No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

☞ The provisions in Article I, Section 10, stipulate those things that the *state governments* are prohibited from doing. The most important of these are:

1. Individual states may not enter into separate treaties with foreign nations.
2. The governments of the states are bound by the same requirements as the federal government in the prohibition of bills of attainder, ex post facto laws, laws impairing obligations of contracts, and granting titles of nobility.
3. State governments may not issue currency for the purpose of paying debts unless that currency is in gold and silver. This provision came in reaction to the laxness of some state governments that issued depreciated or, in some cases, worthless currency during the period of the Revolution. This provision marked the beginning—but only the beginning—of the creation of a single national currency.
4. During the period of the Confederation, many states, eager to raise their own revenues, levied tariffs on goods entering their ports from other states. The new Constitution reserved the power of taxing imports to the federal government alone, preventing states from enacting their own tariffs.

5. Although the individual states were permitted to maintain their own militias for the maintenance of order within their boundaries, the Constitution prohibits states from maintaining either a standing army or a navy in time of peace; it also prohibits the states from entering into agreements with other states or foreign powers for military purposes.

ARTICLE II

Section 1

The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of

Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; a quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been

elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

☞ The opening words of Article II, Section 1, are both remarkably simple and maddeningly vague: "The executive Power shall be vested in a President of the United States of America." While other sections of Article II provide some specificity on the nature and extent of presidential power, for the most part the language of Article II relating to executive power is far less specific than that of Article I defining congressional power.

Opinions about the length of the president's term varied widely, with proposals ranging from a minimum of two years to a term of "during good behavior"—or, effectively, for life. The delegates also disagreed about whether the president should be eligible for reelection. The decision on a four-year term seemed to satisfy most delegates and, by avoiding mentioning anything about the president's eligibility for reelection, the framers left the question of how many terms a president should serve up to the voters. George Washington's decision to serve only two terms in office set a precedent that lasted until the presidency of Franklin D. Roosevelt, who won election to the presidency four times, serving from 1933 until his death in 1945. In 1951 Congress passed, and the states ratified, the Twenty-second Amendment, limiting presidents to two terms.

The next part of Article II, Section 1, reflects the torment the Convention delegates experienced as they wrestled with the question of how to give the president sufficient power without giving him excessive power, as well as how to free him from excessive dependence on the legislature while at the same time assuring that he did not become, in their terms, an "elective monarch." While one

would think that the best way to do this would be to have the president elected by and answerable to the people of the nation at large, the vast majority of delegates feared that the American people were simply too provincial—too ignorant of the merits of possible presidential candidates across a land as vast as that of the thirteen states of which America was then comprised—to make a wise choice. For that reason, for most of the Convention the delegates inclined toward election of the president by the Congress or, at least, by the more popular branch of Congress, the House of Representatives. But this method ran the risk of violating the principles of separation of powers by making the president unduly dependent upon the Congress for his election. For much of the summer of 1787, the delegates argued unproductively about various alternatives for electing the president, and finally, in the tortured language of Article II, Section 1, they called for the creation of an electoral college: a group of independent electors, selected in each of the states "in such Manner as the Legislature thereof may direct," who would then cast their ballots for a president and vice president.

Although initially designed as a decidedly elitist device by which only the most knowledgeable and distinguished men—those selected to be electors—would use their own independent judgment in casting their ballots for the president, by the election of Thomas Jefferson in 1800 the presidential electoral system had been entirely transformed by the unexpected invention of organized political parties. The newly created political party system functioned in a way that caused slates of presidential electors to be pledged in advance to vote for particular candidates, with the result being that American voters, whose numbers were expanding as the number of citizens eligible to vote expanded, were now casting their votes, not on the basis of the identity of the individual electors, but on the merits of the candidates themselves. The invention of political parties—a development occurring wholly outside America's constitutional system—fundamentally changed the way the Constitution operated, transforming it from a "republican" but elitist political system into a truly democratic one.

Americans have grumbled about the imperfections of the electoral college system from the days when it was first debated in the Constitutional Convention up to the present, but for the most part, it has managed to produce victors in the presidential contests whose legitimacy as duly elected chief executives has not been challenged. There have been exceptions: the election of John Quincy Adams, decided by the House of Representatives in 1824; the election of a "minority" Republican president, Abraham Lincoln, in 1860, which led to the secession of the Southern states; the disputed 1876 presidential election between Samuel Tilden and Rutherford B. Hayes, in the final days of Reconstruction; and the contested election of George W. Bush in 2000, ultimately decided by the Supreme Court. Each of these cases has provoked criticism of the electoral college system, but up to this point neither Congress nor the American people have moved to the obvious alternative: direct popular election of the president.

The decision to require that the president be a "natural born Citizen" of the United States was made in the Convention with little discussion and probably with little thought. Indeed, eight of the delegates to the Convention had themselves been born outside British North America (all were born in the British Isles and would in any case have been eligible to serve as president because they were citizens of the United States at the time of the adoption of the Constitution). In an age in which America's economy, culture, and politics are increasingly shaped by recent immigrants, this particular constitutional provision seems a good candidate for amendment.

This provision defines the vice president's most important duty: to succeed the president in case of his death, disability, or removal from office. The framers left the line of succession in the event of the vice president's death, disability, resignation, or removal up to Congress. The Twenty-fifth Amendment, adopted in 1967, provided a means by which a president could select, with the confirmation of a majority of members of Congress, another vice president.

Although Congress is given responsibility for setting the presi-

dent's salary, it may not increase or decrease his salary during his term of service, a provision designed to render the president independent of the Congress's will.

It is widely believed that George Washington, when he took the first presidential oath of office in 1789, added the words "So Help me, God;" however, there is no written evidence to prove this. Beginning with Abraham Lincoln's second oath of office in 1865, many American presidents have added the phrase.

Section 2

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

☞ Article II, Section 2, is principally concerned with outlining the powers of the president, but given the enormous power of the modern presidency, it seems remarkably short and vague in its prescriptions. Certainly, the most important—and controversial—of those powers has devolved from the president's role as commander in chief of the army and navy of the United States and of the militias of the several states. That role, which has given the president enormous power to "make war," has sometimes come in conflict with the power of Congress to "declare war" as well as with Congress's power to control the financial appropriations necessary to make fighting a war possible.

By the terms of Article II, Section 2, the president has the primary role in entering into treaties with other nations, although it reserves to the Senate the right to approve any treaty before it assumes the force of law.

The president has the power, with the advice and consent of the Senate, to appoint ambassadors, ministers, justices of the Supreme Court, and "all other Officers of the United States." In recent decades, as the Supreme Court has become a more powerful and assertive branch of the federal government, members of the Senate have responded by asserting more vigorously *their* right to advise and consent with respect to the appointment of justices of the Court.

The president's use of the power to appoint "all other Officers of the United States" has increased in direct proportion to the growing power of the federal government and of the executive branch in particular. Although the Founding Fathers no doubt assumed that the president would appoint members of a presidential "cabinet," they would perhaps have been surprised at the growth in the size and scope of the bureaucracy serving each of the cabinet departments. The president's cabinet has expanded from four members in President Washington's day (the secretaries of treasury, war, and state and the attorney general) to fifteen (not including the vice president) today.

Section 3

He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

☞ Presidents Washington and Adams addressed the Congress directly on the "State of the Union," but from 1801 to 1909 the president merely sent the Congress written messages. Beginning in 1913, and continuing to the present day, the formal State of the Union address to Congress, given at the beginning of each year, has become an important national ritual. Some presidents, including President Barack Obama, have convened both houses of Congress on other "extraordinary Occasions," to address them on subjects that they have considered important.

Section 4

The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

☞ This is another one of the provisions of Article II that is remarkably simple and maddeningly vague. The framers of the Constitution all agreed that a president should be removed from office if he committed treason, bribery, or other "high Crimes," but most of them also believed that the president might be removed if he were found culpable of "malfeasance in office" (a term used in one of the earlier drafts of the Constitution). On the other hand, most of the framers agreed that it would be improper for Congress to remove a president simply because a majority of members of Congress might disagree with him, and since "malfeasance" was a term with a meaning that might vary in the eye of the beholder, they substituted the term "Misdemeanors" for "malfeasance." It was a term that left no one wholly satisfied, and it has caused considerable confusion in those rare cases (during the presidencies of Andrew Johnson, Richard Nixon, and William Jefferson Clinton) in which impeachment proceedings against a president have been initiated.

Article III

Section 1

The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services a Compensation which shall not be diminished during their Continuance in Office.

☞ Just as the framers of the Constitution considered the Congress to be the most vital branch of the new government and therefore dealt with that branch in the very first article of the Constitution, so too was the placement of the judicial branch in Article III of the Constitution a reflection of their view of the relative importance of that branch. The brevity and vagueness of the language in Article III are similarly a reflection of their relative lack of concern about the judicial branch as well as of their uncertainty about its function in the new federal union.

Article III, Section 1, stipulates that there would be one "su-