies over removal of cabinet officers and incorporation of the Bank, the House debates brought forth virtually all the constitutional arguments that anyone has come up with in two centuries of second-guessing—as they did on many other issues of greater or lesser importance which as a practical matter they settled for all time.

In short, not only the debates but also the actions taken or rejected by the First Congress constitute a practical interpretation of the Constitution by able and diligent officers sworn to support it and charged with the responsibility to put it into practice. The legislative interpretation was not binding. It was not always unanimous. It was not always convincing. It was not always clear that Congress was even aware of the existence of a constitutional problem. Sometimes, like judges, members of Congress must have been advocates for a predetermined position. Nevertheless the records of the First Congress afford
important evidence of what thoughtful and responsible public servants close to the adoption of the Constitution thought it meant. What they thought is surely of interest not only to historians but also to anyone trying two hundred years later to figure out what the Constitution means.
No. 1. "A Comment on Separation of Power"
   Philip B. Kurland, November 1, 1971.

No. 2. "The Shortage of Natural Gas"
   Edmund W. Kitch, February 1, 1972.

No. 3. "The Prosaic Sources of Prison Violence"

No. 4. "Conflicts of Interest in Corporate Law Practice"

No. 5. "Six Man Juries, Majority Verdicts—What Difference Do They Make?"

No. 6. "On Emergency Powers of the President: Every Inch a King?"

No. 7. "The Anatomy of Justice in Taxation"

No. 8. "An Approach to Law"

No. 9. "The New Consumerism and the Law School"

No. 10. "Congress and the Courts"
   Carl McGowan, April 17, 1975.

No. 11. "The Uneasy Case for Progressive Taxation in 1976"
   Walter J. Blum, November 19, 1976.
Franklin E. Zimring, January 24, 1977.

No. 13. “Talk to Entering Students”

Hans Zeisel, April 15, 1978.

No. 15. “Group Defamation”

No. 16. “The University Law School and Practical Education”

No. 17. “The Sovereignty of the Courts”

No. 18. “The Brothel Boy”

No. 19. “The Economists and the Problem of Monopoly”
George J. Stigler, July 1, 1983.


No. 21. “The Limits of Antitrust”

No. 22. “Constitutionalism”

No. 23. “Reconsidering Miranda”

No. 24. “Blackmail”
No. 25. "The Twentieth-Century Revolution in Family Wealth Transmission"

   Stuart E. Eizenstat, March 10, 1990.

No. 27. "Flag Burning and the Constitution"

No. 28. "The Institutional Structure of Production"

No. 29. "The Bill of Rights: A Century of Progress"
   John Paul Stevens, December 1, 1992.

No. 30. "Remembering 'TM'"

No. 31. "Organ Transplantation: Or, Altruism Run Amuck"

No. 32. "The Constitution in Congress: The First Congress, 1789-1791"