PREVIEW

The Faultless Imperfection

The United States Constitution Revisited

A citizen's view of a revered document

by

James F. Oshust

**Putting our Constitution back where it belongs:
into the hearts and minds of all Americans,
and in the classroom**

Newport, Maine

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Disclaimer:

This work is the writer's personal evaluation and commentary related to the wordage and structure of the Constitution, drafted in September 1787 and as expanded by Amendments to this current time. I have particularly subdivided several of the Amendments so as to highlight and bring specific attention to individual commentary. As is with any such a document, subject to the vagaries of ongoing discussion and counter proposals, it is left to agreement or dispute by readers. An endowed right as encompassed in the document itself. It should be noted that some of the spellings appear to conflict with current usage but are presented reflecting the actual printing and language in use at the time of the original document. The writer offers no claim of academic expertise or extensive resources for the personal observations contained herein. With all due respects to those who will disagree, I have attempted to bring a sense of balance in the thinking for the benefit of anyone taking the time to read the Constitution. We are constantly besieged by those desiring immediate change that we must evolve in the interpretation the original wording and change that which is no longer relevant in their opinion, much as mankind has evolved. Yet that evolution was the result of millennia of change to meet need, recognition of required servicing of the ability to survive. Should we not now be more circumspect in making those requested or demanded changes?

The views of the author are not necessarily the views held by the publisher, who does represent, however, the author's right to his opinion and his right to state that opinion in print and publicly.

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Dedication:

This volume is dedicated
to those Americans whose service and sacrifice
was willingly spent to assure its preservation
over the years of our nation's history.

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Prologue

"Let every American, every lover of liberty, every well-wisher to its posterity swear by the blood of the Revolution never to violate in the least particular the laws of the country, and never to tolerate their violation by others. As the patriots of `76 did to support the Declaration of Independence, so to the support of the Constitution and laws, let every American pledge his life, his property, and his sacred honor. Let every man remember that to violate the law is to trample on the blood of his father and to tear the charter of his own and his children's liberty. . . Let it be taught in schools, in seminaries, and in colleges, let it be written in primers, in spelling books, and in almanacs, let it be preached from the pulpit, proclaimed in legislative halls, and enforced in courts of justice. And, in short, let it become the political religion of the nation, and in particular, a reverence for the Constitution."

– Abraham Lincoln

"The people made the Constitution, and people can unmake it. It is a creature of their own will, and lives by their will" John Marshall, Chief Justice of the U.S. Supreme Court (1755-1835)

Personal observations of a document dearly held vital to the freedoms of those who would read this treatise.

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Preface

Preamble to the United States Constitution

"We the People of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution of the United States of America."

COMMENT: Since its inception, The United States Constitution has been the subject of millions of pages of opinion, interpretation and academic punditry. "The Faultless Imperfection" attempts to present the entirety of the prefacing articles, the original documents wording and its later amendments. In each section, specific references and individual allowances or prohibitions are discussed – from an average citizen's viewpoint – without the semantic soliloquies so apparent in all those past tomes produced by those who either seek to restate or reduce the contents of those cherished documents. To add fuel to the dying embers of understanding of the Constitution by our younger generation, the addition of numerous suggestions and possible revised language is discussed. More importantly discussed is the emphasis on the need to become reasonably familiar with this instrument of our founding. The work is intended for John/Jane Q. Public, and hopefully their children. As their parents become aware of the paucity of any formal education on the subject – once a required subject in schools which has gone the way of other subjects considered either irrelevant in today's highly mobile society, or discarded as a necessary loss to make way for instruction in the modern, more liberal oriented curriculum – maybe they/we will be

motivated to spearhead a return to a study of the Faultless Imperfection of the Constitution of the United States in our minds and in our schools.

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The Beginning

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain inalienable rights that among these are Life, Liberty and the pursuit of Happiness."

– (the second paragraph of the
Declaration of Independence – July 4, 1776)

COMMENT: The American Revolution was not what the colonists actually intended. A revolution, as the standard meaning would imply, is to overthrow what exists. It was not the aim of those who initiated the first rebellious actions. They were wholly concerned with separating themselves and their yet unaware constituency from the yoke of King George and the entire English domination. Their goal was not the overthrow of the monarchy. Rather, to be allowed, without interference or over sight by any foreign power, to govern themselves in a manner that would be constructed and function free of beholding to any other influence. It was through this upheaval and eventual release by the English royal house that a new nation was formed. One that was especially unique in the history of the world and became a beacon of desired freedom by so many others throughout the globe for years to come. To encompass that new sense of individual liberty and self-determination, there needed a written dialogue, a charter of those rights and sovereignty to assure what had been formed would survive and remain the protected covenant of all its inhabitants. Thus the creation of the United States Constitution, a document revered, yet remaining the

center of controversy among those who view it as either a near biblical tome, or those who feel it is a living document subject to change as social commentary might dictate.

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From Hope to Reality

The United States Constitution, from its inception, its original design and throughout its nearly two hundred and thirty years, has remained a symbol of personal and societal freedom to all those across the globe seeking release from tyranny and deprivation of the human expression they have too long and too often been denied. It is the matrix of the finest governmental structure ever devised. Yet, as one must quickly recognize, it was the result of human consideration and compromise, every facet dependent on the foibles of a flawed mankind. A human species that since the beginning of time has exhibited both brilliance and flawed perception, too often in conflict one with another. The Founding Fathers sought to create a government that truly emphasized the participation of each and every citizen; one which allowed access to our liberties and benefits through a specified and welcoming process; a process that enabled so many of our ancestors the opportunity to achieve what the tyranny, disallowance and institutional poverty that constantly restrained the human spirit's desire to gain a rightful place in society. The Founders strived to articulate a form that would protect the individual and the body of government as an effective administration for the sole purpose of the good of the people it served. To allow both the private citizen, and his or her elected officials, to pursue those methods and efforts required to withstand any deterioration of those rights along with the incursion by foreign forces or influences.

Deceased U.S. Supreme Court Associate Justice, Antonin Scalia, is reported to have asked if the present Constitution, as now existing, is any longer a valid document. Inasmuch as the Constitution is recognized as

the “Law of the Land”, we face a conundrum. The law, as we know it, is the adhesive assuring that the fragile fabric of our national structure, woven in the name of individual rights, remains intact; that it will not fray any more, even through its careless handling by our political leadership and national administration.

To clarify history**,** this is actually the second constitution. The first document being the Articles of Confederation which permitted and occasioned what might be referred to as a de facto government. Formulated in 1777, it authorized raising and financing an army in the struggle to gain separation from England. Furthermore it entitled the new organization the right and privilege to invite and deal with diplomatic agents and to enter into treaties with foreign governments. In reading the original Articles of Confederation one recognizes three major variances to what is now our functioning document. First, all matters dwelled in one legislative chamber called the Congress. Secondly, the authority of this early Congress did not stem from the people as a whole but rather from the original colonies/states. Third, matters decided or requested by that Congress were transmitted to the states for action including the imposition of taxes and the often controversial question of jurisdiction relating to legal matters and any type of criminal code. Very simply there was no national administration or central government as it were. In 1787 that all basically changed with the drafting of what we now accept as the United States Constitution.

Allow me to again emphasize that this is presented as one person’s view of an admirable document. The reader must understand that the original articles and accompanying First Ten Amendments were the profound beliefs of the framers of the Constitution as to what type or form of government might provide the guarantee and protections of the citizenry as was considered worthy of consideration at that time. Although it disallowed several distinct racial, ethnic and economic classes at that time the document reflected what these Founding Fathers must have felt best fit the needs of the then majority based on their personal social, economic, political and more succinctly their particular religious and/or philosophical background and experience.

The offering of an average citizen with no legal training but an avidity for discussion and accelerated viewpoints of the Constitution, and is not meant as an instructive tool or scholarly description. There are many members of academia and historical research who can and have imparted their enlightened review of this document. Practically speaking, so many of our current laws were written for a different time and under different conditions. The society of man and its prevailing ethical and moral judgments were tempered by a desire to attend to whatever religious or moral belief that held sway at the time of the original writing and later amendments. We tend to judge today's differing opinion of certain parts of the constitution within the shadow of our present thinking and the ever evolving concept of personal freedom and individual expression. Time will always reflect growing and changing interpretations of the will of the public as opposed to the viewpoint and commitment of those in power. It is to the extent of such divergent considerations that this dissertation is presented. To forestall change or alteration or abuse that can forever deny the original intent of the document.

I cannot determine, nor rationally can anyone however erudite or highly trained in such, what our Founding Fathers intended or the social climate when they delved into certain aspects of individual, states and/or national rights. What I have written herein is first an observation of each section or individual part of the document. Then, where, I, as just an average citizen, find difficulty with the use, interpretation or current misuse of its language, I will be direct in my comments and suggest alternative or supplemental language or opposition—again my personal viewpoint. Readers will note that at times I merely recite certain sections, having no reason to suggest another approach due to lack of appropriate or sufficient reasoning for any suggested change or alteration.

Furthermore it need be understood that the underlying principles of our current Constitution were not formulated in one day or one month. But rather came from often spirited and acrimonious debate during the years following the end of open hostilities with the English King. But as is always the case when mortal man determines to set one canon of conditions or a single agreement on a future action, there is no easy path

to immediate resolution. More often than not, consensus is born of constraint.

To many, the United States Constitution in its current form is considered the law of the land, inviolable and immune to the immediate changes so often demanded by more dissident elements. To others, it is an archaic pronouncement of individuals whose time and understanding of changing human values and societal qualifications, has long passed. Yet, to an even larger part of our population, the document remains hidden behind the veil of misunderstanding and lack of thoughtful review and more tragically, the lack of substantive education in our schools. Sadly, as important and critical to every new citizen and those reaching voting age, it is a subject miserably taught in schools or the preparatory role to citizenship for any new entry.

It is said a constitution is the act of a people to create the structure of a government. Regardless of form, a constitution should include four primary purposes; to provide the actual configuration of the governing entity. Next, it must give authority to the powers that government possesses and apportion those powers among the various branches. Third, it should stipulate those limits on the government itself. It is these stated limitations that creates the balance desired by the people. Finally, it needs to provide the reasonable system by which changes can be made in the future to rectify or clarify as need might dictate.

Since Americans have long accepted but still harbor a natural resentment against any governing authority, it must be remembered that the early founders of this country were strongly distrustful of government, born of their earlier domination by their English masters three thousand miles away. It was incumbent on the Founding Fathers to clearly enumerate what powers selected administrators had or could exercise. It is in this context that the original format for personal liberties and expression of individual rights became the dominant theme of the Declaration of Independence, the initial acts of confederation and finally the United States Constitution. It could be easily said that much of our laws were written for a different time and different conditions, long shrouded in a veil of shortened memory. However, we must be ever

cognizant that as mankind has developed newer and more adventuresome soirée's into formerly undiscovered vistas of human thought and achievement, the past can still remain a beneficial guide to the future.

The law is not a benevolent master, nor is it to dictate or assess latitudes of variance allowed in its administration. That power has been entrusted in our Constitution to the courts who are supposed to be the extension of human thought, and subject to its frailties and inevitable bias. To assume exactness and correctness in its administration is to consider each snowflake a copy of its predecessor. As often as its presentation has been argued before the High Court and adjudicated, it may still seem to the casual observer as a vehicle, subject to interpretation, deviation and sadly at times, obfuscation. So let us begin the trek to dig deeper into the actual wordage of the Constitution. Not a cursory scan and not a rehashing of the supposedly wise reminisces of avowed pundits.

In prefacing any dialogue regarding this primary subject we need to clarify the word: law. The law defines boundaries and limitations to human conduct and the rights of access by the individual. Without such definition, we become a rudderless society, destined to wander aimlessly through our own lack of direction. Where there is conflict of interpretation or issues in doubt due to semantic confusion, it must first be determined if there is textually demonstrable constitutional commitment to assure the correct construction of the original and sustaining intent of the wordage in question.

There exists two differing schools of thought regarding the use of the Constitution. To the markedly conservative it is the rock on which our present form of government and all its inherent and attributed liberties rests. Never changing, it is to be immutable in its meaning. To its defenders, it is an escutcheon, borne high by those who distrust change and anyone proposing same. It has been said that the men who made the Constitution were of the mutual opinion that government was a "necessary evil." Thus they insisted that the powers ascribed to this new government be specifically stipulated. And that the Supreme Court would be the best arbiter and interpreter of that document and its eventual codes and statutes. Regrettably their well-meaning intent never fully reached

fruition. To the obverse, the more liberal element feels the document should be open to constant change as desired or demanded by the current power structure and social environment.

We have long heard that government should not be an overlord of the people but rather its servant. Sadly, the opposing more liberally interpretive viewpoint considers the Constitution merely a set of rules and conditions, developed by those for whom the ages have proven were at best naïve in the changes that would evolve. To these advocates of continual political abuse, the Constitution was a menu of social conduct and conditions that would serve the populace best if constantly under review and change, where public interest is a matter of political power than personal advantage. Some feel the Constitution is not what it says but what those controlling the mantle of national administration wish to see altered to fit current public opinion or majority intent.

In this essay, we are going to look closely at the considered "Law of the Land" through the writer's eyes. It will undoubtedly be filtered by ones human nature and most assuredly a degree of bias that influences all to a varying degree. I've become far more attuned to the subject matter than I'd ever imagined when I began this strong interest almost sixty years ago. Many, whose work I've pursued and read have my deepest respect for their standing in the legal community and their evident credibility. Regrettably there are too many others who feel the Constitution is merely a casual compilation of thoughts, written to be thoroughly revised as the will of the mob or the political ambition of another of the `one world' political puppets. It is from this perch on the fence line of common sense that I pursue the ever elusive truth of fact. The Constitution sets ground rules for the allocation of authority between the two operative elements, the Executive and the Legislative. The third leg to this triangle of governmental form is the Judiciary. Their task is to ostensibly assure there will not be any exaggerated emphasis by one side or the other in the function of governing

Was the original language of the Constitution born of traditional ideologies? Of course, as these are the progenitors of all thoughts and commentary committed to the written word. Such range of consideration

can shift from the idealistic to the utopian wherein all manner of evil or injustice is diminished or potentially eliminated totally. To the more astute, ideology refers to intellectual concepts. But to the realist and pragmatist, it is the substance of an individual or group's structured beliefs, religious, political or social. Unlike the disciplined thesis or dogma purported by a religion as the exact word of God, the Constitution is not a string of words in perfect order. It is flawed regardless of the sincerity of the writers' intent. So as any written document can be edited, it is subject to change. But we must be very careful that change be a limited and highly structured process. Today, the word change appears in a doctrinal sense, a contended method to achieve the betterment of the wording's intent. Those who would constantly use this verbiage intend not on improvement but as a solidification of power. And it is this ongoing struggle for power that embodies most efforts to change the United States Constitution.

The original Constitution and its accompanying additions do not form a précis. Rather, it encompasses what the writers felt were primary needs in order to accomplish their mission. It was a mission that included freedom from monarchial control and the limitations on personal rights that had enslaved mankind since the beginning of time. To others, it is a document, well-meaning in its inception but constantly in need of revision, clarification and at times immediate and measurable change in direction, however subtle or overt. A symbol of our national structure, but like the tree of liberty it has been likened to in past prose, subject to the winds of change, able to bend with the needs of societal evolution. In both camps, the fire of their zeal is so often dampened when one merely advises them that change is acceptable – in a manner prescribed by law. Amendments can and have been proffered, submitted for legislative debate and vote by that body. If successful, it is then submitted to the states for ratification, requiring thirty seven of the current fifty states to agree, thus instituting the change or revision as detailed in the offered amendment. The inevitable question is what need or proprietary authorship should generate such change. Who or what group or what ideology shall be the generator of any move or demand to create whatever

change is considered in imminent need so as to assuage a misdeed or attend to a deficiency in personal liberty? That decision must lie in the hands of the citizen constituency and not at the whim or personal agenda of those who have gained elected or appointed power whether nationally or locally. The critics who feel the Constitution is totally outdated and comprised of inappropriate beliefs and dogma, must remember two very simple elements to the document's genesis. First, the Constitution is a veritable stew concocted of varied and often diverse ingredients. Its components reflected the views, opinions, the cultural ideology and unfortunately also the prejudices of the time.

For students wishing to learn more about how and in what context the original Constitution was drafted, pursuing a study of that time and thought can help – to a limited degree. It was an era when the control of the mighty was preeminent and the role of those without power was to be forever subordinate. It was a document, ennobled by the good intentions and the desire to rectify past grievances. Slavery, women's rights, voting age, the abolishing of the ignorance expressed in the prohibition amendment, all needed and received their time to be restated properly.

So now, on to the Constitution as it currently resides as the governing document of our nation. The reader will note that certain comments will tend to repeat themselves in varying manners. That is because there are similar concerns or issues pertinent to several or more Articles or Amendments. Regardless of how they might seem unconnected, they are in the light of modern review, actually related to one another, although sometimes in vague association. I've learned to minimize my dislike of the liberal elitism that resounds in many academic and politically correct articles appearing in a highly suspect media.

For the truly adventuresome in past commentary on the Constitution, I would suggest reviewing some of the rulings issued by or at times dissented with by members of the U.S. Supreme Court. There were Associate Justices Hugo Black, William O. Douglas, Benjamin Cardozo, John Marshall, William Brennan, the venerable Oliver Wendell Holmes and the much discussed Warren Burger court when he was Chief Justice. In their words lies the interpretive matrix of their particular time. And as

you would soon realize, those interpretations were subject to marked change as the societal need and the inevitable motion of time occurred. At certain places, specific case law will be referred to, not to state these as some kind of deep legal treatises, but as trail markers; legal decisions that more clearly explain how subsequent language was developed based on an Amendment declaring such need. The following is meant to create discussion and thought. Realistically it is not the right of the individual to interpret the Constitution as he or she may wish and then act on that interpretation in undertaking or claiming or denying any aspect of that document. It remains the mandate of the judicial system to make such determinations.

We will in turn review these questions and comments about the Constitution relative to its current status, and a cleansing of the misinterpretations and inconsistencies articulated by both its proponents and opponents. What concerns me the most is how original concept of the Constitution and future laws created by a totally politically obsessed Congressional process, will be compatible to that same Constitution written so many years ago. Or worse yet, as eventually approved by a Supreme Court that may become an ultra-liberal bastion of thought if and when such excessively altruistic oriented future members are nominated by a White House occupant exhibiting a far more socialist bent. Many have long acknowledged the Constitution as the guiding document for our government to operate. Yet our modern political philosophy appears to lean ever more toward the provision of life services under governmental mandate and not through change of the will of the citizenry as a whole. But perhaps Thomas Jefferson said it best when he cautioned, “A government big enough to give you everything you want is strong enough to take away everything you have.”

If we consider the Constitution a doctrine of laws we must further believe that the law is that cohesive substance so needed to bind ever tenuously this fragile fabric of our society. Forbearance with those who would subjugate the basic structure of the Constitution to further their own ideology is admirable. But the ultra-left and those demanding that this document become their personal template for whatever change is

being pursued by public pressure or insistence by social zealots, must not be allowed to prostitute the process for orderly change as required by law.

The language of the original form of the Articles has been repeated in this writing exactly as they appear in a reproduction of the original document. So those obsessed with grammatical or punctuation revisions need to remember, what they are viewing is how the original wordage was framed and punctuated. To the politically correct, those who insist on purifying by omitting now considered unacceptable words, it is an argument bearing little relevance to this dissertation. The growing intent to cleanse the original wording of many pieces of great literature through applying the astringent of petty politicizing, is an affront to the purpose of the written word. Words are the road signs that lead us through the thoughts of the writer. Words are the monuments of man's history, indestructible regardless of the ravages of the jaded literati or the politically inculcated.

It must be recognized by the reader that per Supreme Court Justice William Randolph Hearst in a 1918 comment, "A word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used."

Remember, it was written by a minority of individuals with the education and proclivity to an extended use of the English language. Inasmuch as a majority of then future citizens could read very little or had limited advantage to, other than the merest scrabble of education. The Constitution and its preceding Declaration of Independence sprang from those who could and desired to provide in writing for those in need of such rights. It must also not be forgotten, the principal piece of literature and the premier published work at that time, was in fact the Holy Bible. Regardless of the many offerings of the Greek classics and myriad of other philosophers and polemicists, it still does not dampen or lessen the intent and impact of the original constitutional design other than the sophistry so common among the self-endowed savants of modern media and academia.

Regrettably, any elected President or Congressional leadership who

demands social change without any voice of the people to caution or remand or secession, threatens the solidarity of the document's original intent. Thus the need to again, in the opinion of the author, revise his earlier productions of this treatise. It is not a close reading of the Constitution or excessive scrutiny that is required, but rather recognition that to effect those changes desired by the reigning power structure, the simple procedure reflected in the Constitution dictates public presentation and eventual acceptance of any such changes through a citizen vote. Only then will change occur in a legal, moral and ethical manner.

Regardless, whether the reader desires to limit the increasing reach of the government or feels this document should encompass the total needs of the constituency without question concerning requested entitlement or granted emoluments, it is an instrument unique in the recorded history of mankind. It stands as a symbol of individual freedom, never before proposed and implemented however criticized, interpreted or possibly needing review it has been over the past 230 years.

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The Constitution of the United States of America

Article I

SECTION 1 - All legislative Powers herein granted shall be vested in a congress of the United States, which shall consist of a Senate and House of Representatives.

COMMENT: This is the statutory constitutional requirement that only the legislature should create and forward laws, determining policies and all effective rules for operation of the government and its administration for the benefit and betterment of the public constituency. Here is where the Constitutional rubber must hit the mandated road, as it were. As will be later argued, it has been more common over the past several decades for the judiciary at all levels to seek to set social policy. Bluntly stated, that is not their responsibility or their rightful position as the Constitution currently exists. This we shall pursue when that body's enumeration of rights is further detailed. Until reconstituted or invigorated by a new found sense of obligation to the people's primary needs, this body, as will the Senate, continue to debate their personal agendas in conflict with that of their constituencies. It is this phrase "... all legislative powers shall... be vested in a Congress" that has supported many claims to reduce the Supreme Court's ability to alter or diminish the power of any law through review and adjudication.

This writer cannot project or propose any potential answer for alleviating the current quandary faced in the public opinion as to the

ongoing inability of the two bodies or their respective political entities to achieve a modicum of agreement, compromise, or mutual understanding of the many issues facing the legislative process.

SECTION 2 – The House of Representatives shall be composed of members chosen every second year by the people of the several States and the Electors in each State shall have the qualifications requisite for Electors of the most numerous Branch of the State legislature.

COMMENT: Regardless of the seeming semantic convolution, the basic premise insures direct election of those who would speak for the people they represent. It is this writer's opinion, however, that possibly a part of the ongoing stagnation that occurs even when electoral changes occur in the Congress or Executive Branch, involves the apparent unrelenting need for each representative to pursue reelection. With one short year under their belt, House of Representative members are then vigorously on the campaign trail to hopefully be given the votes to return to the Halls of Congress the next year. Were that two year term extended to three years, would not a greater balance and stability be accomplished? A more solid representation could be achieved. A sense of maturity of legislative input might lessen this hurried race to seek support at the ballot box while attempting to assure that which most benefits both individual constituency and the country as a whole?

SECTION 2 [continued] No person shall be a representative who shall not have attained to the age of 25 years, and been seven years a Citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen. [Representatives and direct taxes shall be apportioned among the several states which may be included within this Union according to their respective numbers. Which shall be determined by adding to the whole number of

free persons, including those bound to service for a term of years and excluding Indians not taxed, three-fifths of all other persons.] *

The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of 10 years, in such manner as they shall by law, direct. The number of Representatives shall not exceed one for every 30,000, but each state shall have at least one representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to call chuse three, Massachusetts eight, Rhode Island and Providence plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five and Georgia three.

When vacancies happen in the representation from any State the executive authority thereof shall issue writs of election to fill such vacancies. The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

SECTION 3. The Senate of the United States shall be composed of two Senators from each state, chosen by the Legislature thereof, for six years; and each Sen. shall have one vote. Immediately after they shall be assembled in consequence of the first election, and if vacancies happen by resignation, or otherwise, during the recess of the Legislature of any state, the executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

COMMENT: And it is this opportunity to appoint those to fill vacancies in either house that too often creates the political chicanery

within local elective influence. In a number of states, such appointment privilege is tantamount to a lottery of favors as to what can be gained by either the appointer or the administration in power. Without a required selection process controlled by the right of vote by the citizenry, we continue to be bound by rulers in which we have no voice or have lost confidence to hear the voice or the constituency.

There has arisen the question of "natural born citizenship" referring to presidential and vice presidential candidates. Until resolved as to any change in the "birth" requirement now in effect, the problem of accession remains a problem as those in the chain of succession would be ineligible were any situation require reaching into the list of stipulated congressional leadership or cabinet officers if not "naturally born citizens" as currently prescribed.

Were state administrations required in every instance to allow the pertinent constituency to vote on any such replacement for the congressional position vacated by death, inability to perform or other reasons, several exceptions could be plausible alternatives. If the next election for that particular position is less than six months in the future or the replacement is merely a place holder until other candidates can be offered to the constituency for a vote.

(Section 3, continued.) No Person shall be a Senator who shall not have attained to the age of 30 years and been nine years a Citizen of the United States, and who shall not when elected, be an inhabitant of that State for which he shall be chosen.

COMMENT: This requirement has become one of the most implausible aspects of the residency clause. The phraseology in itself is rather obfuscated and may need a close and definitive review. As an example, a recent presidential candidate had earlier in her congressional bid, merely purchased a home in the state of desired Senatorial position. She then blatantly declared herself a resident of that state without any conscious length of residency there. Seeking advantage to the lack of

concern for the constituency in the desired area is more a matter of personal hypocrisy than value to the voter. As to the Presidency, that issue as to eligibility was defined in Section 1, Article II, covered later in this dissertation and as regards the required "natural born Citizen" categorization.

The question of natural born citizenry reached its most public and rancorous dialogue with the election of the first black individual in 2008. The individual's actual birthplace was held in doubt by his critics and opponents for many months. The question, was he actually born in Hawaii, a state in the union or possibly the home country of his biological father, the country of Kenya. That and his somewhat circuitous travels from childhood to his final destination in the United States created a controversy that threatened to invalidate his election if ever proven he was not native born. Because of the delay in producing documentation verifying his birth as an American citizen, the newly elected president appeared to ignore this growing concern. Eventually the sufficient documentation was provided. The question remains. Why such a delay when ones genealogy is something of which to be proud unless not definitive by fact? He could have easily produced the valid birth certificate early during the inquiry and the entire matter would have as quickly vanished from public thought or media concern. His claim and that of his supporters that such documentation was not required or mandated merely furthered the exaggerated media tumult.

Yet there has long been the argument of what the term "natural born citizen" actually defines as to eligibility. Some would have that phrase changed to only a legitimate or verified citizenship but long ago countered by the Alexander Hamilton insistence it would preclude foreign influence through a non-citizen attaining the office. Since the term "natural born" citizen is not defined in the Constitution and there appears no commentary in the Federal convention of 1787 it has been suggested the term may have been merely suggested in a letter from John Jay to George Washington. Jay, who would become the first Chief Justice of the Supreme Court in 1789, staying on the bench until 1795, expressed the need that the position of "Commander-in-chief be nothing less than a

natural born citizen."

However, the discussion will undoubtedly continue for years to come unless constitutionally clarified through change. To reduce any future controversy as to the question of legitimacy to the Office of the President, I would propose that all contenders for that office, including that of the Vice Presidency and Speaker of the House of Representatives (second in line were the President to be deceased or unable to perform the duties of that office), be required, if challenged to present verifiable documentation of their native citizenship as mandated in the Constitution. And this stipulation should remain unless and until such prerequisite be changed by appropriate amendment to the Constitution.

(***Section 3, continued.) The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided. The Senate shall choose their other officers, and also a President Pro tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States. The Senate shall have sole power to try all impeachments. When sitting for that purpose they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall provide: and no person shall be convicted without concurrence of two thirds of the members present.***

COMMENT: Without any defined powers other than as abstractly described, the Vice President too often spends his days fulfilling the myriad of public functions either not on the President's schedule or considered too mundane or politically ineffective. There is a humorous commentary on this unique position; "A woman had two sons, one went to sea and the other becoming Vice President of the United States. Neither was ever heard of again." One of TV's better known comics once noted, "The major task a Vice President undertakes is to check the obituary page each morning to see if he has another job." We have been fortunate over

the years to have had a few strong and eventually proven very able successors to the Presidency when death removed the incumbent. Regrettably that has not always been the case. Too often the Vice Presidential slot on the national election ticket is used to fulfill campaign promises or pacify an important and potentially divisive segment of the principal candidate's party.

(Section 3, continued.) Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States. But the party convicted shall nevertheless be liable and subject to indictment, trial judgment and punishment, according to the law at the time of the accused offense.

COMMENT: A question arises as to whether a citizen based legal action or action brought by any particular group can be submitted against any impeached official. This would include assurance that all previously mandated or due pensions or other such benefits be removed and no longer enjoyed at a cost to the tax paying public. Again, the continuing argument for and against term limits for both houses raises the concept of a greater involvement by members of a society, too often denied a voice due to the extended tenure of those previously elected. Thus, were the senatorial terms reduced to five years, many elections for both houses would occur in off years from the quadrennial presidential bid. This might provide access by many more potential candidates, not being tied to those periodic attempts by one party or the other to totally change the control of power in Washington. This writer is a confirmed advocate for term limits for all congressional positions as shall be referred to in later passages. We have developed a career path never intended by our founding Fathers. One that has further created the phlegmatic nature of our legislative process.

SECTION 4. The times and places, and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators the Congress, shall assemble at least once in every year and such meetings shall be on the first Monday in December unless they shall by law appoint a different day.

COMMENT: Here we have the direct conflict between the rights of the states and the contended interference by the federal government into the ability of each state to control the elective process. The current US Attorney General at this writing, has taken a forceful stand against several states that require a photo identification form to validate a voter. Although a mélange of required photo ID's currently exists in order to acquire or achieve access to or provision of documentation, here is where the "states right" aspect comes to the fore. If the national administration can control that element of voter process, it becomes a controlling factor totally in opposition to the intent of the Founding Fathers. So long as the individual state voting requirements do not refer to or limit access by race, sex, religion or other defining personal qualifications, it should be the state's right to assure a method to minimize voter fraud.

The current Administration contends that many Latinos and others of minority categories, have no such photo application such as would exist with a valid driver's license. The question continues, what creates eligibility for a photo identification that would allow the holder to vote – citizenship? If that is not required, then the appropriate amendment should be developed and required that the mandatory number of states approve such a change. Sadly, such an occurrence would mark the end of the totality and protection of all legitimate citizens.

To demand acquiring such an ID through the state is argued as the creation of a national ID to be carried by every individual in this country.

This is an anathema to the more liberal causes but considered by others as necessary protection of the citizen which choruses the more conservative viewpoint. Still, it appears the only action of import not requiring photo identification of some nature seems to be voting. One of the most sacred and valued freedoms we as a society enjoy and one of the nationally proscribed processes most vulnerable to fraud or deceit. The primaries in each state have become quagmires of differing political philosophies and rank discord among those seeking to use these preliminaries to either secure their position or best their opponent. The constant race to be the first primary on a national scale has turned the process into a veritable circus of juvenile pique and questionable behavior on both local and state level. We are required a plethora of identification at airports, seeking travel documents, visas, passports, bank transactions seeking financial assistance, the list is seemingly unending. Can we not require similar safeguards for the most important right any citizen has – to vote?

SECTION 5. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each House may provide. Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two thirds, expel a member. Each House shall keep a Journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of each House on any question shall, at the desire of one fifth of those present, be entered on the Journal. Neither House, during the session of Congress, shall without the consent of the other, or just adjourn for more than three days, nor to

any other Place than that in which the two houses shall be sitting.

COMMENT: Here again we find our legislative process being continually mired in a desire of legislators to spend as little time possible at their assigned tasks. Or more possibly, to use the taxpayer's financial support to use valuable deliberative time to merely posture in an attempt to assure future voting majorities during the next election campaign. Regrettably, this constitutional provision regarding the sitting of either legislative body, has become ample fodder for a sitting Chief Executive to appoint and designate while bypassing legislative approval. This writer suggests:

"That Congress shall publish no less than ten days prior to the beginning of each mandated session, those days of each week when the congress reasonably expects and has planned to be in session and available to conduct the business of the people. Furthermore, that when legislation is required to complete or extend in the interest of the people, processes, including but not limited to passage of a budget, completion of hearings related to Presidential and Judicial appointments, unless a majority vote is held and so recorded delaying such actions, the elected representatives shall continue and strive to complete such actions as referred to herein. Additionally, vacation or extended adjournments within each session shall be so noted and publicized in advance so as to inform the general populace when such absence from their mandated functions will occur."

SECTION 6. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law and paid out of the treasury of the United States they shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and

returning from the same.; and for any speech or debate in either House, they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been encreased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

SECTION 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their Journal, and proceed to reconsider it. If after such reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the Pres. within 10 days parentheses Sundays excepted) after it shall have been presented to him, the same shall be a Law, in like manner as if he had signed it, unless the

Congress by their adjournment prevent its return in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary parentheses except on a question of adjournment parentheses shall be presented to the President of the United States; and, before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a Bill.

COMMENT: A major complaint by many citizen groups direct criticism at the apparent laxity of both Houses of Congress to spend sufficient time developing, discussing and either passing or negating legislation. There are the excessive periods of non-activity, extended vacations and the inevitable shortened period of deliberation each week caused by the constant travel back and forth between Washington and the individual solon's home base. This seeming excess expenditure at tax payer expense has long become a thorn in the side of the citizenry who themselves, find even the simplest necessities a strain on their personal budget. Please note this writer's suggestion as was proffered in reference to Section 5 of this article.

Another disturbing allowance within this section, directly provides all members of Congress a right precluded by law for every other citizen. That of protection from libel and slander laws so long as their comments are made from the floor of that establishment. Such protection has also been carried further into the so-called official committee hearings held in the Capitol building. This immunity allows a member to decry, proclaim, declare, state without reservation, complaint, contended misdeed by others (nonmembers of that body) even though such remarks as spoken and/or made part of the official Congressional Record are found to be without substance, factual support or proven validity. Others, not provided this immunity, could and would often be accused and at times prosecuted

for the same unsupported dalliance with the truth. Justice Joseph Story, (1779-1845) of the USSCT, noted for his opinion shaping Commentaries of the US constitution (1833) regarding the part of the section reference, ". . . that for any speech or debate in either, they shall not be questioned in any other place," he wrote; "No man ought to have a right to defame others under the color of a performance of the duties of his office."

This abuse of the protection against such derogatory dialogue by an elected member of congress is an affront to the original purpose of those laws concerning purposeful or harmful denigration or vilification from the floor of either house. The Court has ruled on a number of occasions that such immunity continues whether forwarding or continuing any such statements in media releases, speeches or interviews outside the protective cloak of Congress. The arrest prohibition should remain but there should be a direct reference to any verbal onslaughts by members of either house. This writer would suggest the appropriate development of caution within this section by amending the language as follows.

"That declarations, statements, contentions and directed conclusions made by any member outside the legislative body of either House, be subject to any and all recourse that might be taken by an aggrieved citizen who can present a palpable charge of damage to good name, reputation or economic disadvantage. And that such charge be issued forthwith and be allowed suitable processing within the jurisdiction available at the time. And that said member of either house may be challenged by any recipient of such statements or comments uttered during the protected ambience and required to add to or substantiate such protected commentary if a charge of defamation, damage to reputation or economic disadvantage should be proved by such recipient."

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ABOUT THE AUTHOR

James Oshust's fifty year career included executive management of major entertainment, sports and exposition facilities; participation in management roles for the 1996 & 2002 Olympic Games, 1994 World Cup Soccer Championships and the 1998 TBS sponsored "Goodwill Games." Additionally, as an executive with one of the initial professional soccer clubs in the United Sates and facility design and event operations consultant with over forty projects domestically and abroad including two other Olympic Games. He is the author of three novels. He and his wife Barbara, a former professional ice skater and recognized artist reside in Salt Lake City, Utah.