No. 20-56174

In the United States Court of Appeals For The Ninth Circuit

MATTHEW JONES, *et al.*,

Plaintiffs-Appellants,

v.

XAVIER BECERRA, in his official capacity as Attorney General of the State of California, *et al.*,

Defendants-Appellees,

Appeal from the United States District Court for the Southern District of California
Civil Case No. 3:19-cv-01226-L-AHG (Honorable M. James Lorenz)

BRIEF OF AMICUS CURIAE EVERYTOWN FOR GUN SAFETY IN SUPPORT OF APPELLEES AND AFFIRMANCE

Janet Carter
William J. Taylor, Jr.
Lisa M. Ebersole
EVERYTOWN LAW
450 Lexington Avenue
P.O. Box 4184
New York, New York 10017
(646) 324-8215

Lisa Kobialka
KRAMER LEVIN NAFTALIS & FRANKEL LLP
990 Marsh Road
Menlo Park, CA 94025
(650) 752-1700

Darren A. LaVerne
Karen S. Kennedy
Daniel M. Ketani
1177 Avenue of the Americas
New York, New York 10036
(212) 715-9100

Counsel for Amicus Curiae Everytown for Gun Safety

January 26, 2021

CORPORATE DISCLOSURE STATEMENT

Everytown for Gun Safety (formally, Everytown for Gun Safety Action Fund) has no parent corporations. It has no stock and hence no publicly held company owns 10% or more of its stock.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

STATEMENT OF INTEREST 1

STATEMENT OF ADDENDUM 2

INTRODUCTION AND SUMMARY OF ARGUMENT 2

ARGUMENT 4

I. RESTRICTIONS ON THE TRANSFER OF FIREARMS TO PERSONS UNDER 21 COMPORT WITH HISTORICAL UNDERSTANDINGS OF THE SECOND AMENDMENT—AND THUS REGULATE CONDUCT OUTSIDE ITS SCOPE 4

A. The relevant time period for purposes of the historical analysis begins around 1868 with the Fourteenth Amendment's ratification. 6

B. For most of the history of the United States, including when the Second and Fourteenth Amendments were ratified, individuals under 21 were considered minors 9

C. Laws restricting the sale or transfer of firearms to minors have existed for more than 150 years. 11

D. Plaintiffs' historical analysis based on militia laws is flawed and irrelevant to the constitutional analysis of California's age-based restriction. 14

II. COURTS HAVE ACKNOWLEDGED THE LONGSTANDING HISTORY OF AGE-BASED RESTRICTIONS ON THE TRANSFER OF FIREARMS AND HAVE UPHELD SUCH RESTRICTIONS. 19

CONCLUSION 26

TABLE OF AUTHORITIES

Page(s)

Cases

Ass'n of N.J. Rifle & Pistol Clubs, Inc. v. Att'y Gen. N.J.,
910 F.3d 106 (3d Cir. 2018) 2

Biffer v. City of Chi.,
116 N.E. 182 (Ill. 1917).....13

Coleman v. State,
32 Ala. 581 (1858) 12

District of Columbia v. Heller,
554 U.S. 570 (2008).....*passim*

Duncan v. Becerra,
970 F.3d 1133 (9th Cir. 2020), *pet'n for reh'g en banc filed*, No. 19-55376 (Aug. 28, 2020).....9

Ezell v. City of Chi.,
651 F.3d 684 (7th Cir. 2011) 7

Friedman v. City of Highland Park,
784 F.3d 406 (7th Cir. 2015) 8

Fyock v. City of Sunnyvale,
779 F.3d 991 (9th Cir. 2015) 4, 9

Gamble v. United States,
139 S. Ct. 1960 (2019).....7, 8

Gould v. Morgan,
907 F.3d 659 (1st Cir. 2018).....7

Hirschfeld v. Bureau of Alcohol, Tobacco, Firearms, & Explosives,
417 F. Supp. 3d 747 (W.D. Va. 2019), *appeal docketed*, No. 19-2250 (4th Cir. Nov. 7, 2019).....3, 22, 23

Horsley v. Trame,
808 F.3d 1126 (7th Cir. 2015) 10, 23

Interest of J.M.,
144 So. 3d 853 (La. 2014) 24

In re Jordan G.,
33 N.E.3d 162 (Ill. 2015).....25

Lindenau v. Alexander,
663 F.2d 68 (10th Cir. 1981) 18

Mitchell v. Atkins,
No. C:19-cv-05106-RBL, 2020 WL 5106723
(W.D. Wash. Aug. 31, 2020), *appeal docketed*, No. 20-35827
(9th Cir. Sept. 22, 2020) 1, 4, 15, 21, 22

Nat'l Rifle Ass'n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives,
700 F.3d 185 (5th Cir. 2012) .....*passim*

Nat'l Rifle Ass'n of Am., Inc. v. McCraw,
719 F.3d 338 (5th Cir. 2013) 24

Parman v. Lemmon,
244 P. 227 (Kan. 1925), *rev'd on other grounds on rehearing*, 244
P. 232 (Kan. 1926).....13

People v. Aguilar,
2 N.E.3d 321 (Ill. 2013).....6, 24

People v. Mosley,
33 N.E.3d 137 (Ill. 2015).....24

Peruta v. Cty. of San Diego,
824 F.3d 919 (9th Cir. 2016) (en banc) 6, 7

Powell v. Tompkins,
926 F. Supp. 2d 367 (D. Mass. 2013), *aff'd on other grounds*, 783
F.3d 332 (1st Cir. 2015).....23

Powers v. Ohio,
499 U.S. 400 (1991).....18

Presser v. Illinois,
116 U.S. 252 (1886).....18

Rehaif v. United States.
139 S. Ct. 2191 (2019).....2

Rhode v. Becerra,
No. 20-55437 (9th Cir.) 1

Rupp v. Becerra,
401 F. Supp. 3d 978 (C.D. Cal. 2019), *appeal docketed*, No. 19-56004 (9th Cir. Aug. 28, 2019).....2

Silvester v. Harris,
843 F.3d 816 (9th Cir. 2016) 5

State v. Allen,
94 Ind. 441 (1884) 12

State v. Callicutt,
69 Tenn. 714 (1878).....12

United States v. Chovan,
735 F.3d 1127 (9th Cir. 2013) 5

United States v. Greeno,
679 F.3d 510 (6th Cir. 2012) 7

United States v. Rene E.,
583 F.3d 8 (1st Cir. 2009).....6, 23

United States v. Skoien,
614 F.3d 638 (7th Cir. 2010) (en banc) 4

United States v. Torres,
911 F.3d 1253 (9th Cir. 2019) 5

Whitt v. Whitt,
490 S.W.2d 159 (Tenn. 1973) 12

Worman v. Healey,
922 F.3d 26 (1st Cir. 2018).....8

Statutes

10 U.S.C.
§ 246 17
§ 505(a) 16

18 U.S.C.
§ 922(b)(1) 3, 19, 20
§ 922 (c)(1) 3, 19, 20

California Penal Law
§ 27510 ..... *passim*

Other Authorities

2 *Annals of Congress, The Debates and Proceedings in the Congress of the United States* (1834) 17

Black's Law Dictionary (1st ed. 1891) 10

William Blackstone, 1 *Commentaries On the Laws of England* (1st ed. 1765) 10

Larry D. Barnett, *The Roots of Law,* 15 Am. U. J. of Gender, Social Policy & the Law 613 (2007) 10

Thomas M. Cooley, *A Treatise on the Constitutional Limitations* (5th ed. 1883) 12

Vivian E. Hamilton, *Adulthood in Law and Culture*, 91 Tul. L. Rev. 55 (2016) 10

3 William Waller Hening, *The Statutes At Large; Being A Collection Of All The Laws Of Virginia* 335 (1823) 15, 16

Join the Military, USAGov, https://www.usa.gov/join-military 16

T. E. James, *The Age of Majority*, 4 Am. J. Legal Hist. 22 (1960) 10

STATEMENT OF INTEREST

Amicus curiae Everytown for Gun Safety ("Everytown") is the nation's largest gun violence prevention organization, with nearly six million supporters across the country, including over 860,000 in California. Everytown was founded in 2014 as the combined effort of Mayors Against Illegal Guns, a national, bipartisan coalition of mayors combating illegal guns and gun trafficking, and Moms Demand Action for Gun Sense in America, an organization formed after a 20-year-old gunman murdered twenty children and six adults at an elementary school in Newtown, Connecticut. The mayors of 58 California cities are members of Mayors Against Illegal Guns. Everytown also includes a large network of gun-violence survivors who are empowered to share their stories and advocate for responsible gun laws.

Everytown's mission includes defending common-sense gun safety laws by filing *amicus* briefs that provide historical context and doctrinal analysis that might otherwise be overlooked. Everytown has filed such briefs in numerous Second Amendment cases, including in cases, like this one, involving challenges to minimum-age and other restrictions on the purchase and sale of firearms and ammunition. *See, e.g.*, *Hirschfeld v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, No. 19-2250 (4th Cir.); *Mitchell v. Atkins*, No. 3:19-cv-05106-RBL (W.D. Wash.); *Rhode v. Becerra*, No. 20-55437 (9th Cir.). Several courts have also

cited and expressly relied on Everytown's amicus briefs in deciding Second Amendment and other gun cases. *See, e.g.*, *Ass'n of N.J. Rifle & Pistol Clubs, Inc. v. Att'y Gen. N.J.*, 910 F.3d 106, 112 n.8 (3d Cir. 2018); *Rupp v. Becerra*, 401 F. Supp. 3d 978, 991-92 & n.11 (C.D. Cal. 2019), *appeal docketed*, No. 19-56004 (9th Cir. Aug. 28, 2019); *see also Rehaif v. United States*. 139 S. Ct. 2191, 2210-11, nn.4 & 7 (2019) (Alito, J., dissenting).[1]

STATEMENT OF ADDENDUM

Pursuant to Fed. R. App. P. 28(f) and Ninth Circuit R. 28-2.7, an addendum containing pertinent statutes, constitutional provisions, treatises, and other authorities has been filed concurrently with this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiffs challenge California Penal Law section 27510 under the Second Amendment. Section 27510 prohibits persons licensed to sell firearms from selling or transferring firearms to persons under 21 years of age, subject to a number of exceptions. The district court correctly rejected Plaintiffs' request for a preliminary injunction, concluding that they had not met their burden to establish a likelihood of success on the merits, for two independent reasons. *First*, the court concluded that "age-based firearm restrictions such as California['s] are longstanding, do not

[1] All parties consent to the filing of this brief. No party's counsel authored this brief in whole or part and, apart from Everytown, no person contributed money to fund its preparation or submission.

burden the Second Amendment, and are therefore presumptively Constitutional." 1-ER-11. *Second*, the court held that even if California's age restriction did implicate Second Amendment rights, it would survive the applicable (intermediate) standard of scrutiny. 1-ER-12-16.

This brief addresses the district court's first conclusion and demonstrates that it was correct: given our nation's long history of age-based firearms regulations, this Court should uphold California's law as outside the scope of the Second Amendment. For more than 150 years, states have restricted the ability of individuals under 21 (the age of majority under the common law) to purchase or acquire firearms. As the Supreme Court made clear in *Heller*, longstanding forms of firearms regulation such as these are "presumptively lawful." *District of Columbia v. Heller*, 554 U.S. 570, 626-27 & n.26 (2008). Accordingly, and in light of the long history of regulation, several federal courts, including the Fifth Circuit, have upheld age-based restrictions like California's against Second Amendment challenges. *See, e.g.*, *Nat'l Rifle Ass'n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185 (5th Cir. 2012) ("*BATFE*") (upholding federal criminal statutes making it unlawful for federal firearms licensees to sell handguns and handgun ammunition to those under 21, 18 U.S.C. § 922(b)(1) and (c)(1), and federal regulations implementing those statutes); *Hirschfeld v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 417 F. Supp. 3d 747 (W.D. Va. 2019) (same), *appeal docketed*, No.

19-2250 (4th Cir. Nov. 7, 2019); *Mitchell v. Atkins*, No. C:19-cv-05106-RBL, 2020 WL 5106723 (W.D. Wash. Aug. 31, 2020) (upholding Washington law prohibiting sales of semiautomatic rifles to individuals under 21), *appeal docketed*, No. 20-35827 (9th Cir. Sept. 22, 2020).

We respectfully submit that this Court should do the same, and should affirm the district court's denial of a preliminary injunction.

ARGUMENT

I. RESTRICTIONS ON THE TRANSFER OF FIREARMS TO PERSONS UNDER 21 COMPORT WITH HISTORICAL UNDERSTANDINGS OF THE SECOND AMENDMENT—AND THUS REGULATE CONDUCT OUTSIDE ITS SCOPE.

The Supreme Court held in *Heller* that the Second Amendment protects an individual right to bear arms. Its opinion emphasized, however, that this right "is not unlimited," and that "nothing in [its] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms." 554 U.S. at 626. Those longstanding prohibitions include "laws imposing conditions and qualifications on the commercial sale of arms," which are "presumptively lawful regulatory measures." *Id.* at 626-27 & n.26. Moreover, "exclusions need not mirror limits that were on the books in 1791." *United States v. Skoien*, 614 F.3d 638, 641 (7th Cir. 2010) (en banc); *see also Fyock v. City of Sunnyvale*, 779 F.3d 991, 997 (9th Cir. 2015).

The Ninth Circuit applies a two-step framework to assess whether a law violates the Second Amendment. The first step asks "whether the challenged law burdens conduct protected by the Second Amendment." *United States v. Chovan*, 735 F.3d 1127, 1136 (9th Cir. 2013). This Court examines "whether there is persuasive historical evidence showing that the regulation does not impinge on the Second Amendment right as it was historically understood." *Silvester v. Harris*, 843 F.3d 816, 821 (9th Cir. 2016). The second step applies a "means-end" test, under which the court first determines the appropriate level of scrutiny and then asks whether the law satisfies that scrutiny. *See, e.g.*, *Chovan*, 735 F.3d at 1136-38; *see also* 1-ER12-16 (explaining that intermediate scrutiny applies and Section 27510 survives such scrutiny, because there is a "reasonable fit" between the law and the important government interest it serves).

The Court may uphold laws that restrict conduct historically understood to fall outside of the Second Amendment's scope without needing to proceed to the second step of the two-step framework. *Silvester*, 843 F.3d at 829-30. That is precisely the situation here. Restricting the sale or transfer of firearms to individuals under the age of 21 is a "longstanding" form of firearms regulation that "historically has fallen outside the scope of the Second Amendment." *United States v. Torres*, 911 F.3d 1253, 1258 (9th Cir. 2019). As the district court correctly concluded, Plaintiffs' motion for a preliminary injunction failed on the merits at step one of the

constitutional analysis. *See* 1-ER-12 ("Plaintiffs cannot demonstrate a likelihood of success on the merits because the challenged regulation does not burden the Second Amendment"). Thus, the Court need not reach the second step of its inquiry. *See* Appellees Br. 21-22; *see also, e.g.*, *Peruta v. Cty. of San Diego*, 824 F.3d 919, 942 (9th Cir. 2016) (en banc) (holding, based on historical analysis alone, that law prohibiting persons from carrying loaded or unloaded concealed weapons, subject to a license-based exception, did not violate the Second Amendment); *United States v. Rene E.*, 583 F.3d 8, 12, 16 (1st Cir. 2009) (holding, based on historical analysis alone, that law regulating possession of handguns by juveniles did not violate the Second Amendment); *People v. Aguilar*, 2 N.E.3d 321, 329 (Ill. 2013) (historical evidence set forth in other decisions supports "the obvious and undeniable conclusion that the possession of handguns by minors is conduct that falls outside the scope of the second amendment's protection"); *cf. BATFE*, 700 F.3d at 204 ("Although we are inclined to uphold the challenged federal laws at step one of our analytical framework, in an abundance of caution, we proceed to step two.").

A. The relevant time period for purposes of the historical analysis begins around 1868 with the Fourteenth Amendment's ratification.

As an initial matter, Plaintiffs wrongly suggest that the only relevant history is founding-era history. *See, e.g.*, Appellants' Br. 28, 30, 33-34. In fact, because Plaintiffs are challenging a state law, the most relevant time period for purposes of historical analysis begins around 1868, when the Fourteenth Amendment was

ratified and made the Second Amendment fully applicable to the States. *See Gould v. Morgan*, 907 F.3d 659, 669 (1st Cir. 2018) ("Because the challenge here is directed at a state law, the pertinent point in time would be 1868 (when the Fourteenth Amendment was ratified)."), *cert. denied*, No. 18-1272 (June 15, 2020); *United States v. Greeno*, 679 F.3d 510, 518 (6th Cir. 2012) (noting that the proper inquiry is whether the challenged statute "regulates activity falling outside the scope of the Second Amendment right as it was understood at the relevant historical moment—1791 [Bill of Rights ratification] or 1868 [Fourteenth Amendment ratification]" (internal quotation marks and citation omitted) (alterations in original)); *Ezell v. City of Chi.*, 651 F.3d 684, 702 (7th Cir. 2011) ("[I]f the claim concerns a state or local law, the 'scope' question asks how the right was publicly understood when the Fourteenth Amendment was proposed and ratified.") (citing *McDonald v. City of Chi.*, 561 U.S. 742, 770-85 (2010) and *Heller*, 554 U.S. at 625-28); *cf. Peruta*, 824 F.3d at 933 (evaluating historical materials bearing on the adoption of both the Second and Fourteenth Amendment in considering Second Amendment challenge to county's interpretation of the statutory good cause requirement under California law).[2]

[2] Plaintiffs' citation (Appellants' Br. 33-34) to *Gamble v. United States*, 139 S. Ct. 1960 (2019), is inapposite. *Gamble* involved a challenge to a *federal* prosecution, and thus it did not implicate the time of ratification of the Fourteenth Amendment. And even on those terms, *Gamble*'s import is far narrower than

The historical inquiry continues after 1868. *Heller* instructs that "examination of a variety of legal and other sources to determine the *public understanding* of a legal text in the period *after* its enactment or ratification" is also "a critical tool of constitutional interpretation."[3] *Heller*, 554 U.S. at 605 (second emphasis added); *see also, e.g.*, *Friedman v. City of Highland Park*, 784 F.3d 406, 408 (7th Cir. 2015) (noting that "*Heller* deemed a ban on private possession of machine guns to be obviously valid" despite the fact that "states didn't begin to regulate private use of machine guns until 1927," and that "regulating machine guns at the federal level" did not begin until 1934); *BATFE*, 700 F.3d at 196 ("*Heller* demonstrates that a regulation can be deemed 'longstanding' even if it cannot boast a precise founding-era analogue."). Indeed, the Ninth Circuit has found that regulations as recent as the "early twentieth century … might nevertheless demonstrate a history of longstanding

---

Plaintiffs suggest: it did not reject any reliance on later sources, but instead said that treatises from a later time period were not sufficient to overturn "170 years of [the Court's] precedent" on the Fifth Amendment. *Id.* at 1964.

[3] Plaintiffs claim that 19th century laws "can prove nothing," citing *Heller*'s statement that later sources "'do not provide as much insight into [the Second Amendment's] original meaning as earlier sources.'" Appellants' Br. 33. But *Heller* involved *only* the Second Amendment, and not its late-19th-century incorporation through the Fourteenth, because it concerned a District of Columbia regulation, not a state law. *See Worman v. Healey*, 922 F.3d 26, 34 n.4 (1st Cir. 2018) (noting this distinction between *Heller* and a Second Amendment challenge to a state law), *cert. denied*, No. 19-404 (June 15, 2020).

regulation if their historical prevalence and significance is properly developed in the record." *Fyock*, 779 F.3d at 997.[4]

As explained in the following section, the historical record, beginning prior and continuing to 1868, and extending into the modern era, supports restrictions on the sale and transfer of firearms for 18-to-20-year-olds. While some individuals of the founding generation may have had personal opinions about the age at which someone could properly handle a firearm, these widespread laws and court decisions from the second half of the 19th century establish that the Constitution allows a state government to prevent those under 21 from possessing firearms.

B. For most of the history of the United States, including when the Second and Fourteenth Amendments were ratified, individuals under 21 were considered minors.

Plaintiffs allege that "[o]nce an individual turns 18 years old in this country, he or she is considered a legal adult free to exercise fundamental constitutional rights pursuant to the United States Constitution." 14-ER-18. For most of our history, however, including up to 1868, when the Fourteenth Amendment was ratified, and long after, persons under the age of 21 were considered minors.

---

[4] *See also Duncan v. Becerra*, 970 F.3d 1133, 1150 (9th Cir. 2020) (in undertaking the step-one historical analysis, a court should "look[] for evidence showing whether the challenged law traces its lineage to founding-era *or Reconstruction-era* regulations." (emphasis added)), *pet'n for reh'g en banc filed*, No. 19-55376 (Aug. 28, 2020).

At common law, the age of majority was 21, and the term "minor" or "infant" applied to persons under 21. *See BATFE*, 700 F. 3d at 201; *Horsley v. Trame*, 808 F.3d 1126, 1130 (7th Cir. 2015) ("During the founding era, persons under 21 were considered minors or 'infants.'").[5]

Indeed, until 1969, the age of majority for unmarried men was 21 in every state. ADD152-157, Larry D. Barnett, *The Roots of Law*, 15 Am. U. J. Gender, Soc. Pol'y & L. 613, 681-86 (2007); *BATFE*, 700 F.3d at 201 ("[I]t was not until the 1970s that States enacted legislation to lower the age of majority to 18."); *Horsley*, 808 F.3d at 1130 ("The age of majority was 21 until the 1970s."). Thus, historically, laws restricting the rights of minors applied to persons under the age of 21.

[5] *See also* ADD0006, Blackstone, 1 *Commentaries On the Laws of England* 451 (1st ed. 1765) ("So that full age in male or female is twenty one years, … who till that time is an infant, and so styled in law."); ADD0010, Infant, *Black's Law Dictionary* (1st ed. 1891) (defining "infant" as "[a] person within age, not of age, or not of full age; a person under the age of twenty-one years; a minor"; ADD0021, Vivian E. Hamilton, *Adulthood in Law and Culture*, 91 Tul. L. Rev. 55, 64 (2016) ("The immediate historical origins of the U.S. age of majority lie in the English common law tradition. The American colonies, then the United States, adopted age twenty-one as the near universal age of majority. The U.S. age of majority remained unchanged from the country's founding well into the twentieth century."); ADD0064, T. E. James, *The Age of Majority*, 4 Am. J. Legal Hist. 22, 30 (1960) ("In the eyes of the common law, all persons were esteemed infants until they attained [21 years of age]"); *id.* at ADD0060 (noting that at the time of the Magna Carta, the age of majority was 21 years); ADD0073, James Kent, 2 *Commentaries on American Law* 191 (1827), Lecture XXXI Of Infants ("T[he] necessity of guardians results from the inability of infants to take care of themselves; and this inability continues, in contemplation of law, until the infant has attained the age of twenty-one years.").

C. Laws restricting the sale or transfer of firearms to minors have existed for more than 150 years.

Statutes restricting the purchase and transfer of firearms by those under the age of 21 are "longstanding," *Heller*, 554 U.S. at 626, and have existed for over 150 years. Indeed, numerous nineteenth century state laws restricted the purchase of firearms by, and transfer of firearms to, minors—including laws for the states of Alabama, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Nevada, North Carolina, Tennessee, Texas, West Virginia, Wisconsin, Wyoming, and the District of Columbia. *See, e.g.*, ADD0158-218, Chart compiling the earliest known nineteenth century state laws restricting the purchase of firearms by, and transfer of firearms to, minors; *see also BATFE* 700 F.3d at 202. Moreover, constitutional provisions analogous to the Second Amendment existed in twelve of these states at the time those laws restricting the ability of minors to purchase or use particular firearms were enacted. *See* ADD0219-75, Chart compiling nineteenth century state analogues to the Second Amendment.

Not only did the people's elected representatives demonstrate, by enacting these laws, that they considered them to be within the government's constitutional power, but judges and leading scholars of the era also considered them to be constitutional. For example, in 1878, the Supreme Court of Tennessee rejected a challenge to a law prohibiting the sale of pistols to minors, defined as those under age 21, holding that "we regard the acts to prevent the sale, gift, or loan of a pistol

or other like dangerous weapon to a minor, not only constitutional as tending to prevent crime but wise and salutary in all its provisions."[6] *State v. Callicutt*, 69 Tenn. 714, 716-17 (1878). The court rejected the defendant's argument that "every citizen who is subject to military duty has the right 'to keep and bear arms,' and that this right necessarily implies the right to buy or otherwise acquire, and the right in others to give, sell, or loan to him." *Id.* at 716. The court explained that the challenged laws were "passed with a view to 'prevent crime'" and do not "affect" or "abridge" the constitutional right of the "'citizens of the State to keep and bear arms for their common defense.'" *Id.*[7]

Thomas Cooley, the "most famous" nineteenth century constitutional law scholar who wrote "a massively popular" constitutional law treatise, *Heller*, 554 U.S. at 616, acknowledged that "the State may prohibit the sale of arms to minors." ADD0292, Thomas M. Cooley, *A Treatise on the Constitutional Limitations* 740 n.4 (5th ed. 1883). Cooley recognized the validity of age restrictions and concurrently

[6] *See Whitt v. Whitt*, 490 S.W.2d 159, 160 (Tenn. 1973) (noting that Chapter 162 of the Public Acts of 1971 reduced the age of majority from 21 to 18 years of age).

[7] There are numerous examples of prosecutions under similar laws. *See, e.g.*, *Coleman v. State*, 32 Ala. 581, 582 (1858) (upholding conviction under law forbidding "sell[ing], or giv[ing], or lend[ing]" a pistol "to any male minor"); *State v. Allen*, 94 Ind. 441, 442 (1884) (defendant was charged with "'unlawfully barter[ing] and trad[ing] to … a minor under the age of twenty-one years, a certain deadly and dangerous weapon, to wit: a pistol'").

noted that the "federal and State constitutions therefore provide that the right of the people to bear arms shall not be infringed." *Id.* at 429. He did not see a conflict between these principles.

Early twentieth-century court decisions also recognize the constitutionality of age-based firearms regulations. *See Parman v. Lemmon*, 244 P. 227, 229 (Kan. 1925) (rejecting constitutional challenge to a law that prohibited the sale or possession of "dangerous weapons," including pistols and revolvers, to minors), *rev'd on other grounds on rehearing*, 244 P. 232 (Kan. 1926); *cf. Biffer v. City of Chi.*, 116 N.E. 182, 185 (Ill. 1917) (approving city ordinance that, among other things, denied minors permits to carry concealed weapons).[8]

In light of this extensive historical record, the district court was right to conclude that age restrictions like those in Section 27510 are part of a longstanding regulatory traditional and therefore constitutional. *See* 1-ER-10-11 (endorsing conclusions of other federal courts that age restrictions are longstanding, including because "[i]ndividuals under the age of 21 were considered minors or 'infants' for most of our country's history without the rights afforded adults," and, "'by 1923,

[8] *See* ADD0293-95, Op. of Kentucky Att'y Gen. OAG 94-14 (Mar. 3, 1994) (concluding that bill restricting possession of handguns by minors is constitutional under the federal and state constitutions and explaining, in relevant part, that "[g]iven the Commonwealth's history of restricting the access of minors to deadly weapons, it is not unreasonable to conclude that the Kentucky constitutional provision recognizing a right to bear arms has no application to minors").

over half the states … had set 21 as the minimum age for purchase or use of a particular firearm'" (quoting *Mitchell*, 2020 WL 5106723, at *4).

D. Plaintiffs' historical analysis based on militia laws is flawed and irrelevant to the constitutional analysis of California's age-based restriction.

Despite purporting to base their case on history, Plaintiffs barely engage with this robust historical record. Instead, they insist, incorrectly and in the face of contrary caselaw (*see supra* Section I.A), that the *only* relevant historical period is the time of the Second Amendment's ratification. *See* Appellants' Br. 33-34.[9] And Plaintiffs then hang effectively their entire argument on a series of unwarranted inferences from colonial and founding-era militia laws. They observe that most state laws and the Militia Act of 1792 required males in an age range encompassing 18-to-20-year-olds to enroll in the militia; and they maintain that this necessarily implies the right of anyone aged 18 to 20 to purchase, acquire, use, and possess firearms. *See* Appellants' Br. 20-25. Even on its own terms—and as the Fifth Circuit has already held, *see BAFTE*, 700 F.3d at 204 n.17—this argument fails on multiple

[9] In one particularly telling example, Plaintiffs dismiss the Fifth Circuit's reliance on nineteenth-century laws in *BATFE* on the ground that they were adopted "beginning more than five decades after the Founding." Appellants' Br. 33-34. Leaving aside the errors in that criticism on its own terms, *cf. Heller*, 554 U.S. at 605-619, it is certainly no response in a case, such as this, challenging a state-law restriction.

grounds.[10]

First, Plaintiffs' argument is undercut by the Supreme Court's decision in *Heller*, in which the Court decoupled the right to bear arms from the duty to serve in the militia. *See Heller*, 554 U.S. at 589-94. As the Fifth Circuit observed in *BATFE*, *Heller* held that "the right to arms is not co-extensive with the duty to serve in the militia." 700 F.3d at 204 n.17.

Second, Plaintiffs' argument cannot account for the fact that the lower age for militia service differed between states and frequently changed over time. For instance, in 1705, Virginia mandated militia duty at the age of 16. ADD0296-98, An act for settling the Militia, ch. XXIV, 3 William Waller Hening, *The Statutes At Large; Being A Collection Of All The Laws Of Virginia* ("Hening") 335, 335-36 (1823). In 1723, it raised the age to 21. ADD0299-300, An Act for the settling and better Regulation of the Militia, ch. II, § II, 4 Hening 118, 118 (1820). In 1755, it lowered the age to 18. ADD0301-03, An Act for the better regulating and training the Militia, ch. II, §§ II-III, 6 Hening 530, 530-31 (1819)). At the beginning of the Revolutionary War, Virginia lowered the minimum age to 16 (ADD0304-06, An ordinance for raising and embodying a sufficient force, for the defence and protection of this colony, ch. I, 9 Hening 9, 16-17 (1821)), only to raise it back to 18

[10] Plaintiffs in *Mitchell* also advanced this argument unsuccessfully. *See* Plaintiffs' Reply in Support of Summary Judgment and Opposition to Cross Motion, No. 3:19-cv-05106, Dkt. No. 103, at 9-12 (W.D. Wash.) (filed Apr. 28, 2020).

after the war (ADD0307-09, An act for amending the several laws for regulating and disciplining the militia, and guarding against invasions and insurrections, ch. XXVIII, § II, 11 Hening 476, 476-77 (1823)). In addition, during the nineteenth century, several states mandated militia enrollment at age 21, rather than 18. *See, e.g.*, ADD0340-42, N.C. Const. of 1868, art. XII, § 1 (1873); ADD0345-84, Chart compiling examples of state laws mandating militia enrollment at age 21. As the Fifth Circuit observed, these differing ages and fluctuations "undermine[] Appellants' militia-based claim that the right to purchase arms must fully vest precisely at age 18—not earlier or later." *BATFE*, 700 F.3d at 204 n.17. It is unclear whether even Plaintiffs would accept the irresponsible consequences of their argument—that those as young as 16 or even 15 should have the same Second Amendment rights as adults. *See* Appellants' Br. 23-25 (advocating for rights at age 18 while relying on militia and other laws that encompassed 15- or 16-year-olds); Appellees' Br. 28 n.4 ("Plaintiffs fail to carry their argument to its logical—and absurd—result."); *see also BATFE*, 700 F.3d at 204 n.17 (argument "proves too much" by implying rights for 16-year-olds).[11]

[11] Relatedly, the modern equivalents to early militia laws show an additional fatal flaw in Plaintiffs' effort to derive rights from the fact of serving with firearms. Seventeen-year-olds may serve active duty in the U.S. military. *See* 10 U.S.C. § 505(a) (enlistment permitted for "persons who are not less than seventeen years of age nor more than forty-two years of age"; parental consent required for 17-year-olds); *Join the Military*, USAGov, https://www.usa.gov/join-military ("You must be

Third, historical sources undermine the notion that 18-to-20-year-olds in the militia were required to supply their own firearms, and hence must have had a right to purchase them. In the debate regarding the Militia Act, Representative Jeremiah Wadsworth of Connecticut noted that "as to minors, their parents or guardians would prefer furnishing them with arms themselves." ADD-343-44, 2 *Annals of Cong., The Debates and Proceedings in the Cong. Of the U.S.* 1856 (1834). Several states even *required* the parents of militia members who were minors to provide firearms to their children. *See, e.g.*, ADD0345-84, Chart compiling examples of state laws requiring parents to furnish or provide arms to minors in the militia. And some militia laws required states to equip certain militia members with public arms (*i.e.*, arms that were the property of the state or town); ADD0385-411, Chart compiling examples of state laws providing for distribution of public arms to militia members. Thus, even laws that did mandate militia enrollment by minors frequently provided other means by which those minors would receive arms, negating the purported implication that minors had *a right* to arm themselves, much less to acquire firearms from a dealer.

---

at least 17 to enlist in any branch of the active military.") (last visited Sept. 9, 2020); *see also* 10 U.S.C. § 246 ("The militia of the United States consists of all able-bodied males at least 17 years of age[.]"). But again, even Plaintiffs do not maintain that the Second Amendment extends to those under 18. Indeed, Plaintiffs reveal their awareness of this flaw in their argument when they state, incorrectly, that "[a]t *age 18*, they *became eligible* to serve … [i]n the military." Appellants' Br. 1 (emphasis added).

Fourth, Plaintiff's argument fails to recognize that a government mandate to engage in certain conduct does not create an individual right to do so. For example, even though citizens have a duty to serve on a jury, "[a]n individual juror does not have a right to sit on any particular petit jury," *Powers v. Ohio*, 499 U.S. 400, 409 (1991); and even though there is a duty to serve in the military if drafted,"[i]t is well established that there is no right to enlist in this country's armed services," *Lindenau v. Alexander*, 663 F.2d 68, 72 (10th Cir. 1981). The Supreme Court made that clear in the militia context almost 150 years ago. *See Presser v. Illinois*, 116 U.S. 252, 263 (1886) (holding that participation in a non-government-organized militia "cannot be claimed as a right independent of law"). And it reaffirmed that principle in *Heller*, explaining that "weapons … most useful in military service," not typically possessed by law-abiding citizens for lawful purposes, fall outside of the Second Amendment's scope, *see* 554 U.S. at 627-28—even though the government may mandate their use in the military or militia.

In short, this nation's longstanding history of firearm age restrictions establishes that Section 27510 is constitutional at the first step of the two-part Second Amendment analysis.

II. COURTS HAVE ACKNOWLEDGED THE LONGSTANDING HISTORY OF AGE-BASED RESTRICTIONS ON THE TRANSFER OF FIREARMS AND HAVE UPHELD SUCH RESTRICTIONS.

A significant body of caselaw confirms the constitutionality of age-based restrictions. More than eight years ago, in *BATFE*, the Fifth Circuit upheld 18 U.S.C. §§ 922(b)(1) and (c)(1) and attendant regulations, which prohibit federally licensed firearms dealers from selling handguns or handgun ammunition to persons under the age of 21. Following the two-step approach, the court first focused on the history of firearm age restrictions, starting with the era in which the Second Amendment was ratified. The Fifth Circuit observed that during that era, "an expectation of sensible gun safety regulation was woven into the tapestry of the guarantee," and that the gun regulations of the era "targeted particular groups for public safety reasons." 700 F.3d at 200. Noting that a person under the age of 21 was generally considered a "minor" or "infant" at the time, the Fifth Circuit concluded that "[i]f a representative citizen of the founding era conceived of a 'minor' as an individual who was unworthy of the Second Amendment guarantee, and conceived of 18-to-20-year-olds as 'minors,' then it stands to reason that the citizen would have supported restricting an 18-to-20-year-old's right to keep and bear arms." *Id.* at 202.

The Fifth Circuit also took into account the history of restricting the ability of minors to purchase firearms, starting in the nineteenth century. The Court observed that "by the end of the 19th century, nineteen states and the District of Columbia had

enacted laws expressly restricting the ability of persons under 21 to purchase or use particular firearms, or restricting the ability of 'minors' to purchase or use particular firearms while the state age of majority was set at age 21." *Id.* at 202. The court cited decisions by the Supreme Courts of Delaware, Indiana, and Kentucky, which recognized the validity of these laws more than a century ago. *Id.* The Fifth Circuit concluded that the restrictions found in 18 U.S.C. §§ 922(b)(1) and (c)(1) on "the ability of 18-to-20-year-olds to purchase handguns from [federally licensed firearms dealers]" were "consistent with a longstanding, historical tradition, which suggests that the conduct at issue falls outside the Second Amendment's protection." *Id.* at 203. Thus, the Fifth Circuit found it was "inclined to uphold the challenged federal laws at step one of our analytical framework." *Id.* at 204. The court, however, "in an abundance of caution," proceeded to step two and held that the challenged laws "pass constitutional muster even if they implicate the Second Amendment guarantee." *Id.*

The district court agreed with the Fifth Circuit's analysis and rejected Plaintiffs' suggestion that eighteenth-century militia service rules entail an absolute prohibition on firearms restrictions for those aged 18 to 20 today. *See* 1-ER-9-11. Plaintiffs criticize the court for doing so, *see* Appellants' Br. 26-34, but none of their arguments is persuasive. Their first assertion—that *BATFE* is distinguishable because the law challenged there was less "severe," *see id.* at 27—is simply

irrelevant; Plaintiffs have failed to connect that assertion to any aspect of the step-one historical inquiry. Their second assertion encompasses a series of attacks on *BATFE*'s reasoning, *see id.* at 27-34, which either inaccurately parody that reasoning or are otherwise mistaken.[12]

Plaintiffs' claims also fly in the face of several other decisions. Most recently, a district court in Washington rejected a Second Amendment challenge to a Washington law that prohibits those under 21 from purchasing or possessing (except in their home and certain other circumstances) a "semiautomatic assault rifle." *See Mitchell*, 2020 WL 5106723, at *3-7. The court held that the challenged law "does not burden Second Amendment rights," and thus is constitutional at the first step of the two-part inquiry, because "reasonable age restrictions on the sale, possession, or use of firearms have an established history in this country." *Id.* at *5. "U.S. law has long recognized that age can be decisive in determining rights and obligations," the

[12] Contrary to Plaintiffs' portrayal, the Fifth Circuit described early safety regulations not as laws *themselves* establishing a historical basis for age restrictions, but rather as part of the foundational principle that "the right to keep and bear arms has never been unlimited." 700 F.3d at 200. It relied on scholarly work "suggesting that the Founders would have supported limiting or banning 'the ownership of firearms by minors, felons, and the mentally impaired,'" and connected that to the age group challenging Section 27510 by observing that "minors" would be understood at the time of the founding to be those under 21, *see id.* at 200-01—points that Plaintiffs can only try to rebut by selectively describing and disassociating them, *see* Appellants' Br. 29-31. And, as already discussed (*see supra* Section I.A), Plaintiffs' claim that laws from around the time of the Fourteenth Amendment's ratification and thereafter "can prove nothing," *see* Appellants' Br. 33, is simply wrong.

court explained. *Id.* at *4. "For most of our country's history, 18- to 20-year-olds were considered minors or 'infants' without the full legal rights of adulthood. … Against this historical backdrop, it is unsurprising that laws prohibiting those under 21 from purchasing firearms are longstanding." *Id.* The court observed that such laws have existed from the nineteenth century up to the present, and that, "[b]ased on this historical evidence, several courts have concluded that firearms age restrictions, particularly those for people under 21, fall outside the Second Amendment's ambit." *Id.*[13]

A federal court in West Virginia reached a similar result in *Hirschfeld*, which considered a Second Amendment challenge to the same statute and regulations upheld in *BATFE*. *See Hirschfeld*, 417 F. Supp. 3d at 749. In addressing the history of age-based firearms regulations, the court noted that "[o]ver the course of the nineteenth and early twentieth century, many states enacted restrictions on gun ownership and use by certain categories of people for public safety reasons—including those under a certain age" and "[b]y the 1920s, roughly half of the states had set 21 as the minimum age for the use and possession certain firearms." *Id.* at 752. The court went on to note that courts upheld these types of laws and "legal

[13] Even though it conclusively held that plaintiffs' challenge failed at the first step of the two-part inquiry and was constitutional for that reason alone, the *Mitchell* court also held that Washington's age restriction would survive the applicable (intermediate) standard of scrutiny. *See id.* at *5-7.

scholars of the time accepted that the State may prohibit the sale of arms to minors." *Id.* (internal quotation marks and citations omitted). Relying on this "historical record of legislation, court decisions, and scholarship" as well as the reasoning in *BATFE*, the court held that challenged laws do not implicate Second Amendment rights.[14] *Id.* at 756.

Other federal courts have also upheld similar regulations affecting the ability of young people to obtain firearms. In *United States v. Rene E.*, 583 F.3d 8, 16 (1st Cir. 2009), the First Circuit upheld a federal ban on juvenile possession of firearms after "evaluat[ing] evidence that the founding generation would have regarded such laws as consistent with the right to keep and bear arms." In *Horsley v. Trame*, 808 F.3d 1126, 1134 (7th Cir. 2015), the Seventh Circuit upheld a state law restricting the ability of persons under the age of 21 from acquiring a firearm license without parental consent. And, in *Powell v. Tompkins*, 926 F. Supp. 2d 367, 387 (D. Mass. 2013), *aff'd on other grounds*, 783 F.3d 332 (1st Cir. 2015), the U.S. District Court for the District of Massachusetts held that Massachusetts's "proscription against grants of licenses to carry firearms to adults under the age of twenty-one comports with the Second Amendment and imposes no burden on the rights of eighteen- to twenty-year-olds to keep and bear arms." The court explained that "classification-

[14] As in *BATFE*, in an abundance of caution, the court went on to the second step of analysis and determined that the challenged law survived intermediate scrutiny. *Hirschfeld*, 417 F. Supp. 3d at 756.

based limitations on access to firearms for the purpose of ensuring public safety were commonplace in the early republic" and "[b]y the turn of the twentieth century, nearly twenty states had laws restricting the ability of persons under the age of twenty-one to access firearms, and over the course of the next twenty or so years, this number steadily grew." *Id.*[15]

State courts, including the Supreme Courts of Louisiana and Illinois, have also upheld various age-based restrictions on firearms possession, including for persons under the age of 21. *See State in Interest of J.M.*, 144 So. 3d 853, 862 (La. 2014) (holding that the "prohibition on the juvenile possession of a handgun is the type of long-standing limitation" that survives constitutional scrutiny, given that "[a]s early as in 1890, the Louisiana legislature made it a misdemeanor offense 'for any person to sell, or lease or give through himself or any other person, any pistol, dirk, bowie-knife or any other dangerous weapon, which may be carried concealed to any person under the age of twenty-one years'"); *Aguilar*, 2 N.E.3d at 329 ("[A]lthough many colonies permitted or even required minors to own and possess firearms for purposes of militia service, nothing like a right for minors to own and possess firearms has existed at any time in this nation's history."); *People v. Mosley*, 33 N.E.3d 137, 155

[15] *See also Nat'l Rifle Ass'n of Am., Inc. v. McCraw*, 719 F.3d 338, 347 (5th Cir. 2013) (upholding state law requirement that applicants for concealed-carry permits be at least 21; noting that "the conduct burdened by the Texas scheme likely 'falls outside the Second Amendment's protection'").

(Ill. 2015) (holding that possession of handguns by minors is conduct that falls outside the scope of the Second Amendment); *In re Jordan G.*, 33 N.E.3d 162, 168 (Ill. 2015) (holding that age-based restrictions on the right to keep and bear arms are historically rooted and apply "equally to those persons under 21 years of age").

In sum, federal and state courts across the country have reached a consensus that the historical record supports the longstanding nature of age-based firearms restrictions, making such restrictions permissible under the Second Amendment. We respectfully submit that this Court likewise should conclude that Plaintiffs' Second Amendment claim fails at the first step of the two-step inquiry.[16]

[16] In the alternative, for the reasons set out in the State's brief, this Court should affirm the district court's decision because (a) the applicable standard of scrutiny is intermediate scrutiny; (b) Section 27510 easily survives that scrutiny; and (c) Plaintiffs have not met their burden to satisfy the other requirements for a preliminary injunction. *See* Appellees' Br. 29-61. In addition, as the State notes, the claims of the individual Plaintiffs who have turned 21 are now moot. *See id.* at 61-64; *BATFE*, 700 F.3d at 191.

CONCLUSION

For the foregoing reasons, and those set forth by the State, the Court should affirm the denial of Plaintiffs' motion for a preliminary injunction.

Respectfully submitted,

Dated: January 26, 2021

By: *s/ Lisa Kobialka*

Lisa Kobialka
KRAMER LEVIN NAFTALIS & FRANKEL LLP
990 Marsh Road
Menlo Park, CA 94025
(650) 752-1700
lkobialka@kramerlevin.com

Darren A. LaVerne (admission pending)
Karen S. Kennedy (admission pending)
Daniel M. Ketani (admission pending)
1177 Avenue of the Americas
New York, New York 10036
(212) 715-9100

Janet Carter
William J. Taylor, Jr.
Lisa M. Ebersole
EVERYTOWN LAW
450 Lexington Avenue
P.O. Box 4184
New York, NY 10017
(646) 324-8215

Counsel for Amicus Curiae Everytown for Gun Safety

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

Instructions for this form: http://www.ca9.uscourts.gov/forms/form08instructions.pdf

9th Cir. Case Number(s) 20-56174

I am the attorney or self-represented party.

This brief contains 6,478 **words**, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief *(select only one)*:

- ○ complies with the word limit of Cir. R. 32-1.
- ○ is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.
- ◉ is an **amicus** brief and complies with the word limit of Fed. R. App. P. 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).
- ○ is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.
- ○ complies with the longer length limit permitted by Cir. R. 32-2(b) because *(select only one):*
  - ○ it is a joint brief submitted by separately represented parties;
  - ○ a party or parties are filing a single brief in response to multiple briefs; or
  - ○ a party or parties are filing a single brief in response to a longer joint brief.
- ○ complies with the length limit designated by court order dated _____.
- ○ is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature s/ Lisa Kobialka **Date** 01/26/2021

(use "s/[typed name]" to sign electronically-filed documents)

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

No. 20-56174

In the United States Court of Appeals For The Ninth Circuit

MATTHEW JONES, *et al.*,

Plaintiffs-Appellants,

v.

XAVIER BECERRA, in his official capacity as Attorney General of the State of California, *et al.*,

Defendants-Appellees,

Appeal from the United States District Court for the Southern District of California
Civil Case No. 3:19-cv-01226-L-AHG (Honorable M. James Lorenz)

ADDENDUM TO BRIEF OF AMICUS CURIAE EVERYTOWN FOR GUN SAFETY IN SUPPORT OF APPELLEES AND AFFIRMANCE

Janet Carter
William J. Taylor, Jr.
Lisa M. Ebersole
EVERYTOWN LAW
450 Lexington Avenue
P.O. Box 4184
New York, New York 10017
(646) 324-8215

Lisa Kobialka
KRAMER LEVIN NAFTALIS & FRANKEL LLP
990 Marsh Road
Menlo Park, CA 94025
(650) 752-1700

Darren A. LaVerne
Karen S. Kennedy
Daniel M. Ketani
1177 Avenue of the Americas
New York, New York 10036
(212) 715-9100

Counsel for Amicus Curiae Everytown for Gun Safety

January 26, 2021

TABLE OF CONTENTS

Description	**Page No.**
Excerpt from William Blackstone, 1 *Commentaries On the Laws of England* (1st ed. 1765)	ADD0001-0007
Excerpt from *Black's Law Dictionary* (1st ed. 1891)	ADD0008-0010
Vivian E. Hamilton, *Adulthood in Law and Culture*, 91 Tul. L. Rev. 55 (2016)	ADD0011-0054
T.E. James, *The Age of Majority*, 4 Am. J. Legal Hist. 22 (1960)	ADD0055-0067
Excerpt from James Kent, 2 *Commentaries on American Law* (1827)	ADD0068-0082
Larry D. Barnett, *The Roots of Law*, 15 Am. U. J. of Gender, Social Policy & the Law 613 (2007)	ADD0083-0157
Chart compiling the earliest known nineteenth century state laws restricting the purchase of firearms by, and transfer of firearms to, minors, as well as true and correct copies of the referenced laws	ADD0158-0218
Chart compiling nineteenth century state analogues to the Second Amendment, as well as true and correct copies of the referenced laws	ADD0219-0275
Excerpt from Thomas M. Cooley, *A Treatise on Constitutional Limitations* (5th ed. 1883)	ADD0276-0292
Opinion of Kentucky Attorney General OAG 94-14 (Mar. 3, 1994)	ADD0293-0295
Excerpt from 3 William Waller Hening, *The Statutes At Large; Being A Collection Of All The Laws Of Virginia* 335 (1823)	ADD0296-0298
Excerpt from 4 William Waller Hening, *The Statutes At Large; Being A Collection Of All The Laws Of Virginia* 118 (1820)	ADD0299-0300
Excerpt from 6 William Waller Hening, *The Statutes At Large; Being A Collection Of All The Laws Of Virginia* 530 (1819)	ADD0301-0303
Excerpt from 9 William Waller Hening, *The Statutes At Large; Being A Collection Of All The Laws Of Virginia* 9 (1821)	ADD0304-0306

Excerpt from 11 William Waller Hening, *The Statutes At Large; Being A Collection Of All The Laws Of Virginia* 476 (1823)	ADD0307-0309
Chart compiling examples of state laws mandating militia enrollment at age 21, and well as true and correct copies of the referenced laws	ADD0310-0339
Section 1 of article XII of the North Carolina Constitution of 1868	ADD0340-0342
Excerpt from 2 *Annals of Congress, The Debates and Proceedings in the Congress of the United States* (1834)	ADD0343-0344
Chart compiling examples of state laws requiring parents to furnish or provide arms to minors in the militia, as well as true and correct copies of the referenced laws	ADD0345-0384
Chart compiling examples of state laws providing for distribution of public arms to militia members, as well as true and correct copies of the referenced laws	ADD0385-0411

COMMENTARIES

ON THE

LAWS

OF

ENGLAND.

BOOK THE FIRST.

BY

WILLIAM BLACKSTONE, Esq.

VINERIAN PROFESSOR OF LAW,

AND

SOLICITOR GENERAL TO HER MAJESTY.

OXFORD,

PRINTED AT THE CLARENDON PRESS.

M. DCC. LXV.

CONTENTS.

INTRODUCTION.

SECT. I.

On the STUDY *of the* LAW. Page 3.

SECT. II.

Of the NATURE *of* LAWS *in general.* 38.

SECT. III.

Of the LAWS *of* ENGLAND. 63.

SECT. IV.

Of the COUNTRIES *subject to the* LAWS *of* ENGLAND. 93.

BOOK I.

Of the RIGHTS *of* PERSONS.

CHAP. I.

Of the absolute RIGHTS *of* INDIVIDUALS. 117.

CHAP.

CONTENTS.

CHAP. II.

Of the PARLIAMENT. 142.

CHAP. III.

Of the KING, *and his* TITLE. 183.

CHAP. IV.

Of the KING's *royal* FAMILY. 212.

CHAP. V.

Of the COUNCILS *belonging to the* KING. 220.

CHAP. VI.

Of the KING's DUTIES. 226.

CHAP. VII.

Of the KING's PREROGATIVE. 230.

CHAP. VIII.

Of the KING's REVENUE. 271.

CHAP. IX.

Of ſubordinate MAGISTRATES. 327.

CHAP. X.

Of the PEOPLE, *whether* ALIENS, DENIZENS, *or* NATIVES. 354.

CHAP.

CONTENTS.

CHAP. XI.

Of the CLERGY. 364.

CHAP. XII.

Of the CIVIL STATE. 384.

CHAP. XIII.

Of the MILITARY *and* MARITIME STATES. 395.

CHAP. XIV.

Of MASTER *and* SERVANT. 410.

CHAP. XV.

Of HUSBAND *and* WIFE. 421.

CHAP. XVI.

Of PARENT *and* CHILD. 434.

CHAP. XVII.

Of GUARDIAN *and* WARD. 448.

CHAP. XVIII.

Of CORPORATIONS. 455.

of all that he has tranſacted on his behalf, and muſt anſwer for all loſſes by his wilful default or negligence. In order therefore to prevent diſagreeable conteſts with young gentlemen, it has become a practice for many guardians, of large eſtates eſpecially, to indemnify themſelves by applying to the court of chancery, acting under it's direction, and accounting annually before the officers of that court. For the lord chancellor is, by right derived from the crown, the general and ſupreme guardian of all infants, as well as idiots and lunatics; that is, of all ſuch perſons as have not diſcretion enough to manage their own concerns. In caſe therefore any guardian abuſes his truſt, the court will check and puniſh him; nay ſometimes proceed to the removal of him, and appoint another in his ſtead [p].

2. LET us next conſider the ward, or perſon within age, for whoſe aſſiſtance and ſupport theſe guardians are conſtituted by law; or who it is, that is ſaid to be within age. The ages of male and female are different for different purpoſes. A male at *twelve* years old may take the oath of allegiance; at *fourteen* is at years of diſcretion, and therefore may conſent or diſagree to marriage, may chooſe his guardian, and, if his diſcretion be actually proved, may make his teſtament of his perſonal eſtate; at *ſeventeen* may be an executor; and at *twenty one* is at his own diſpoſal, and may aliene his lands, goods, and chattels. A female alſo at *ſeven* years of age may be betrothed or given in marriage; at *nine* is entitled to dower; at *twelve* is at years of maturity, and therefore may conſent or diſagree to marriage, and, if proved to have ſufficient diſcretion, may bequeath her perſonal eſtate; at *fourteen* is at years of legal diſcretion, and may chooſe a guardian; at *ſeventeen* may be executrix; and at *twenty one* may diſpoſe of herſelf and her lands. So that full age in male or female, is twenty one years, which age is completed on the day preceding the anniverſary of a perſon's birth [q]; who till that time is an infant, and ſo ſtiled in law. Among the antient Greeks and Romans *women*

[p] 1 Sid. 424. 1 P. Will. 703.

[q] Salk. 44. 625.

were never of age, but ſubject to perpetual guardianſhip[r], unleſs when married, "*niſi conveniſſent in manum viri:*" and, when that perpetual tutelage wore away in proceſs of time, we find that, in females as well as males, full age was not till twenty five years[s]. Thus, by the conſtitutions of different kingdoms, this period, which is merely arbitrary, and *juris poſitivi*, is fixed at different times. Scotland agrees with England in this point; (both probably copying from the old Saxon conſtitutions on the continent, which extended the age of minority "*ad annum vigeſimum primum,* "*et eo uſque juvenes ſub tutelam reponunt*[t]") but in Naples they are of full age at *eighteen*; in France, with regard to marriage, not till *thirty*; and in Holland at *twenty five*.

3. INFANTS have various privileges, and various diſabilities: but their very diſabilities are privileges; in order to ſecure them from hurting themſelves by their own improvident acts. An infant cannot be ſued but under the protection, and joining the name, of his guardian; for he is to defend him againſt all attacks as well by law as otherwiſe[u]: but he may ſue either by his guardian, or *prochein amy*, his next friend who is not his guardian. This *prochein amy* may be any perſon who will undertake the infant's cauſe; and it frequently happens, that an infant, by his *prochein amy*, inſtitutes a ſuit in equity againſt a fraudulent guardian. In criminal caſes, an infant of the age of *fourteen* years may be capitally puniſhed for any capital offence[w]: but under the age of *ſeven* he cannot. The period between *ſeven* and *fourteen* is ſubject to much incertainty: for the infant ſhall, generally ſpeaking, be judged *prima facie* innocent; yet if he was *doli capax*, and could diſcern between good and evil at the time of the offence committed, he may be convicted and undergo judgment and execution of death, though he hath not attained to years of puberty

[r] Pott. Antiq l. 4. c. 11. Cic. *pro Muren.* 12.

[s] *Inſt.* 1. 23. 1.

[t] Stiernhook *de jure Sueonum. l.* 2. *c.* 2. This is alſo the period when the king, as well as the ſubject, arrives at full age in modern Sweden. Mod. Un. Hiſt. xxxiii. 220.

[u] Co. Litt. 135.

[w] 1 Hal. P. C. 25.

or

A

DICTIONARY OF LAW

CONTAINING

DEFINITIONS OF THE TERMS AND PHRASES OF AMERICAN AND ENGLISH JURISPRUDENCE, ANCIENT AND MODERN

INCLUDING

THE PRINCIPAL TERMS OF INTERNATIONAL, CONSTITUTIONAL, AND COMMERCIAL LAW; WITH A COLLECTION OF LEGAL MAXIMS AND NUMEROUS SELECT TITLES FROM THE CIVIL LAW AND OTHER FOREIGN SYSTEMS

BY HENRY CAMPBELL BLACK, M. A.

Author of Treatises on "JUDGMENTS," "TAX-TITLES," "CONSTITUTIONAL PROHIBITIONS," etc.

ST. PAUL, MINN.
WEST PUBLISHING CO.
1891

THE dictionary now
to prepare a concise
and maxims used in
the working lawyer
history or comparati
pilation of the body
nor attempt to supe
field of the English
construed by the cou
cyclopædic in its cha
comprehensive. Its
sought between its c
(within the compass
to the true function
tain nothing but the
the necessary terms.
tion of the present w
will be found to con
other. None is quit
include *all* these tern

For the convenie
ment, as well as in i
found for numerous
and feudal law, and
of the modern inte
seemed necessary to
Spanish, Scotch, and
adapt the work to th
of political or public
ing, and commerce,
law and forensic med
from the vernacular,
in statutes, have acqu
in laws or private do
But the main body o
phrases used in mode

In searching for
has carefully examin
ous states, and from
definitions thus enact
thoritative. Most; i
will be found under t
to definitions formul

by human skill or fore-
om natural causes, such
ns, perils of the sea, in-
quakes, or sudden death
istible force is meant an
ıan agency, from its nat-
utely uncontrollable. 11
ısed in the civil law, this
ıymous with "fortuitous

s where a vessel is pursuing
a lawful manner, using the
ainst danger, and an acci-
hest degree of caution that
ired. It is enough that it is
circumstances; such as is
and has been found by long
cient to answer the end in
life and property. 7 Wall.

is only when the disaster
causes, without negligence
and when both parties have
means in their power, with
and with a proper display of
ent the occurrence of the ac-

A guard; a watchman.

IS. In old English law.
sands, or sea-shore. A
ent mentioned in Heng-

t. Infamy; ignominy or

s meant infamy established
nce of crime; *infamia facti*
upposed to be guilty of such
been judicially proved. 17

. In Roman law. A per-
eputation was diminished
of some of the rights of
n account of his infamous
e of conviction for crime.
v, § 135.

RIME. A crime which
ı one who has committed

ıs"—*i. e.*, without fame or
plied at common law to cer-
conviction of which a person
o testify as a witness, upon
on would not commit so hein-
was so depraved as to be un-
ese crimes are treason, fel-
alsi. Abbott.

ıble by imprisonment in
r penitentiary, with or
r, is an infamous crime.
n of the fifth amendment

of the constitution that "no person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury." 117 U. S. 348, 6 Sup. Ct. Rep. 777.

"Infamous," as used in the fifth amendment to the United States constitution, in reference to crimes, includes those only of the class called "*crimen falsi*," which both involve the charge of falsehood, and may also injuriously affect the public administration of justice by introducing falsehood and fraud. 15 N. B. R. 335.

By the Revised Statutes of New York the term "infamous crime," when used in any statute, is directed to be construed as including every offense punishable with death or by imprisonment in a state-prison, and no other. 2 Rev. St. (p. 702, § 31,) p. 587, § 32.

INFAMY. A qualification of a man's legal *status* produced by his conviction of an infamous crime and the consequent loss of honor and credit, which, at common law, rendered him incompetent as a witness, and by statute in some jurisdictions entails other disabilities.

INFANCY. Minority; the state of a person who is under the age of legal majority, —at common law, twenty-one years. According to the sense in which this term is used, it may denote the condition of the person merely with reference to his years, or the contractual disabilities which non-age entails, or his *status* with regard to other powers or relations.

INFANGENTHEF. In old English law. A privilege of lords of certain manors to judge any thief taken within their fee.

INFANS. In the civil law. A child under the age of seven years; so called "*quasi impos fandi*," (as not having the faculty of speech.) Cod. Theodos. 8, 18, 8.

Infans non multum a furioso distat. An infant does not differ much from a lunatic. Bract. l. 3, c. 2, § 8; Dig. 50, 17, 5, 40; 1 Story, Eq. Jur. §§ 223, 224, 242.

INFANT. A person within age, not of age, or not of full age; a person under the age of twenty-one years; a minor. Co. Litt. 171*b*; 1 Bl. Comm. 463–466; 2 Kent, Comm. 233.

INFANTIA. In the civil law. The period of infancy between birth and the age of seven years. Calvin.

INFANTICIDE. The murder or killing of an infant soon after its birth. The fact of the birth distinguishes this act from "fœticide" or "procuring abortion," which terms denote the destruction of the *fœtus* in the womb.

INFANTS' MARRIAGE ACT. The statute 18 & 19 Vict. c. 43. By virtue of this act every infant, (if a male, of twenty, or, if a female, of seventeen, years,—section 4,) upon or in contemplation of marriage, may, with the sanction of the chancery division of the high court, make a valid settlement or contract for a settlement of property. Wharton.

INFANZON. In Spanish law. A person of noble birth, who exercises within his domains and inheritance no other rights and privileges than those conceded to him. Escriche.

INFEFT. In Scotch law. To give seisin or possession of lands; to invest or enfeoff. 1 Kames, Eq. 215.

INFEFTMENT. In old Scotch law. Investiture or infeudation, including both charter and seisin. 1 Forb. Inst. pt. 2, p. 110.

In later law. *Saisine*, or the instrument of possession. Bell.

INFENSARE CURIAM. An expression applied to a court when it suggested to an advocate something which he had omitted through mistake or ignorance. Spelman.

INFEOFFMENT. The act or instrument of feoffment. In Scotland it is synonymous with "*saisine*," meaning the instrument of possession. Formerly it was synonymous with "investiture." Bell.

INFERENCE. In the law of evidence. A truth or proposition drawn from another which is supposed or admitted to be true. A process of reasoning by which a fact or proposition sought to be established is deduced as a logical consequence from other facts, or a state of facts, already proved or admitted.

An inference is a deduction which the reason of the jury makes from the facts proved, without an express direction of law to that effect. Code Civil Proc. Cal. § 1958.

INFERENTIAL. In the law of evidence. Operating in the way of inference; argumentative. Presumptive evidence is sometimes termed "inferential." 4 Pa. St. 272.

INFERIOR. One who, in relation to another, has less power and is below him; one who is bound to obey another. He who makes the law is the superior; he who is

2016

Adulthood in Law and Culture

Vivian E. Hamilton
William & Mary Law School, vhamilton@wm.edu

Adulthood in Law and Culture

Vivian E. Hamilton*

Young people today come of age in a cultural and economic milieu that prolongs their attainment of the traditional markers of adulthood. Their subjective conceptions of the transition to adulthood also depart radically from the traditional conception, with its emphasis on discrete transition events (including marriage and entry into the workforce). Instead, the modern transition to adulthood is a gradual process comprising the acquisition of general capabilities, rather than the achievement of externally constructed events. The state-established age of legal majority stands in marked contrast to this gradual and prolonged process. Not only does it categorically establish the inception of adult status, but states in the mid-twentieth century adopted laws lowering *statewide ages of majority from twenty-one to eighteen.*

Setting legal adulthood at eighteen fails to accord with the trajectory of individual development, the time needed to acquire the skills and education demanded of individuals in the modern labor market, and even the social experiences of young people coming of age in modern America. In other words, the legal construction of adulthood is starkly at odds with its social and cultural constructions.

Moreover, we now understand that young people reliably attain different capacities at distinct stages of development. Thus across a range of policymaking contexts, any categorical rule will fail to take account either of context-specific capacities or deficiencies. The core commitments of the liberal democratic state, however, require it to extend to individuals those rights which they have attained the capacity to exercise—in other words, to recognize and account for context-specific capacities.

An ever-growing number of exceptions to the age of majority confirms its diminishing utility as a presumptive marker of adult capacity. Abandoning altogether the presumptive age of legal majority in favor of context-specific rules advances the state's liberal ends and better aligns the legal and socio-cultural constructions of adulthood. The developmental and behavioral sciences can and should supplement more traditional policymaking considerations. Finally, existing law, already rife with exceptions to the age of majority, demonstrates that context-specific decision making imposes no undue burden on lawmakers.

I. INTRODUCTION 57
II. THE LEGALLY CONSTRUCTED STATUS OF ADULTHOOD 61
A. *The Age of Majority: A Brief History* 63
B. *Legal Effects of Majority: An Overview* 66
1. Disentitlement to Parental and/or State Support 66
2. Freedom from Parental Authority 68
3. Contract Rights 70
4. The Right to Full Labor Market Participation 73
5. The Right to Political and Civic Participation 74

 Cabell Research Professor of Law, William & Mary School of Law. B.A. Yale College, J.D. Harvard Law School. For helpful comments on earlier drafts, I am grateful to James Dwyer, Rebecca Green, and Elizabeth Scott. For their excellent research assistance, I am grateful to Brandi Smith, James Young, and John Tyler Carver.

6. The Right to Medical and Procreative Choice 75
C. Exceptions to the Age of Majority.....76
1. Contract Rights, Labor Market Participation, and the Right to Medical and Procreative Choice (Redux).....77
2. Giving Sexual Consent.....77
3. The Right To Drive 78
4. The Right To Purchase, Possess, and Consume Alcohol.....78
5. Continued Entitlement to Parental Support and Benefits 79
III. ADULTHOOD DEINSTITUTIONALIZED.....80
A. Structural Influences on the Transition to Adulthood.....80
B. Socio-Cultural Conceptions of Modern Adulthood.....84
C. Cognitive and Socio-Emotional Development from Adolescence Through Emerging and Early Adulthood.....87
IV. DISMANTLING THE CATEGORICAL AGE OF MAJORITY 90
A. Context-Specific Competence.....91
1. Individual Competence and Core Commitments of the Liberal Democratic State.....91
2. Adult Status, Autonomy, and Relationship.....93
B. Assessing Capacity: Lessons from Existing Law and Science 94
C. Reconciling Law, Culture, and Capacity: An Example 95
V. CONCLUSION.....96

The qualities that distinguish juveniles from adults do not disappear when an individual turns 18. . . . [H]owever, a line must be drawn. . . . The age of 18 is the point where society draws the line for many purposes between childhood and adulthood.[1]

—*Roper v. Simmons*, 543 U.S. 551, 574 (2005)

1. The *Roper* Court went on to hold that age eighteen is "the age at which the line for death eligibility ought to rest." Roper v. Simmons, 543 U.S. 551, 574 (2005). Several years after *Roper*, the Court held that juveniles convicted of nonhomicide offenses could not be sentenced to life without the possibility of parole. Graham v. Florida, 560 U.S. 48 (2010). Most recently, the Court held that juveniles convicted of crimes, including murder, could not be subjected to sentencing schemes that mandated sentences of life without the possibility of parole. Miller v. Alabama, 132 S. Ct. 2455 (2012).

I. INTRODUCTION

The age of majority is the gateway to adult legal status, presumptively converting legal incapacity to capacity.[2] Young people attaining adult legal status will, for example: lose the presumptive entitlement to parental support; lose the ability to disavow contracts due to age-based incapacity; gain the ability to participate in civic and political life; and, if convicted of a serious-enough criminal offense, become susceptible to sentences of life imprisonment or death.[3]

Today, the near universal U.S. age of majority is eighteen, but it has historically fluctuated from the mid-teens to the mid-twenties both here and abroad.[4] Fluctuations in the age of majority have generally accorded with changes in the nature of the capacities required of society's adult citizens and the age by which individuals tend to attain those capacities.[5] Historically, young people have crossed the legal—and social—threshold to adulthood upon gaining the capacities to perform the types of work required of a given time and place, to bear arms and fight on behalf of the state, and/or to form and support a family.

The U.S. age of majority was lowered from twenty-one to eighteen, however, for reasons quite unrelated to capacity.[6] Yet research across disciplines demonstrates that setting the age of majority at eighteen fails to accord with the trajectory of individual development, the time necessary to acquire the skills and abilities demanded of individuals in the modern labor market and broader socio-economic context, and even the social experiences of young people coming of age in modern American culture. The legal construction of adulthood is thus starkly at odds with the social meaning and experiences of adulthood.

Neither raising nor lowering the age of majority will redress its deficiencies. Instead, individuals predictably acquire different capabilities across the course of their development and exercise them

---

2. *See* discussion *infra* subpart II.B; *see also, e.g.*, CAL. FAM. CODE § 6501 (West 1992) ("An adult is an individual who is 18 years of age or older."); VA. CODE ANN. § 1-204 (2005) ("For the purposes of all [Virginia] laws . . . unless an exception is specifically provided in this Code, a person shall be an adult, shall be of full age, and shall reach the age of majority when he becomes 18 years of age."); Elizabeth S. Scott, *The Legal Construction of Adolescence*, 29 HOFSTRA L. REV. 547, 559 (2000) ("Currently, legal adulthood begins at age eighteen.").

3. *See* discussion *infra* subpart II.B.

4. *See* discussion *infra* subpart II.A.

5. *See* discussion *infra* subpart II.A.

6. *See* discussion *infra* subpart II.A.

with varying levels of competence in different contexts.[7] Thus, while eighteen is a singularly inapt age at which to set majority across virtually every legal context to which it applies, I argue that *no* categorical age of majority can reliably capture the context-specific acquisition of various capacities.

The inadequacy of the categorical age of majority is reflected in the ever-growing number of exceptions to it. These exceptions aim to adapt rules to better conform to the needs of society and capacities (or incapacities) of young people. The exceptions have historically tended towards extending rights to individuals younger than the age of majority. Thus young people will have exercised many of the rights technically reserved to adults—entering contracts, deciding medical treatment, even marrying—long before reaching adult status.[8]

Increasingly, however, legal exceptions extend rules that once applied strictly to minors to individuals past the age of majority.[9] In doing so, these exceptions to presumptive majority recognize that most young individuals will enter adulthood unready to assume some of the most significant attributes of their new status, such as the financial self-sufficiency intimated by adults' legal disentitlement to parental support.

For most young adults, financial dependency will instead continue well into their adult years. For the first time in over a century, more adults aged eighteen to thirty-four live in their parents' house than in any other living arrangement.[10] The Federal Dependent Coverage Mandate, part of the Patient Protection and Affordable Care Act (ACA), is but one example of this type of legally mandated exception. The ACA expanded the availability of health insurance for young adults by allowing those aged nineteen to twenty-six to remain covered as dependents under their parents' plans.[11] In doing so, it

7. *See, e.g.*, Paul Arshagouni, *"But I'm an Adult Now . . . Sort of": Adolescent Consent in Health Care Decisionmaking and the Adolescent Brain*, 9 J. HEALTH CARE L. & POL'Y 315, 360 (2006); *see also* discussion *infra* subpart III.C (discussing exceptions to the age of majority).

8. *See* discussion *infra* subpart II.C.

9. *See* discussion *infra* subpart II.C.5.

10. Richard Fry, *For First Time in Modern Era, Living with Parents Edges Out Other Living Arrangements for 18- to 34-Year-Olds*, PEW RES. CTR. 4 (May 24, 2016), http://www.pewsocialtrends.org/files/2016/05/2016-05-24_living-arrangemnet-final.pdf.

11. Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010) (codified as amended in scattered sections of 42 U.S.C.).

highlights the ongoing dependence that now characterizes the early years of adulthood.[12]

Scholars and jurists alike have critiqued the body of law affecting young people as lacking coherence.[13] Much of the criticism focuses on the challenges posed by attaching different legal consequences to different ages. Our collection of laws is indeed flawed, but these critics miss the mark. Instead, individuals acquire different capabilities across the course of their development and exercise them with varying levels of competence in different contexts.[14]

Some scholars have argued for exceptions to the age of majority in specific legal contexts. These arguments have included, for example, extending the entitlement to child support[15] or foster care[16] beyond the age of majority and extending the right to make certain medical or procreative decisions without adult intervention to individuals who have not yet attained majority.[17] Others have argued against the presumption of incapacity of minors (children[18] or adolescents[19]) in favor of presumed capacity, with some arguing for the recognition of the variable capacities of minors at different ages.[20]

This Article diverges from earlier critiques in its call for dismantling altogether the age of majority—thus doing away with the conception of adulthood as a distinct legal status. The core

---

12. *Id.* The ACA, sometimes referred to as "Health Reform" or "Obamacare," is a major federal health reform measure aiming to make healthcare coverage universal and affordable.

13. *See, e.g.*, Roper v. Simmons, 543 U.S. 551 (2005) (Scalia, J., dissenting) (criticizing differences in the legal treatment of adolescents in the abortion and juvenile justice contexts); Jonathan Todres, *Maturity*, 48 HOUS. L. REV. 1107, 1109-10 (2012) (arguing that by approaching "the concept of maturity in a piecemeal and issue-specific fashion," the law has developed "a legal construct of maturity that is anything but consistent or coherent").

14. *See, e.g.*, Arshagouni, *supra* note 7; *see also* discussion *infra* subpart III.C (discussing cognitive and socio-emotional development).

15. *See* Monica Hof Wallace, *A Federal Referendum: Extending Child Support for Higher Education*, 58 U. KAN. L. REV. 665, 666 (2010).

16. *See* Keely A. Magyar, *Betwixt and Between but Being Booted Nonetheless: A Developmental Perspective on Aging Out of Foster Care*, 79 TEMP. L. REV. 557, 558 (2006).

17. *See* J. Shoshanna Ehrlich, *Shifting Boundaries: Abortion, Criminal Culpability and the Indeterminate Legal Status of Adolescents*, 18 WIS. WOMEN'S L.J. 77, 91 (2003).

18. *See* Hillary Rodham, *Children's Rights: A Legal Perspective*, *in* CHILDREN'S RIGHTS: CONTEMPORARY PERSPECTIVES 21, 33 (Patricia A. Vardin & Ilene N. Brody eds., 1979); Henry H. Foster & Doris Jonas Freed, *Needed: A Bill of Rights for Children*, STUDENT LAW., Oct. 1973, at 22, 55.

19. *See* Rhonda Gay Hartman, *Adolescent Autonomy: Clarifying an Ageless Conundrum*, 51 HASTINGS L.J. 1265, 1362 (2000).

20. *See* Rodham, *supra* note 18; Foster & Freed, *supra* note 18.

commitments of the liberal democratic state require extending to individuals the right to exercise those self-regarding capacities of which they are capable. That end calls for adopting context-specific rules informed by insights from the social and developmental sciences, which can help explain the development of capabilities and their exercise in different contexts.

Jettisoning the presumptive age of majority in law would have the secondary benefit of eroding what has become the cultural archetype of adulthood. Studies have revealed that young people conceive of the adult status as a state of individualism and independence.[21] It is a normative construction that not only undermines the importance of community but is also markedly incongruent with the ongoing dependence typical of today's young adults.

Part II sets the age of majority in historical and legal contexts. Insights from social history and anthropology help explain cultural and structural factors that influence adult status and the conception of adulthood. This Part thus describes the legal construction of adulthood and how the line between minority and adulthood came to be drawn at age eighteen. It demonstrates that setting the age of majority at eighteen was an ill-conceived move set in motion by the wartime need to lower the draft age and facilitated by what was a subsequent historical aberration—the rapid transition to adulthood that occurred during a postwar industrial economy that enabled young people with few skills to earn high wages, thereby enabling them to marry and establish households at young ages.

The legal construction of adult status is starkly at odds with the modern social meaning and experiences of adulthood. Part III provides a social history of the transition to adulthood and describes the sociocultural construction of modern adulthood. Young people today conceive of adulthood differently than they have in the past. They come of age in a cultural and economic context that prolongs their achievement of certain traditional markers of adulthood. For example, in a service-based postindustrial economy, the vast majority of well-paying jobs require some postsecondary education or training. Individuals achieve financial independence, marriage, and parenthood a full decade or more after reaching legal adult status. Along with insights from the developmental sciences into relevant aspects of development from adolescence through early adulthood, this survey

21. *See* discussion *infra* Part IV.

makes plain the incongruence between adult status as constructed by U.S. law and adult status as conceptualized and experienced by individuals.

Part IV argues that the disjunction between social and legal constructions of adulthood harms individuals and contravenes the core commitments of the liberal democratic state. It proposes that lawmakers implement fully what they have already begun to implement piecemeal—abandoning the presumptive age of legal majority and adopting legal rules that account for the context-specific acquisition of capabilities. It argues that today's lawmakers would be remiss to ignore relevant and readily available research across the social and developmental sciences, in addition to more traditional policy considerations. Indeed, some legislators, jurists, and legal scholars have begun to consider the implications of some of this research.[22]

The age of majority is a construct that has quite lost any social or legal utility it may have once had, and it should thus be abandoned. The remainder of this Article examines it, details its flaws, and proposes a principled and pragmatic alternative to it.

II. THE LEGALLY CONSTRUCTED STATUS OF ADULTHOOD

Sir Henry Maine's observation about the movement away from status in progressive societies may hold true as a general matter across legal realms, but counterexamples abound.[23] In law, "status" denotes a group sharing some set of attributes that justifies its membership being governed by a common set of rules.[24] Legal statuses can thus facilitate the efficient functioning of a complex society. "Corporation,"

---

22. *See, e.g.*, Roper v. Simmons, 543 U.S. 551, 574 (2005) (holding unconstitutional the imposition of the death penalty for crimes committed by an offender younger than age eighteen). Almost entirely ignored, however, though particularly useful in the legislative contexts which are this Article's primary focus, are the contributions of behavioral decision research. This research offers a framework and methods for studying and assessing decision-making competence and accounts for both individual and situational variability. Baruch Fischhoff, *Assessing Adolescent Decision-Making Competence*, 28 DEVELOPMENTAL REV. 12, 13 (2008).

23. HENRY SUMNER MAINE, ANCIENT LAW: ITS CONNECTION WITH THE EARLY HISTORY OF SOCIETY AND ITS RELATION TO MODERN IDEAS 165 (5th ed. 1873) ("[T]he movement of the progressive societies has hitherto been a movement *from Status to Contract*."); *see also* Vivian Hamilton, *Principles of U.S. Family Law*, 75 FORDHAM L. REV. 31, 38-41 (2006) (discussing the resistance to change of certain aspects of the marital status).

24. "Status" in the legal context is defined as "[t]he fact or position of belonging to a group which is subject to certain legal rights or limitations." *Status*, OXFORD ENGLISH DICTIONARY (3d ed. 2012).

"marriage," and "minor," for example, are all legal statuses defined and governed by distinct sets of legal rules. "Adult" is another.

Like the law generally, statuses shape and are shaped over time by social forces. Their meanings can be at once legally and socially constructed, and they thus evolve along with changing social circumstances. The status of "wife," for example, once comprised the near total legal incapacity imposed by the doctrine of coverture.[25] Social pressure led to the revising of the status through the repeal of coverture with states' adoption of Married Women's Property Acts and eventually to the formal equality of wives and husbands.[26]

Childhood and adulthood are also socially and legally constructed statuses whose meanings have varied dramatically over time and across cultures.[27] Despite what may appear to be the inevitability of our current binary classification system, in which individuals are either minors or adults, the progression from childhood to adulthood is fluid and not readily amenable to biological definition.[28] Instead, structural (e.g., legal and economic norms) and cultural (e.g., social norms) changes have influenced the course and timing of individuals' transitions to adulthood.

The age of majority has historically fluctuated depending on the capacities required of adults at different times and places. It has also varied according to the capacities required of different social roles that young individuals were destined to fill. In Medieval England, for example, the age of majority for English males destined for the military status of knighthood was twenty-one, before which they would not have completed the training nor gained the strength required of them. However, young men destined for agricultural life attained adult status at the significantly younger age of fifteen, by which they would have gained the capacity to engage in agricultural

---

25. NANCY F. COTT, PUBLIC VOWS: A HISTORY OF MARRIAGE AND THE NATION 10-12 (2000).

26. *See, e.g.*, NORMA BASCH, IN THE EYES OF THE LAW: WOMEN, MARRIAGE, AND PROPERTY IN NINETEENTH-CENTURY NEW YORK 158-59 (1982). Marital status itself, moreover, continues to evolve, most recently when the Supreme Court held that same-sex couples have a constitutional right to marry. *See* Obergefell v. Hodges, 135 S. Ct. 2584, 2608 (2015).

27. *See, e.g.*, BARBARA BENNETT WOODHOUSE, HIDDEN IN PLAIN SIGHT: THE TRAGEDY OF CHILDREN'S RIGHTS FROM BEN FRANKLIN TO LIONEL TATE 26 (2008) ("The timing of transition from childhood to adulthood is strongly influenced by issues of class and culture as well as by issues of race and gender."); Annette Ruth Appell, *The Pre-Political Child of Child-Centered Jurisprudence*, 46 HOUS. L. REV. 703, 706 (2009) (arguing that childhood is a "socially constructed category deeply connected to race, gender, class, and citizenship").

28. *See* Scott, *supra* note 2, at 548.

work.[29] The following subparts survey the historical evolution of the legal age of majority, significant aspects of the modern construction of the legal status, and exceptions to that presumptive legal status.

A. The Age of Majority: A Brief History

Early Roman law set the age of majority at the age by which individuals would presumably have attained the intellectual capacities required to exercise full citizenship, manage their affairs, and become parents and the heads of families themselves—age fifteen for males.[30] But while the onset of puberty may have signaled the physical capacity to become parents, the Romans apparently believed that it failed to coincide with young males' attainment of full intellectual maturity. Accordingly, Roman law placed free males who were technically "of full years and rights" under the temporary guardianship of adults known as *Curatores*.[31] A *Curator*'s approval was required to validate young males' formal acts or contracts until they reached twenty-five years of age.[32] Indeed, Roman law used the terms "minority" and "majority" in reference, not to age fifteen, but instead to age twenty-five—the age of *plenam maturitatem, or full maturity*.[33]

Throughout other parts of Europe, the attainment of physical capacity—particularly the ability to participate in warfare—determined legal maturity.[34] The age of majority between the ninth and eleventh centuries was fifteen for males.[35] When the nature of warfare changed during the Middle Ages so did the age of majority.[36] The increasing weight of defensive armor and growing use of mounted cavalry required both greater strength and skill on the part of the English knights who fought on behalf of the crown.[37] The age of

---

29. T.E. James, *The Age of Majority*, 4 AM. J. LEGAL HIST. 22, 30 (1960).
30. MAINE, *supra* note 23, at 155; James, *supra* note 29, at 25.
31. MAINE, *supra* note 23, at 156.
32. *Id.* at 156-57.
33. *Id.* at 156; James, *supra* note 29, at 33.
34. James, *supra* note 29, at 25. The age of majority freed an individual from the wardship or tutelage of his adult guardian, entitled him to marry, and required him to claim his inheritance. *Id.* at 30-31.
35. *Id.* at 24-25. Historians have noted that, while fifteen was the age of majority in ninth- and tenth-century France, Germany, and northern Europe, there is no "clear authority" that it was also the English age of majority during that time. They consider it reasonable to assume, however, that it was. *Id.* at 26-27.
36. *Id.*
37. *Id.* at 27; *see also* 2 WM. A. SHAW, THE KNIGHTS OF ENGLAND (1906) (listing knights by year in which they were dubbed).

eligibility for knighthood (the equivalent of the age of majority at the time) increased to twenty-one, by which age young men would have gained the strength and completed the training required of those who fought in the heavy cavalry.[38]

Not all English males were destined for the honor of military tenure. Socage tenure, for example, was an agricultural status held by tenants who worked the land of feudal lords to whom they owed rent.[39] The requisite capacities for those who held this status were the abilities to farm and conduct their "rustic employs."[40] The age of majority for socage tenants seems to have originally been fourteen, though it was later raised to fifteen by local custom.[41]

Perhaps unsurprisingly, the age required for the elite status of knighthood was the age whose imprint would endure.[42] English historical and common law traditions became law throughout the British Commonwealth.[43] Twenty-one remained the age of majority for centuries in England, as well as throughout much of the Western world and nations that incorporated English traditions.[44]

The immediate historical origins of the U.S. age of majority lie in the English common law tradition.[45] The American colonies, then the United States, adopted age twenty-one as the near universal age of majority.[46] The U.S. age of majority remained unchanged from the country's founding well into the twentieth century. In 1942 wartime needs prompted Congress to lower the age of conscription from twenty-one to eighteen, a change that would eventually lead to the lowering of the age of majority generally.[47]

For a period of years following the lowering of the draft age to eighteen, the voting age (and the general age of majority) remained twenty-one. The obligation of military service, however, has long

38. *See* James, *supra* note 29, at 28.
39. *Id.* at 30.
40. *Id.*
41. *Id.* at 29-30.
42. *Id.* at 33.
43. *See* WENDELL W. CULTICE, YOUTH'S BATTLE FOR THE BALLOT: A HISTORY OF VOTING AGE IN AMERICA 72 (1992).
44. James, *supra* note 29, at 22, 33.
45. *See id.* at 25-26.
46. DONALD GRIER STEPHENSON, JR., THE RIGHT TO VOTE: RIGHTS AND LIBERTIES UNDER THE LAW 248 (2004).
47. *See* CULTICE, *supra* note 43, at 7, 20; *see also* Vivian E. Hamilton, *Democratic Inclusion, Cognitive Development, and the Age of Electoral Majority*, 77 BROOK. L. REV. 1447, 1461-62 (2012) [hereinafter Hamilton, *Democratic Inclusion*] (discussing the influence of the Second World War on public sentiment and Congress' initiative to lower the voting age to eighteen).

been linked to the right to political participation.[48] Thus Congressional debates to subject eighteen-year-olds to the draft were soon followed by proposals to also extend to eighteen-year-olds the right to vote.[49] These proposals led to the eventual passage of the Twenty-Sixth Amendment in 1971, lowering the voting age to eighteen in both state and federal elections.[50]

Once eighteen had become the age of conscription and of the franchise, it began to replace twenty-one across a range of contexts and has been adopted as the near universal age of majority.[51] Forty-four states have adopted eighteen as the presumptive age of legal majority.[52] Six have set their ages of majority higher, with five states setting it at nineteen and one at twenty-one.[53]

Eighteen has thus become firmly entrenched as the presumptive age of majority, replacing in just a few decades its centuries-old predecessor. Its widespread adoption notably reflected a desire for a certain sort of consistency rather than a widely held consensus that young people reached maturity or generally attained adult-like capabilities before age twenty-one.

The impetus for lowering the age of majority, of course, was the immediate need for large numbers of soldiers to participate in U.S. wartime efforts. Although having less to do with maturity of judgment than with physical maturity, other age-based limitations previously imposed on young people between eighteen and twenty fell alongside the age of conscription. The following subpart briefly describes some of the more significant of the legal changes that currently accompany the attainment of the age of majority.[54]

---

48. AKHIL REED AMAR, AMERICA'S CONSTITUTION: A BIOGRAPHY 19 (2005) ("In classic republican theory, the rights of collective self-government stood shoulder to shoulder with the responsibilities of collective self-defense."); *see* ALEXANDER KEYSSAR, THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES 36 (2000).

49. CULTICE, *supra* note 43, at 22.

50. U.S. CONST. amend. XXVI, § 1 ("The right of citizens . . . eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.").

51. *Termination of Support—Age of Majority*, NAT'L CONF. ST. LEGISLATURES, http://www.ncsl.org/research/human-services/termination-of-child-support-age-of-majority.aspx (last updated Mar. 2015) (listing statutory citations for the ages of majority of each U.S. state and territory).

52. *Id.*

53. *Id.*

54. For more exhaustive discussions of the effects of majority, see Larry Cunningham, *A Question of Capacity: Towards a Comprehensive and Consistent Vision of Children and Their Status Under Law*, 10 U.C. DAVIS J. JUV. L. & POL'Y 275, 285-364 (2006); Todres, *supra* note 13, at 1121-41.

B. Legal Effects of Majority: An Overview

Today, the legal age of majority reflects a presumption that typical individuals of that age are "mature enough to function in society as adults, to care for themselves, and to make their own self-interested decisions."[55] Every state has adopted a legal age of majority through various legislative or judicial measures.[56]

Designated statutory provisions establishing statewide ages of majority, for example, generally provide that upon reaching the established age, a person "shall be an adult for all purposes whatsoever and have the same legal capacity, rights, powers, privileges, duties, liabilities and responsibilities."[57] Some states have adopted an age of majority indirectly, usually through statutory provisions that establish the age at which parents' duty of support presumptively terminates.[58] Finally, common and statutory law frequently address more directly other age-related laws—both those that comport with the age of majority and those that act as exceptions to it. The following subparts briefly identify some of the more significant of the civil effects that attend the age of majority.

1. Disentitlement to Parental and/or State Support

There is a strong presumption that a young person's entitlement to parental support ends at majority, generally age eighteen.[59] A number of states allow the extension of support orders past eighteen if a child is enrolled in but has not yet graduated from high school.[60]

Similarly, young people presumptively age out of foster care once they turn eighteen or, in some states, nineteen.[61] Some states provide for continuing foster care past age eighteen when the young person is enrolled in some sort of educational or rehabilitative program.[62] Others give their courts discretion to determine whether to

---

55. Scott, *supra* note 2.

56. *See, e.g.*, *id.*

57. *See, e.g.*, CONN. GEN. STAT. § 1-1d (2015) (lowering the statewide age of majority from twenty-one to eighteen).

58. *See, e.g.*, *id.*

59. *Termination of Support—Age of Majority*, *supra* note 51. Forty-four states set the age of majority at eighteen. *Id.*

60. *See, e.g.*, *id.* For example, twenty-four states will allow the extension of support orders to age nineteen if certain conditions are met; some other states permit extensions beyond nineteen. *Id.*

61. *See* Magyar, *supra* note 16, at 564-73.

62. The states include Arkansas, Connecticut, Massachusetts, Pennsylvania, South Carolina, South Dakota, and Tennessee. *See* ARK. CODE ANN. § 9-27-306(a)(1)(B)(ii) (2016); CONN. GEN. STAT. § 17a-93(1) (2015); MASS. GEN. LAWS ch. 119, § 23(f) (2016); 42

continue state custody past age eighteen based on factors that can include the young person's best interests or need for services.[63] Only a few states' statutes explicitly provide for retaining custody for the purpose of helping a young person successfully transition to independence.[64] Dedicated federal funds exist to help states provide foster care only to individuals younger than eighteen and eighteen-year-olds enrolled in high school who will likely graduate before their nineteenth birthdays.[65]

By ending parental and state support obligations at majority, the law treats those who are aged eighteen and over or who have completed a high school education as capable of financial independence and responsible for their own financial support.[66] A high school education may in previous decades have enabled financial self-sufficiency, but as Part IV demonstrates, high school alone rarely suffices. In the modern economy, well-paying jobs providing the opportunity for middle-class living typically require postsecondary education or training.[67] The legal effects of the age of majority operate to leave high school graduates without parental support before allowing them a sufficient opportunity to attain financial security. In doing so, the age of majority both disserves young people and ineffectively meets the workforce needs of the employers that drive the nation's economy.

PA. CONS. STAT. § 6302 (2016); S.C. CODE ANN. § 63-3-510(B) (2008); S.D. CODIFIED LAWS § 26-6-6.1 (2015); TENN. CODE ANN. § 37-1-102(b)(5)(G) (2016).

63. These states include Alaska, Illinois, Iowa, and New Jersey. *See* ALASKA STAT. § 47.10.080(c)(1)(B) (2015); 705 ILL. COMP. STAT. 405/2-31(1) (1987); IOWA CODE § 232.102(1)(b) (2016); N.J. STAT. ANN. § 30:4C-2.3 (West 2016).

64. These states include Arizona, Arkansas, Kentucky, and New Jersey. *See* ARIZ. REV. STAT. ANN. § 8-521.01(A)-(B) (2016); ARK. CODE ANN. § 9-27-306(a)(1)(B)(ii) (2016); KY. REV. STAT. ANN. § 620.140(1)(d) (West 2016); N.J. STAT. ANN. § 30:4C-2.3 (West 2016).

65. 42 U.S.C. §§ 608a, 619(2)(B), 672 (2012). The Foster Care Independence Act (FCIA) permits states to use federal money to fund independent living programs for young people aged eighteen to twenty-one. Foster Care Independence Act of 1999, Pub. L. No. 106-169, § 121, 113 Stat. 1822, 1829-30 (codified as amended at 42 U.S.C. § 1396d(w)). Only about half of young people between eighteen and twenty-one are eligible for the room and board allotment provided by the statute, which totals just over $1400 annually per individual. *See* Magyar, *supra* note 16, at 563; Cynthia Andrews Scarcella et al., *The* Cost *of Protecting Vulnerable Children* IV*: How Child Welfare Funding Fared During the Recession*, URBAN INST. 16-18 (2004), http://www.urban.org/research/publication/cost-protecting-vulnerable-children-iv (select "Download PDF").

66. The law in just under half of the states assumes that financial dependence will end, not necessarily at age eighteen, but instead upon the young person's graduation from high school. Magyar, *supra* note 16, at 564.

67. *See* discussion *infra* subpart IV.C.

2. Freedom from Parental Authority

Legal adults gain independence from parental authority. During their children's minority, parents have not only a legally enforceable obligation to provide for the support of their children; they also have a constitutional right to the "custody and control" of their children.[68] "Custody and control" encompasses the ability to make all manner of decisions on their behalf.[69]

The state exercises its *parens patriae* power to enact regulations that interfere with parental authority in areas including education and public health.[70] Otherwise, the state generally defers to parents' child-rearing practices so long as their caregiving does not fall to a level that would constitute statutorily defined abuse or neglect.[71]

Parents' day-to-day authority over their children is thus universally acknowledged and respected; at the same time, its contours are rarely formally defined. Parents decide where their children will live, where they will attend school, which doctors will attend them, which medical procedures they will undergo, and every aspect of how they will be raised—their daily schedules, activities, diets, etc. Once an individual is identified as a parent, community actors such as school officials and health care providers afford them the decision-making authority that attend that status.[72]

---

68. *See* Pierce v. Soc'y of Sisters, 268 U.S. 510, 534-35 (1925) (holding unconstitutional state legislation requiring that all children be educated in public schools and recognizing parents' rights "to direct the upbringing and education of children under their control"); Meyer v. Nebraska, 262 U.S. 390, 399-400 (1923) (holding unconstitutional state legislation restricting the teaching of foreign languages in elementary schools and recognizing parents' rights to "establish a home and bring up children").

69. *See* Troxel v. Granville, 530 U.S. 57, 72 (2000) (plurality opinion) (holding unconstitutional a state third-party visitation statute that permitted any person to petition a court for visitation with a child at any time because the statute "failed to accord the determination of . . . a fit custodial parent[] any material weight"). The plurality in *Troxel* stated "that the 'liberty' protected by the Due Process Clause includes the right of parents to 'establish a home and bring up children' and . . . 'to direct the upbringing and education of children under their control.'" *Id.* at 65-66 (first quoting *Meyer*, 262 U.S. at 399; then quoting *Soc'y of Sisters*, 268 U.S. at 534-35).

70. *See, e.g.*, *Soc'y of Sisters*, 268 U.S. at 534 (noting "the power of the State reasonably to regulate all schools [and] to require that all children of proper age attend some school"); *Meyer*, 262 U.S. at 401 (observing that "the state may do much, go very far, indeed" to advance the general welfare infringing upon parents' rights).

71. *See* Emily Buss, *Adrift in the Middle: Parental Rights After* Troxel v. Granville, 2000 SUP. CT. REV. 279, 287-96 (arguing in favor of state noninterference in parenting generally).

72. A notable exception exists in the case of noncustodial parents, in which case a biological parent's authority may be limited by judicial decree.

Just as many aspects of the parent's authority tend to exist informally, its technical cessation once a child reaches the age of majority also tends to occur informally. However, two legal doctrines—invoked, ironically, when there is a failure or absence of presumptive parental authority—help delineate the contours of parental authority.

The first is the doctrine of emancipation, which confers upon a minor "the rights, duties, privileges, and responsibilities provided by the civil law to a person who has reached the age of majority under civil law."[73] Generally, minors found to be living independent of their parents and supporting themselves may be declared emancipated.[74] Most states provide for some form of emancipation through either statutory or common law.[75] However, not all states have formally adopted the doctrine, and some that have done so provide only a limited array of rights to emancipated minors.[76] Certain transition events most commonly appear as justification for a child's emancipation—the child's marriage, pregnancy, or military service.[77] The rights of emancipated minors typically allow them to enter contracts (such as lease agreements), receive certain forms of public assistance usually reserved to heads of household, and retain their own earnings.[78] Emancipation also relieves parents of the duty to support the minor child.[79]

The second legal mechanism, the ungovernability action, permits parents to initiate a judicial action seeking to have a minor child found "ungovernable."[80] A minor may be brought under court supervision if

---

73. HAW. REV. STAT. § 577-25 (2015). *See generally* Carol Sanger & Eleanor Willemsen, *Minor Changes: Emancipating Children in Modern Times*, 25 U. MICH. J.L. REFORM 239 (1992) (describing the legal processes by which minors may become emancipated).

74. *See* Sanger & Willemsen, *supra* note 73, at 240.

75. *See id.* at 240-41.

76. *See* Bethany Stasiak, *Statutory and Judicial Emancipation of Minors in the United States*, BOS. COOP NETWORK (2002), http://bostoncoop.net/lcd/emancipation/emancipation_deliverable.pdf.

77. *See id.*

78. *See, e.g.*, KAN. STAT. ANN., § 38-102 (2015) (providing only for the minor's right to enter contracts, including those involving real and personal property); WIS. STAT. § 48.987 (2015) (providing that a self-supporting minor is entitled to his or her own earnings); N.Y. COMP. CODES R. & REGS. tit. 18, § 349.5 (2016) (providing for the granting of public assistance to eligible emancipated minors).

79. *See* William E. Dean, Note, Ireland v. Ireland: *Judicial Emancipation of Minors in Idaho: Protecting the Best Interests of the Child or Conferring a Windfall upon the Parent?*, 31 IDAHO L. REV. 205, 215 (1994).

80. *See generally* Randy Frances Kandel & Anne Griffiths, *Reconfiguring Personhood: From Ungovernability to Parent Adolescent Autonomy Conflict Actions*, 53

the minor is found to be a "habitual truant or is incorrigible, ungovernable, or habitually disobedient and beyond the lawful control of his or her parents, guardian or lawful custodian."[81] State statutes adopt intentionally vague standards under which a young person's actions, albeit lawful but which violate the parents' mores and expectations, may justify a court's determination that the youth should be in the custody of a social services department for placement and treatment in a foster home or other institution.[82] These actions can include engaging in sexual relationships over parents' objections, being truant from school, violating curfews, and general disobedience.[83]

Emancipated minors step into the shoes of their parents, exercising for themselves the authority that parents would normally exercise over them. Parents who successfully have a child adjudicated ungovernable allow the state, at least temporarily, to substitute its *parens patriae* power for parental control. Ungovernability actions illustrate the sort of authority parents are entitled to exercise over their children and with which children are expected to comply. Even if a child's actions stop short of criminal or delinquent behavior—such as general noncompliance with parents' wishes—the state may act to reinforce parental authority. Thus both emancipation and ungovernability actions help illustrate the scope of parental authority.

3. Contract Rights

On reaching the age of majority, individuals may disaffirm contracts entered during their minority.[84] The common law has for centuries provided minors this protection, known as the infancy defense or infancy doctrine.[85] The infancy doctrine has historically existed to protect young people from squandering their wealth or from falling prey to unscrupulous adults who would take advantage of their inexperience in the marketplace.[86] Disaffirmance does not generally

---

SYRACUSE L. REV. 995 (2003) (describing and critiquing the ungovernability action as a means of resolving parent-child conflict and proposing in its stead a form of civil action that prioritizes not only parental decision-making rights but also adolescent autonomy rights).

81. N.Y. FAM. CT. ACT § 732 (McKinney 2010).

82. Kandel & Griffiths, *supra* note 80, at 997.

83. *Id.*

84. 7 JOSEPH M. PERILLO, CORBIN ON CONTRACTS § 27.2 (rev. ed. 2002); 5 SAMUEL WILLISTON & RICHARD LORD, A TREATISE ON THE LAW OF CONTRACTS §§ 9:3-:5 (4th ed. 1993).

85. *See* 5 WILLISTON & LORD, *supra* note 84, § 9:2.

86. Larry A. DiMatteo, *Deconstructing the Myth of the "Infancy Law Doctrine": From Incapacity to Accountability*, 21 OHIO N.U. L. REV. 481, 481 n.3 (1995).

permit the rescinding individual to reap the benefit of the voided contract. Instead, each party generally must return to the other any consideration given.[87]

A 2009 federal statute, the Credit Card Accountability, Responsibility, and Disclosure Act (CARD Act), goes further than the infancy doctrine in providing protection to minors.[88] The CARD Act prohibits any contract for a credit card entered by an individual younger than twenty-one unless one of two exceptions apply: (1) an adult twenty-one years or older cosigns and accepts joint liability for any debt incurred pursuant to the contract; or (2) the individual demonstrates "independent means of repaying" any debt incurred.[89]

Common and statutory law have both created several exceptions to the infancy defense.[90] One of these exceptions prevents the later disaffirmance of contracts that provide minors the "necessaries of life."[91] Thus when minors purchase basic necessities, the exception aims to counteract one of the potential drawbacks of the infancy defense—merchants' unwillingness to conduct business with minors for fear of later disaffirmance.[92] Other statutorily created exceptions prohibit the disaffirmance of certain types of contracts where legislatures deemed finality and certainty to outweigh the right of disaffirmance.[93] These exceptions commonly include insurance contracts, child support agreements, and student loans.[94]

---

87. 7 PERILLO, *supra* note 84, § 27.6. The common law imposed no duty on the minor to return consideration or goods no longer in the minor's possession. Modern courts, however, have been more willing to require minors to make restitution to the adult contracting party in such circumstances. *Id.*

88. Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, § 301, 123 Stat. 1734, 1747-48 (codified at 15 U.S.C. § 1637(c) (2012)).

89. *Id.* For a critique of the CARD Act, see Andrew A. Schwartz, *Old Enough To Fight, Old Enough To Swipe: A Critique of the Infancy Rule in the Federal Credit CARD Act*, 2011 UTAH L. REV. 407. Schwartz argues that the Act's provisions "run[] badly afoul of th[e] broad societal consensus [that eighteen-year-olds are adults], roll[] back the clock to medieval times, and undermine[] the dignity of eighteen-year-olds." *Id.* at 408. He also argues that because the Act makes credit more difficult for young people to obtain, it stifles youthful entrepreneurship and thus deprives society of the potential benefits of these ventures. *Id.*

90. 7 PERILLO, *supra* note 84, § 27.8; 5 WILLISTON & LORD, *supra* note 84, § 9:18; DiMatteo, *supra* note 86, at 488-89.

91. Sources cited *supra* note 90.

92. Irving M. Mehler, *Infant Contractual Responsibility: A Time for Reappraisal and Realistic Adjustment?*, 11 U. KAN. L. REV. 361, 364-65 (1963).

93. DiMatteo, *supra* note 86, at 483 n.10.

94. 7 PERILLO, *supra* note 84, § 27.3; 5 WILLISTON & LORD, *supra* note 84, § 9:6; DiMatteo, *supra* note 86, at 513.

It is only once individuals enter adulthood that merchants may transact business with them without fear of disaffirmance. Yet the threat of disaffirmance does little to dissuade merchants or hinder minors from conducting business. Minors are instead active and significant participants in the marketplace, as both consumers and sellers. Market research into a single year of their economic activity estimated that minors spent nearly $190 billion in economic transactions and estimated their spending to increase to nearly $209 billion by 2011, despite a projected 3% decline in teen population.[95] Scholars observe that teens' spending power, particularly through increasing online spending in which they can participate in economic activity in virtual anonymity, gives minors "the potential to cause serious economic consequences to online businesses by disaffirming contracts in droves."[96] Yet there is scant evidence of any impending economic calamity.

While the right to contract is regularly touted as one of the rights of adulthood, it is in reality a right that is regularly exercised by minors. This regular involvement in market transactions arguably renders the right to contract an almost-irrelevant marker of the transition to adult status. Indeed, for decades, both scholars and jurists have been calling for the doctrine's overhaul or outright repeal.[97]

Critics of the infancy doctrine argue that adolescents have sufficient capacity to enter contracts to which they should be held. The doctrine may have the perverse effect of permitting market-savvy individuals to later disavow contracts that they were sufficiently capable to enter as minors.[98] More recently, commentators have pointed to the growing body of developmental research tending to confirm the cognitive capacity of adolescents to enter contracts.[99] To

95. Vahe Habeshian, *By 2011, Teen Market Shrinks, Spending Clout Soars to $200B*, MARKETINGPROFS (June 29, 2007), http://www.marketingprofs.com/opinions/2007/19516/by-2011-teen-market-shrinks-spending-clout-soars-to-200b; *Teen Market To Surpass $200 Billion by 2011, Despite Population Decline*, MARKETINGCHARTS (June 28, 2007), http://www.marketingcharts.com/traditional/teen-market-to-surpass-200-billion-by-2011-despite-population-decline-817/.

96. Cheryl B. Preston, *CyberInfants*, 39 PEPP. L. REV. 225, 268 (2012).

97. *See, e.g.*, Kiefer v. Fred Howe Motors, Inc., 158 N.W.2d 288, 290 (Wis. 1968) (acknowledging the defects of the infancy doctrine but suggesting that the legislature was the proper branch to alter the doctrine rather than the court); DiMatteo, *supra* note 86, at 518; Mehler, *supra* note 92, at 364.

98. DiMatteo, *supra* note 86, at 485.

99. *See, e.g.*, Michael Glassman & Donna Karno, *On Establishing a Housing Right of Contract for Homeless Youth in America*, 7 SEATTLE J. FOR SOC. JUST. 437, 453 (2009) ("The suggestion that youth under fifteen are not capable of understanding the social contract

the extent the infancy doctrine flies in the face of social reality, provides unneeded protection to (at least a subset of) minors, and contravenes the core moral underpinning of contract law itself—the keeping of promises—it is ripe for revision.[100]

4. The Right to Full Labor Market Participation

Federal and state laws impose restrictions on the types and hours of employment in which individuals younger than eighteen may engage. Federal law, through the Fair Labor Standards Act (FLSA), curtails the employment of individuals younger than sixteen, but it imposes relatively few restrictions on the employment of those aged sixteen and older.[101] The FLSA instead leaves sixteen- and seventeen-year-olds largely free to engage in paid employment in nonhazardous occupations.[102] Many states, however, have adopted measures that extend greater protections to older teens with the goal of preventing their paid work from interfering with their health or education. These measures generally impose limits on the number of hours sixteen- and seventeen-year-olds may work.[103] Once workers reach age eighteen, they are no longer subject to these special protections.

The provisions of the FLSA and other labor regulations that free individuals from restrictions on their employment upon reaching the age of majority roughly correspond with the completion of high school. As noted above and discussed more fully below, economic changes have made postsecondary education increasingly necessary to obtaining middle-class income. Due to increases in the costs of that education and parents' unwillingness or inability to provide ongoing financial support, more students today than in recent decades find it necessary to work either full- or part-time while enrolled in school.[104]

---

is not supported by developmental research . . . ."); Cunningham, *supra* note 54, at 292 (noting the absence of "effort to change the infancy doctrine despite criticism from academics and even courts [and] despite the . . . widespread agreement among psychologists that children's cognitive abilities develop at a far earlier age than originally thought").

100. *See* Cunningham, *supra* note 54, at 293-94; Hartman, *supra* note 19, at 1303-04.

101. 29 U.S.C. §§ 206-07, 212 (2012); 29 C.F.R. § 570.2(a) (2011). Federal regulations prohibit the employment of all individuals under eighteen in hazardous occupations. 29 C.F.R. § 570.2(a)(1)(ii); *see also* 29 C.F.R. § 570.50-.68 (listing hazardous occupations).

102. The Act imposes no work hour restrictions on individuals aged sixteen and over. 29 C.F.R. §§ 570.2(a)(1)(i), .35, .70(a).

103. *See, e.g.*, N.Y. LAB. LAW § 143 (McKinney 2016).

104. Anne H. Gauthier & Frank F. Furstenberg Jr., *Historical Trends in Patterns of Time Use Among Young Adults in Developed Countries*, *in* ON THE FRONTIER OF

It is regrettable that the difficulty of financing postsecondary education requires many students to combine work and school, increasing the length of time required to complete their educations and obtain desirable employment. Ameliorating this difficulty might entail any number of policy revisions. Those efforts arguably ought not occur, however, by way of revisions to existing labor protections.

5. The Right to Political and Civic Participation

With few exceptions, individuals acquire the rights and duties of political and civic participation at age eighteen. The national voting age is eighteen.[105] States have the authority to set the voting age lower, but the Twenty-Sixth Amendment prevents their setting it higher.[106] Some states permit seventeen-year-olds to vote in primary elections if they will turn eighteen by the general election, but no state has chosen to allow individuals younger than eighteen to vote.[107] There has been a global move to lower the voting age, as well as scattered efforts in several U.S. states and municipalities to do so.[108] To date, only one municipality—the city of Takoma Park, Maryland has enacted legislation lowering the voting age to sixteen for local elections.[109]

The national age for draft eligibility and voluntary enlistment in any of the branches of the military absent parental consent is eighteen.[110] Individuals who obtain parental consent may voluntarily enlist at seventeen.[111]

The age at which individuals become eligible to sit on federal juries is eighteen, lowered from twenty-one in 1972 by amendment to the federal Jury Selection and Service Act.[112] In the states, there is

---

ADULTHOOD: THEORY, RESEARCH, AND PUBLIC POLICY 150, 159 (Richard A. Settersten Jr. et al. eds., 2005).

105. *See* Hamilton, *Democratic Inclusion*, *supra* note 47, at 1448.

106. U.S. CONST. amend. XXVI, § 1 ("The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.").

107. *See 17-Year-Old Primary Voting*, FAIRVOTE, http://archive3.fairvote.org/reforms/universal-voter-registration/17-year-old-primary-voting-2/ (last visited Sept. 4, 2016).

108. *See* Hamilton, *Democratic Inclusion*, *supra* note 47, at 1465-74 (listing nations that have already lowered the voting age and those with pending efforts to do so).

109 Lindsay A. Powers, *Takoma Park Grants 16-Year-Olds Right to Vote*, WASH. POST (May 14, 2013), https://www.washingtonpost.com/local/takoma-park-grants-16-year-olds-right-to-vote/2013/05/14/b27c52c4-bccd-11e2-89c9-3be8095fe767_story.html.

110. 10 U.S.C. § 505(a) (2012).

111. *Id.*

112. Act of Apr. 6, 1972, Pub. L. No. 92-269, 86 Stat. 117 (amending 28 U.S.C. § 1865(b)(1) (1970)) (setting the age of eligibility to serve on federal grand or petit juries at twenty-one).

only slightly more variation in the age of jury eligibility, and these closely track the states' respective ages of majority.[113] Thus, the near universal age at which individuals become eligible for jury service is eighteen (in forty-six states and the District of Columbia);[114] the age for jury service eligibility is nineteen in two states[115] and twenty-one in two other states.[116]

Although individuals acquire most rights to civic and political participation upon reaching the age of majority, it is not unusual for governments to impose separate age requirements on holders of various state and federal offices. Both federal and state constitutional provisions require individuals to meet higher age requirements in order to qualify to hold certain offices.[117]

6. The Right to Medical and Procreative Choice

The authority to make medical decisions affecting minors presumptively rests with their parents.[118] Only upon reaching the age of majority are individuals categorically entitled to make their own medical decisions.[119] Minors may consent to treatment in some circumstances, including in cases of emergency, in cases involving reproductive health care (such as contraceptive services, prenatal care, and examination and treatment for sexual assault and sexually transmitted diseases), and in cases involving mental health care (which extends to outpatient substance abuse and mental health treatment).[120]

---

113. *Compare Termination of Support—Age of Majority*, *supra* note 51 (providing age of majority of individual states), *with* Roper v. Simmons, 543 U.S. 551 (2005) (giving jury qualification age for individual states).

114. *Roper*, 543 U.S. 551 app. (listing minimum age for jury service in forty-eight states and the District of Columbia); OR. REV. STAT. § 10.030(2)(c) (2009); 42 PA. CONS. STAT. § 4502 (2016).

115. ALA. CODE § 12-16-60(a)(1) (2016); NEB. REV. STAT. § 25-1601(1) (2015).

116. MISS. CODE ANN. § 13-5-1 (2016); MO. REV. STAT. § 494.425(1) (2015).

117. *See, e.g.*, U.S. CONST. art. I.

118. B. Jessie Hill, *Medical Decision Making by and on Behalf of Adolescents: Reconsidering First Principles*, 15 J. HEALTH CARE L. & POL'Y 37, 38 (2012); Kimberly M. Mutcherson, *Whose Body Is It Anyway? An Updated Model of Healthcare Decision-Making Rights for Adolescents*, 14 CORNELL J.L. & PUB. POL'Y 251, 259 (2005).

119. David M. Vukadinovich, *Minors' Rights To Consent to Treatment: Navigating the Complexity of State Laws*, 37 J. HEALTH L. 667, 667-68 (2004) ("While the law is clear with regard to the right of competent adults to consent to or refuse medical treatment, state statutes generally are more complicated when the patient is a minor.").

120. Rhonda Gay Hartman, *Coming of Age: Devising Legislation for Adolescent Medical Decision-Making*, 28 AM. J.L. & MED. 409, 416-27 (2002); Hill, *supra* note 118, at 42-43.

States may require minors to obtain parental consent prior to obtaining an abortion. But states must provide for an alternative bypass procedure where a neutral third-party must consent to the abortion upon finding either that (1) the minor is sufficiently mature and informed to make the decision independently or (2) an abortion would be in her best interests.[121] Generally, emancipated minors and minors determined on an individualized basis to possess adequate maturity (pursuant to what is known as the "mature minor" doctrine) may also make their own medical decisions.[122]

C. Exceptions to the Age of Majority

A survey of just a number of the legal exceptions to the presumptive age of majority, like the one that follows, leads to two conclusions about the age of majority itself. First, the proliferation of exceptions to it demonstrates that the age of majority insufficiently meets current social needs. That the exceptions alter legal consequences for individuals variously past the age of majority and those who have not yet attained it, moreover, suggests that perhaps *no* categorical age of majority can adequately meet social needs.

Second, the existence of exceptions that apply in specific legal contexts demonstrates that it is not unduly burdensome for lawmakers to engage in this sort of context-specific rulemaking. Stated differently, categorical rules like the age of majority serve useful purposes by eliminating uncertainty and advancing efficiency. Yet lawmaking that impacts young people has already begun to alter in order to better address, in comparison to the presumptive age of majority, the needs of society and capacities or incapacities of young people.

---

121. *See* Bellotti v. Baird, 443 U.S. 622, 647-48 (1979); Planned Parenthood of Cent. Mo. v. Danforth, 428 U.S. 52, 72-76 (1976). For a cogent analysis of these cases that concludes that they fail to meaningfully expand children's broader claims to constitutional rights, see Martin Guggenheim, *Minor Rights: The Adolescent Abortion Cases*, 30 HOFSTRA L. REV. 589 (2002).

122. Andrew Newman, *Adolescent Consent to Routine Medical and Surgical Treatment*, 22 J. LEGAL MED. 501, 504-08 (2001) (discussing and critiquing exceptions applied to emancipated and "mature" minors and arguing in favor of a bright-line rule allowing all individuals over age sixteen to make medical decisions).

1. Contract Rights, Labor Market Participation, and the Right to Medical and Procreative Choice (Redux)

Young people do not formally acquire the rights to contract, fully participate in the labor market, or independently make medical and procreative choices until reaching the age of legal majority. However, as previously discussed, exceptions to each of these rules allow minors to engage regularly in these activities prior to attaining majority.[123] In each of these contexts, the exceptions better describe the reality of young people's experiences—and the needs of society—than does the presumptive rule.

2. Giving Sexual Consent

Every state has established a minimum age at which individuals may consent to sex. Seven states have set the age of sexual consent at eighteen—the legal age of majority in those states. The remainder have set the age of consent below the age of majority.[124] The most common age adopted by states is sixteen, while four states have set the age of sexual consent at age fourteen.[125]

Although sexual consent laws on occasion lead to the criminal prosecution of teenagers who engage in consensual sex, states have generally revised their laws so that only individuals who are significantly older than the minor below the age of consent are subject to prosecution.[126] Historically, statutory rape laws aimed to protect women and restrict their sexual activity.[127] Today, the age of sexual consent and statutory rape laws that rely on the age differential between the victim and perpetrator reflect pragmatic responses to the prevalence of teenage sexual activity. Indeed, nearly half of all high school students surveyed in 2009 reported having engaged in sexual intercourse.[128]

---

123. *See* discussion *supra* subpart I.B.

124. *See* Jennifer Ann Drobac, *Sex and the Workplace: "Consenting" Adolescents and a Conflict of Laws*, 79 WASH. L. REV. 471, 486 (2004).

125. *Id.*; *see also* Todres, *supra* note 13, at 1139-41 (discussing state laws on age of consent).

126. Asaph Glosser et al., *Statutory Rape: A Guide to State Laws and Reporting Requirements*, DEPT. HEALTH & HUM. SERVICES, ES-1, 6 tbl.1, 6-8 (2004), http://aspe.hhs.gov/hsp/08/SR/StateLaws/report.pdf.

127. *See* Frances Olsen, *Statutory Rape: A Feminist Critique of Rights Analysis*, 63 TEX. L. REV. 387, 401-02 (1984).

128. Danice K. Eaton et al., *Youth Risk Behavior Surveillance—United States, 2009*, MORBIDITY & MORTALITY WKLY. REP., June 2010, at 98 tbl.61.

3. The Right To Drive

Although car crashes kill more teens than any other cause, the United States grants drivers' licenses earlier than any other nation in the developed world.[129] Every state issues licenses to individuals younger than eighteen, with most states setting the age of licensure at sixteen.[130] A few states set the driving age at fourteen or fifteen, and only one—New Jersey—has set it higher, at age seventeen.[131]

The youngest drivers crash at the highest rates. Crash rates are consistently highest among sixteen-year-olds and decline substantially with each year of increasing age.[132] Younger novice drivers have significantly higher crash rates than do older novices.[133] This evidence has led most states to adopt graduated licensing systems which permit novice drivers to gain experience but impose on them restrictions (e.g., passenger limits and night-time driving restrictions) aimed at reducing their exposure to hazardous driving contexts.[134]

4. The Right To Purchase, Possess, and Consume Alcohol

Congress conditioned states' receipt of federal highway funds on their imposing a drinking age of twenty-one.[135] In light of high rates of alcohol-related injuries and death, many states readily raised their drinking ages.[136] Some lawmakers argued against what they viewed as inconsistent and unfair treatment of young people eighteen and older. They reasoned that young people who were subject to the draft and permitted to enlist voluntarily in the armed services ought not be denied the adult right to consume alcohol.[137] While arguments against raising the drinking age above states' ages of majority failed, some

129. *See* Vivian E. Hamilton, *Liberty Without Capacity: Why States Should Ban Adolescent Driving*, 48 GA. L. REV. 1019 (2014) [hereinafter Hamilton, *Liberty Without Capacity*].

130. *Id.* at 1021.

131. *Id.* at 1034.

132. *Id.*

133. *Id.* at 1029-30.

134. *Id.* at 1031.

135. 23 U.S.C. § 158 (2012); South Dakota v. Dole, 483 U.S. 203 (1987) (upholding statute as a valid exercise of Congressional spending power).

136. Michael P. Rosenthal, *The Minimum Drinking Age for Young People: An Observation*, 92 DICK. L. REV. 649, 653-54 (1988).

137. *See* Cunningham, *supra* note 54, at 298 (discussing debate and defeat of bill sponsored by Wisconsin state legislator to lower the drinking age for service members to nineteen).

scholars have suggested that the psychological research on adolescent and emerging adult capacity supports lowering the drinking age.[138]

5. Continued Entitlement to Parental Support and Benefits

The Dependent Coverage Mandate of the ACA expanded the availability of health insurance for young adults by allowing those aged nineteen to twenty-six to remain covered as dependents under their parents' plans.[139] Minors have long received medical coverage through their parents' employer-provided health plans.[140] After age eighteen or graduating from college, however, minors were reclassified as adults and lost their dependent status, along with the derivative health benefits that attended it.[141] These young adults obtained health coverage only with difficulty, if at all.[142] One in three young adults aged nineteen to twenty-five had no health insurance in 2010.[143] The effect of the Dependent Coverage Mandate was dramatic, and parents rushed to add their adult children to their health plans.[144] By the end of 2011, parents had extended health insurance to 6.6 million young adults who had been ineligible for such coverage before the ACA's passage.[145]

---

138. *See id.* at 297.

139. Sara R. Collins et al., *Young, Uninsured, and in Debt: Why Young Adults Lack Health Insurance and How the Affordable Care Act Is Helping*, COMMONWEALTH FUND 2 (June 2012), http://www.commonwealthfund.org/~/media/Files/Publications/Issue%20Brief/2012/Jun/1604_collins_young_uninsured_in_debt_v4.pdf [hereinafter Collins et al., *Why Young Adults Lack Health Insurance*].

140. *Id.* at 3. Children who receive health coverage through Medicaid or the Children's Health Insurance Program are reclassified as adults on their nineteenth birthdays and, with the exceptions of pregnant women or parents of children with very low incomes, also lose their health coverage. *Id.* at 1.

141. *Id.* at 15 n.4.

142. Sara R. Collins et al., *Realizing Health Reform's Potential: How the Affordable Care Act Is Helping Young Adults Stay Covered*, COMMONWEALTH FUND 1 (May 2011), http://www.commonwealthfund.org/~/media/files/publications/issue-brief/2011/may/1508_collins_how_aca_is_helping_young_adults_reform_brief_v5_corrected.pdf [hereinafter Collins et al., *Realizing Health Reform's Potential*].

143. Robin A. Cohen & Michael E. Martinez, *Health Insurance Coverage: Early Release of Estimates from the National Health Interview Survey, January–March 2011*, CDC (Sept. 2011), http://www.cdc.gov/nchs/data/nhis/earlyrelease/insur201109.pdf (finding 33.9% of nineteen- to twenty-five-year-olds to be uninsured in 2010); Carmen DeNavas-Walt et al., *Income, Poverty, and Health Insurance Coverage in the United States: 2011*, U.S. CENSUS BUREAU (Sept. 2012), http://www.census.gov/prod/2012pubs/p60-243.pdf (finding 29.8% of nineteen- to twenty-five-year-olds to be uninsured in 2010).

144. Collins et al., *Realizing Health Reform's Potential*, *supra* note 142, at 1.

145. Cohen & Martinez, *supra* note 143; *see also* Yaa Akosa Antwi et al., *Effects of Federal Policy To Insure Young Adults: Evidence from the 2010 Affordable Care Act Dependent Coverage Mandate*, (Nat'l Bureau of Econ. Research, Working Paper No. 18200,

The Dependent Coverage Mandate extends to a wide swath of legal adults a benefit long associated with minor and dependent status. Its very title signals that this cohort of legal adults commonly remains reliant on others in significant respects. As such, they lack the independence that is one of the characteristic markers of adulthood, despite having formally attained that legal status.

III. ADULTHOOD DEINSTITUTIONALIZED

This Part discusses the nature of the transition to adulthood, which is not at all fixed nor definite.[146] It is instead variable, not only with respect to its timing (whether it occurs earlier or later in a young person's life), but also with respect to its substance (those characteristics whose attainment mark adult status). Put another way, changes over time alter the social context in which young people come of age, which in turn influences both the age at which they reach adult status and the manner by which they reach it.

Variations in social contexts have gone a long way toward shaping young people's transitions to and conceptions of adulthood. In the United States and other western countries, the transition to adulthood is both exceptionally unstructured and prolonged. This Part argues that the nature of the transition has contributed to a modern conception of adulthood itself as a status achieved only gradually and not dependent on the attainment of specific external events, such as marriage or the completion of education.[147] Part IV will discuss the policy implications of the historical developments discussed in this Part.

A. Structural Influences on the Transition to Adulthood

Historians of society have identified five significant events that have, for more than a century, marked the transition from minority to adulthood for most young Americans. These have been: (1) marrying; (2) leaving their parents' homes; (3) establishing

---

June 2012) (reporting on the health insurance and labor market implications of the recent Affordable Care Act).

146. Jeffrey Jensen Arnett, *Emerging Adulthood: Understanding the New Way of Coming of Age*, *in* EMERGING ADULTS IN AMERICA: COMING OF AGE IN THE 21ST CENTURY 3, 4 (Jeffrey Jensen Arnett & Jennifer Lynn Tanner eds., 2006) [hereinafter Arnett, *Understanding the New Way of Coming of Age*] ("The timing and meaning of . . . reaching full adult status [] is different today than it was 50 or 100 years ago . . . .").

147. Jeffrey Jensen Arnett, *Suffering, Selfish, Slackers? Myths and Reality About Emerging Adults*, 36 J. YOUTH & ADOLESCENCE 23, 25 (2007); *see also infra* subpart III.B (discussing the socio-cultural conceptions of modern adulthood).

households of their own; (4) completing their educations or leaving school; and (5) entering the workforce.[148] While a minority of the young population has always taken other paths to adulthood (e.g., never marrying or remaining resident with their parents), the dominance of this five-part pathway to adulthood has made it the modern "bedrock of social organization," channeling most Americans onto "paths to a narrowly conceived adulthood."[149]

Most young Americans thus experienced each of the five transition events along the course to adulthood. The timing of the events and the order in which they have tended to occur, however, have varied in important ways over time.[150] A whole range of interrelated social contexts have influenced these variations, with structural changes having particular salience for young people coming of age in the twentieth and early twenty-first centuries. Scholars now characterize the transition to adulthood during this period of roughly one hundred years, not as a continuous evolution or trend, but as separable into three discrete but related eras.

The first era spans 1900 to 1950. During this period, young people both discontinued their educations and entered the workforce at early ages—in their teen years.[151] Although employed full-time, they nonetheless tended to remain in their parents' households, delaying marriage. Because the wages earned by young people were relatively low, full-time employment generally provided insufficient income to enable them immediately to set up independent households.[152] Instead, young people continued to rely on the financial and residential security of their parents' households for a number of years following their entry into the paid workforce.[153] Parents, in turn, relied on their children's labor and earnings, their own economic instability due largely to across-the-board job insecurity and the exclusion of married women from the workplace.[154]

The socio-economic context of this first period of the twentieth century contributed to an extended period of intergenerational interdependence. Young people did not complete the five-part

148. John Modell et al., *Social Change and Transitions to Adulthood in Historical Perspective*, 1 J. FAM. HIST. 7 (1976).

149. Jordan Stanger-Ross et al., *Falling Far from the Tree: Transitions to Adulthood and the Social History of Twentieth-Century America*, 29 SOC. SCI. HIST. 625, 626 (2005).

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.* at 638.

154. *Id.*

transition to adulthood—which would include moving from their parents' households into their own and marrying—until relatively late in life.[155]

The nature of young people's transition to adulthood changed during a distinct second era, extending from approximately 1950 into the 1970s. Significant changes in the institutional and economic context that characterized this period prompted equally significant changes in the transition to adulthood. Wartime and postwar industrialization and the introduction of government social programs together contributed to a period of unprecedented economic prosperity in the decades that followed.[156]

Government programs introduced during this era included Social Security and old-age pensions, which lessened older Americans' reliance on their children's wages.[157] New Deal programs guaranteeing private investments facilitated individual and family saving. Other programs underwrote and made loans to homeowners, making home ownership more readily available to younger buyers.[158]

The military needs brought on by the nation's involvement in World War II provided abundant job opportunities for service members themselves and for those away from the battlefields whose labor was needed to support the war effort.[159] Manufacturing accelerated during the war, and postwar industrialization ushered in an era of unprecedented economic opportunity.[160] Jobs in manufacturing generally required neither formal education nor high levels of skill, encouraging young people to enter the workforce at younger ages. Only one in three adults took the time to complete high school during this period, and one in sixteen completed college.[161] Industries' need for laborers in the postwar economy nonetheless led to continued job opportunities and increasing wages, particularly for young men.[162]

Three factors in particular contributed to young people's leaving their parents' homes and marrying at ages younger than at any time in

155. *Id.* at 626.
156. *Id.* at 640.
157. *Id.* at 639.
158. *Id.*
159. *Id.*
160. Catherine A. Fitch & Steven Ruggles, *Historical Trends in Marriage Formation: The United States 1850-1990*, *in* THE TIES THAT BIND: PERSPECTIVES ON MARRIAGE AND COHABITATION 59, 65 (Linda J. Waite et al. eds., 2000).
161. *Percent of People 25 Years and Over Who Have Completed High School or College, by Race, Hispanic Origin and Sex: Selected Years 1940 to 2004*, U.S. CENSUS BUREAU, tbl.A-2 (Mar. 2005), www.census.gov/population/socdemo/education/tabA-2.pdf.
162. Stanger-Ross et al., *supra* note 149, at 640.

the nation's history: (1) their ability to earn high wages at young ages; (2) the implementation of government programs that supported homeownership; and (3) government-provided support for higher education, particularly for former service members.[163]

This midcentury era of early and rapid transition to adulthood and family life where men's labor paid them a wage sufficient to support a family represented an historical aberration, not a new norm.[164] Nonetheless, just as the "single-earner, breadwinner-homemaker marriage" of the 1950s became entrenched in the collective memory as the "traditional" family,[165] it is possible that shifts in the timing of these transitions that occurred during this period became entrenched as the normative transition to adulthood. If so, adoption of this conception, in which young people became capable of establishing households, marrying, and gaining financial independence by their late teens, may help explain the readiness with which Americans accepted the across-the-board lowering of the legal age of majority that occurred shortly after this historical period.

The third era, which continues today, began in the 1970s. By the end of that decade, the decline of industry made low-skilled manufacturing jobs scarce. Moreover, well-paying jobs in what was becoming a service- and technology-based postindustrial economy increasingly required higher levels of formal education.[166] College enrollment increased in the immediate aftermath of the Great Recession, which led to more young adults remaining in (or returning to) their parents' households.[167] Employment and relative earning for young men declined, with wages in particular falling significantly from 2000 to 2010.[168]

Many of the jobs in the modern economy pay less than the manufacturing jobs of the twentieth century.[169] The best of these jobs also require higher education.[170] According to one report, two-thirds

163. *Id.* at 640-41; Michael R. Haines, *Long Term Marriage Patterns in the United States from Colonial Times to the Present* 35-36 (Nat'l Bureau of Econ. Research, Historical Paper No. 80, 1996).

164. Stanger-Ross et al., *supra* note 149, at 627.

165. Andrew J. Cherlin, *The Deinstitutionalization of American Marriage*, 66 J. MARRIAGE & FAM. 848, 851 (2004).

166. Stanger-Ross et al., *supra* note 149, at 642-43.

167. Fry, *supra* note 10, at 6.

168. *Id.*

169. JEFFREY JENSEN ARNETT, EMERGING ADULTHOOD: THE WINDING ROAD FROM THE LATE TEENS THROUGH THE TWENTIES 145 (2004) [hereinafter ARNETT, THE WINDING ROAD].

170. *Id.*

of high-growth, high-wage jobs require employees to have a college degree.[171]

Individuals thus began spending more years gaining higher levels of education and participating in the workforce, both to finance their educations and to build financial resources for their future needs.[172] While engaged in these activities, they delayed marriage and forming households of their own. Instead, they tended to spend this protracted period of the transition to adulthood in relative autonomy, despite often spending part of the period living in the parents' households.[173] Young people today thus take longer to complete the five-part transition to adulthood than they did in the past, undertaking each traditional transition event at a later age than in previous decades.[174]

Viewing the "dramatic shifts" in the path to adulthood in the historical context in which they transpired helps "serve to undermine a normative understanding of the transition to adulthood and to point, instead, to its deeply historical dynamics."[175] Young people's conceptions of the transition to adulthood, examined in the following subpart, emphasize the variable aspects of the pathway to adulthood and the variable meaning of adulthood itself.

B. Socio-Cultural Conceptions of Modern Adulthood

Psychologist Jeffrey Arnett conducted a series of studies across the United States to identify contemporary conceptions of adulthood among young people themselves.[176] The studies found that their conceptions depart radically from the traditional conception of the transition to adulthood.

Young people rarely list any of the five transition events (i.e., marrying, leaving parents' homes, establishing independent households, completing educations or leaving school, and entering the workforce) that have long defined the attainment of adult status.

171. John M. Bridgeland et al., *Raising the Compulsory School Attendance Age: The Case for Reform*, CIVIC ENTERPRISES (2007), http://files.eric.ed.gov/fulltext/ED503356.pdf.

172. Stanger-Ross et al., *supra* note 149, at 643. Andrew Cherlin characterized the 1950s, during which individuals married young and families could live comfortably on the wages of one spouse, as "the most unusual time for family life in the past century." ANDREW J. CHERLIN, THE MARRIAGE-GO-ROUND: THE STATE OF MARRIAGE AND THE FAMILY IN AMERICA TODAY 6 (2009).

173. Stanger-Ross et al., *supra* note 149, at 643-44.

174. *Id.* at 645.

175. *Id.*

176. ARNETT, THE WINDING ROAD, *supra* note 169, at 14-15; Arnett, *Understanding the New Way of Coming of Age*, *supra* note 146, at 12.

Instead, researchers have consistently found that individuals perceive the most significant markers of adulthood to be: (1) accepting responsibility for oneself; (2) making independent decisions; and (3) attaining financial independence.[177]

For the young people who participated in the studies, accepting responsibility for oneself connotes shouldering the responsibilities previously assumed by parents rather than expecting parents to deal with the consequences of one's actions.[178] Independent decision making to them connotes making important life decisions oneself, outside the influence of one's parents.[179] And to be financially independent means no longer relying on one's parents to pay one's bills.[180]

Researchers in other industrialized countries have conducted similar studies, and results have been remarkably uniform across regions as well as across ethnic and socio-economic groups.[181] These results hold even in regions with culturally or religiously significant coming-of-age milestones.[182] In the Jewish tradition, for example, the bar mitzvah has long marked the adolescent boy's transition to adulthood and his assumption of the religious obligations of adult Jewish males.[183] Similarly, in Latin cultures, the quinceañera celebration marks the adolescent girl's transition to adulthood.[184] Yet studies conducted in Israel and Argentina, where each ceremony is celebrated almost universally, revealed that while these ceremonial milestones might be significant cultural and religious events, they are not significant markers of adulthood.[185] Instead, individuals in these cultures, as in other industrialized regions where researchers conducted similar studies, view the three responsibility- and independence-related criteria as the more meaningful markers of adult status.[186]

---

177. *See* sources cited *supra* note 176.

178. ARNETT, THE WINDING ROAD, *supra* note 169, at 48.

179. *Id.*

180. *Id.*

181. Arnett, *Understanding the New Way of Coming of Age*, *supra* note 146, at 12.

182. *See* Todres, *supra* note 13, at 1148-49 (describing coming-of-age ceremonies across several cultural traditions).

183. *Id.*

184. *Id.*

185. Alicia Facio & Fabiana Micocci, *Emerging Adulthood in Argentina*, *in* EXPLORING CULTURAL CONCEPTIONS OF THE TRANSITION TO ADULTHOOD 21, 30 (Jeffrey Jensen Arnett & Nancy L. Galambos eds., 2003); Ofra Mayseless & Miri Scharf, *What Does It Mean to Be an Adult?: The Israeli Experience*, *in supra*, at 5, 15-16.

186. *See* sources cited *supra* note 185; *see also* Larry J. Nelson et al., *The Influence of Culture in Emerging Adulthood: Perspectives of Chinese College Students*, 28 INT'L. J. OF

These findings also point to what appears to be a fundamental historical shift in two respects. First, in cultures across the globe, and for most of American history, marriage has been the singular event marking the attainment of full adult status.[187] Marriage continues to be an important social institution in the United States, but individuals no longer rank marriage as necessary, or even important, in making the transition to adulthood. It is losing—or has perhaps already lost—its historical primacy as a marker of adult status.[188]

Second, as Arnett explains, individuals achieve each of the three markers gradually rather than experiencing them as the transition events previously discussed—in other words, as "milestones that take place at a specific time and that a person clearly either has or has not reached," such as getting married or completing education.[189] This absence of readily identifiable markers may contribute to what young people who have attained the age of legal majority consistently report with respect to their status: Despite having formally reached legal adult status, young people in the process of developing what they perceive to be the markers of adulthood report that they do not consider themselves adults. Instead, they feel as though they occupy a status somewhere between adolescence and full adulthood.[190]

Arnett has termed this in-between period "emerging adulthood," which he characterizes as a distinct developmental period spanning approximately ages eighteen to twenty-five.[191] He emphasizes that it is a status largely experienced by young people in wealthier, developed nations rather than a universal stage of development. Nonetheless, his theory of emerging adulthood finds additional empirical support in the developmental sciences. The following subpart turns to the developmental aspects of the transition to adulthood.

BEHAV. DEV. 26 (2004) (finding that most Chinese college students feel that adulthood is indicated by successful acceptance of responsibilities rather than traditional markers of transition such as marriage).

187. Anthropologists and historians of American society both identify marriage as having long served this social function. *See, e.g.*, JOSEPH F. KETT, RITES OF PASSAGE: ADOLESCENCE IN AMERICA 1790 TO THE PRESENT 247 (1977); ALICE SCHLEGEL & HERBERT BARRY III, ADOLESCENCE: AN ANTHROPOLOGICAL INQUIRY 92-93 (1991).

188. ARNETT, THE WINDING ROAD, *supra* note 169, at 208.

189. Arnett, *Understanding the New Way of Coming of Age*, *supra* note 146, at 12.

190. *Id.*

191. Jeffrey Jensen Arnett, *Emerging Adulthood: A Theory of Development from the Late Teens Through the Twenties*, 55 AM. PSYCHOLOGIST 469, 469 (2000).

C. Cognitive and Socio-Emotional Development from Adolescence Through Emerging and Early Adulthood

The state's use of a categorical age of majority represents a rough judgment about the development of maturity and competence.[192] This subpart briefly surveys aspects of individual development that may bear on our understanding of that development and the course of young people's attainment of various capabilities. It begins with the development of general cognitive capacity over the course of adolescence, defined by researchers as the developmental period (rather than a period defined strictly by chronological age) following childhood and spanning approximately ages twelve to seventeen.[193]

General cognitive capacity includes the abilities to understand and logically reason from facts, process information, and assess the nature of a given situation.[194] These basic cognitive abilities improve more or less linearly throughout childhood and reach mature levels by midadolescence—approximately age sixteen.[195] Researchers have concluded that the reasoning and basic information-processing capacities of the typical sixteen-year-old are "essentially indistinguishable" from those of adults.[196]

However, not all cognitive processes mature by midadolescence. Some processes, including certain aspects of working memory, continue to specialize and develop into adulthood, maturing only in the early twenties.[197] Working memory is involved in a number of complex mental abilities, including the ability to filter irrelevant information and suppress inappropriate actions.[198]

Studies have confirmed adolescents' competence to make rational decisions, but the contexts in which adolescents make decisions can drastically affect the quality of their decision making.[199]

---

192. Scott, *supra* note 2, at 559-60.

193. Charles Geier & Beatriz Luna, *The Maturation of Incentive Processing and Cognitive Control*, 93 PHARMACOLOGY, BIOCHEMISTRY & BEHAV. 212, 212 (2009).

194. Laurence Steinberg et al., *Are Adolescents Less Mature Than Adults?: Minors' Access to Abortion, the Juvenile Death Penalty, and the Alleged APA "Flip-Flop,"* 64 AM. PSYCHOLOGIST 583, 590-92 (2009) [hereinafter Steinberg et al., *Less Mature Than Adults?*].

195. *Id.*; Laurence Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, 28 DEVELOPMENTAL REV. 78, 80 (2008) [hereinafter Steinberg, *Adolescent Risk-Taking*].

196. Steinberg et al., *Less Mature Than Adults?*, *supra* note 194, at 592.

197. Beatriz Luna et al., *What Has fMRI Told Us About the Development of Cognitive Control Through Adolescence?*, 72 BRAIN & COGNITION 101, 105 (2010).

198. *Id.* at 101.

199. Margo Gardner & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental*

When adolescents make decisions in contexts involving stressors that require them to exercise psychosocial maturity and regulatory competence—for example, "[i]n the heat of passion, . . . on the spur of the moment, in unfamiliar situations, . . . and when behavioral inhibition is required"—their decision making suffers.[200] Researchers have come to refer to this phenomenon as the "competence-performance distinction."[201]

Researchers have also found adolescents to be as "knowledgeable, logical, reality-based, and accurate in the ways in which they think about risky activity . . . as their elders."[202] When making decisions about risk, adolescents' decision-making process does differ in significant respects from that of adults. Compared to adults, for example, adolescents tend to weigh and value benefits more heavily than they do risks.[203] This tendency alone, though, seems inadequate to explain what are typical characteristics of adolescent behavior—impulsivity, risk taking, and sensation seeking.[204]

Developmental neuroscientists, aided by technological developments over the last decade that allow them to observe the brain as it performs different tasks, now posit that the development of neural systems along different timelines can help explain adolescent risk taking and poor decision making despite adolescents' apparent cognitive abilities, as well as other aspects of adolescent behavior.[205]

The first neural system, referred to as the *socio-emotional* system, involves social-information-processing and reward seeking and processing.[206] Activity in neural reward systems peaks rapidly

---

Study, 41 DEVELOPMENTAL PSYCHOL. 625, 625 (2005); Valerie F. Reyna & Frank Farley, *Risk and Rationality in Adolescent Decision Making: Implications for Theory, Practice, and Public Policy*, 7 PSYCHOL. SCI. PUB. INT. 1, 2, 11 (2006); Steinberg, *Adolescent Risk-Taking*, *supra* note 195.

200. Reyna & Farley, *supra* note 199, at 12.

201. Jennifer L. Woolard et al., *Theoretical and Methodological Issues in Studying Children's Capacities in Legal Contexts*, 20 L. & HUM. BEHAV. 219, 220 (1996).

202. Steinberg, *Adolescent Risk-Taking*, *supra* note 195.

203. *See* Fischhoff, *supra* note 22, at 19-20; Geier & Luna, *supra* note 193, at 213.

204. Sara B. Johnson et al., *Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy*, 45 J. ADOLESCENT HEALTH 216, 218 (2009); Steinberg, *Adolescent Risk-Taking, supra* note 195, at 79.

205. Stephanie Burnett et al., *The Social Brain in Adolescence: Evidence from Functional Magnetic Resonance Imaging and Behavioural Studies*, 35 NEUROSCIENCE & BIOBEHAVIORAL REVIEWS 1654, 1660 (2011); B.J. Casey et al., *The Adolescent Brain*, 1124 ANNALS N.Y. ACAD. SCI. 111, 111-15 (2008).

206. Geier & Luna, *supra* note 193, at 216-17; *see* Steinberg, *Adolescent Risk-Taking*, *supra* note 195, at 83. The socio-emotional system includes "the amygdala, nucleus accumbens, orbitofrontal cortex, medial prefrontal cortex, and superior temporal sulcus." *Id.*

around the time of pubertal maturation (in early adolescence) and then declines.[207] It is this peak in activity, neuroscientists believe, that leads to heightened reward salience—that is, adolescents experience rewarding stimuli as even more rewarding than during either childhood or adulthood. This helps explain adolescent sensation-seeking behaviors in which they seek out new and highly stimulating experiences and willingly taking risks in order to attain them.[208]

The system referred to as the *cognitive control* system, involving abilities to intentionally coordinate and engage in goal-directed behavior, follows a different developmental trajectory. Its development is more gradual and linear than that of the socio-emotional system.[209] Along with other structural changes in the brain, this developmental trajectory correlates with the steady improvement of basic cognitive processes into adolescence, with the maturation of basic cognitive processes largely complete by midadolescence.[210]

In sum, adolescents' basic cognitive abilities mature by age sixteen and give them the capacity to learn, process information, reason, and make rational decisions. Self-regulatory capacities continue to develop, however, making adolescents susceptible to the confounding influence of their heightened sensitivity to reward.[211] This heightened sensitivity, which peaks around midadolescence, inclines adolescents towards sensation seeking, risk taking, and impulsivity.[212] Self-regulatory immaturity can dominate or overwhelm

---

207. Geier & Luna, *supra* note 193, at 216-17. For a technical discussion of this aspect of brain development, see CHARLES A. NELSON ET AL., NEUROSCIENCE OF COGNITIVE DEVELOPMENT: THE ROLE OF EXPERIENCE AND THE DEVELOPING BRAIN 24 (2006).

208. Steinberg, *Adolescent Risk-Taking*, *supra* note 195, at 85.

209. *Id.* at 93. For technical discussions of these developmental processes, see Nitin Gogtay & Paul M. Thompson, *Mapping Gray Matter Development: Implications for Typical Development and Vulnerability to Psychopathology*, 72 BRAIN & COGNITION 6, 7 (2010); Tomáš Paus, *Mapping Brain Maturation and Cognitive Development During Adolescence*, 9 TRENDS COGNITIVE SCI. 60, 62 (2005); and Arthur W. Toga et al., *Mapping Brain Maturation*, 29 TRENDS NEUROSCIENCES 148, 149-50 (2006).

210. Luna et al., *supra* note 197, at 101; Steinberg, *Adolescent Risk-Taking*, *supra* note 195, at 93-94. The system includes the prefrontal cortex (involved in executive, decision-making, and self-regulatory functions), "association" areas (which connect different regions of the brain and support the complex integration of functions), and parts of the corpus callosum (which connects the left and right hemispheres of the brain). Beatriz Luna, *Developmental Changes in Cognitive Control Through Adolescence*, *in* ADVANCES IN CHILD DEVELOPMENT AND BEHAVIOR 233, 240 (Patricia Bauer ed., 2009); Luna et al., *supra* note 197, at 101; Steinberg, *Adolescent Risk-Taking*, *supra* note 195, at 93-94.

211. Steinberg, *Adolescent Risk-Taking*, *supra* note 195, at 83.

212. *Id.* at 89.

cognitive processes and drive adolescent behaviors, particularly in high-pressure contexts and those triggering heightened emotion.[213]

Brain development continues well into the mid-twenties. Advanced cognitive capacities, including higher-order and executive functions such as strategic planning, continue to improve linearly through late adolescence and early adulthood.[214] These improvements correlate with structural changes that increase connections within and between different regions of the brain.[215]

Improved coordination of affect (the external expression of emotions) and cognition correlates with increased connectivity between regions of the brain involved in social and emotional information processing and those involved in cognitive processes.[216] Thus emotional regulation and impulse control both improve through adolescence and into the mid-twenties. The continuation of developmental processes into the postadolescent period provides some neurobiological support that buttresses the behavioral case for categorizing "emerging adulthood" as a distinct period of development.[217]

IV. DISMANTLING THE CATEGORICAL AGE OF MAJORITY

Part II demonstrated that the categorical age of majority fails to comport with the legal reality created by a host of rules whose adoption has imposed a growing number of exceptions to its presumptive operation. Part III demonstrated that young people's transition to adulthood, subjective construction of the transition to adulthood, and individual developmental processes all contemplate a gradual and prolonged process comprising the acquisition of general capabilities—not the achievement of externally constructed events. These capabilities, moreover, vary across contexts. Thus young people tend to attain the capacity for financial independence relatively late in life but attain the capacity for making informed and rational decisions about their own medical care relatively early in life.

Informed by the preceding Parts, this Part contends that the exceptions to the presumptive age of majority better address the needs

213. Luna, *supra* note 210, at 257; Steinberg, *Adolescent Risk-Taking*, *supra* note 195, at 96-98.

214. Steinberg, *Adolescent Risk-Taking*, *supra* note 195, at 94-96. These include response inhibition, planning, and spatial working memory. *Id.*

215. *Id.*

216. *Id.*

217. JEFFREY JENSEN ARNETT, ADOLESCENCE AND EMERGING ADULTHOOD: A CULTURAL APPROACH 14 (5th ed. 2013).

of society and young people alike. It argues for the explicit adoption of a "rule comprising exceptions"—in other words, for the abandonment altogether of the presumptive age of legal majority in favor of context-specific rules. The state's commitment to individual liberty supports such an approach because it extends to individuals those rights which they have attained the capacity to exercise.

This Part also argues that other commitments, namely commitments to community, mitigate against the retention of adulthood as a categorical legal status. Finally, it provides guidance to lawmakers seeking to assess capacity in certain contexts, offering insights from behavioral decision research, and proposes the adoption of a number of policy measures consistent with the policymaking approach advanced here. The subparts that follow elaborate these arguments.

A. Context-Specific Competence

Young people reliably attain different capabilities at distinct stages of development.[218] Accordingly, across a range of policymaking contexts, a categorical rule will fail to take account either of context-specific capacities or of ongoing deficiencies. This subpart first argues that the core commitments of the liberal democratic state require it to account for context-specific capabilities.[219] It next argues that the state's commitment to community (in tension with individual liberty but important nonetheless) provides further support for jettisoning adulthood as status.

1. Individual Competence and Core Commitments of the Liberal Democratic State

Individual liberty is the core value of the liberal constitutional democratic state, and safeguarding its citizens' liberty is therefore the state's primary end.[220] The minimum entitlement of all citizens is the basic liberty to decide one's life course for oneself, and it is the state's

218. *See* discussion *supra* subpart III.C.

219. Behavioral scientists have posited one definition of context as "a culturally defined situation that (a) occurs in a particular time and place and (b) contains actors who perform culturally defined roles." James P. Byrnes, *The Development of Self-Regulated Decision Making*, *in* THE DEVELOPMENT OF JUDGMENT AND DECISION MAKING IN CHILDREN AND ADOLESCENTS 5, 7 (Janis E. Jacobs & Paul A. Klaczynski eds., 2005).

220. I elaborate these arguments and settle on a version of liberty embraced by certain liberal theorists in Vivian E. Hamilton, *Immature Citizens and the State*, 2010 BYU L. REV. 1055, 1068-74 [hereinafter Hamilton, *Immature Citizens*].

duty to guarantee it.[221] Those individuals whose capabilities in some respect remain immature have two basic categories of interests that the state should take account of in its decision making: welfare interests and autonomy interests.[222] Their welfare interests pertain to their well-being, irrespective of any affirmative choice they make, including an interest in being protected from their own deficiencies. Their autonomy-related interests pertain to their exercising those specific liberties of which they are capable.[223]

Simply put, lawmakers should work to become more cognizant of and responsive to young people's capacities and extend to them age- and context-specific liberties to make the self-regarding decisions of which they are capable.[224] This decision-making process can indeed be a complex one, although the developmental and behavioral sciences can (and ought to) supplement the more traditional policymaking considerations. The following subpart briefly discusses the assessment of context-specific capacity—a task which necessarily retains some level of imprecision.

Respected scholars, including Professor Elizabeth Scott, have argued against abandoning the age of majority as a categorical rule.[225] Scott reasons that, although like all categorical rules it includes some level of imprecision, the age of majority serves society's purposes relatively well by advancing the goals of certainty and administrative efficiency.[226] Moreover, to the extent it underestimates young persons' capacities in certain legal contexts (such as the minors' competence to execute contracts) and delays their ability to exercise certain rights, the harms are generally slight, and temporary.[227]

Although I agree with Scott's identification of the costs and benefits of the categorical rule, I would weigh them differently. Existing law, rife with exceptions to the age of majority, demonstrates

---

221. *Id.* at 1074.

222. *Id.* at 1095.

223. *Id.*

224. *Id.* at 1128. For a discussion of children's status as rights holders separate from their possessing any specific capacity, see JAMES G. DWYER, THE RELATIONSHIP RIGHTS OF CHILDREN 291-307 (2006).

225. *See* Scott, *supra* note 2 (arguing in favor of recognizing the legal status of adolescence in the juvenile justice context but retaining the presumptive age of majority in other contexts where it currently applies).

226. *See, e.g.*, *id.* at 560 ("The use of a [categorical age of majority] to designate the end of childhood ignores individual variations in developmental maturity as well as varying maturity demands across the range of legal rights and responsibilities. Nonetheless, it generally functions quite well.").

227. *Id.*

that context-specific decision-making poses no undue burden on lawmakers. The argument that failure to extend liberties despite individual capacity imposes minimal harm elides the primacy of the state's obligation to individual liberty. Where capacity exists, the justification for denying that liberty (or vesting it in a parent or guardian) disappears. Further, with respect to certain rights, delay itself can constitute denial. For example, the sixteen-year-old who would refuse surgery to correct a nonfatal congenital defect will be denied the right to do so if her parents consent to the procedure. For the young patient, acquiring the right to make her own medical decisions after reaching majority provides no relief from the earlier denial of that right.

2. Adult Status, Autonomy, and Relationship

As discussed above, young people in today's developed nations identify as markers of adulthood: (1) accepting responsibility for oneself; (2) making independent decisions; and (3) attaining financial independence.[228] At one level, this construction of adulthood is altogether unobjectionable. Most parents, after all, work to raise their children to be responsible, financially independent adults.

At another level, this conception of adulthood is deeply troubling. Conspicuously absent from it are notions of obligation to community or family, or indeed any recognition of the role of ongoing connection and interdependence.[229] The current conception of adulthood instead emphasizes as normative the attainment of individual autonomy and independence. The absence of notions of community is particularly notable in light of the growing importance of ongoing familial support to young people coming of age today.

As discussed above, contemporary young people travel a prolonged path to independence, particularly financial independence. Many young people continue to be at least partially dependent on and tied to their natal families well past the legal age of adulthood.[230] In 2014 more adults aged eighteen to thirty-four lived with parents than

228. *See* discussion *supra* subpart III.B.

229. Feminists have drawn attention to the ways in which notions of autonomy and individuality have operated to reinforce traditionally hierarchical relationships and minimized relationships and interdependencies. *See, e.g.*, MARTHA ALBERTSON FINEMAN, THE AUTONOMY MYTH: A THEORY OF DEPENDENCY (2004); Katherine Hunt Federle, *On the Road to Reconceiving Rights for Children: A Postfeminist Analysis of the Capacity Principle*, 42 DEPAUL L. REV. 983, 1017-19 (1993).

230. *See, e.g.*, Stanger-Ross et al., *supra* note 149, at 643-44.

with a spouse or partner in their own household, and the trend continues to increase.[231]

To the extent it expresses a societal expectation or norm of across-the-board independence (decisional, financial, etc.), the current conception of adulthood is out of step with the experiences of today's young people. To the extent that the law conveys a normative expectation that they are adults and thus ought to possess adult characteristics, their inability to have done so by the legally prescribed age may be both experienced and perceived as failure.

Not attaining the characteristics of adulthood by the legal age of majority, however, merely reflects the particular social context—including the economic context—in which they are coming of age.

The state's affirmative duty to take action for the purpose of expressing the importance of connection and interdependence is arguably quite limited. But doing so presents lawmakers with what seems a rare opportunity to advance individual liberty (by rejecting the categorical rule in favor of rules more tailored to individual capacities) while also expressing the importance of relationships and community.

B. Assessing Capacity: Lessons from Existing Law and Science

Categorical rules like an age of legal majority advance goals of administrative efficiency and certainty.[232] The existence of a categorical rule spares the decision maker in a given case the task of making burdensome (and likely unreliable) individualized assessments of capacity. Yet as argued above, lawmakers in the liberal state have a duty to assess the capacities of immature citizens in legal contexts.[233]

In any given context, the interplay of various factors will influence capacity. It is possible to characterize age-related capacity as a function of: (1) patterns of cognitive and socio-emotional development; (2) the nature of the capacity being exercised (e.g., characteristics of the task to be performed or the decision to be made); (3) the context in which the capacity will be exercised; and (4) the broader social, cultural, and economic milieu.

The interrelationship of factors in these categories shapes in predictable ways the typical individual's capacity, for example, to

231. *See* Fry, *supra* note 10.
232. Scott, *supra* note 2, at 560.
233. Hamilton, *Immature Citizens*, *supra* note 220, at 1095.

make a decision in a certain context or perform a given task. Identifying and accounting for the relevant aspects of these influences on the exercise of capacity can significantly improve policymakers' predictive power.

What, if anything, can brain science contribute to lawmaking or policymaking? It is now well known that the developmental sciences have shed light on aspects of child and adolescent behavior that has important policymaking implications.[234] The most widely touted of these has been lawmaking in the area of juvenile justice.[235] Casual observation can—and has—led to erroneous generalizations about behavior. These mistaken generalizations in turn have led to misguided policymaking. For example, adolescent impulsivity and susceptibility to peer pressure in certain situations have led to the conclusion that they lack the capacity to make reliably mature voting decisions in elections or medical decisions in a doctor's office.[236] Conversely, adolescents' ability to learn the mechanics of motor vehicle operation has led to the conclusion that they have the capacity to operate them competently.[237] Both conclusions are wrong, and insights from the psychological and neurological sciences help explain why.

C. Reconciling Law, Culture, and Capacity: An Example

One of the central tensions between social and legal adulthood is that individuals are likely to attain fundamental decision-making capacities before they can realistically attain financial stability and self-sufficiency.[238] Yet a near universal consequence of reaching the age of majority is distentitlement to parental support. Indeed, for many young people approaching the age of majority, perhaps one of the most significant changes attending their new status (especially,

234. *See* Laurence Steinberg, *Should the Science of Adolescent Brain Development Inform Public Policy?*, 64 AM. PSYCHOLOGIST 739, 740 (2009) ("[W]e know a good deal about brain development during adolescence that usefully informs policy discussions . . . ."); *cf.* Terry A. Maroney, *The False Promise of Adolescent Brain Science in Juvenile Justice*, 85 NOTRE DAME L. REV. 89, 95 (2009) ("[L]egal decisionmakers acting in a policymaking role—usually legislatures but sometimes the courts—therefore ought to consider developmental neuroscience one source among many upon which to draw when making legally relevant assumptions about adolescents as a group. To go further is unwarranted and unwise.").

235. *See, e.g.,* ELIZABETH S. SCOTT & LAURENCE STEINBERG, RETHINKING JUVENILE JUSTICE (2008).

236. *See* Hamilton, *Democratic Inclusion*, *supra* note 47, at 1447.

237. *See* Hamilton, *Liberty Without Capacity*, *supra* note 129.

238. *See* discussion *supra* subparts II.A. & II.C.

perhaps, for individuals who have a parent who may be grudgingly subject to an order of support) is the expiration of parents' obligation to provide them with support.

As discussed above, it was against a background of economic prosperity that states, upon lowering the ages of conscription and voting, also lowered the age of majority generally. Young people who had previously been minors until age twenty-one (during a period when they arguably had less need of its protections until that age) became adults at eighteen. With that status, they gained the legal rights of adulthood. At the same time, they lost the right of parental support and even the special protections afforded minors by the state through its role as *parens patriae*.

In the intervening decades since lowering the age of majority, however, well-paying manufacturing jobs have all but disappeared. The incomes of workers with a high school degree or less have declined steeply, and their unemployment rates are particularly high. The largest share of jobs in the current economy has moved from manufacturing to the information and services sector, and as discussed above, the best of these jobs require postsecondary education. Failing to recognize the importance of supporting young people as they strive to become the sorts of workers required in today's economy disserves them in the short term, and the larger society in the longer term. State lawmakers should thus seriously consider raising, perhaps to twenty-one, the age through which parents are obligated to support their children.

V. CONCLUSION

Young people's conception of adulthood, and their experience of becoming adults, bears little resemblance to the legal construction of adulthood as status. Although they formally attain adult status upon reaching the legal age of majority, that formal marker has remarkably little meaning in young people's lives. What is now socially meaningful is the gradual attainment of the various indicia of adulthood—responsibility for oneself, autonomous decision making, and financial self-sufficiency.

I have argued in this Article that the categorical age of majority contravenes a legal reality constructed by the proliferation of exceptions to it, young people's social experience and subjective constructive of the transition to adulthood, and the capacities gained (and deficiencies retained) over the predictable course of individual developmental processes. By retaining it, the state fails its foremost

obligation to safeguard the basic liberties of its citizens. Legal consequences linked to the age of majority are best amended to attach to the specific age to which they pertain—whether or not that is the current age of majority.

I suggest further that the time may have come to jettison not only adulthood as legal status but also adulthood as social construct. Doing so presents the state with a rare opportunity to simultaneously safeguard individual autonomy rights through context-specific rulemaking and also advance the importance of community relationships and the interdependencies of citizens, even in liberal society.

The Age of Majority

By T. E. JAMES*

A CHILD IS REGARDED, in common parlance, as a person under the age of twenty-one years. In the eyes of the common law, all persons were esteemed infants until they attained this age,[1] except for the sovereign, who attained majority at eighteen, though, for legislative purposes, he was never in minority.[2]

Variations in the age of the sovereign's majority could be found as in the case of the majority of others. The King of Denmark came of age at fourteen, according to Lacombe in his history of the ancient kings of the northern European countries. This custom would be referable to a period prior to the tenth century. "At that age the King would declare publicly that he wished no longer to have the services of a tutor."[3] Gothic kings seem frequently to have come of age at fifteen, for example Childebert II in 585 A.D.[4] The aristocracy would have been influenced by the royal example; but, inevitably, the qualifications for majority were different. Thus, in his *Memoirs of Ancient Chivalry*, St. Palaye records that the minority of the nobles in France ended at seventeen, "because they were then judged strong enough and sufficiently qualified for the culture of their lands, the mechanic arts and commerce in which they were all employed." St. Palaye referred to a period before training in arms was developed in the tenth and eleventh centuries, the age of chivalry, for he continued: "yet the profession of arms demanded an ability and strength not to be acquired til twenty-one, and this ex-

* Reader in Law, King's College, London, England.

[1] *Co. Litt.* 78.b; BACON *Abridgement* (1832), vol. 4, Infancy and Age, A.

[2] BLACKSTONE, *Commentaries*, vol. 1, p. 248.

[3] LACOMBE, *Abrégé chronologique de l'Histoire du Nord*, (1763), vol. 1. Remarques particuliers sur le Dannemarc, pp. 386-7.

[4] See *Theodorici Regis Italiae Epistolae*, Bk. 1, letter 38.

tended to those nobles whose only profession was a military life."[5]

The profession followed, or the function played in society, must have considerably influenced the choice of majority age. In this connection the legal capacity to do certain acts and the majority age were subject to the same test. For example, borough customs which developed in England throw some light on varying ages selected for capacity: "The years of discretion, which brought to a child independent responsibility for crime and trespass, were in some boroughs chosen to give the child full legal capacity; in other cases there was a tendency to vary the age of majority needed according to the particular act which had to be made valid."[6] An anomalous case is recorded where it was pleaded that a child was of age at birth.[7] Apparently, in London, children under age were formerly allowed to devise land, though by 1419 the contrary was stated to be the custom. Municipal guardianship grew, no doubt, alongside the seignorial guardianship and eventually developed into an elaborate system. "The borough court, with orphans under its own wardship, could test for itself the reality of the discretion of the ward before the full legal capacity was granted and the terms of wardship ended."[8] Counting and yard measure tests and whether a child knew a good penny from a bad one were methods employed to ascertain the age of discretion. In some boroughs, for example at London, the rules of socage wardship were adopted under certain circumstances.

The reason why twenty-one was selected as the crucial age for majority appeared to depend upon the ancient rules of tenure. The explanation was based upon good authority; but to understand the background of thought on this subject it is necessary to go back to earlier times, namely to the Roman Law as embodied in the works of Justinian.

In Roman Law, two systems were evolved of protecting a

---

[5] ST. PALAYE, *Memoirs of Ancient Chivalry* (1759); transl. 1784, p. 42. This passage is quoted more fully below.

[6] *Borough Customs*, edited by Mary Bateson (1906), vol. 21, Selden Society. The introduction to this work is relied upon here.

[7] The same suggestion is mentioned by BEAUMANOIR, though he considers it unreasonable. See *Les Coutumes de Beauvoisis*, para. 536.

[8] *Borough Customs*, above p. cxxviii.

child, or, perhaps to be more accurate, of protecting its interests. These were the institutions of *tutela* and *cura*. By the time of Justinian three age groups were recognised as carrying legal incapacities. Firstly, "infantia," which existed when the child was incapable of speech. But, about A.D. 407, this was fixed at below seven years of age. Secondly, "tutela impuberes" ceased at puberty, a tutor no longer being required when the child might have children, since the interest of his relatives in the property then ceased. Puberty was in later law fixed "post quartum decimum annum completum" for males[9] and at the completion of twelve years for females.[10] Thirdly, "cura minoris," was of later development and continued for males from the closing of *tutela* "ad vicesimum quintum annum completum."[11] This was subject to "venia aetatis," that is, the privilege of full age could be granted by imperial decree before it was actually attained. In this connection, Constantine provided that "venia aetatis" might be applied for by a man "cum vicesimi anni metas empleverint" or a woman "cum octavum et decimum annum egressae fuerint."[12]

Amongst the barbarian tribes, infancy could be terminated at fifteen[13] and it would seem that this became established as the vital age both for combat and majority. "We find in the Ripuarian laws that the age of fifteen, the ability to bear arms and majority went together."[14] As regards judicial combat, in France fifteen years was essential, for if either the challenger or the challenged were below that age, there could be no combat.[15] Many other countries required a higher age and Beaumanoir expressed the view that in France it should be twenty.

In the northern parts of Europe, between the ninth and

---

[9] *Inst.* 1.22.

[10] C.5.60.3 and *Inst.* 1.22.

[11] *Inst.* 1.23.

[12] C.2.44.2.

[13] TACITUS, *De Moribus Germ.*, c.13; CAESAR, *De Bello Gall.* Bk.6, c.15; and see SELDEN, *Titles of Honor* (1672), Bk.2, c.1, note 6. Originally as in Germany, in all the European States every person who wore a sword had a title to go to the National Assembly.

[14] MONTESQUIEU, *The Spirit of Laws*, Bk.18., c.26.

[15] PH.DE BEAUMANOIR, *Les Coutumes de Beauvoisis*, para. 1810, written in the thirteenth century.

eleventh centuries, fifteen seems to have been the age of majority; but the test was quite a different one from that applied in the more stable society governed by Roman Law. In Rome, the question was: had the male "pupil" both understanding and judgment as to acts in law, in particular in relation to property rights? These capacities he was presumed to have at puberty, later fixed at fourteen years. No doubt the principles of Roman Law would have influenced all people within the Empire and the age of fourteen may have been generally accepted, as a result, as the age of maturity for males. However, there is a curious tendency to add a year to ages for capacity, as will appear below, and is noticeable for example, in relation to socage tenure. The explanations given are various, such as an additional year for the handing over of the property or livery of seisin, somewhat similar to the executors' year, or for better certainty. Gilbert[16] allows a certain latitude in calculation, for example, when the law required a year, it added a day for better certainty, as in the case of murder, when death must occur within a year and a day. On the other hand, barbarian peoples may have concluded that fifteen was the age of maturity for males without Roman influence and for needs of their own. Whatever the reason may have been, fifteen is the age that appears to have been adopted in the northern parts of Europe as the age of majority for males; and it was accepted in States far removed from the supposed scenes of feudalism. The test applied in selecting this age seems to have been different from that applied in Rome, namely, the capacity to bear arms. In this connection in Ancient Rome, before the Empire was founded, no citizen was liable to military service before completing his seventeenth year. Later, this age was changed to the sixteenth year.[17] Sir Henry Spelman, writing at the end of the seventeenth century, has a relevant passage, which is to be found in *Reliquiae Spelmannianae*, "De Aetate Militaris," to the same effect though with some variant examples accumulated over a thousand years.[18]

In England the posse comitatus included every freeman

[16] GILBERT, LORD CHIEF BARON, *On Tenures* (1796), Preface.

[17] MOMMSEN, *The History of Rome*, 1854-56, pp. 346-7.

[18] *Reliquiae Spelmannianae* (1689), p. 173 et seq.

capable of bearing arms. The Assize of Arms, enforced by a proclamation of 1195, provided for all subjects of the age of fifteen or up to be sworn to keep the peace. However, the later *Statutum de Militibus* (1307), provided that none was to be distrained *ad arma militaria suscipienda* till the age of twenty-one.[19]

In the absence of any clear authority, it may be assumed that at one time between the ninth and tenth century, fifteen was also the age of majority in England; but, by the time of the Magna Carta, this age had been raised to twenty-one, at least so far as men holding in knight service were concerned. For it was provided that on a ward coming of age, that is on attaining twenty-one years, he should have his inheritance without relief and without fine. Nevertheless, the lord might claim his aid *pur fair fitz chevaler* as soon as the age of fifteen was attained.[20]

The raising of the age has been attributed to various causes. Some writers have alleged that it was due to the increase in the weight of arms.[21] There are some grounds for this assertion, particularly in Normandy and England in the ninth and tenth centuries, where the need had arisen for society to protect itself. The Franks dominated the situation; and the needs of the time resulted in a military revolution involving the mounted knight.[22] In the late eleventh century, knighthood became a social distinction. The reception of a young man of an age to bear arms was marked with a ceremony and armour became more elaborate, although it was not until about the middle of the thirteenth century that armour increased considerably in weight. The new feature introduced in the late eleventh and in the twelfth centuries related especially to the more elaborate defensive armour. The knee-

---

[19] 1 Ed.2, St.1.

[20] 1225, 9 Hen. *111*, c.3. This confirmed the common law rule as stated by Glanville, Lib.7, c.9; St. of Westm.1., 3 Edw.1., c.36; Co.Litt.78,.b.

[21] GILBERT, *On Tenure* (1796), in the Preface; GILBERT STUART, *Society in Europe* (1778), p. 56; MONTESQUIEU, *op. cit.*, Bk. 18.c.26.

[22] LACOMBE, *Arms and Armour*, trans. Ch. Boutall (1869). It has been suggested that the practical value of cavalry was first appreciated in the West in warfare against the Saracens in the eighth century. See also LAKING, *A Record of Armour and Arms through Seven Centuries* (1920), vol. 1, p. 61.

length mail shirt was developed to give protection to the extremities of the man who wore it, the sleeves and skirt were lengthened and narrowed, until forearms, wrists, hands, legs and feet were all covered. In addition, a mail coif guarded the neck and most of the face.[23] "From the Conquest onward the history of arms and armour is, in the main, a history of fashions of knights who will fight on horseback whenever they dare risk the skin of the costly beast, the destrier or great horse." [24] At the time of the Conquest, the English were accustomed to ride to the battlefield but dismounted to fight.

Apart from the development in defensive armour in the eleventh and twelfth centuries, contributing factors to the raising of the age from fifteen would have been the use of horses in battle by the knight and the added skill required in combat. These would give rise to the need for the more thorough training of the young potential warrior.

It must be remembered that there were two classes of knights in feudal institutions: the one of great antiquity, the other evolving from the invention of a fee, that is the knight who was a receiver of a feudal grant.[25] The former class of knight signified, before the Conquest, a military dependent of a great landholder. Indeed, in Norman times, the knight and squire were the lowest in the scale of nobility to possess the privilege of wearing a sword. Knight service was of Norman introduction to England and did not, it seems, arise out of old English customs. This system would have been similar to that known throughout France. There is some evidence, moreover, that the importance of the institution of this second class of knighthood was still not developed in the late eleventh century.[26]

In about 1070, William the Conqueror reorganized the professional army, placing the emphasis on the mounted knight

[23] DEMAY, *Le Costume au Moyen Age d'après les Sceaux* (1880); LAKING, *A Record of Armour and Arms through Seven Centuries* (1920), vol. 1; SMAIL, *Crusading Warfare* (1956).

[24] LAKING, *op. cit.*, vol. 1, p. 32.

[25] LAKING, *op. cit.*, vol. 1, p. 61.

[26] J. SELDEN, *Titles of Honor*, Bk.2.c.1, sect. 2; J. H. ROUND, *The Introduction of Knight Service into England*, 1891.

This is born out, for example, by a document, commented upon by C. H. Haskins, from Normandy between 1070 and 1081 which related

who had to serve a military apprenticeship to achieve the requisite skill.[27] The training of the knight seems to have become formalised in the age of chivalry. St. Palaye gives a detailed account of the training for knighthood, from birth till the age of twenty-one, when the youth "after so many proofs of valour might be admitted to the honour." [28]

It was at this age of twenty-one that the squire might become a knight. Particular merit might gain him the honour before that age, as is illustrated by dramatists and writers. Sovereigns in particular were regarded automatically as possessing superior genius. The regular age was, however, twenty-one for those who were destined to follow the profession of arms and this became the age also for the acceptance of a duel. St. Palaye makes the point that, though the French nobles attained their majority at seventeen, being then strong enough and sufficiently qualified to cultivate their lands and to indulge in commerce, still "the profession of arms demanded an ability and strength not to be acquired till the age of twenty-one." [29]

It follows that the study of military skill and the laborious training in the customs of chivalry would have been an added factor, if not a cause, for raising the age of majority.

The ultimate selection of the age of twenty-one, as the age at which knighthood was attained in the age of chivalry, was probably connected with the age at which infants come out of ward. So far as wardship was concerned, the Duke of Normandy had the guardianship of all orphans within age bound by homage in connection with a fief. Within age is specifically defined, in this connection, as those who have not

---

to the disposal by the Conqueror of an heiress, her husband to receive certain specifically defined aids, which did not include the aid for knighting the eldest son. Doc. No. 714 from the Cartulary of Mont-St. Michel: *English Historical Review* (1907), vol. 22, p. 647.

[27] G. O. SAYLES, *The Medieval Foundations of England* (1948); C. STEPHENSON, *Medieval Feudalism* (1942).

[28] ST. PALAYE, *Mémoires sur L'Ancienne Chevalerie* (1759) trans. 1784, p. 39.

[29] See, for example, SHAKESPEARE, *Henry VI*, Part III, Act 2, Scene 2, where Henry VI knights his own Edward, Prince of Wales; ST. PALAYE, *Mémoires sur L'Ancienne Chevalerie* (1759), trans. 1784, pp. 3-42.

completed their twentieth year "and for these one allows another year, according to the customs of Normandy, in which they may apply to the Court and claim the property of their ancestors." [30] Why twenty was selected as the age of emancipation is a question to which there seems to be no answer. It is suggested that the choice is related to the development of the age of chivalry, in the eleventh and twelfth centuries, which required a period of training, for the attainment of the honour of knighthood, not only in the military arts but also in the principles of chivalry.[31]

Although the age of knighthood in England at the time of Coke had been fixed for several centuries at twenty-one,[32] the lord might have claimed his aid *pur faire fitz chevaler* as soon as the age of fifteen was attained.[33] This was a relic of ancient usage and follows the very early fixing of the age of majority on the completion of fourteen, later extended to twenty-one years, suggested for northern countries. Moreover, an Act of Parliament might declare a person of full age before he was twenty-one though, it is to be observed, the honour of knighthood does not appear to have been eagerly sought on all occasions.[34] With respect to military tenures, wardship was terminated at twenty-one, "at which age the law presumed he was qualified both by skill and strength of body to perform the part of a soldier." [35]

---

[30] *L'Ancienne Coutume de Normandie*, edited by Wm. Lawrence de Gruchy, 1881, c.33. Though the date of the Coutume is uncertain, commentators are almost generally agreed in placing the final composition at the end of the thirteenth century.

[31] It may be related to the rule established by Constantine that male minors might apply for *venia aetatis* at that age.

[32] *Co. Litt*, 78.b, 88b; BLACKSTONE, Commentaries, vol. 1, p. 463.

[33] St. of West. 1, 3 Edw. I., c.36; *Co.Litt.* 78b. Moreover the lord might terminate lordship by knighting the heir.

[34] 4 *Co. Inst.* 36; BLACKSTONE, *Commentaries*, vol. 2, p. 87; St. of Knights (1307), 1 Edw. II, which provided that "none shall be distrained to take upon him the order of a knight before he come to the age of one and twenty."

[35] F. S. SULLIVAN, *An Historical Treatise on the Federal Law*, 1772, Lect. 12, p. 136 etc. The above reasoning is substantiated by Sullivan, in this lecture: the lord was obliged to answer to the king, or other superior lord, for all military duties and he, therefore, took the profits of the land during the ward's minority; the lord instructed the heir meanwhile in the art of war.

This reasoning would not apply to tenants in socage, where the relations of the heir, to whom the wardship appertained, were accountable for the profits of the tenancy and therefore, on the tenant attaining majority, the reason for the continuance of the wardship ceased. These tenants were not interested immediately in the change in the nature of armour and the increased skill in military arts. In socage tenure, which was essentially agricultural, the heir came of majority, or out of ward, as soon as he became capable of attaining to husbandry and "of conducting his rustic employs." Fifteen seems to have been the recognized age of majority for socage tenants, which age was later reduced to fourteen; but a certain evolution is observable as regards this age. Glanville states the age to be fifteen; Bracton refers to fifteen and fourteen; Fleta mentions no specific years but says that the heir who held by socage tenure became of age when marriageable and then states that the age of marriage was fixed at fourteen.[36] The adoption of the age of fourteen in Fleta's time may have been no more than a return to an old practice, this age being originally the age of majority in socage, which tenure some authorities suggest had an origin previous to the Norman Conquest. However, by local customs the age of majority was generally at fifteen. One of the best known examples is that of Gavelkind accepted in the County of Kent. By this custom the additional year was added, for the heir at majority was obliged to appear in the court of the lord and demand his inheritance, which the Lord was accordingly obliged to deliver.[37]

It would seem, therefore, that the present age of majority at twenty-one was early established at common law. The choice of this age evolved perhaps from the system of judicial combat and knight service, the age of knighthood being increased from fourteen or fifteen to the completion of twenty years, owing to the weight of the arms and the greater skill required in warfare. The added year may be accountable to the need for the suing of livery. For, at the conclusion of wardship, the guardian was bound to restore to the heir his

[36] *Gl.Lib.* 8,cap.9; *Br. Lib.*2, c.37, f.86b; *Lib.*5, c.21, f.422a. *Fleta Lib.* 1.c.9.f.5; *Lib.* 1, c.13.

[37] ROBINSON, *Gavelkind*, Bk.2. c.2, pp. 185-222.

inheritance in good condition and freed from debts, this obligation being measured by the duration of the wardship and the amount of the inheritance. The heir would therefore require time to enter upon his lands to enquire into the state of his property. It may well be that when the age of fifteen was fixed for the purpose of military tenure, the test being the ability to bear arms, socage tenure followed the élite in accepting this age likewise. Since only military tenure was affected immediately by the bearing-of-arms test, on the development of armour and the art of combat the age was increased to twenty-one. Meanwhile the rule in socage tenure remained unchanged except for the variation described above, reducing the age of majority to fourteen.

It is of interest in considering the age of majority to refer to the age of marriage. Depending on the age of puberty, the age of fourteen for males fixed by Justinian was generally followed throughout Western Europe, subject of course to the requisite consents by guardians and parents. The authority of the guardian was an essential control of the ward. As the result of the abolition of military tenure in 1660 and the turning of all lands so held into socage, wardship would then have ended in all cases at the age of fourteen when the tenant would choose his own guardian.[38] There was therefore a grave disadvantage in this early cessation from the danger of an improvident choice of a guardian being made. Accordingly, the statute of Charles II provided that the father could in all cases appoint a guardian by deed or by will until his child attained twenty-one. Subsequently, if no such appointment were made, the Court of Chancery often intervened and appointed a guardian to prevent the infant squandering his patrimony.

Nevertheless, thereafter at fourteen an infant might dispose of himself or herself in marriage without the consent of the guardian and this was so until the Marriage Act of 1753, which rendered marriages of persons under twenty-one years,

[38] For at this age, the law supposed a tenant in socage to be capable of choosing a guardian for himself: BLACKSTONE, *Commentaries*, vol, 2, p. 97. See also, 12 Car. 2, c.24.

even of socage tenure, in which marriage was not any perquisite or advantage.[39] A statute of Philip and Mary had the effect of enlarging the duration of legal control of a father over his daughter from fourteen to sixteen, at least insofar as it can be enforced by habeas corpus. The direct object of this Act was to prevent the taking and marrying of girls under sixteen without the consent of their parents.[40] This would seem to be the reason today for fixing the woman's age of consent to sexual intercourse at sixteen. There is no apparent reason, unless by analogy to the age of consent for females, why the age at which males may marry has presently been fixed in England at sixteen years.[41] However, the age at which the parties to a marriage could give consent was formerly fixed in accordance with the rules of Roman Law. Swinburne, writing at the end of the sixteenth century, on "Spousals," states that under seven all espousals are void. From seven to fourteen for males and twelve for females they are voidable. Coke allowed a girl to be dowable once she had attained the age of nine. Clearly, at one time marriages took place at very early ages on occasions and could be consummated as soon as the onset of puberty. The age of consent to sexual relations would seem to have been of later development. No doubt, the fixing of the age of consent for marriage in the case of males is the origin of the common law rule that males under fourteen are presumed to be impotent.[42]

---

[39] However, as regards the eldest son, in socage tenure in respect to matters other than marriage "with respect to the custody of the body alone," the guardianship of the father, which is a guardianship by nature, continued until the son and heir apparent attain the age of 21 years," per Holt C. J. in *King v. Thorp*, Carthew, p. 386.

Lord Hardwicke's Act, 26, Geo. 2.c.33, enacted to prevent clandestine marriages. See in respect of consents ss. 3 and 11. This is no longer the law today, see the Marriage Act, 1949.

[40] 4 and 5 Ph. & M.c.8. This statute is now repealed but its direct object is embodied in Sexual Offenses Act 1956, s.20.

[41] See Marriage Act, 1949, s.2. and Sexual Offences Act, 1956, s.6. for the age of consent by girls.

[42] *Co. Litt.* 78b; see also 1 BLACKSTONE, *Commentaries*, vol. 1, p. 463.

No evidence in such a case is admissible to show, when rape is charged, that the defendant had in fact arrived at the full state of puberty and could commit the offence; *R. v. Phillips*, 8C & P. 736; *R. v. Waite* (1892) 2 Q.B. 600.

It would seem that the age of majority, fixed at twenty-one, is a curious development from the older systems requiring military service. Having upon it the mark of usage by the élite, it became generally accepted when those services finally disappeared.[43] It is possible that the choice of twenty with the subsequent addition of a year, was influenced by *venia aetatis* for male minors of that age, allowed by Constantine.

The Roman Law rule, fixing the age of *plenam maturitatem* at twenty-five, seems nowhere in the common law to have been accepted. In ecclesiastical law, twenty-five appears as the age fixed for admission to any benefice with cure by the Lateran Council.[44] This age is familiar to conveyancers in England, as is evidenced by the cases. Since the postponement of the vesting of a gift in favour of children until twenty-five occurred so frequently in wills and settlements, it is evidence that the donors considered that the beneficiaries would attain a true sense of discretion at that age.[45]

---

[43] This is indicated in the Introduction to vol. 38, (1921) of the Selden Society, edited by Vinogradoff and Ehrlich.

[44] *Gibs. Cod.*848. By 13 Eliz.c.12,s.3, no person was to be admitted to any benefice with cure till he was at least twenty-three. Subsequently, twenty-four was fixed as the lowest age for admittance to the priesthood, which was a necessary condition to being admitted to any ecclesiastical benefice: 44 Geo.3.c.23 and *Gibs.Cod.*848.

[45] Indeed, so frequently have testators and settlors in the past used ages above twenty-one for the vesting of a gift (in fact, the age of twenty-five is most commonly to be found in the cases) that the legislature has intervened to prevent the rule against perpetuities rendering such delayed gifts void: Law of Property Act, 1925, s.163.

COMMENTARIES

ON

AMERICAN LAW.

BY JAMES KENT.

VOLUME II.

NEW-YORK:

PUBLISHED BY O. HALSTED.

1827.

CONTENTS.

PART IV.

OF THE LAW CONCERNING THE RIGHTS OF PERSONS.

Page

LECTURE XXIV.—*Of the Absolute Rights of Persons*, - - - - 1
1. The history and character of bills of rights, *ib.*
2. The right of personal security, - - - - - 9
3. The law concerning slander and libels, 12
4. The right of personal liberty, and the writ of *habeas corpus*, - - - - - - - - - 22

LECTURE XXV.—*Of Aliens and Natives*, - - - - - - - - - - - 33
1. Of natives, - - - - - - - - - - - - - - - *ib.*
2. The doctrine of allegiance and expatriation, - - - - - - - - - - - - - - - - - - - 36
3. Of aliens, - - - - - - - - - - - - - - - - 48

LECTURE XXVI.—*Of the Law concerning Marriage*, - - - - - 65
1. Marriages, when void for lunacy or fraud, *ib.*
2. The age of consent, - - - - - - - - - - - 67
3. Bigamy, - - - - - - - - - - - - - - - - - 68
4. Marriage between near relations, - - - - 70
5. The consent of parents, - - - - - - - - - 73
6. The forms of marriage, - - - - - - - - - 75
7. Foreign marriages, - - - - - - - - - - - 78

LECTURE XXVII.—*Of the Law concerning Divorce*, - - - - - 81
1 Divorce *a vinculo*, - - - - - - - - - - - - - *ib.*
2. Foreign divorces, - - - - - - - - - - - - 89
3. Effect of foreign judgments, - - - - - - 101
4. Divorce *a mensa et thoro*, - - - - - - - - 104

LECTURE XXVIII.—*Of Husband and Wife*, - - - - - - - - - - 109
1. The husband's right by marriage in the property of the wife, - - - - - - - - - - - 110
2. The duties of the husband, - - - - - - - - 121

Page

3. The wife's power at law to act as a *feme sole*, - 127
4. Her capacity in equity, - - - - - - - - - - - 136
5. Other rights and disabilities incident to the marriage union, - - - - - - - - - - - 149

LECTURE XXIX.—*Of Parent and Child*, - - - - - - - - - - - - - 159
1. The duties of parents, - - - - - - - - - - - *ib.*
2. The rights of parents, - - - - - - - - - - - 169
3. Of illegitimate children, - - - - - - - - - - 173

LECTURE XXX.—*Of Guardian and Ward*, - - - - - - - - - - - - 181
1. Guardian by nature, - - - - - - - - - - - - *ib.*
2. Guardian by nurture, - - - - - - - - - - - 182
3. Guardian in *socage*, - - - - - - - - - - - - *ib.*
4. Testamentary guardians, - - - - - - - - - - 184
5. Guardians judicially appointed, - - - - - - 185
6. The duty and responsibility of guardians, 187

LECTURE XXXI.—*Of Infants.*—And herein of their acts, when void, when voidable, and when valid, 191

LECTURE XXXII.—*Of Master and Servant*, - - - - - - - - - - 201
1. Slaves, domestic slavery, and its extinction in this state, - - - - - - - - - - - - - *ib.*
2. Hired servants, - - - - - - - - - - - - - - 209
3. Apprentices, - - - - - - - - - - - - - - - 211

LECTURE XXXIII.—*Of Corporations*, - - - - - - - - - - - - - - 215
1. The history of corporations, - - - - - - - - 216
2. The various kinds of corporations, - - - 220
3. Their powers and capacities, - - - - - - - 224
4. The visitation of them, - - - - - - - - - - 240
5. Their dissolution, - - - - - - - - - - - - - 245

PART V.

OF THE LAW CONCERNING PERSONAL PROPERTY.

LECTURE XXXIV.—*Of the History, Progress, and Absolute Rights of Property*, - - - - - - - - - - - 255
1. Of title by occupancy, - - - - - - - - - - - 256
Of wrecks, - - - - - - - - - - - - - - - - 259

Page
2. Of markets overt, - - - - - - - - - - - - 261
3. The right of alienation, - - - - - - - - - - 264
4. Of sumptuary laws, - - - - - - - - - - - - 266
5. Of taxation, - - - - - - - - - - - - - - - - 268
6. Of the claim for improvements on land, 271
7. The right of government to assume property, and control its use, - - - - - - - - 274

LECTURE XXXV.—*Of the Nature, and various Kinds of Personal Property*, - - - - - - - - - - - - - 277
1. Chattels real, and fixtures, - - - - - - - - 278
2. Qualified property in chattels personal, 281
3. Joint tenancy in chattels, - - - - - - - - - 283
4. Chattel interests in remainder, - - - - - 285

LECTURE XXXVI.—*Of Title to Personal Property by original acquisition*, - - - - - - - - - - - - - - - - 289
1. Of original acquisition by occupancy, - *ib.*
2. ——————— by accession, - - - - - 293
3. ——————— by intellectual labour, 293
(1.) Of patent rights for inventions, - 299
(2.) Of copyrights of authors, - - - - - 306

LECTURE XXXVII.—*Of Title to Personal Property by transfer by act of law*, - - - - - - - - - - - - - 317
1. By forfeiture, - - - - - - - - - - - - - - - *ib.*
2. By judgment, - - - - - - - - - - - - - - - 319
3. By insolvency, - - - - - - - - - - - - - - 321
4. By intestacy, - - - - - - - - - - - - - - - 332

LECTURE XXXVIII.—*Of Title to Personal Property by Gift*, 353
1. Gifts *inter vivos*, - - - - - - - - - - - - - 354
2. Gifts *causâ mortis*, - - - - - - - - - - - - 358

LECTURE XXXIX.—*Of the Contract of Sale*, - - - - - - - - - 363
1. Of the different kinds of contracts, - - - *ib.*
2. Of the consideration, - - - - - - - - - - - 364
3. Of the subject matter of the contract, - 367
4. Of the implied warranty of the articles sold, - - - - - - - - - - - - - - - - - - - 374
5. Of the duty of mutual disclosure of material facts, - - - - - - - - - - - - - - - 377
6. Of passing the title by delivery, - - - - - 387

Page

7. Of the memorandum required by the statute of frauds, - - - - - - - - - - - - - - - 402
8. Of sales of goods as affected by fraud, - 403
9. Of sales at auction, - - - - - - - - - - - - 423
10. Of the vendor's right of stoppage *in transitu*, - 427

LECTURE XL.—*Of Bailment*, - 437
1. Of *depositum*, - - - - - - - - - - - - - - - - *ib.*
2. Of *mandatum*, - - - - - - - - - - - - - - - - 443
3. Of *commodatum*, - - - - - - - - - - - - - - - 446
4. Of pledging, - - - - - - - - - - - - - - - - - 449
5. Of *locatum*, or hiring for a reward.—And herein of the law concerning innkeepers and common carriers, - - - - - - - - - 456

LECTURE XLI.—*Of Principal and Agent*, - - - - - - - - - - - - - 477
1. Agency, how constituted, - - - - - - - - - - *ib.*
2. Of the power and duty of agents, - - - - - 481
3. Of the agent's right of lien, - - - - - - - - 495
4. Of the termination of agency, - - - - - - - 504

LECTURE XLII.—*Of the History of Maritime Law*, - - - - - - - 509
1. Of the maritime legislation of the ancients, - 510
2. Of the maritime legislation of the middle ages, - - - - - - - - - - - - - - - - - - 515
3. Of the maritime legislation of the moderns, - 522

ERRATA.

Page 2, l. 1, for has read have.
29, 18, for for read of.
65, last line, for *ver.* read *rer.*
112, l. 18, dele that.
387, 20, for of read at.
398, 26, for beauty read brevity.
401, 17, for was read is.
—, 18, for passed read passes.

LECTURE XXXI.

OF INFANTS.

The necessity of guardians results from the inability of infants to take care of themselves; and this inability continues, in contemplation of law, until the infant has attained the age of twenty-one years. Within that period, minors cannot, except in a few specified cases, make a binding contract, unless it be for necessaries, or in marriage. Nor can they do any act to the injury of their property, which they may not avoid, or rescind, when they arrive at full age. The responsibility of infants for crimes by them committed, depends less on their age, than on the extent of their discretion and capacity to discern right and wrong.

Most of the acts of infants are voidable only, and not absolutely void; and it is deemed sufficient, if the infant be allowed, when he attains maturity, the privilege to affirm or avoid, in his discretion, his acts done, and contracts made in infancy. But when we attempt to ascertain from the books, the precise line of distinction between void and voidable acts, and between the cases which require some act to affirm a contract, in order to make it good, and some act to disaffirm it, in order to get rid of its operation, we meet with much contradiction and confusion. A late writer, who has compiled a professed treatise on the law of infancy, concludes, from a review of the cases, that the only safe criterion by which we can ascertain, whether the act of an infant be void or voidable, is, "that acts which are capable of being legally ratified are voidable only; and acts which are incapable of being legally ratified are absolutely void.[a] But, the

---

[a] *Bingham on Infancy*, 88.

criterion here given, does not appear to free the question from its embarrassment, or afford a clear and definite test. All the books are said to agree in one result, that whenever the act done *may be* for the benefit of the infant, it shall not be considered void, but he shall have his election when he comes of age, to affirm or avoid it; and this, says Ch. J. Parker,[a] is the only clear and definite proposition, which can be extracted from the authorities. But we are involved in difficulty, as that learned judge admits, when we come also to the application of this principle. In *Zouch* v. *Parsons*,[b] it was held by the K. B., after a full discussion and great consideration of the case, that an infant's conveyance by lease and release, was voidable only; and yet Mr. Preston[c] condemns that decision in the most peremptory terms, as confounding all distinctions and authorities on the point; and he says, that Lord Eldon repeatedly questioned its accuracy On the other hand, Mr. Bingham[d] undertakes to show, from reason and authority, that the decision in Burrows is well founded; and he insists[e] that all the deeds, and acts, and contracts of an infant, except an account stated, a warrant of attorney, a will of lands, a release as executor, and a conveyance to his guardian, are, in judgment of law, voidable only, and not absolutely void. But the modern as well as ancient cases, are much broader in their exception. Thus it is held, that a negotiable note, given by an infant, even for necessaries, is void;[f] and his acceptance of a bill of exchange is void;[g] and his contract as security for another, is absolutely void;[h] and a bond, with a penalty, though given for

---

a Whitney v. Dutch, 14 *Mass. Rep.* 457.
b 3 *Burr.* 1794.
c *Treatise on Conveyancing*, vol. ii. 249.
d *Law of Infancy*, ch. 2.
e See his work, p. 34, and also his preface.
f Swasey v. Administrator of Vanderheyden, 10 *Johns. Rep.* 33.
g Williamson v. Watts, 1 *Campb. N. P.* 552.
h Curtin v. Patton, 11 *Serg. & Rawle.* 305.

necessaries, is void.[a] It must be admitted, however, that the tendency of the modern decisions is in favour of the reasonableness and policy of a very liberal extension of the rule, that the acts and contracts of infants should be deemed voidable only, and subject to their election when they became of age, either to affirm or disallow them. If their contracts were absolutely void, it would follow as a consequence, that the contract could have no effect, and the party contracting with the infant, would be equally discharged.[b] The doctrine of the case of *Zouch* v. *Parsons*, has been recognised as law in this country, and it is not now to be shaken. On the authority of that case, even the bond of an infant has been held to be voidable only at his election.[c] It is an equitable rule, and most for the infant's benefit, that his conveyances to and from himself, and his contracts, in most cases, should be considered to be voidable only.[d] Lord Ch. J. Eyre, in *Keane* v. *Boycott*,[e] undertook to reconcile the doctrine of void and voidable contracts, on the ground, that when the court could pronounce the contract to be to the infant's prejudice, it was void, and when to his benefit, as for necessaries, it was good; and when the contract was of an uncertain nature as to benefit or prejudice, it was voidable only at the election of the infant. Judge Story declared these distinctions to be founded in solid reason,[f] and they are considered to be so, and the point is not susceptible of greater precision.

If the deed or contract of an infant be voidable only, it is nevertheless binding on the adult with whom he dealt, so long as it remains executory, and is not rescinded by the in-

---

a *Co. Litt.* 172 a. recognised as being still the law by *Bayley, J.* in 3 *Maul. & Selw.* 482.

b 1 *Fonb. Tr. of Eq.* 74.

c Conroe v. Birdsall, 1 *Johns. Cas.* 127.

d Jackson v. Carpenter, 11 *Johns. Rep.* 539. Oliver v. Houdlet, 13 *Mass. Rep.* 237. Roberts v. Wiggin, 1 *N. H. Rep.* 73. Wright v. Steele, 2 *N. H. Rep.* 55.

e 2 *H. Blacks.* 511.

f 1 *Mason's Rep.* 82.

fant.[a] It is also a general rule, that no one but the infant himself, or his legal representatives, can avoid his voidable deed or contract; for while living, he ought to be the exclusive judge of the propriety of the exercise of a personal privilege intended for his benefit; and when dead, those alone should interfere who legally represent him.[b] The infant's privilege of avoiding acts which are matters of record, as fines, recoveries, and recognizances, is much more limited than his privilege of avoiding matters *en pais*. The former must be avoided by him by writ of error, or *audita querela*, during his minority; but deeds, writings, and parol contracts, may be avoided during infancy, or after he is of age, by his dissent, entry, suit, or plea, as the case may require.[c] If any act of confirmation be requisite after he comes of age, to give binding force to a voidable act of his infancy, slight acts and circumstances will be a ground from which to infer the assent; but the books appear to leave the question in some obscurity, when and to what extent a positive act of confirmation on the part of the infant is requisite. In *Holmes* v. *Blogg*,[d] the Ch. Justice observed, that in every instance of a contract, voidable only by an infant on coming of age, he was bound to give notice of disaffirmance of the contract in a reasonable time. The inference from that doctrine is, that without some act of dissent, all the voidable contracts of the infant would become binding. But there are other cases which assume that a voidable contract becomes binding upon an infant after he comes of age, only by reason of acts or circumstances, amounting to an affirmance of the con-

---

a Smith v. Bowin, 1 *Mod.* 25. Holt v. Ward, *Str.* 937. Warwick v. Bruce, 2 *Maul. & Selw.* 205. Brown v. Caldwell, 10 *Serg. & Rawle*, 114.

b 8 *Co.* 42. b. Keane v. Boycott, 2 *H. Blacks.* 511. Van Bramer v. Cooper, 2 *Johns. Rep.* 279. Jackson v. Todd, 6 *ibid.* 257. Oliver v. Houdlet, 13 *Mass. Rep.* 237. Roberts v. Wiggin, 1 *N. H. Rep.* 73.

c *Co. Litt.* 380. b.

d 8 *Taunton*, 35.

tract.[a] In the cases of *Jackson* v. *Carpenter*, and *Jackson* v. *Burchin*,[b] the infant had disaffirmed the voidable deed of his infancy, by an act equally solemn, after he became of age. This is the usual and the suitable course, when the infant does not mean to stand by his contract; and his confirmation of the act or deed of his infancy, may be justly inferred against him after he has been of age for a reasonable time, either from his positive acts in favour of the contract, or from his tacit assent under circumstances not to excuse his silence. In *Curtin* v. *Patton*,[c] the court required some distinct act, by which the infant either received a benefit from the contract after he arrived at full age, or did some act of express and direct assent and ratification; but that was the case of a contract considered to be absolutely void. In the case of voidable contracts, it will depend upon circumstances, such as the nature of the contract, and the situation of the infant, whether any overt act of assent or dissent on his part be requisite to determine the fact of his future responsibility.

Infants are capable, for their own benefit, and for the safety of the public, of doing many binding acts. Contracts for necessaries are binding upon an infant, and he may be sued and charged in execution on such a contract, provided the articles were necessary for him under the cir-

---

a Evelyn v. Chichester, 3 *Burr.* 1717. 1 *Rol. Abr.* tit. *Enfants.* k. *Co. Litt* 51. b. Hubbard v. Cummings, 1 *Greenleaf*, 11. In Holmes v. Blogg, 8 *Taunton*, 508., it is remarkable that the distinguished counsel in that case, one of whom is now Lord Chancellor, and the other Ch. J. of the C. B., treat this as an open and debateable point. Serjeant *Copley* insisted, that the infant's contract was binding on him when he became adult, because there had been no disaffirmance of it; and Sergeant *Best* contended, that disaffirmance was not necessary, and that infants were not bound by any contract, unless the same was affirmed by them after coming to full age.

b 11 *Johns. Rep.* 539. 14 *ibid.* 124.

c 11 *Serg. & Rawle*, 305.

cumstances and condition in which he was placed.[a] The question of necessaries is governed by the real circumstances of the infant, and not by his ostensible situation; and, therefore, the tradesman who trusts him is bound to make due inquiry.[b] Lord Coke considers the necessaries of the infant to include victuals, clothing, medical aid, and "good teaching or instruction, whereby he may profit himself afterwards."[c] If the infant lives with his father or guardian, and their care and protection are duly exercised, he cannot bind himself even for necessaries.[d] It is also understood, that necessaries for the infant's wife and children, are necessaries for him;[e] and in all cases of contracts for necessaries, the real consideration may be inquired into. The infant is not bound to pay for the articles furnished, more than they were really worth to him as articles of necessity, and, consequently, he may not be bound to the extent of his contract; nor can he be precluded, by the form of the contract, from inquiring into the real value of the necessaries furnished.[f]

Infancy is not permitted to protect fraudulent acts; and, therefore, if an infant takes an estate, and agrees to pay rent, he cannot protect himself from the rent, after enjoying the estate, by pretence of infancy. If he pays money with his own hand, without a valuable consideration for it, he cannot get it back again. If he receives rents, he cannot de-

---

a Ive v. Chester, *Cro. Jam.* 560. Clarke v. Leslie, 5 *Esp. N. P.* 28. Coates v. Wilson, *ibid.* 152. Berolles v. Ramsay, 1 *Holt's N. P.* 77.

b Ford v. Fothergill, *Peake's N. P.* 229.

c *Co. Litt.* 172 a.

d Bainbridge v Pickering, 2 *Blacks. Rep.* 1325. Wailing v. Toll, 9 *Johns. Rep.* 141.

e Turner v Trisby, *Str.* 168.

f Makarell v. Bachelor, *Cro. Eliz.* 583.

mand them again when of age.[a] There are, however, many hard cases in which the infant cannot be held bound by his contracts, though made in fraud; for infants would lose all protection if they were to be bound by their contracts made by improper artifices, in the heedlessness of youth, before they had learned the value of character, and the just obligation of moral duties. Where an infant had fraudulently represented himself to be of age when he gave a bond, it was held that the bond was void at law.[b] But where he obtained goods upon his false and fraudulent affirmation that he was of age, though he avoided payment of the price of the goods, on the plea of infancy, the vendor was held entitled to reclaim the goods, as having never parted with his property in them;[c] and it has been suggested, in a recent case,[d] that there might be an instance of such gross and palpable fraud, committed by an infant arrived at the age of discretion, as would render a release of his right to land binding upon him. Infants are liable in actions arising *ex delicto*, whether founded on positive wrongs, or constructive torts, or frauds. But the fraudulent act, to charge him, must be wholly tortious; and a matter arising *ex contractu*, though infected with fraud, cannot be changed into a tort, in order to charge the infant in trover, or case, by a change in the form of the action.[e] He is liable in trover for tortiously converting goods intrusted to him;[f] and in detinue, for goods delivered upon a special contract for a specific purpose;[g] and in *assumpsit*, for money which he has fraudulently embezzled.[h]

---

a Kirton v. Elliott, 2 *Bulst.* 69. Lord Mansfield, in 2 *Eden*, 72. Holmes v. Blogg, 8 *Taunton*, 508.

b Conroe v. Birdsall, 1 *Johns Cas.* 127.

c Badger v. Phinney, 15 *Mass. Rep.* 359.

d Stoolfoos v. Jenkins, 12 *Serg. & Rawle*, 399.

e Jennings v. Rundall, 8 *Term Rep.* 335. Johnson v. Pie, 1 *Lev.* 169.

f Homer v. Thwing, 3 *Pickering*, 492.

g Mills v. Graham, 4 *Bos. & Pull.* 140.

h Bristow v. Eastman, 1 *Esp Rep.* 172.

An infant has a capacity to do many other acts valid in law. He may bind himself as an apprentice, it being an act manifestly for his benefit; but, when bound, he cannot dissolve the relation.[a] The weight of opinion is, that he may make a testament of chattels, if a male, at the age of fourteen, and if a female, at the age of twelve years.[b] He may convey real estate, held as a naked trustee, under an order in chancery. The equity jurisdiction in this case, is grounded on the statute of 7 Ann, c. 19. which has been re-enacted in this state, and extends only to plain and express trusts. Whatever an infant is bound to do by law, the general rule is, that the same will bind him, if he does it without suit at law.[d] If, therefore, he be a tenant in common, he may make a reasonable partition. He may discharge a mortgage on due payment of the mortgage debt. His acts as executor, at the age of seventeen, will bind him, unless they be acts which would amount to a *devastavit*. There was no occasion, said Lord Mansfield,[e] to enumerate instances. The authorities are express, that if an infant does a right act, which he ought to do, and which he was compellable to do, it shall bind him. We have already seen, that an infant of fourteen, if a male, and twelve if a female, may enter into a valid contract of marriage; but he is not liable to an action, on his executory contract, to marry, though the infant may sue an adult on such a promise.[f]

In consequence of the capacity of infants, at the age

---

a 3 *Barn. & Cress.* 484.

b *Harg.* n. 33. to lib. 2. *Co. Litt.* Mr. Hargrave has collected all the contradictory opinions on this point. The civil law gave this power to the infant at the age of seventeen years, and this period has been adopted by statute in Connecticut.

c Sess. 24. ch. 30.

d *Co. Litt.* 172. a.

e 3 *Burr.* 1801.

f Hunt v. Peake, 5 *Cowen*, 475.

of consent, to contract marriage, their marriage settlements, when reasonable, have been held valid in chancery; but it has long been an unsettled question, whether a female infant could bind her real estate by a settlement upon marriage. In *Drury* v. *Drury*,[a] Lord Ch. Northington decided, that the statute of 27 Hen. VIII. which introduced jointures, extended to adult women only, and that, notwithstanding a jointure on an infant, she might waive the jointure, and elect to take her dower; and that a female infant could not, by any contract previous to her marriage, bar herself of a distributive share of her husband's personal estate, in case of his dying intestate. This decree was reversed in the House of Lords, upon the strength of the opinions of Lord Hardwicke, Lord Mansfield, and the majority of the judges;[b] and the great question finally settled in favour of the capacity of the female infant, to bar herself by her contract before marriage, of her right of dower in her husband's lands, and to her distributive share of her husband's personal estate. The question still remained, whether she had the capacity to bind *her own real estate* by a marriage settlement. Mr. Atherley,[c] after reviewing the cases, concludes, that the weight of the conflicting authorities was in favour of her capacity so to bind herself. But it seems he did not draw the correct conclusion; for, in *Milner* v. *Lord Harewood*,[d] Lord Eldon has subsequently held, that a female infant was not bound by agreement to settle her real estate upon marriage, if she did not, when of age, choose to ratify it; and that nothing but her own act, after the period of majority, could fetter or affect it. The case of *Slocombe* v. *Glubb*,[e] admits, that a male infant may bar

---

a 1 *Eden*, 39.
b 1 *Eden*, 60—75.
c *Treatise on Marriage Settlements*, p. 28—41.
d 18 *Vesey*, 259.
e 2 *Bro.* 545.

himself by agreement before marriage, either of his estate by the curtesy, or of his right to his wife's personal property; and both the male and female infant can settle their *personal* estate upon marriage. The cases of *Strickland* v. *Croker*,[a] and *Warburton* v. *Lytton*,[b] are considered by Mr. Atherley[c] as favourable to the power of a male infant to settle his real estate upon marriage, and that seems to be decidedly his opinion. But since the decision of Lord Eldon, in *Milner* v. *Lord Harewood*, this conclusion becomes questionable; for if a female infant cannot settle her real estate without leaving with her the option, when twenty-one, to revoke it, why should not the male infant have the same option?

---

a 2 *Cas. in Ch.* 211.
b Cited in 4 *Bro.* 440.
c *Treatise on Marriage Settlements*, p. 42—45.

Journal of Gender, Social Policy & the Law

Volume 15 | Issue 4 Article 1

2007

The Roots of Law

Larry D. Barnett

THE ROOTS OF LAW

LARRY D. BARNETT

ABSTRACT

This Article rests on the macrosociological thesis that (i) the concepts and doctrines used in law are determined by the properties of society and that (ii) these properties are produced by large-scale forces. The thesis thus maintains that the content of law is not shaped by the persons who serve as legislators, judges, and executive-branch policymakers; such individuals are merely the vehicles by which societal conditions mold law. To illustrate, the Article examines shifts in law in the United States on a number of subjects, including law setting the age of majority and law regulating access to abortion, and it links these shifts to changes in specific aspects of U.S. society. Data from the 1960 census on the forty-eight coterminous states are analyzed with logistic regression to identify system-level properties distinguishing states that liberalized their law on abortion between 1967 and 1972 (i.e., before Roe v. Wade) from states that did not. The regression analysis, in conjunction with time-series data for the nation as a whole, suggests that the liberalization by states and by Roe of law-imposed restrictions on abortion was associated mainly with increases in school enrollment and educational level among young women. This Article advances the premise that long-term growth in the quantity of knowledge broadly affected the American social system and its law, and ascribes the rising prevalence and longer duration of education among women—as antecedents of the liberalization of law on abortion—primarily to the expansion of knowledge.

THE ROOTS OF LAW

LARRY D. BARNETT*

Abstract....613
I. Introduction....614
A. Sex Roles....616
B. The Investment Company Act and the Concept of "Person"....617
C. Age of Majority....620
II. Knowledge as a Societal Property....627
III. Law and Abortion in the United States....636
A. Change in Law Regulating Abortion, 1967-1973....637
B. Factors Affecting Decisions by Women to Abort Pregnancies....639
C. Time-Series Indicators of a National Need for Abortion....647
D. System-level Properties and the Liberalization of State Abortion Law....651
IV. The Concept of Societal Need....672
A. Functionalism....673
B. Societal Need and Abortion....677

I. INTRODUCTION

Distinct concepts and principles characterize every profession,[1] and the reality perceived by members of one profession therefore differs to some extent from the reality perceived by members of another profession.[2] Be-

* Professor, School of Law, Widener University, Wilmington, Delaware USA. Postal address: Post Office Box 7474, Wilmington, DE 19803-0474 USA. E-mail address: ldbarnett@widener.edu

The Widener University Legal Information Center provided invaluable assistance in the preparation of this article. I would particularly like to thank Enza Klotzbucher, Mary Jane Mallonee, and Kelly Pierce of the Center staff.

1. Larry D. Barnett, *When is a Mutual Fund Director Independent? The Unexplored Role of Professional Relationships under Section 2(a)(19) of the Investment Company Act*, 4 DEPAUL BUS. & COM. L.J. 155, 173-78 (2006) (summarizing the central elements of a profession).

2. According to research in linguistics, "the world is presented in a kaleidoscopic flux of impressions which has to be organized by our minds—and this means largely by the linguistic systems in our minds. We cut nature up, organize it into concepts, and ascribe significances as we do, largely because we are parties to an agreement to organize it in this way—an agreement that holds throughout our speech community and is codified in the patterns of our language." Benjamin Lee Whorf, *Science and Linquistics*, *in* LANGUAGE, THOUGHT, AND REALITY: SELECTED WRITINGS OF BENJAMIN LEE WHORF 207, 213 (John B. Carroll ed., 1956); see also Benjamin Lee Whorf, *Language, Mind, and Reality*, *in* LANGUAGE, THOUGHT, AND REALITY, *supra* at 246-47 (stating that "[e]very language . . . incorporates certain points of view and certain patterned resistances to widely divergent points of view"). Professions as well as societies differ in the concepts they use, and the concepts unique to a particular profession accordingly provide its members with perceptions that do not exist among the members of a differ-

cause an understanding of the world is never complete—perhaps because "[r]eality is nothing but a collective hunch"[3]—no single profession has a monopoly on truth, and research that brings together different professions has the potential to yield new insights. Accordingly, this Article brings together two professions—law and sociology—in an attempt to answer a pair of related questions. First, why does the law of a society contain certain concepts and doctrines at one point in history but not at another? Second, why at a given point in time does the law of one society contain certain concepts and doctrines while the law of another society does not? I believe that both questions have a common answer and that the answer stems from the discipline of macrosociology. Specifically, my thesis is that the properties of society form the roots of law and that these properties, and the forces behind them, shape the content of law in the social system in which the law develops and operates.

As a social science, macrosociology assumes that the doctrines of law are not random occurrences. Instead, macrosociology contends that identifiable system-level factors account for differences in law both across time in any particular jurisdiction and across jurisdictions at any particular point in time. The macrosociological approach employed in the instant Article (i) views law as an institution of a society and, hence, as a component of a system;[4] (ii) assumes that, as an institution, law aids society by promoting the equilibrium and cohesiveness of the system in the long run;[5] (iii) contends that, for law to benefit society, the content of law—i.e., the concepts and doctrines of law—must manifest the properties of society, not the personalities of individuals; and (iv) expects, therefore, that law will change as large-scale forces alter the properties of society. The preceding principles, although generally ignored in research on law,[6] form the foundation of this

---

ent profession.

3. Michael Moncur's (Cynical) Quotations, The Quotations Page, http://www.quotationspage.com (last visited Sept. 23, 2006) (quoting JANE WAGNER, THE SEARCH FOR SIGNS OF INTELLIGENT LIFE IN THE UNIVERSE (1986)).

4. Macrosociology assumes that, as a system, a society is characterized by cohesiveness and is comprised of interacting, interdependent components. *See* JOHN SCOTT, SOCIOLOGICAL THEORY: CONTEMPORARY DEBATES 138-39, 150, 153 (1995). The findings of quantitative research are consistent with this assumption. *See* Sung-Soon Clara Kim, Dimensions of Social Integration: Solidarity and Deviance in American Cities 9-28, 142-48 (1985) (unpublished Ph.D. dissertation, University of Virginia) (on file with Widener University School of Law Delaware Campus Library).

5. In my macrosociological framework, law furthers both social integration and system integration. Social integration involves the relationships between the individuals, and between the groups of individuals, in a society; system integration involves the relationships between the structural components of a society. David Lockwood, *Social Integration and System Integration*, *in* EXPLORATIONS IN SOCIAL CHANGE 244, 245 (George K. Zollschan & Walter Hirsch eds., 1964).

6. DANIEL J. ELAZAR, AMERICAN FEDERALISM: A VIEW FROM THE STATES 97, 135-36 (1966) (exemplifying an early use of principle (iv)). The statistical techniques available in the 1960s would not have allowed Professor Elazar to undertake the type of regression analysis reported in Part III(D) of the instant Article.

Article, and the fourth principle, which follows from the three that precede it, is the focus of the Article.

Several illustrations can be given in support of the fourth principle, i.e., the principle that law evolves in response to large-scale forces that alter the properties of society. These illustrations rely on studies (including, when available, quantitative data) that concern a long time interval prior to the change in law under consideration. Shifts that occur in the concepts and doctrines of law can be traced in most instances to change in societal properties that began much earlier and that occurred gradually.

A. Sex Roles

The first illustration is the manner in which American law during the nineteenth and twentieth centuries treated the biological trait of sex. In 1872, the United States Supreme Court, with just one dissenting justice, ruled that a state could deny a woman a license to practice law even if she were eligible for a license in a state where she had formerly resided.[7] The Court deferred to the state's police power, under which states regulate occupations, and concluded that an inconsistency between states in the requirements for admission to the bar does not nullify the requirements of the more restrictive state, even though the restriction involves the sex of the applicant and the applicant had resided in a less-restrictive state. Notably, three justices, concurring in the decision, explained the ruling with their view that:

> The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood.[8]

A full century would pass before Supreme Court jurisprudence on sex-based differences in government policy underwent substantial change. Since the 1970s, the Court has required government to justify policies that treat women differently than men[9] and to do so with a rationale that is "ex-

7. Bradwell v. State, 83 U.S. 130, 139 (1872). *See generally* Caroline Goddard & Gwen Hoerr McNamee, *Myra Colby Bradwell*, *in* BAR NONE: 125 YEARS OF WOMEN LAWYERS IN ILLINOIS: EIGHT WOMEN LAWYERS IN ILLINOIS 3-7 (Gwen Hoerr McNamee ed., 1998).

8. *Bradwell*, 83 U.S. at 141 (Bradley, J., concurring). A similar view appears in a majority opinion of the Court rendered in 1908 on a state statute that limited the number of hours a woman, but not a man, could work during a twenty-four hour period. *See* Muller v. Oregon, 208 U.S. 412, 421-22 (1908).

9. United States v. Virginia, 518 U.S. 515, 532-34 (1996).

ceedingly persuasive."[10] However, social science research indicates that the shift in Supreme Court doctrine on gender just mirrored societal change in the state of sex roles[11] and that the Court accepted gender egalitarianism only after sex equality had markedly increased.[12]

Unfortunately, the scholarship of professionals in the field of law generally rests on the often implicit assumption that law molds society and that society has no more than a small effect on the content of law. As a result, the impact of societal conditions on law has been largely ignored, and not surprisingly, there is a dearth of quantitative research on the hypothesis that jurisprudence on the sex trait is tied closely to societal conditions. The macrosociological approach I advance challenges the prevailing assumption that law shapes social conditions. In my approach, law is a mechanism that facilitates the operation of society, and the concepts and doctrines used by the law of a society will necessarily be in harmony with the properties of the society. Often, if not typically, this harmony will require time to develop after societal conditions change, but eventually the concepts and doctrines of law must be congruent with societal conditions if law is to remain a viable institution of society. Thus, American law on gender evolved in response to change in sex roles and reflected the nature of these roles.

I turn now to two additional topics that illustrate the proposition that law is rooted in societal conditions.

B. The Investment Company Act and the Concept of "Person"

The Investment Company Act ("Act"),[13] which Congress adopted in 1940,[14] governs vehicles in the United States that (i) issue and sell securities to investors and (ii) invest the assets obtained from the sale of their securities in securities issued by others, which are usually business entities, governments, and/or government agencies. Because the Act is the basis for the regulation of mutual funds by the Securities and Exchange Commission,[15] it is a prominent aspect of law pertinent to finance in the United

---

10. *Id.* at 533; *accord* Nev. Dep't of Human Res. v. Hibbs, 538 U.S. 721, 728-30, 740 (2003) (holding constitutional a federal statute that, in banning sex-based employment discrimination, removed the sovereign immunity of states that engaged in such discrimination).

11. LARRY D. BARNETT, LEGAL CONSTRUCT, SOCIAL CONCEPT 50-55 (1993).

12. *Id.* at 52-55. Between 1910 and 1990, the largest decadal decline in sex segregation in occupations occurred from 1930 to 1940. *See* Kim A. Weeden, *Revisiting Occupational Sex Segregation in the United States, 1910-1990: Results from a Log-Linear Approach*, 35 DEMOGRAPHY 475, 480 index A (1998). Notable decreases in such segregation took place in two subsequent decades (1940 to 1950 and 1960 to 1970), but these decreases were much smaller in magnitude than the decline between 1930 and 1940. *See id*.

13. 15 U.S.C. § 80a (2006).

14. Act of Aug. 22, 1940, ch. 686, title 1, 54 Stat. 789 (1940).

15. 15 U.S.C. § 80a-37 (2006). The Securities and Exchange Commission defines a mutual fund as an open-end management investment company, i.e., as an investment

States and significant to the welfare of the American public. An indicator of the societal importance of mutual funds is that in 2006 mutual funds managed net assets totaling $10.4 trillion, and their investors included almost half (48%) of all households in the country.[16]

As specified in Section 3 of the Act, an investment company must inter alia be an "issuer,"[17] and given the definition of issuer in Section 2 of the Act, an issuer must be a "person."[18] Therefore, the conceptualization of person is fundamental to an investment company: an investment vehicle cannot be an investment company unless it is a person. Of relevance here, the Act defines a person to include a "company,"[19] and by doing so, Congress placed entities—i.e., artificial persons—within the scope of the Act.

By encompassing an artificial being, is the Act's definition of person consistent with the way society at large employs the word? This question is important because my thesis contends that the meaning of concepts in law is compatible with their meaning in the general population. Research in etymology suggests that, in referring to artificial beings, the definition of person in law was preceded by a similar definition in society. The word *person* came into English from the Old French word *persone*, which in turn was derived from the Latin word *persona*.[20] Before the fourteenth century ended, the English concept of person referred not only to a human being but also to "[a] character sustained or assumed in a drama or the like, or in actual life; part played; hence function, office, capacity."[21] The latter meaning can include fictionalized characters, and by extending the word *person* to such characters, the English language abstracted artificial beings from interpersonal activities and recognized artificial beings as separate from the human beings who were involved in these activities.

Prior to the fifteenth century, therefore, English as a language possessed the ability to conceptualize an intangible dimension of human interaction

---

company that issues securities redeemable by the company. Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies, Investment Company Act Release No. IC-25922, 68 Fed. Reg. 6564, 6565 n. 6 (Feb. 7, 2003); *see* 15 U.S.C. §§ 80a-2(a)(32), 80a-4, 80a-5(a).

16. INVESTMENT COMPANY INSTITUTE, 2007 INVESTMENT COMPANY FACT BOOK 58, 95 (47th ed. 2007), *available at* http://www.icifactbook.org (including net assets of money market funds in total net assets of mutual funds).

17. 15 U.S.C. § 80a-3.

18. *Id.* § 80a-2(a)(22) (defining issuer as "every person who issues or proposes to issue any security, or has outstanding any security which it has issued").

19. 15 U.S.C. § 80a-2(a)(28) (2000) (defining person as "a natural person or a company"); 15 U.S.C. § 80a-2(a)(8) (2000) (defining company to include corporations and partnerships).

20. WEBSTER'S DICTIONARY OF WORD ORIGINS 353-55 (1995).

21. 11 OXFORD ENGLISH DICTIONARY 596-97 (J.A. Simpson & E.S.C. Weiner eds., 2d ed. 1989) (using definition I.1); *see also* Oxford English Dictionary, www.oed.com (search "find word" for "person;" then select "person, n.;" then follow "Date Chart" hyperlink) (showing dates of meaning usage in English literature).

such as business arrangements and to treat this dimension as distinct from the human participants in the arrangement. Because the idea of an artificial person had become possible in the English language, a necessary condition existed for English law to recognize this type of person—including what we call a corporation and a partnership.[22] Notably, it was in the fifteenth century that corporations and partnerships were brought within the definition of person in the law of England.[23] Artificial beings thus appeared in the lexicon of English law only after they appeared in the English language, and the sequence is not simply coincidence. Business arrangements that today would be labeled partnerships, companies, and guilds had become an important element in the economy of England well before the fifteenth century began.[24] The experience of society is the impetus for the emergence and meaning of concepts,[25] and the nature of economic activity required artificial persons to be part of the language of England and of its law.[26]

When American law included artificial beings within the definition of person, therefore, it followed a long-established practice[27] and accepted a meaning for the word that had already been adopted outside the institution

---

22. Because they are accepted by law, corporations and partnerships are logically characterized as artificial persons that *result from* fictionalizing rather than as artificial persons that *are* a fiction. However, the judiciary does not necessarily take this approach. "If [a corporation] is a fiction it is a fiction created by law with intent that it should be acted on as if true. The corporation is a person." Klein v. Bd. of Tax Supervisors, 282 U.S. 19, 24 (1930).

23. WEBSTER'S DICTIONARY OF WORD ORIGINS, *supra* note 20, at 354; Beth Stephens, *The Amorality of Profit: Transnational Corporations and Human Rights*, 20 BERKELEY J. INT'L L. 45, 54 (2002).

24. SHEPARD BANCROFT CLOUGH & CHARLES WOOLSEY COLE, ECONOMIC HISTORY OF EUROPE 56, 75, 148 (1941); A. B. Hibbert, *The Economic Policies of Towns*, *in* 3 CAMBRIDGE ECONOMIC HISTORY OF EUROPE 157, 170, 190-95 (M.M. Postan & E.E. Rich eds., 1965); *see* Shael Herman, *Trusts Sacred and Profane: Clerical, Secular, and Commercial Uses of the Medieval Commendatio*, 71 TUL. L. REV. 869, 891-94 (1997); R. de Roover, *The Organization of Trade*, *in* 3 CAMBRIDGE ECONOMIC HISTORY OF EUROPE 42, 113 (M.M. Postan & E.E. Rich eds., 1965).

25. S. I. HAYAKAWA, LANGUAGE IN THOUGHT AND ACTION 11-14 (2d ed. 1964).

26. *Cf.* Sylvia L. Thrupp, *The Gilds*, *in* 3 CAMBRIDGE ECONOMIC HISTORY OF EUROPE 230, 231-32, 244 (M. M. Postan & E.E. Rich eds., 1965) (describing the development of occupational guilds in England during the late thirteenth century: "[t]heir organization was important . . . in bringing more formal deliberation to bear on the shaping of the law and custom and on the administrative procedures through which orderly relations were maintained among buyers and sellers").

27. Bank of the United States v. Deveaux, 9 U.S. (5 Cranch) 61, 88 (1809) .

> As our ideas of a corporation, its privileges and its disabilities, are derived entirely from the English books, we resort to them for aid in ascertaining its character. It is defined as a mere creature of the law, invisible, intangible, and incorporeal. Yet, when we examine the subject further, we find that corporations have been included within terms of description appropriated to real persons.

Id. *See generally* Franklin A. Gevurtz, *The Historical and Political Origins of the Corporate Board of Directors*, 33 HOFSTRA L. REV. 89 (2004) (outlining the historical antecedents of boards of directors of corporations).

of law. However, if the theoretical framework employed in this Article accounts for the concepts used by law, the word person is only illustrative of a general principle, namely, that all concepts and rules of law develop within and are molded by the social system and culture in which the law is embedded. This principle accounts for abstractions from interpersonal relationships involving economic activity and the acceptance by law in the United States of artificial beings as persons: corporations and partnerships are, and long have been, central to the U.S. economy,[28] indicating that these forms of business organization have been an important, if not essential, aspect of U.S. society.

C. Age of Majority

For a macrosociological theory of law, a compelling topic is the age of majority, i.e., the age at which society ceases to define an individual as a child and confers all of the rights, and imposes all of the duties, of adulthood. The topic is important sociologically for two related reasons. First, age, like gender, is a factor that organizes social life in every technologically advanced society, including the United States.[29] Second, the age of

---

28. Business receipts—data on which are available for corporations, partnerships, and nonfarm proprietorships—evidence the economic importance of corporations and partnerships in the United States. Of all receipts for the three types of business organization combined, corporations and partnerships have accounted for more than ninty percent in recent years. Calculated from U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES: 2006 (125th ed. 2005), at table 726, *available at* http://www.census.gov/prod/2005pubs/06statab/business.pdf

Unfortunately, data that use a consistent definition of proprietorship over a long period of time are unavailable. Corporations were not a customary form of conducting business in the United States before 1850. *See* William W. Bratton, Jr., *The New Economic Theory of the Firm Critical Perspectives from History*, 41 STAN. L. REV. 1471, 1485 (1989). Sole proprietorships, too, seem not to have been the norm prior to 1850. Rather, businesses at this time were predominantly partnerships. LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 130 (3d ed. 2005). Nonetheless, corporations were being formed in the decades preceding 1850, usually by special acts of state legislatures. William C. Kessler, *Incorporation in New England: A Statistical Study, 1800-1875*, 8 J. ECON. HIST. 43, 45-47, 50 (1948). Notably, the business corporations in existence during this period "tended to function in vital, sensitive parts of the economy, such as banking and transportation. They tended to be the largest economic organizations and concentrations of economic power." Stephen A. Siegel, *Understanding the Nineteenth Century Contract Clause: The Role of the Property-Privilege Distinction and "Takings" Clause Jurisprudence*, 60 S. CAL. L. REV. 1, 68 (1986). The economy of the United States, therefore, is likely to have been dominated by corporations and/or partnerships almost since the nation began. *See* JAMES WILLARD HURST, THE LEGITIMACY OF THE BUSINESS CORPORATION IN THE LAW OF THE UNITED STATES, 1780-1970, at 14-18 (1970).

Law manifests the pivotal economic function of artificial beings both in legislation (e.g., state statutes on corporations and partnerships) and in judicial opinions. *See* Marshall v. Balt. & Ohio R.R. Co., 57 U.S. (16 How.) 314, 327 (1850) (explaining that corporations exist because "[t]he necessities and conveniences of trade and business require that [natural persons] . . . should act by representation, and have the faculty of contracting, suing, and being sued in a factitious or collective name").

29. Gunhild O. Hagestad & Peter Uhlenberg, *The Social Separation of Old and Young: A Root of Ageism*, 61 J. SOC. ISSUES 343, 344-47 (2005).

majority provides a salient line in the American social system. Specifically, for persons who do not suffer from a physical or psychological disability, the line separates individuals deemed dependent by society from individuals deemed independent.[30] Given its societal importance, the age of majority is designated by law, and "[y]oung people eagerly anticipate their legal 'adulthood.' At the age of majority, our society puts them on notice that they are assuming an array of rights and responsibilities which they never had before."[31]

In examining the age of majority designated by law, I will limit myself to the forty-eight states in the continental United States. I exclude Alaska and Hawaii because I consider a period that extends to the start of the twentieth century, and Alaska and Hawaii were not states until the end of the sixth decade of that century.[32] In addition, I omit all non-state jurisdictions. Thus, the District of Columbia is excluded along with non-state jurisdictions located outside the continental United States, such as Puerto Rico, Guam, and the Virgin Islands.[33]

The table in the Appendix to this Article summarizes state law on the age of majority. Column 3 of the table shows, by state, the age of majority that was in force in the 1990s. Column 4 specifies the year in which the legislature of each state approved the age in column 3, and column 2 gives the age of majority that preceded the age in column 3. In reviewing the table, the reader should keep two points in mind. First, the last column specifies the year in which the legislature approved the age of majority that applied in the state during the 1990s, but the year of legislative approval may not have been the first year that the age of majority was in effect. Some states did not implement the revised age of majority until the year following its approval by the legislature. Because my interest is whether law setting the age of majority responds to its social environment, the point at which a law-making body accepts a new age of majority seems more significant than the point at which government officially implements it. Second, the legislation altering the age of majority may have amended an existing statute or it may have altered the common law, i.e., doctrine in court decisions. Under the common law, the age of majority was twenty-one.[34]

---

30. Sy Moskowitz, *American Youth in the Workplace: Legal Aberration, Failed Social Policy*, 67 ALB. L. REV. 1071, 1081-82 (2004).

31. Schwan v. Riverside Methodist Hosp., 452 N.E.2d 1337, 1339 (Ohio 1983).

32. Proclamation No. 3269, 24 Fed. Reg. 81 (1959) (declaring Alaska a state); Proclamation No. 3309, 24 Fed. Reg. 6868 (1959) (declaring Hawaii a state).

33. From 1960 to 1980, these jurisdictions accounted for just 1.8% of all residents of areas that were under U.S. sovereignty. Calculated from U.S. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES: 1985, 12 Table 12, 826 Table 1451 (105th ed. 1984), *available at* http://www. census.gov/prod/www/ abs/statab.html.

34. HOMER H. CLARKE, JR., THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES 309 (2d ed. 1988).

A review of the table in the Appendix yields a number of conclusions. Of greatest importance, states generally reduced the age of majority to eighteen, or in a few instances to nineteen, during a relatively short time span, viz., in the first half of the 1970s. Additionally, this period witnessed the elimination of different ages of majority for males and females by states that had such differences. However, states whose age of majority contained a gender distinction were few in number, and all but one of these states (Illinois) had small populations.[35] Gender differences in the age of majority had thus largely disappeared prior to the 1970s. Moreover, change in statutory law preceded rather than followed the emergence of constitutional law on the subject. In 1975, the U.S. Supreme Court concluded that, for purposes of child support, a gender-based distinction in the age of majority violates the equal protection guarantee of the Constitution,[36] but when the Court announced its decision in April 1975, the nine states with a different age of majority for women and men had eliminated the distinction.[37] The age of majority, therefore, was a product of the legislative process, not the judicial process.

Whether new law is developed by legislatures or by courts (or by executive-branch agencies), however, is not of central concern to my thesis. As an institution, law must aid the operation of its society in the long run, and through legislation, judicial action, or agencies of the executive branch, the doctrines of law will come to reflect the character of the social system and the forces shaping it. Let me accordingly attempt to identify the forces that contributed to reducing the age of majority in the early 1970s. Since the reduction occurred in most states during a short span of time, the forces that were involved evidently operated on a national scale and affected much of the population to roughly the same degree. But what social forces were at work? One of them, I believe, was the changing age structure of the United States that resulted from the baby boom after World War II and the historical context preceding the boom. Specifically, because of low levels of fertility before the war, especially during the Depression of the 1930s, the post-war baby boom created a large bulge in the demographic

35. U.S. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES: 1998, 28 Table 26 (118th ed. 1998), *available at* http://www.census.gov/prod/ www/abs/statab.html.

36. Stanton v. Stanton, 421 U.S. 7, 17 (1975) (suggesting twice that its holding applied only in "the context of child support").

37. Stanton v. Stanton, 517 P.2d 1010 (Utah 1974) (upholding the different age of majority for men and women), *rev'd*, 421 U.S. 7 (1975) (decided April 15, 1975). The U.S. Supreme Court announced its ruling in *Stanton* on April 15, 1975. *Id.* Two of the nine states, Arkansas and Utah, eliminated the sex difference in their age of majority in 1975, but both states acted before April 15: a gender-neutral age of majority was approved by the Utah legislature on March 24, 1975 and by the Arkansas legislature on April 7, 1975. Act of Apr. 7, 1975, No. 892, 1975 Ark. Acts 2321; Act of Mar. 24, 1975, ch. 39, § 15-2-1, 1975 Utah Laws 121. In adopting a uniform age of majority, the Utah legislature thus was not responding to an adverse court decision.

structure of the population, and as the passage of time moved the bulge into successive age categories, these age categories seriatim perceptibly and rapidly increased in relative size. During the three decades after the war, therefore, the salience and significance of younger age groups rose dramatically. This demographic situation probably contributed to the collective decision during the early 1970s to reduce the age of majority. Research on other topics suggests that the age makeup of the U.S. population has had distinct effects,[38] and the changing age distribution of the country after World War II was likely to have been a key factor altering the age of majority in the 1970s.

The historical context and demographic dimensions of the baby boom may be understood with data on annual births. Estimates of fertility in the United States as a whole are available by individual year starting in 1909. From 1909 until the mid-1920s, the crude birth rate (the number of births per one-thousand members of the population) was consistently above twenty-five. Subsequently, the rate declined, reaching a low of 18.4 in the mid-1930s, and stayed in a relatively narrow range until World War II ended in 1945. Once World War II was over, births rose: from 1946 to 1959, the crude birth rate was between 24.1 and 26.6.[39] The comparatively low birth rate during the decade-and-a-half before the war, together with the materially higher birth rate after the war, had a dramatic effect on the age structure of the population.

If a society is to avoid upheaval, it must absorb its youth socially as well as economically. Since my goal is to ascertain whether the post-World War II baby boom helps to explain the reduction in the age for adult status during the first half of the 1970s, the ages directly affected by the change—viz., eighteen, nineteen, and twenty—necessarily are included in my analysis. In addition, persons close to their eighteenth birthday presumably contributed to lowering the age of majority, because in the 1960s they were relatively numerous and their share of the population was growing rapidly. The appreciable expansion of the segment of the population that was approaching age twenty-one—an expansion attributable to the baby boom fol-

38. *See* Guy N. Burkhardt, Population Determinants of Social Change: An Analysis of the Age Composition of the United States from 1920 to 1983 (1988) (unpublished Ph.D. dissertation, Portland State University) (on file with Widener University School of Law Delaware Campus library); *see also* Henry M. McMillan & Jerome B. Baesel, *The Macroeconomic Impact of the Baby Boom Generation*, 12 J. MACROECONOMICS 167 (1990) (finding that the age composition of the U.S. population affected real interest rates, income, inflation, and unemployment); Michael D. Mumford et al., *Age-Related Changes in the Likelihood of Major Contributions*, 29 INT'L J. AGING & HUM. DEV. 171, 175 (1989); Raymond K. Oldakowski, The Influence of Population Change on Municipal Fiscal Policy (Aug. 1987) (unpublished Ph.D. dissertation, University of Illinois at Urbana-Champaign) (on file with author) (finding that age structure and other population characteristics generate changes in municipal fiscal policy).

39. NATIONAL CENTER FOR HEALTH STATISTICS, VITAL STATISTICS OF THE UNITED STATES: 1993, VOL. I, NATALITY, at Table 1-1 (1999).

lowing World War II and occurring in the decade-and-a-half prior to 1970—confronted society with the necessity of assimilating a large group that would soon be adults and was probably a major source of pressure on the American social system.

Given these theoretical considerations, my focus is on the fraction of the population fifteen to twenty years of age and the manner in which this fraction changed over time. Striking shifts in this fraction may be infrequent in the history of a society, but when they occur, they have the ability to create conspicuous social and economic problems. Figure 1 shows the percentage of the U.S. population that was fifteen to twenty years old each year from 1900 to 1980.[40] Particularly important is the period from 1940 to 1970: the percentage declined by more than one-fourth between 1940 and 1954 (from 11.2% to 7.9%) and then rose by one-half between 1955 and 1976 (from 7.9% to 11.8%), with most of the rise occurring before 1970. Thus, during the three decades that preceded the reduction of the age of majority to eighteen, there was a sharp decline and rebound in the demographic presence of the age group most directly affected by whether majority was attained at age twenty-one or at age eighteen. The rapidity and magnitude of the rebound undoubtedly increased the salience of youth, and the prominence of young persons in the population is likely to have promoted law that reduced the age for adulthood.

40. The percentages were calculated for each year from 1900 through 1980. Percentages are based on the resident population of the forty-eight states for 1900-1939 and on the total population for 1940 and later years. Alaska and Hawaii are included by the Census Bureau in total population starting in 1950. U.S. BUREAU OF THE CENSUS, ESTIMATES OF THE POPULATION OF THE UNITED STATES, BY SINGLE YEARS OF AGE, COLOR, AND SEX: 1900 TO 1959, CURRENT POPULATION REP., Series P-25, No. 311 (1965); U.S. BUREAU OF THE CENSUS, ESTIMATES OF THE POPULATION OF THE UNITED STATES, BY AGE, SEX, AND RACE: APRIL 1, 1960 TO JULY 1, 1973, CURRENT POPULATION REP., Series P-25, No. 519 Table 1 (1974); U.S. BUREAU OF THE CENSUS, PRELIMINARY ESTIMATES OF THE POPULATION OF THE UNITED STATES, BY AGE, SEX, AND RACE: 1970 TO 1981, CURRENT POPULATION REP., Series P-25, No. 917 Table 1 (1982).

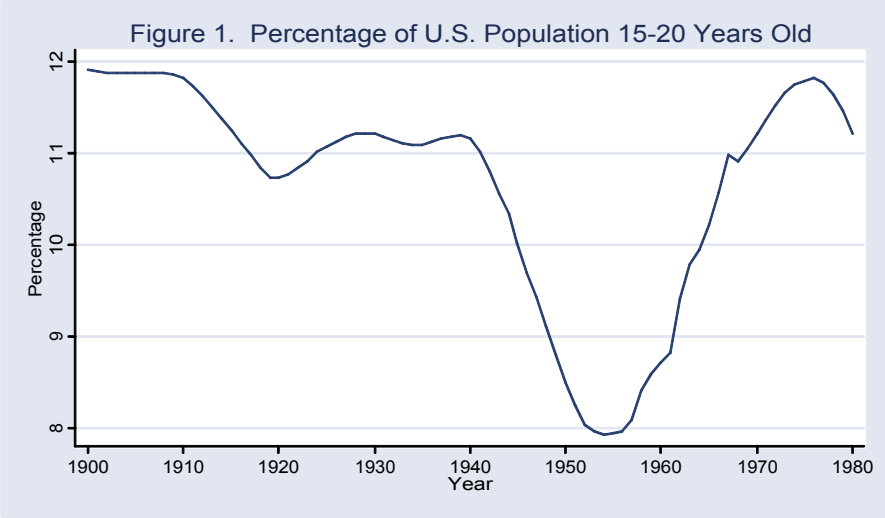


Figure 1 also shows that the percentage of the population fifteen to twenty years of age was relatively high in the early decades of the twentieth century. Why was the age of majority not reduced to eighteen at this time? One possibility is that the substantial swing after 1940 in the proportion of persons fifteen to twenty years old by itself reduced the age of majority to eighteen. Under this hypothesis, the magnitude and speed of the change in the proportion was decisive. A second possibility is that the relatively large percentage of fifteen to twenty year olds in the population during the second half of the twentieth century (rather than the volatility of the percentage) acted in conjunction with one or more other factors that were present at the time—factors that did not exist or were not adequate in strength at the start of the twentieth century. According to the second hypothesis, the level of the percentage, and not its change, was critical, but the level of the percentage was unable by itself to alter the age of majority; the presence of some other factor(s) was required. A third possibility, of course, is that the reduction of the age of majority to eighteen in the 1970s was the product of both the large pre-reduction swing in the relative size of the age group fifteen to twenty years old and at least one additional factor. Under the last hypothesis, the change in, and not the level of, the relative size of the age group combined with one or more other factors to lower the age of majority. Since social phenomena are typically complex, the second and third alternatives are more plausible than the first. Thus, the age structure of the population probably did not act alone to reduce the age of majority in the 1970s.

What else may have been at work? One possible factor was the transformation that occurred during the twentieth century in the traits that American parents wanted to inculcate in their children. Specifically, inde-

pendence increased and obedience decreased as characteristics desired for children, and both changes were sizeable.[41] These changes may have stemmed from the large, complex, and expanding body of knowledge found in the United States, because individualism and personal autonomy become more prevalent when knowledge grows or reaches a certain threshold.[42] A lower age of majority is, of course, consistent with a societal emphasis on independence for youth, while a higher age of majority can be expected a priori in a social system that stresses obedience to authority.[43]

By way of conclusion, the reduction of the age of majority that occurred during the first half of the 1970s should be regarded as a means by which American society, through its law, adjusted to an important group. The assimilation of large, distinct groups—a process that probably happens in most social systems—has long been significant in the United States, even during the nineteenth century.[44] At the start of the twentieth century, immigration into the United States was appreciable, and a large part of the immigrant stream originated in central, eastern, and southern Europe.[45] Adaptation to and the assimilation of groups that did not share the culture of northwestern Europe—the dominant culture of the United States—were essential to the effective operation of the American social system. By the 1970s, on the other hand, cultural diversity was no longer a major problem for American society,[46] but the baby boom after World War II had created another substantial group, defined by age rather than culture, to which the social order needed to adjust if it was to avoid disruption. One means employed in the adjustment process was to lower the age of majority to eighteen. Law setting the age of majority was thus a societal device to facilitate a macrosociological process.

---

41. Duane F. Alwin, *From Obedience to Autonomy: Changes in Traits Desired in Children, 1924-1978*, 52 PUB. OPINION Q. 33, 43 (1988).

42. BARNETT, *supra* note 11, at 22-23.

43. It is probably not coincidence that, prior to the reduction during the 1970s in the age of majority established by law, loyalty to religion also became less important in the values that American parents had for their children. *See* Alwin, *supra* note 41, at 43.

44. *See* OSCAR HANDLIN, IMMIGRATION AS A FACTOR IN AMERICAN HISTORY 1-3 (1959).

45. U.S. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES, 10 Table 5 (118th ed. 1998), *available at* http://www.census.gov/prod/www/abs/statab.html; U.S. BUREAU OF THE CENSUS, HISTORICAL STATISTICS OF THE UNITED STATES: COLONIAL TIMES TO 1970, PART I, 105-09 (Series C 89-119) (1975), *available at* http://www.census.gov/prod/www/abs/statab.html [hereinafter HISTORICAL STATISTICS].

46. *See* Campbell Gibson & Emily Lennon, *Historical Census Statistics on the Foreign-Born Population of the United States: 1850 to 1900*, Table 1 (U.S. Census Bureau, Population Division Working Paper No. 29, 1999), *available at* http://www.census.gov/population/www/documentation/twps0029/twps0029.html (showing that foreign-born persons comprised no less than 13.2% of the U.S. population between 1860 and 1920 but were just 4.7% of the population in 1970).

II. KNOWLEDGE AS A SOCIETAL PROPERTY

If the sociology of law is to advance, change in law must be studied both when it happens quickly and when it happens slowly. Sudden transformations in doctrines of law may on the surface seem more important than gradual transformations because abrupt transformations are more salient. Sudden transformations are attractive topics additionally because their triggers may be easy to identify. However, inasmuch as prediction is a central goal of the scientific enterprise, abrupt shifts in law can complicate the task of social science. Two types of situations are pertinent in this regard. First, rapid shifts in law can stem from massive but aperiodic events such as natural disasters. These events are likely to prove difficult to anticipate far in advance, and the changes in law they generate, therefore, cannot readily be predicted. Second, doctrines of law can be modified suddenly by forces that develop gradually and that have their effects when thresholds are reached. The second route to abrupt change in law is probably much more common than the first, and the changes this route generates are especially hard to anticipate because there may be more than one point at which slowly building pressure will precipitate new doctrines in law. Multiple thresholds will exist when different combinations of societal properties and their interactions transform law, and multiple thresholds probably exist in every complex society.

Regardless of the speed with which novel doctrines of law arise, the properties of a social system and the forces that affect these properties must be the focus of attention if the doctrines are to be understood and their emergence is to be predicted. In a macrosociological framework, the individuals in the system—including those who participate in law-making bodies such as legislatures, agencies of the executive branch, and courts—do not account for the content of law. Rather, pervasive forces that mold the characteristics of the social system determine the decisions of these individuals with regard to the content of law,[47] and explanations of law that are based on personalities, even personalities of prominence and charisma, treat the institution of law superficially. The character of society and the substance of its law are not formed by individuals, but by large-scale forces that operate through the actions of individuals.

In this part of the Article, I will focus on one such force that I believe shaped the social order and doctrines of law in the United States during the twentieth century and that can be expected to remain a potent influence on

47. Larry D. Barnett, *Law as Symbol: Appearances in the Regulation of Investment Advisers and Attorneys*, CLEV. ST. L. REV. (forthcoming 2007) (contending that in the long run the properties of society and the forces that mold these properities control the doctrines of law). I am not implying that history is governed by a master plan and moves in a preordained direction; my contention is only that certain factors precede societal change and the new concepts and doctrines of law that are generated by such change. *Id.*

U.S. law for the foreseeable future. The role of this force, however, seems not to have been fully appreciated by either social scientists or law-trained scholars. The force is the expansion of knowledge. Undoubtedly, other forces (e.g., increases in population density)[48] influenced the character of American society and the content of its law, but I concentrate on knowledge because I believe that it had, and will continue to have, a major impact on the United States. Perhaps in part because accumulating knowledge shaped social life for so long, its role in the social system has not received the attention it deserves. We simply have become accustomed to improvements in knowledge.

In order to show the degree to which knowledge increased over time, I begin with a quantitative measure of it. Knowledge is difficult to study because it is an abstract concept and must be operationalized. The concept of knowledge is necessarily an abstraction because knowledge assumes different forms (e.g., a chemical compound or mechanical process in manufacturing, a statistical technique for data analysis in science), and in some forms (e.g., mathematics) it is composed entirely of written signs. Being an abstract concept, knowledge is not directly observable and must be measured by its manifestations.

What indicators can be used to determine the magnitude and growth of knowledge? The question does not have an easy answer, because no single indicator or set of indicators seems to be accepted by social scientists[49] even though the amount of knowledge available to Americans is believed to be expanding dramatically.[50] The absence of a generally accepted measure or set of measures is unfortunate. The availability of a relatively simple indicator that correctly gauges the quantity of knowledge, together with long-term data on the indicator, would benefit macrosociological analyses in general and a macrosociological framework for doctrines of law in particular.

Although at present no single indicator adequately depicts the volume and expansion of knowledge in the aggregate, figure 2 shows the annual number of patents that the U.S. Patent and Trademark Office has granted for inventions.[51] In the United States, patents are issued for inventions, for natural plants, and for designs, but of the three, patents for inventions are

48. BARNETT, *supra* note 11, at 23-24; Larry D. Barnett, *Population Growth, Population Organization Participants, and the Right of Privacy*, 12 FAM. L.Q. 37, 37 (1978).

49. *See* G. Nigel Gilbert, *Measuring the Growth of Science*, 1 SCIENTOMETRICS 9 (1978); Mumford et al., *supra* note 38, at 175.

50. Graham T.T. Molitor, *Trends and Forecasts for the New Millenium*, FUTURIST 53, 59 (Aug.-Sept. 1998).

51. The data in figure 2 are from U.S. PATENT & TRADEMARK OFFICE, U.S. PATENT ACTIVITY, CALENDAR YEARS 1790 TO THE PRESENT (2005), *available at* http://www.uspto.gov/web/offices /ac/ido/oeip/taf/reports.htm#by_hist.

the most accurate indicator of knowledge since they are awarded for "any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof," that was not obvious to a person of average skill in the field in which the invention originated.[52] An invention thus constitutes a technological innovation, and since technology employs knowledge, the number of patents granted for inventions over time can serve as an indicator of change in the quantity of accumulated knowledge.

In considering figure 2, the reader should keep in mind that patented inventions represent only one form of knowledge and are just a rough indicator of such knowledge. Patented inventions cannot serve as an accurate indicator of knowledge as a whole for at least two reasons: (1) an addition to knowledge may not be incorporated into a patentable invention; and (2) all patented inventions do not utilize the same amount of knowledge. The two problems are distinct. The first exists because many types of knowledge are not within the term "invention" as defined by law, and hence they cannot be patented. For example, a new measure of sex segregation in occupations[53] is a contribution to knowledge, but it is not patentable. Moreover, even when knowledge generates patented inventions, the quantum of knowledge used is not the same in every invention. To illustrate, less knowledge is probably required to create appliances for the home than to create drugs that treat serious diseases. Unfortunately, neither of the two problems can be corrected at the present time. The first problem could be mitigated by data on copyrights issued for scientific articles and books. However, while copyrights for scientific publications could be employed as an indicator (albeit imperfect) of advances in scientific knowledge,[54] long-term data on these copyrights do not exist. The second problem necessitates a technique to measure the amount of knowledge in an invention, but such a technique has yet to be devised. As a result, time-series data are unavailable on the total amount of knowledge in patented inventions.

52. 35 U.S.C. §§ 101, 103(a) (2006).

53. *See generally* Weeden, *supra* note 12 (using a margin-free method to measure sex segregation in occupations in the United States from 1910 to 1990).

54. Publications such as books and articles can be copyrighted only if they are original. MARSHALL LEAFFER, UNDERSTANDING COPYRIGHT LAW § 2.07 (4th ed. 2005). Copyrighted publications in science, therefore, represent contributions to scientific principles and/or concepts.

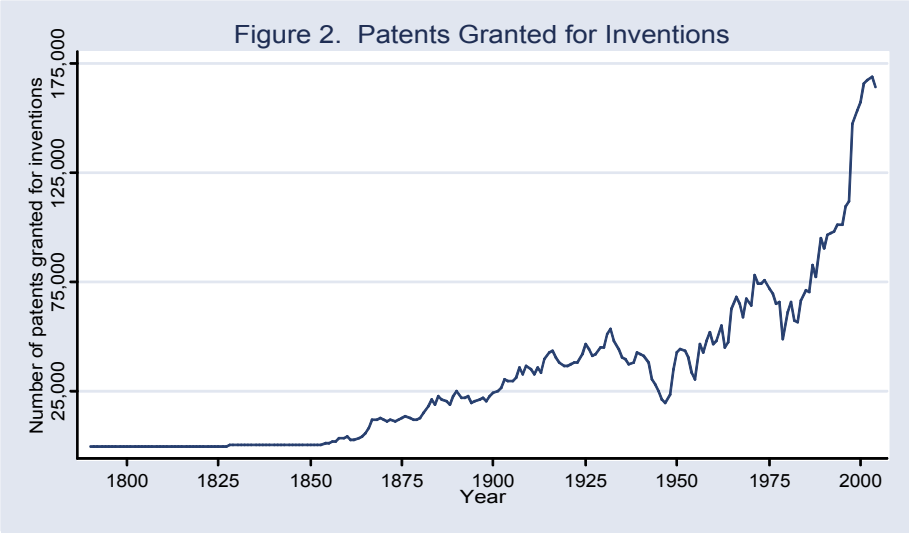


Figure 2 shows a secular rise in the number of patents granted for inventions. However, even during the periods when the number declined, knowledge continued to accumulate; the gains in knowledge simply were less in these periods than in the years that preceded them. Moreover, the intervals of decline in patent issuance are brief when viewed historically, and the discovery process is cumulative, i.e., the inventions in one year build on inventions (knowledge) from earlier years. For the last two centuries, then, knowledge expanded in the United States. Notably, the pace of the expansion accelerated starting in the mid-1980s, which may reflect developments in computer hardware and software.

A sustained increase in knowledge is likely to generate broad changes in the character of society,[55] and the changes resulting from this increase probably include two that are critical to understanding the content and evolution of law. The first is an increase in economic wealth. All else remaining constant, advances in knowledge add to the wealth of a society by augmenting economic productivity and permitting more efficient and/or more complete exploitation of natural resources. Wealth, in turn, allows individuals to pursue and fulfill their personal goals, i.e., wealth promotes secular individualism.[56] The second likely change is an increase in rationality. The progress of knowledge encourages rationality in part by producing a

55. *See* Patrick Nolan & Gerhard Lenski, *Technology, Ideology, and Societal Development*, 39 SOC. PERSP. 23, 33 (1996) (finding with cross-sectional data that, compared to ideology, improvements in subsistence technology had a larger effect on societies).

56. Ron Lesthaeghe, *A Century of Demographic and Cultural Change in Western Europe: An Exploration of Underlying Dimensions*, 9 POPULATION & DEV. REV. 411, 429-30 (1983).

greater understanding of events and experiences; comprehension, in turn, fosters reason. Additionally, the progress of knowledge increases rationality by enlarging the portion of the labor force that works with information[57] and that thus relies on intellectual rather than physical skills. Concomitantly, the progress of knowledge enlarges the number of jobs that are self-directed, i.e., that involve complex, non-methodical tasks and that are not subject to close supervision.[58] In short, occupations concerned with information and characterized by self-direction encompass more people as knowledge advances, and they enhance analytical abilities, i.e., reasoning, in every facet of life.[59] The U.S. commitment to scientific research has thus had widespread effects on American society.[60]

Assuming that the growth of knowledge reshapes society, in what ways did expanding knowledge alter doctrines of law in the United States during the twentieth century? The growth of knowledge undoubtedly had multiple effects, but this Article will suggest just one. Specifically, greater rationality, a consequence of knowledge growth, probably created and intensified expectations that expertise, rather than characteristics irrelevant to occupational skill and performance, would be the basis for employment-related

---

57. *See* Clifford I. Nass, Society as Computer: The Structure and Skill of Information Work in the United States, 1900-1980, 92, 94 (Oct. 1986) (unpublished Ph.D. dissertation, Princeton University) (on file with Widener University School of Law Delaware Campus Library) (finding that between 1900 and 1980 the proportion of the U.S. labor force in occupations dealing with information rose by 5.5% per decade, and that in 1980 two out of five workers were engaged in these occupations).

58. MELVIN L. KOHN & KAZIMIERZ M. SLOMCZYNSKI, SOCIAL STRUCTURE AND SELF-DIRECTION 108 (1990).

59. *See* Nass, *supra* note 57, at 204 (identifying information as the primary substance of nonmanual occupations, not of manual occupations); *see also* Melvin L. Kohn & Carrie Schoenbach, *Class, Stratification, and Psychological Functioning*, *in* WORK AND PERSONALITY 154, 185 (Melvin L. Kohn & Carmi Schooler eds., 1983) (finding that nonmanual occupations, including white-collar workers, have a higher level of self-direction than manual, i.e., blue-collar, occupations). Additions to knowledge thus seriatim enlarge the number of nonmanual positions in an economy, increase intellectual autonomy and flexibility, and heighten reasoning. *Cf.* Melvin L. Kohn & Carmi Schooler, *Job Conditions and Personality: A Longitudinal Assessment of Their Reciprocal Effects*, *in* WORK AND PERSONALITY 125, 147 (Melvin L. Kohn & Carmi Schooler eds., 1983) (finding that self-direction in an occupation is associated with reduced authoritarianism and ideational conformity); KOHN & SLOMCZYNSKI, *supra* note 58, at 235 (finding that self-direction in work produces more intellectual flexibility and a less-conformist orientation to society). *See generally* KOHN & SCHOENBACH, *supra*, at 154 (exploring the impact of occupational self-direction and social stratification on values, orientations, and cognitive functioning).

60. *See* Kenneth C. Land & Fred C. Pampel, *Indicators and Models of Changes in the American Occupational System, 1947-73*, 4 SOC. INDICATORS RES. 1, 18-19 (1977) (finding that expenditures on science raised the mean prestige of the occupational structure in the United States between 1950 and 1973). Because professional and other white-collar occupations are highest in prestige, advances in science and hence in knowledge, which presumably resulted in part from expenditures on science, increased the prevalence of these occupations. By definition, a profession possesses a substantial quantity of complex knowledge. *See* Barnett, *supra* note 1, at 177 (identifying a large body of abstract concepts and complex principles as one of five attributes presently fundamental to the existence of a profession in the United States).

decisions. Evidence that such change in expectations occurred with regard to gender is the declining sex differential in compensation since the early part of the twentieth century: the disparity between American women and men in skill levels due to work experience decreased with the passage of time, and the average pay of women rose more rapidly than the average pay of men.[61] Indeed, the gains of women in the United States seem to be a manifestation of an apparently universal phenomenon, for economic development—a process in which new knowledge is introduced and utilized in an economy[62]—has been found to augment the presence of women in information-based, self-directed occupations in numerous countries.[63] One of the attributes of these occupations is higher income.[64]

Advancing knowledge, in short, enlarges the number of jobs that require intellectual skill rather than physical strength, and it produces, or at least facilitates, pressure on employers to focus their personnel practices on job skills rather than on demographic attributes. In the United States, rationality seems to have become sufficiently pervasive and intense to generate statutes that authorized the imposition of penalties on employers that use demographic characteristics such as age, race, and sex in decisions regarding current employees and applicants for employment. Antidiscrimination statutes represent one of the striking innovations in law during the last half of the twentieth century, and because they illustrate—though by no means exhaust—the doctrines of law produced by advancing knowledge, I review below the antidiscrimination statutes at the federal level that dealt with employment.[65]

I begin with a statute enacted by Congress in 1870 that prohibits race discrimination in contracts and that has been applied to employment contracts.[66] The statute originally was aimed at slavery and associated conditions,[67] and it was extended to employment only in the 1970s.[68] Insofar as it is concerned with job discrimination, therefore, the statute is a creation of

---

61. *See* James P. Smith & Michael Ward, *Women in the Labor Market and in the Family*, 3 J. ECON. PERSP. 9, 10-11 (1989).

62. *Cf.* Eric A. Hanushek & Dongwook Kim, Schooling, Labor Force Quality, and Economic Growth 34 (Working Paper 5399, Nat'l Bureau of Economic Research 1995) (finding that national rates of economic growth rise with the level of student mastery of mathematics and science).

63. Roger Clark, *Contrasting Perspectives on Women's Access to Prestigious Occupations: A Cross-National Investigation*, 72 SOC. SCI. Q. 20, 28-29 (1991).

64. KOHN & SLOMCZYNSKI, *supra* note 58, at 133.

65. I confine myself to federal law, and exclude state law, because my focus is on the stock of knowledge of the nation as a whole. A macrosociological framework, however, is applicable at the state level. Thus, variations between states in knowledge growth and use can be expected to create differences in the content of state law.

66. Act of May 31, 1870, ch. 114, § 16, 16 Stat. 144 (codified at 42 U.S.C. § 1981 (2006)).

67. *See* Long v. Ford Motor Co., 496 F.2d 500, 504 (6th Cir. 1974).

68. *See* Johnson v. Ry. Express Agency, Inc., 421 U.S. 454, 459-60 & n.6 (1975).

the last part of the twentieth century.

The Equal Pay Act of 1963 was the first federal statute explicitly fashioned to combat employment discrimination.[69] The Act requires that, except when differential compensation is attributable to certain specified factors (e.g., a seniority program), women and men in the same establishment must receive identical compensation for work that is "equal," that demands "equal skill, effort, and responsibility," and that occurs under "similar working conditions."[70] Congress directed the Equal Pay Act at the "ancient but outmoded belief that a man, because of his role in society, should be paid more than a woman even though his duties are the same."[71] It is notable, however, that this belief had already been abandoned by Americans: in a 1954 national survey, fully eighty-seven percent of respondents approved, and just thirteen percent disapproved, of equal compensation for male and female employees with the same occupational duties.[72]

While the Equal Pay Act of 1963 is confined to gender and covers only compensation, the Civil Rights Act of 1964 includes a provision (Title VII) that bans discrimination involving "race, color, religion, sex, or national origin" in all facets of employment.[73] The aim of Title VII is to require employers, labor organizations, and employment agencies to base employment decisions on job-related qualifications and to eliminate from these decisions groundless stereotypes that have been maintained by social inertia. In addition, Title VII renders reliance on statistical differences between groups impermissible in employment decisions without a compelling justification. For example, employment decisions cannot be based on the statistically demonstrable fact that women with minor children more often have primary responsibility for child care than men with minor children.[74] "Title VII prohibits the use of popular stereotypes or even statistical data to attribute general group characteristics to each individual member of the group."[75] Under Title VII, potential and current employees must be evalu-

---

69. 29 U.S.C. § 206(d) (2006).

70. *See* Equal Pay Act of 1963, Pub. L. No. 88-38, 77 Stat. 56 (1963) (covering employees who are, or whose employers are, "engaged in commerce or in the production of goods for commerce"). The Act was in force as of 1964. § 4, 77 Stat. 57.

71. S. REP. NO. 88-176, at 1 (1963).

72. 2 GEORGE H. GALLUP, THE GALLUP POLL: PUBLIC OPINION 1935-1971, at 1240 (William P. Hansen & Fred L. Israel eds., 1972).

73. Pub. L. No. 88-352, 78 Stat. 241, 253-66 (1964) (codified at 42 U.S.C. §§ 2000e to 2000e-15 (2006)). The Civil Rights Act was in force as of 1965. § 716, 78 Stat. 266. The Act applied to employers having an impact on interstate commerce and a minimum of twenty-five employees each working day during at least twenty calendar weeks in either the current or the preceding calendar year. § 701, 78 Stat. 253. The Act also prohibited labor organizations and employment agencies from discriminating. § 703, 78 Stat. 255.

74. *See* Phillips v. Martin Marietta Corp., 400 U.S. 542, 543 (1971) (per curiam).

75. Mitchell v. Mid-Continent Spring Co., 583 F.2d 275, 281 (6th Cir. 1978) (internal quotation marks omitted), *cert. denied*, 441 U.S. 922 (1979).

ated individually using criteria that are pertinent to job performance.

Because it encompassed the entire employment relationship and multiple demographic attributes and also established a governmental agency (the Equal Employment Opportunity Commission) to deal with discrimination covered by Title VII,[76] the Civil Rights Act of 1964 has been the most prominent federal legislation to date on employment discrimination. The Civil Rights Act of 1964 did not, however, include all demographic characteristics important to the structure of American society. In particular, it did not cover age, an omission that Congress eliminated three years after enactment of Title VII when it adopted legislation to prohibit discrimination in employment against persons forty to sixty-five years old. Like Title VII, the Age Discrimination in Employment Act of 1967 ("ADEA") extends to all aspects of employment, with exceptions for some types of employers,[77] and was designed to suppress "inaccurate and stigmatizing stereotypes" about age.[78] Under both statutes, decisions that affect employment must rely on factors relevant to job performance and on evaluations of individuals in terms of these factors.

The next, and last, major federal statute on employment discrimination was adopted more than two decades later. In 1990, Congress approved the Americans with Disabilities Act ("ADA") in order to prevent employers, labor organizations, and employment agencies from engaging in unwarranted discrimination against persons who have, or who are thought to have, physical or psychological disabilities.[79] Like other legislation dealing with employment discrimination, the ADA was designed to require that job-related decisions be based on the qualifications of current and potential employees, and it reflected the dissatisfaction of society with preconceptions that preclude evaluations of individuals in terms of these qualifications.[80] In enacting the ADA, "Congress acknowledged that society's ac-

---

76. *See* Pub. L. No. 88-352, §§ 705-709, 78 Stat. 241, 258 (1964).

77. *See* Pub. L. No. 90-202, 81 Stat. 602 (1967) (codified at 29 U.S.C. § 623 (2006)). The ADEA was in force as of 1968 and banned age discrimination by employers, employment agencies, and labor organizations. *Id.* The term "employer" has identical definitions in the ADEA and in Title VII but somewhat different exceptions. Although the ADEA originally did not cover persons who were older than sixty-four, a maximum age was subsequently removed for all but a few occupations. Pub. L. No. 95-256, § 3, 92 Stat. 189 (1978); Pub. L. No. 99-592, §§ 2-3, 100 Stat. 3342 (1986).

78. Hazen Paper Co. v. Biggins, 507 U.S. 604, 610-11 (1993).

79. Pub. L. No. 101-336, 104 Stat. 327 (1990) (codified at 42 U.S.C. §§ 12101-17 (2006)). The ADA, which was in force as of 1992, covered the disabled individual, i.e., one who possesses "a physical or mental impairment that substantially limits one or more of the major life activities . . . or [who is] regarded as having such an impairment." *Id.* Employers were subject to the ADA, with some exceptions, if they had an impact on interstate commerce and a minimum of fifteen employees each working day during at least twenty calendar weeks in either the present or the prior calendar year. *Id.* §§ 3(2), 101(5), 108.

80. In 1977, i.e., thirteen years before the ADA, a national sample of adults in the United States was asked whether the government should enact legislation designed to

cumulated myths and fears about disability and disease are as handicapping as are the physical limitations that flow from actual impairment."[81]

The four statutes described above—the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and the Americans with Disabilities Act of 1990—comprise the main innovations in federal public policy concerned with employment discrimination in the United States and serve as the central tools of the institution of law at the national level for promoting social and economic justice in employment. Indicative of the importance of these statutes to American society is that the number of employers subject to the statutes has generally been expanded over time.[82] Of particular relevance to a macrosociological framework is that the four statutes, as well as related federal legislation,[83] confer an identifiable character on the period from 1963 to 1990. By differentiating the period, the statutes form a unitary sociological phenomenon, and their enactment is presumptively not fortuitous.

In conclusion, novel doctrines are a core concern in a macrosociological approach to law, and an especially important macrosociological topic is any novel doctrine that several major pieces of legislation incorporate. Part II of this Article has focused on the impact of a growing stock of knowledge and has linked this factor to a salient development in recent law in the United States—federal antidiscrimination legislation. However, if the properties of a society have effects that are broad and fundamental, the substantial increase in knowledge is likely to have been responsible for new doctrines of law on a variety of subjects. In Part III below, I present evidence that additions to knowledge reshaped law on abortion by increasing the prevalence and lengthening the duration of schooling among young women.[84]

---

ensure equal job rights for individuals who are physically handicapped. Four out of five respondents endorsed the enactment of such legislation. CBS NEWS & NY TIMES, July 19-25, 1977, accession no. 20297, *available at* LEXIS, RPOLL File.

81. Sutton v. United Air Lines, Inc., 527 U.S. 471, 489 (1999).

82. *See, e.g.*, Equal Employment Opportunity Act of 1972, Pub. L. No. 92-261, § 2, 86 Stat. 103 (1972); Fair Labor Standards Amendments of 1974, Pub. L. No. 93-259, § 28, 88 Stat. 55, 74 (1974); Congressional Accountability Act of 1995, Pub. L. No. 104-1, 109 Stat. 3 (1995).

83. *See, e.g.*, Rehabilitation Act of 1973, Pub. L. No. 93-112, § 504, 87 Stat. 355, 394 (1973).

84. *See* Richard Rubinson & John Ralph, *Technical Change and the Expansion of Schooling in the United States, 1890-1970*, 57 SOC. EDUC. 134 (1984) (finding that advances in technology boosted enrollments in primary and secondary schools in the United States). However, Professors Rubinson and Ralph did not investigate whether advances in technology affected the likelihood of attending college. A study of four countries in Western Europe concluded that economic development between 1900 and 1985 increased the rate at which women enrolled in institutions of higher education. Joan Mary Hermsen, Gendering Higher Education Expansion: Explaining the Growth in Women's University Enrollment Rates in Britain, France, Germany, and Italy During the Twentieth Century 41, 49, 111-12 (1997) (unpublished Ph.D. dissertation, University of Maryland at College Park) (on file with author). Economic development requires the application of knowledge. Because economic development promoted

III. LAW AND ABORTION IN THE UNITED STATES

Because law on abortion underwent a transformation during a relatively short period in the United States, the subject of abortion affords an opportunity not only to identify societal properties and forces shaping law but also to call attention to an important point in the macrosociological thesis that I am advancing. If the concepts and principles that dominate law are attributable to the society in which they are embedded, the distinction between branches of government—the legislature, the executive branch, and the judiciary—is not of major importance, and prevailing doctrines of law do not depend on whether they are in statutes enacted by legislatures, in regulations issued by administrative agencies, or in decisions rendered by judicial bodies. In a macrosociological perspective, broad forces that determine the properties of society shape the governing doctrines of law, and the doctrines respond in the long run to these forces/properties in a manner that protects the equilibrium of the society and maintains, or increases, commitment to the society on the part of its participants. One of the branches of government will supply a doctrine of law that a society needs, because a society is a system and because law is a component that contributes to the system. Thus, merely identifying the branch of government that produces a given doctrine is insufficient for understanding why the doctrine exists. An inquiry of greater depth is necessary. The branches of government form a dependent, not an independent, variable in my framework, and the branch that happens to originate a particular doctrine is a fact requiring an explanation, not a fact providing one.[85]

In asserting that the branch of government from which any particular doctrine emanates cannot explain the content and evolution of law, I am implicitly challenging at least one widely accepted belief, namely, that the political process is an important factor determining doctrines of law. I reject this assumption at the same time I concede that politics is a precursor of law. The role of politics differs across the branches of government—a difference that is particularly apparent between the judicial branch, where politics operates through the appointment and election of judges, and the legislative and executive branches, where politics operates not just through the election of officeholders but also through lobbying efforts directed at them. In my framework, however, political activity is merely the vehicle by which societal needs and values shape doctrines of law, and political analyses—despite their popularity—are not useful for understanding either

---

college attendance in four European nations, it also is likely to have done so in the United States.

85. Barnett, *supra* note 11, at 168 (suggesting that: (1) that the branches of government are mechanisms acting in response to their social environment; and (2) that, to be useful, a theory focusing on doctrines in law must explain why one branch reacts rather than another).

why certain concepts and principles of law are dominant in a society at a given point in time or why such concepts and principles change over time. The political process in a viable social system, I contend, primarily functions to communicate the requirements of society to the institution of law. Thus, social science research has found that the expenditure patterns and legislative subjects of government are not affected materially by whether the persons comprising the governing elite are replaced or retained.[86] Societal imperatives, not political considerations, drive the domestic policies of government.

The preceding points are pertinent to law governing the use of abortion, and I therefore turn to a review of the change that occurred in this law during the late 1960s and early 1970s.

A. Change in Law Regulating Abortion, 1967-1973

Roe v. Wade,[87] the January 1973 decision of the U.S. Supreme Court that held unconstitutional government action intended to impose severe restrictions on access to abortion, has been regarded not just as a milestone in the rights that law accords women,[88] but more broadly as a landmark in the history of constitutional interpretation.[89] The salience of *Roe*, however, diverts attention from an important forerunner that occurred at the state level. Specifically, in the years immediately preceding *Roe*, many states, either through legislation or court decision, substantially liberalized their law on access to therapeutic abortion. The liberalization of state law began in 1967, and by 1972, sixteen states in the coterminous United States had appreciably relaxed the conditions under which women were allowed to terminate pregnancies lawfully.[90] While not all of the states that revised their

---

86. Gregory G. Brunk & Thomas G. Minehart, *How Important Is Elite Turnover to Policy Change?*, 28 AM. J. POL. SCI. 559, 568 (1984); David J. Falcone, *Legislative Change and Policy Change: A Deviant Case Analysis of the Canadian House of Commons*, 41 J. POL. 611, 632 (1979); Harold Wolman et al., *Does Changing Mayors Matter?*, 58 J. POL. 201, 219-21 (1996).

87. Roe v. Wade, 410 U.S. 113 (1973).

88. Amy S. Cleghorn, Comment, *Justice Harry A. Blackmun: A Retrospective Consideration of the Justice's Role in the Emancipation of Women*, 25 SETON HALL L. REV. 1176, 1189 (1995) (describing *Roe as* "the first victory cry for women in the fight to claim emotional and legal independence in a male-dominated world")

89. The U.S. Supreme Court regards *Roe v. Wade* as one of its most socially significant decisions during the last half of the twentieth century. In 1992, the Court described *Roe* as "a watershed decision" and added that *Roe*

> calls the contending sides of a national controversy to end their national division by accepting a common mandate rooted in the Constitution.
> The Court is not asked to do this very often, having thus addressed the Nation only twice in our lifetime, in the decisions of *Brown* [*v. Board of Education* holding unconstitutional purposeful racial segregation in public schools] and *Roe*.

Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 867 (1992).

90. Fifteen of the sixteen states appreciably eased their restrictions on the use of

therapeutic abortion through legislation. The fifteen states were Arkansas, California, Colorado, Delaware, Florida, Georgia, Kansas, Maryland, New Mexico, New York, North Carolina, Oregon, South Carolina, Virginia, and Washington. In Washington, the legislation was drafted by the legislature, but by its terms, the legislation could become law only after it was approved by the voters in a general election. Jon F. Merz et al., *A Review of Abortion Policy: Legality, Medicaid Funding, and Parental Involvement, 1967-1994*, 17 WOMEN'S RIGHTS L. REP. 1 (1995). The pertinent session laws were: Act of Feb. 17, 1969, § 2, 1969 Ark. Acts 177-78; Act of June 15, 1967, ch. 327, 1967 Cal. Stat. 1521; Act of Apr. 25, 1967, ch. 190, 1967 Colo. Sess. Laws 284; Act of June 17, 1969, ch. 145, 57 Del. Laws 409; Act of Apr. 12, 1972, ch. 72-196, 1972 Fla. Laws 608; Act of Apr. 10, 1968, ch. 26-12, 1968 Ga. Laws 1277; Act of Apr. 23, 1969, ch. 180, § 21-3407, 1969 Kan. Sess. Laws 452; Act of May 7, 1968, ch. 470, 1968 Md. Laws 870; Act of Mar. 21, 1969, ch. 67, 1969 N.M. Laws 225; Act of Apr. 11, 1970, ch. 127, 1970 N.Y. Laws 852; Act of May 9, 1967, ch. 367, 1967 N.C. Sess. Laws 394; Act of June 16, 1969, ch. 684, 1969 Or. Laws 1782; Act of Jan. 29, 1970, No. 821, 1970 S.C. Acts 1892; Act of Apr. 4, 1970, ch. 508, 1970 Va. Acts 1101; Act of Feb. 4, 1970, ch. 3, 1970 Wash. Sess. Laws 23. The Washington legislation was approved in an election held on November 3, 1970. Wash. Rev. Code §§ 9.02.060, 9.02.070 (1977).

The sixteenth state that expanded access to therapeutic abortion prior to *Roe* was Vermont, which did so through judicial decision. Specifically, in January 1972, the Supreme Court of Vermont held unconstitutional a state statute that subjected a person who performed an abortion to imprisonment unless the pregnancy threatened the life of the woman; the statute expressly exempted from punishment the woman whose pregnancy was aborted. Beecham v. Leahy, 287 A.2d 836, 840 (Vt. 1972). Following *Beecham*, a pregnancy could be terminated lawfully in Vermont for any reason before the fetus was capable of moving in the uterus, i.e., prior to quickening. *Id.* at 839.

Under Mississippi law prior to 1966, a woman could abort a pregnancy only when the pregnancy jeopardized her life. MISS. CODE ANN. § 2223(1) (1942, recompiled 1956). In 1966, Mississippi revised its abortion statute and added rape as a permissible ground for terminating a pregnancy. Act of May 8, 1966, ch. 358, § 1, 1966 Miss. Laws 661; Merz et al., *supra*, at 33. Because the statutory change did not substantially expand access to abortion, the instant study treats Mississippi as a state that did not alter its abortion law before *Roe*.

As the result of state court decisions rendered prior to *Roe*, Massachusetts allowed a pregnancy to be terminated "to preserve the woman's life or physical or mental health." Merz et al., *supra*, at 30. The court decisions conflicted with the state statute on abortion, which did not permit abortion for any reason. MASS. GEN. LAWS ANN. ch. 272, § 19 (1970). The highest court in Massachusetts established the exception for the life or health of the woman at least as early as 1944. Commonwealth v. Wheeler, 53 N.E.2d 4, 5 (Mass. 1944). Because my focus is on the states that eased restrictions on abortion starting in the 1960s, I classify Massachusetts as a jurisdiction that did not liberalize its law. An additional basis for doing so is that the case law of the highest court in Massachusetts during the 1960s is unclear as to whether a serious threat to the mental or physical health of the pregnant woman was necessary to abort a pregnancy lawfully or whether a health threat of any degree justified an abortion. *Compare* Commonwealth v. Brunelle, 171 N.E.2d 850, 852 (Mass. 1961) (requiring that an abortion be based on a reasonable belief that the health of the pregnant woman was placed in "great peril" by her pregnancy and that her health was in danger of "serious impairment" unless the pregnancy was terminated), *with* Kudish v. Bd. of Registration in Med., 248 N.E.2d 264, 266 (Mass. 1969) (citing *Brunelle* and earlier decisions without specifying the degree to which a pregnancy must endanger the health of the pregnant woman to justify an abortion). Massachusetts would have been categorized in the instant study as a state that liberalized its law on abortion prior to *Roe* if it had clearly changed its law to allow an abortion to be performed legally for health reasons without regard to the level of risk that the pregnancy posed. (For the same reasons, the instant study treats Alabama as a state that did not liberalize its law on abortion before *Roe*: its pre-*Roe* statute allowing an abortion for health reasons was enacted in 1951, as indicated in the text accompanying note 178 *infra*, and I could find no evidence that the statute permitted an abortion regardless of the severity of the health risk created by the pregnancy.)

law permitted women to terminate pregnancies as easily as *Roe*, the important point is that a substantial number of states expanded access to abortion before the Court announced *Roe* in 1973. *Roe*, therefore, must be understood to be a part of a movement that had already begun within law to reduce government barriers to therapeutic abortion.

B. Factors Affecting Decisions by Women to Abort Pregnancies

To identify the societal properties and forces that are pertinent to law on abortion, I will begin with a review of research conducted by social scientists on variables hypothesized to be possible influences on the decisions of pregnant women whether to abort their pregnancies. The review is based on the assumption that the variables having such an effect on individuals suggest the factors determining the strength of the societal need for access to medically approved methods of terminating pregnancy. Unfortunately, social science research dealing with the antecedents of induced abortion among women is scarce, and none of the existing research employs longitudinal, i.e., time series or panel, data. The absence of longitudinal data seriously limits the conclusions that can be drawn regarding causal relationships, because longitudinal data allow temporal sequences to be studied and are thus more likely than cross-sectional data to identify causes accurately.[91]

The studies I review involved multivariate analyses of data on samples of women in the United States and focused on whether induced abortions

---

In 1970, a three-judge federal district court issued a judgment declaring a Wisconsin statute to be unconstitutional in banning abortions during the first trimester of pregnancy and later issued an injunction against enforcement of the statute. The U.S. Supreme Court declined to rule on the declaratory judgment, but it vacated the injunction of the district court and directed the district court to reconsider the injunction. Babbitz v. McCann, 310 F. Supp. 293 (E.D. Wis. 1970), *appeal dismissed*, 400 U.S. 1 (1970); Babbitz v. McCann, 320 F. Supp. 219 (E.D. Wis. 1970), *vacated*, 402 U.S. 903 (1971). The remand of the case on the issue of the injunction has no subsequent judicial history, but since Wisconsin prosecutors and the Wisconsin judiciary were evidently continuing to enforce the state abortion statute during the appeal of the district court declaratory judgment, enforcement presumably continued until the Supreme Court decided *Roe* in January 1973. *See Babbitz*, 320 F. Supp. at 223 (justifying the injunction because "the state judiciary has failed to discourage the prosecutors from trespassing on the federal rights in question. The reaction of the state authorities to our judgment relegates our ruling to nothing more than a gratuitous, advisory opinion"). Accordingly, I do not consider Wisconsin to be a state that liberalized its abortion law prior to *Roe*.

In 1972, a three-judge federal district court, in a declaratory judgment, ruled unconstitutional the New Jersey statute that imposed criminal penalties on physicians who performed abortions, but the court did not enjoin enforcement of the statute. Young Women's Christian Ass'n v. Kugler, 342 F. Supp. 1048 (D. N.J. 1972), *aff'd*, 463 F.2d 203 (3d Cir. 1972), *cert. denied*, 415 U.S. 989 (1974). Because enforcement of the statute could continue while appellate courts considered the district court ruling, I do not deem New Jersey to be a state that liberalized its abortion law before *Roe*.

91. BARNETT, *supra* note 11, at 5-7; Joanna M. Shepherd, *Deterrence versus Brutalization: Capital Punishment's Differing Impacts Among States*, 104 MICH. L. REV. 203, 213 (2005).

among these women were associated with at least two of the following variables: (1) female employment; (2) female education (years of school completed or present school attendance); and/or (3) female marital status. The decisions made by women whether to end pregnancies by abortion are believed to be based on the costs of childbearing[92] and/or on the manner in which women define their role in society.[93] Because each of the three enumerated variables can affect these costs and reflect sex-role definitions, each variable has the potential to influence the proportion of pregnancies that women seek to avoid through contraception and to terminate through abortion. More precisely, insofar as any of the variables burdens childbearing and/or offers socially acceptable alternatives to childbearing, the variable(s) will enhance the need of the social system for ready access to abortion and for law that endorses such access. As a result, this Article examines social science research on the variables to ascertain if one or more of them influences the likelihood that women will end pregnancies through abortion.

Before turning to these studies, it is worth mentioning that the variables being considered—the employment, education, and marital status of women—possess three important attributes. First, the variables have been the subject of at least one well-designed study, and their effect, if any, on abortion can be ascertained tentatively. Quantitative research of reasonable quality will thus be the basis for decisions regarding which of the variables might create a societal need for a change in law on abortion. Second, reliable annual data on the rate or distribution of each variable in the female population of reproductive age are obtainable for years starting soon after World War II. Since the reform of abortion law in the United States commenced in the last half of the 1960s when some states began to ease their restrictions on abortion, a variable can produce a need for this reform only if its rate or distribution in the population increased during earlier years. Accordingly, the period covered by the data must commence well before the 1960s and, because World War II is a landmark in U.S. history, should ideally begin in the last half of the 1940s or in the early 1950s. Third, data on states from the 1960 census are available for each of the three variables, and these data can be used to identify system-level properties that differentiate the states that liberalized their law on abortion in the late 1960s and early 1970s from the states that did not.

In light of the attention that the abortion issue has attracted in the political arena, it is surprising that few well-designed social science studies with

92. Lawrence B. Finer et al., *Reasons U.S. Women Have Abortions: Quantitative and Qualitative Perspectives*, 37 PERSP. ON SEXUAL AND REPROD. HEALTH 110, 117 (2005).

93. Steven L. Nock, *The Symbolic Meaning of Childbearing*, 8 J. FAM. ISSUES 373 (1987).

large data sets have been conducted on the factors affecting the likelihood that women who conceive will abort their pregnancies. Indeed, I was able to locate just two such studies. Like all research, the studies have methodological limitations that need to be understood in evaluating their findings. Therefore, I will discuss each study in some detail.

The first study was based on the 1976 cycle of the National Survey of Family Growth ("NSFG").[94] The NSFG sampled females fifteen to forty-four years old who resided in the coterminous United States. A female in this population was eligible for the sample if (i) she was currently or previously married, or (ii) even though she had never married, she had borne a child who was living with her.[95] In imposing these eligibility criteria, however, the sample excluded childless females who had never married. Since females in the latter category (i.e., childless never-married females) comprised most of the women who were undergoing abortions in the mid-1970s,[96] a serious question exists whether the findings of the study can be generalized to all women who experienced a pregnancy at this time.

Because the dependent variable in the study was whether a woman had ever aborted a pregnancy, the study was confined to women who reported they had been pregnant.[97] In examining the dependent variable, the study dichotomized the respondents—respondents who reported having had an abortion were placed in one category and respondents who did not report an abortion were placed in another category.[98] However, subsequent research indicates that many women in the survey did not admit that they had aborted pregnancies. Indeed, married interviewees in the 1976 NSFG are estimated to have revealed just forty-five percent of the abortions they actually obtained.[99] If the misreporting of abortions was not random but systematically associated with certain attributes of women, the findings of the study may misstate whether, how, and/or the degree to which the attributes are linked to the abortion decisions of women.

In terms of the independent variables that are of interest here, education was determined by the NSFG at the time of pregnancy and scaled with a dichotomy that separated (i) women who were still in school from (ii) women who had finished their education or whose educational status was uncertain.[100] Consequently, the study measured school attendance, not

94. Joanne M. Badagliacco, Who Has Abortions: Determinants of Abortion Choice among American Women (1987) (unpublished Ph.D. dissertation, Columbia University) (on file with Widener University School of Law Delaware Campus Library).

95. *Id.* at 33.

96. *Id.* at 38.

97. *Id*. at 54.

98. *Id.* at 56.

99. Elise F. Jones & Jacqueline Darroch Forrest, *Underreporting of Abortion in Surveys of U.S. Women: 1976 to 1988*, 29 DEMOGRAPHY 113, 115 (1992).

100. Badagliacco, *supra* note 94, at 64.

educational attainment. Employment status of respondents was generally unknown for the point in time when respondents became pregnant, but information existed on whether respondents were economically active outside the home when they were interviewed for the NSFG. The study used the latter information for employment, and hence the variable as measured refers to a point subsequent to the occurrence of pregnancy.[101] While the study assumed that the employment status of women was the same at the time of the pregnancy as at the time of the interview, the assumption may have often been inaccurate given the tendency of women in the 1970s to withdraw from the labor force when they carried pregnancies to term.[102] The findings of the study, accordingly, may be incorrect with regard to the relationship between employment and abortion.

The final independent variable of interest was marital status. For this variable, the study grouped women into two categories: (i) those who were married when they became pregnant or ended their pregnancy; and (ii) those who, when they became pregnant or aborted their pregnancy, had never been married, were married but separated or divorced from their husbands, or were widowed. The study deemed women in the first category to be married, and women in the second category to be unmarried.[103] However, the NSFG did not interview, and the second category therefore omits, never-married females who were childless. The exclusion of the latter females prevents the study from comparing women who were married at the time of their pregnancies to all other women and undermines the ability of the study to assess marital status as an explanatory variable.

What did the statistical analysis reveal? As the investigator recognized,[104] the problems characterizing the research design require that considerable caution be exercised in drawing conclusions from the findings. Nevertheless, the findings are plausible and hence noteworthy. With a range of other variables held constant,[105] a relationship emerged between school attendance and abortion use: the probability that a woman would end a pregnancy was higher among females who were attending school than among females who were not.[106] The relationship to abortion use of both employment status and marital status, however, differed between women who were not mothers when they became pregnant and women

101. *Id*.

102. GUS HAGGSTROM ET AL., CHANGES IN THE LIFESTYLES OF NEW PARENTS 146 (1984).

103. Badagliacco, *supra* note 94, at 61.

104. *Id*. at 76-77.

105. Among the variables controlled was whether the pregnancy occurred before or after the U.S. Supreme Court decided *Roe v. Wade*. *Id.* at 62, 160.

106. Unless otherwise noted, I base my summary of the findings on the logistic regression equations, not the ordinary least-squares equations, estimated by the investigator. Badagliacco, *supra* note 94, at 158-61.

who were.[107] In terms of employment status, non-mothers were more likely to abort a pregnancy when they were employed, full-time or part-time, than when they were not employed, but among mothers, employment status was unrelated to the probability of abortion. In terms of marital status, non-mothers were not characterized by a relationship between marital status and abortion probability, but mothers were less likely to terminate pregnancies when they were married than when they were not.

Two points emerge from the findings and merit some emphasis. First, school attendance was the sole independent variable that did not interact with another factor; the effects of the other two independent variables were contingent on whether the woman was already a mother when she became pregnant. Consequently, school attendance—and, by implication, educational level—offers particular promise as a factor generating a societal need for abortion. Second, standardized regression coefficients from ordinary least-squares regression indicated that school attendance had by far the strongest effect, as well as the most uniform effect, on the likelihood of aborting a pregnancy.[108]

A second study of the antecedents of abortion use was conducted on the pregnancy outcomes of females who resided in eight states or in New York City and whose pregnancies ended during 1980.[109] The data included information on more than a half-million pregnancies involving women twenty years of age and older, but while an impressively large number of cases could be used to assess the factors influencing pregnancy outcome, the data possessed three limitations that should be noted.

The first limitation of the study is that the dataset covered pregnancy outcomes of the residents of just a few geographic areas and therefore included only a portion of all pregnancies—specifically, only one out of nine pregnancies—that occurred in the United States among women age twenty and older and that had an outcome in 1980.[110] While this sampling fraction is much larger than that found in surveys of large populations, the women included in the data were not chosen randomly from a larger universe, rendering tests of statistical significance inappropriate. Accordingly, judgments are not possible whether relationships found between the independent variables and the dependent variable apply to all American women of reproductive age.

The second limitation of the study is that information was unavailable on

---

107. *Id.* at 67.

108. *Id.* at 143, 165.

109. Katherine Trent & Eve Powell-Griner, *Differences in Race, Marital Status, and Education Among Women Obtaining Abortions*, 69 SOC. FORCES 1121 (1991).

110. Computed from *id.* at 1126 and from Stephanie J. Ventura et al., *Trends in Pregnancies and Pregnancy Rates, United States, 1980-88*, 41 MONTHLY VITAL STAT. REP., at Table 1 (Nov. 16, 1992), *available* at http://www.cdc.gov/nchs/products/pubs/pubd/mvsr/supp/42-41/42-41.htm.

the employment status of women whose pregnancies were included in the study. Thus, one of the three variables of concern in this Article was omitted from the data analysis undertaken by the study.[111] To the extent that differences in employment are related to differences in the probability of aborting a pregnancy as well as to differences in education and/or marital status, the study may yield inaccurate conclusions. Notably, available research has identified relationships between employment, education, and marital status.[112]

The third limitation is that the data did not include information on spontaneous fetal deaths when gestation length was twenty weeks or less. The omission of data on early spontaneous fetal deaths, the investigators point out, causes the abortion rate to be overstated, but they contend that the omission does not bias their conclusions regarding the impact on abortion use of the explanatory variables that are of interest here. When the variables produce differences between groups in rates of abortion, the investigators argue, the magnitude of the differences will be correctly gauged because rates of early spontaneous fetal mortality are unlikely to differ between these groups.[113] However, if the investigators are mistaken in this regard, their estimates of the impact of the variables on the probability of abortion may be biased, because while fetal deaths were relatively uncommon in 1980,[114] the fetal deaths that were omitted from the data accounted for roughly three out of four such deaths that took place.[115]

In examining the findings of the study, I concentrate on women who were at least twenty years old, because the study combined younger females into a single category that included ages eighteen and nineteen and ages below eighteen.[116] Women who were at least twenty years old were thus the only group studied that had attained adulthood and had acquired

---

111. In addition to educational attainment and marital status, the following independent variables were included: age, metropolitan versus nonmetropolitan residence, prior number of live births, race, and state of residence. Trent & Powell-Griner, *supra* note 109, at 1126.

112. Among women, educational level and marital status are related to employment status under at least some conditions. Diane H. Felmlee, *A Dynamic Analysis of Women's Employment Exits*, 21 DEMOGRAPHY 171, 178, 180 (1984). In addition, the educational level and the employment status of wives affect the likelihood of marital disruption, suggesting that educational level and employment status of wives are linked to current marital status. Steven Ruggles, *The Rise of Divorce and Separation in the United States, 1880-1990*, 34 DEMOGRAPHY 455, 456, 463 (1997); Scott South & Glenna Spitze, *Determinants of Divorce Over the Marital Life Course*, 51 AM. SOC. REV. 583, 587-88 (1986).

113. Trent & Powell-Griner, *supra* note 109, at 1125.

114. Fetal deaths occurred in just one out of eight pregnancies that ended in 1980. Computed from Ventura et al., *supra* note 110, at Table 2.

115. Computed from U.S. DEP'T OF HEALTH & HUMAN SERVS., VITAL STATISTICS OF THE UNITED STATES: 1980, VOL. IIA, MORTALITY, at Table 3-3 (1985), *available at* http://www.cdc.gov/ nchs/products/pubs/pubd/vsus/1963/1963.htm.

116. Trent & Powell-Griner, *supra* note 109, at Table 2 (reporting the findings).

new rights from the reform of abortion law.[117] In this group, unmarried women had a much higher probability of aborting a pregnancy than currently married women, an effect that was net of differences on the remaining independent variables. The relationship between marital status and abortion was found even among women who were childless; indeed, childless unmarried women were ten times more likely than childless married women to abort a pregnancy. This is contrary to the Badagliacco study, which concluded that marital status did not affect the probability of abortion among childless women.

While marital status exhibited a simple relationship to abortion use, educational attainment did not. As the number of years of schooling increased, so did the likelihood that a pregnancy would end in an abortion, but when the study examined potential interactions, it found that the impact of education varied with the number of previous live births and with marital status. As to number of prior births, a clear difference existed between women who had not borne a child and women who had: the probability of an abortion generally rose with years of schooling for women who were childless, but for women having one or more births, the probability increased only to twelve years of completed schooling and then remained essentially constant. More important, however, is the finding that the effect of education depended on marital status. Among unmarried women, the proportion of pregnancies terminated by abortion rose consistently with education, but among married women, the relationship was ∩ in shape: the probability of abortion increased as the level of completed schooling went from eight or fewer years to twelve years and then fell back to its initial level as the level of completed schooling rose to sixteen or more years.

Let me now attempt to integrate the findings of the two studies. While their results are not conclusive, the studies indicate that abortion use rises with educational attainment and school enrollment and is more common among unmarried women than among married women,[118] but whether abortion is generally and substantially affected by employment is uncertain.[119]

---

117. Because the study focused on pregnancies having an outcome in 1980, all of the pregnancies in the study occurred after *Roe v. Wade*. *Roe* was applicable to adult women but not to females who were minors. 410 U.S. 113, 165 n.67. The constitutional right of minors to procure an abortion developed after *Roe* and was more circumscribed than the right of adults. Planned Parenthood Ass'n of Kansas City v. Ashcroft, 462 U.S. 476 (1983).

118. Another study that finds unmarried women are more likely to end pregnancies is Kanhaiya Lal Vaidya, Unintended Pregnancy and Abortion in the United States: Evidence from the National Survey of Family Growth, Cycle IV, 1988, at 79, 85 (1995) (unpublished Ph.D. dissertation, Bowling Green State University) (on file with author). However, the study did not include a control for the current educational level, schooling status, or employment status of women. *Id.* at 69-70, 94.

119. Among females who terminated pregnancies in 1987, the age-standardized use of abortion varied less with employment status than with school enrollment or marital status. Stanley K. Henshaw & Jane Silverman, *The Characteristics and Prior Contraceptive Use of U.S. Abortion Patients*, 20 FAM. PLAN. PERSP. 158, 162 (1988).

Educational achievement may not possess a linear relationship to the probability of abortion among married women, but it must be kept in mind that unmarried women were by far the chief source of abortions in the United States in the decade-and-a-half that followed *Roe v. Wade*, whether measured by the proportion of pregnancies ended by abortion or by the proportion of females of childbearing age who had an abortion.[120] Among women as a whole, then, a higher level of schooling is associated with a higher likelihood that a woman will terminate a pregnancy.

Before concluding this section, I would like to raise an important, but largely unrecognized and unexplored, methodological issue. The two studies reviewed above focused exclusively on the characteristics of individual women and used these characteristics to estimate the probability that a woman would abort a pregnancy. Neither study, however, examined whether the characteristics of geographic areas that form law-defined jurisdictions such as states are related to jurisdiction-level rates of abortion. For instance, the two studies defined marital status by the marital status of each woman in the sample, and the studies examined whether the marital status of a woman was related to whether she aborted a pregnancy. The studies did not consider whether a relationship existed between the proportion of women who were currently married or unmarried in each state and the percentage of all pregnancies in the state that were aborted. Individual-level attributes and jurisdiction-level attributes are distinctly different types of information, and when studied for their relationship to a state-level measure of abortion use, they may not yield the same conclusions. Unfortunately, while some investigators have attempted to estimate the incidence of abortion from the characteristics of jurisdictions, their research designs have serious limitations.

Future work, then, must address the question whether the antecedents of change in law on abortion are more readily and accurately identified using data on the characteristics of jurisdictions (e.g., states), data on the characteristics of individuals in these jurisdictions, or data on both. From a macrosociological perspective, law as an institution is a component of a social system, and the antecedents of the doctrines of law are expected to stem from the system. Two social science studies using a multivariate statistical technique support the assumption that characteristics of states shape doctrines of state law.[121] The research reported *infra* extends this type of study to the subject of abortion law.

---

120. STANLEY K. HENSHAW & JENNIFER VAN VORT, ABORTION FACTBOOK: READINGS, TRENDS, AND STATE AND LOCAL DATA TO 1988, at 176-77 (1992).

121. Barnett, *supra* note 47; Rich Geddes & Dean Lueck, *The Gains from Self-Ownership and the Expansion of Women's Rights*, 92 AM. ECON. REV. 1079, 1084-90 (2002). A state can be regarded as a system per se or as a subsystem in a larger system, namely, the United States as a society.

C. Time-Series Indicators of a National Need for Abortion

While employment among women may or may not be generally related to the demand for abortion, according to the studies reviewed above, the education and marital status of women are evidently important factors affecting the likelihood that women in the United States will abort their pregnancies. These two variables, therefore, may shape the need for and lawfulness of abortion. Which variable—education or marital status—more accurately predicts abortion use cannot be ascertained from research conducted to date, but each variable seems to have a definite bearing on the probability an individual woman will choose to end a pregnancy, and each variable may thus be an indicator of a system-level determinant of law on abortion.

In light of the above findings with regard to marital status and school enrollment, I consider whether the distribution of marital status and the level of school enrollment among women in the United States changed over time in a manner suggesting that one or both of these variables produced a need for lawfully available abortion prior to the shift in abortion law that occurred from 1967 to 1973.[122] Figure 3 deals with marital status. Specifically, the figure shows, for each year in the time period covered, the percentage of women at age twenty to twenty-four and at age twenty-five to twenty-nine who had not been married; these women are designated "never married." The figure also shows the percentage of women in each of the two age ranges who had been married previously but who were no longer married due to divorce. I confine my attention to unmarried women because they accounted for the vast majority of abortions in the years following *Roe v. Wade*[123] and, presumably, in the years before as well.

For marital status to be a plausible factor creating and heightening a societal need for abortion, the percentage of reproductive-age women who are unmarried, whether from having never married or from divorce, would have had to rise *before* abortion law was reformed. As explained above,

---

122. The U.S. Census Bureau gathered the data on marital status and school enrollment in the Current Population Survey. Although the years before rather than after 1967-1973 determine the possible role of marital status and school enrollment in the need for lawful abortion, the time series I present extends to 1990.

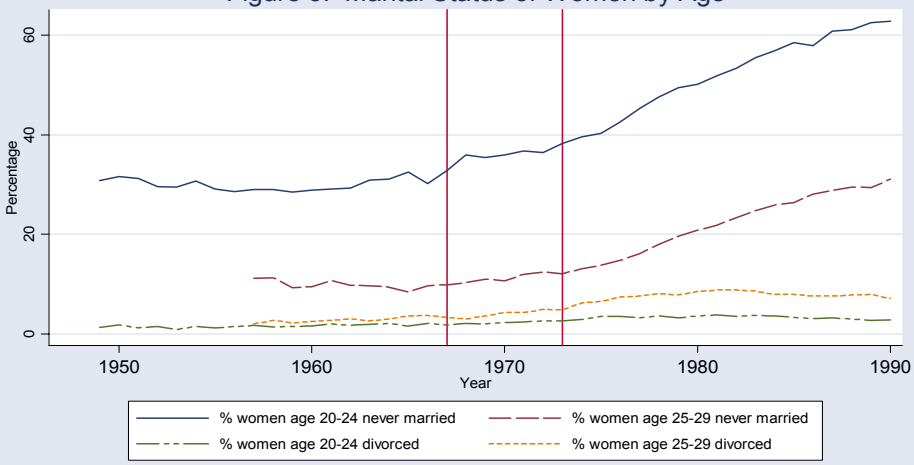
The data on marital status start in 1949 for women twenty to twenty-four years old and in 1957 for women twenty-five to twenty-nine years old; the data are limited to the civilian population in some years but not others. Data on marital status for all years except 1990 are from U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES (71st ed. through the 111th ed.). Data for 1990 are from U.S. BUREAU OF THE CENSUS, MARITAL STATUS AND LIVING ARRANGEMENTS: MARCH 1990, CURRENT POPULATION REPORTS, Series P-20, No. 450 (May 1991), at Table 1. Yearly rates of school enrollment for the civilian noninstitutionalized population are in U.S. Census Bureau, Table A-2: Percentage of the Population 3 Years Old and Over Enrolled in School, by Age, Sex, Race, and Hispanic Origin: October 1947 to 2004, http://www.census.gov/population/www/socdemo/school.html [hereinafter Table A-2].

123. HENSHAW & VAN VORT, *supra* note 120.

the principal doctrinal changes in that reform occurred between 1967, when some states began to ease substantially the grounds for a lawful abortion, and 1973, when the Supreme Court decided *Roe v. Wade*.[124] (The two years are marked by vertical lines in figure 3 as well as in figures 4 and 5.) The years from 1967 to 1973 thus constitute the period of abortion law reform, and the years prior to this period are critical to deciding whether marital status produced a societal need to liberalize abortion law.

During the pre-reform period, as is evident from figure 3, the proportion never married and the proportion divorced are essentially stable among women twenty to twenty-four years old and women twenty-five to twenty-nine years old. Distinct movement in these proportions is found only during and/or after the period when reform occurred, and during the reform period (1967-1973), the movements are generally modest. As a consequence, there is no persuasive evidence that change in the prevalence of unmarried women in the population engendered a societal need for the liberalization of abortion law in the 1960s. If there was a need on the part of the social system to relax the grounds for abortion permitted by law, the source of the need evidently lies elsewhere.

Figure 3. Marital Status of Women by Age



124. I regard the change in abortion law during this period as a national movement, and hence use data on marital status and school enrollment for the United States as a whole, because a decision of the highest federal court ended the period and because in 1972, thirty-nine percent of the population of the United States resided in the sixteen states whose law was changed from 1967 through 1972 to expand access to abortion. The percentage of the population was calculated from U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES: 1974, at Table 11 (95th ed. 1974), *available at* http://www.census.gov/prod/www/abs/statab1951-1994.htm.

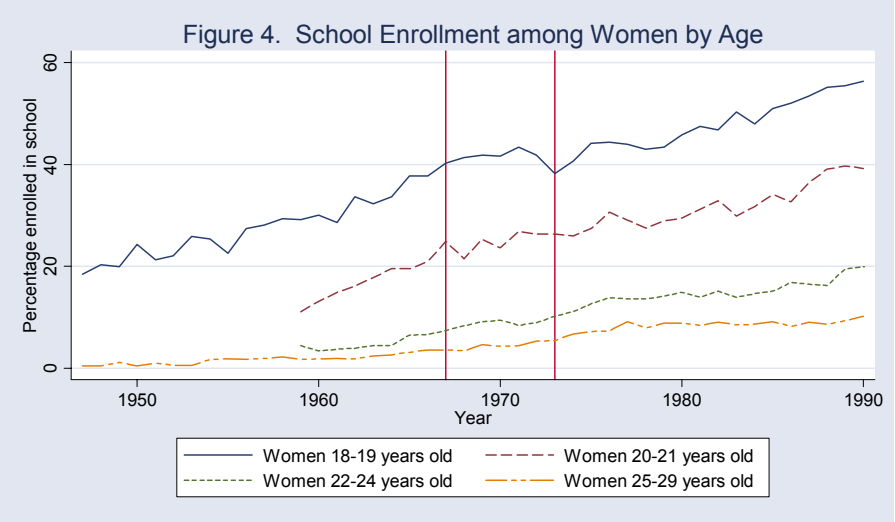
I turn now to the rate of school enrollment among women of childbearing age. Figure 4 shows the yearly percentage of adult women in each of four age groups who were enrolled in school (full-time or part-time). Schools of all levels are included in the figure; the data, therefore, cover enrollments in high schools, junior colleges, colleges granting baccalaureate and graduate degrees, and professional schools.

Substantial growth in school enrollment rates among women eighteen to nineteen years old and among women twenty to twenty-one years old characterize most of the time interval covered by figure 4. Notably, the trend commences prior to the period (1967-1973) when abortion doctrine underwent its main change. The trend was present well in advance of this period among women eighteen to nineteen years old, for whom enrollment rates begin in 1947. A rise in enrollment rates prior to the abortion-law liberalization period also is found among women twenty to twenty-one years old, for whom rates begin in 1959. Finally, an increase in enrollment rates among women twenty-two to twenty-four years old and among women twenty-five to twenty-nine years old is evident before this period, although the increase is small in absolute magnitude and does not commence until shortly before the liberalization of abortion law began. (Rates start in 1959 for women twenty-two to twenty-four years old[125] and in 1947 for women twenty-five to twenty-nine years old.) Thus, school enrollment in all of the age groups in the figure—but especially in the two youngest age groups—was changing in a manner that permitted schooling to create a societal need for abortion and promote legalization of the procedure. Indeed, school enrollment rates, by rising before as well as during the time that states significantly eased restrictions on access to abortion, behaved exactly as they would be expected to behave if they were creating and intensifying a need in American society for liberalized abortion doctrine.[126] Accordingly, macrosociological research on law regulating access to abortion must consider the variable.

---

125. TABLE A-2, *supra* note 122 (providing school enrollment rates from 1947 to 1958 for the age category twenty to twenty-four). From 1959 onward, the table separates this age range into two categories, namely, age twenty to twenty-one and age twenty-two to twenty-four. *Id*. The three-year mean percentage of women enrolled in school at age twenty to twenty-four doubled from 3.7% in 1947-1949 to 7.4% in 1956-1958. Calculated from *id*.

126. After the Supreme Court decided *Roe v. Wade*, women eighteen to twenty-nine years old were the source of approximately seven out of ten lawful abortions performed in the United States, and the proportion varied little over time. HENSHAW & VAN VORT, *supra* note 120, at Table 1. Given the consistency of this proportion in the years that followed *Roe*, the same proportion is likely to have prevailed in the years that preceded the ruling. If women eighteen to twenty-nine years old provided most of the pregnancies that were terminated in the period prior to 1967-1973, their rising rate of school enrollment before abortion law underwent liberalization had the ability to spawn and magnify a need for the liberalization.



Finally, I consider female employment. Although a relationship between the employment status of a woman and the probability she will abort a pregnancy has not been established, a relationship between these variables has not been disproved. Social science research to date does not allow a conclusion to be drawn regarding such a relationship, because studies of the relationship are too few in number and suffer from too many limitations. However, a link between female employment and abortion has been posited by theory, and thus such a link is a possibility that cannot be dismissed out of hand. For this reason, I examine the labor force participation rate, i.e., the percentage of individuals in a demographically defined group who currently are employed or are engaged in finding employment.

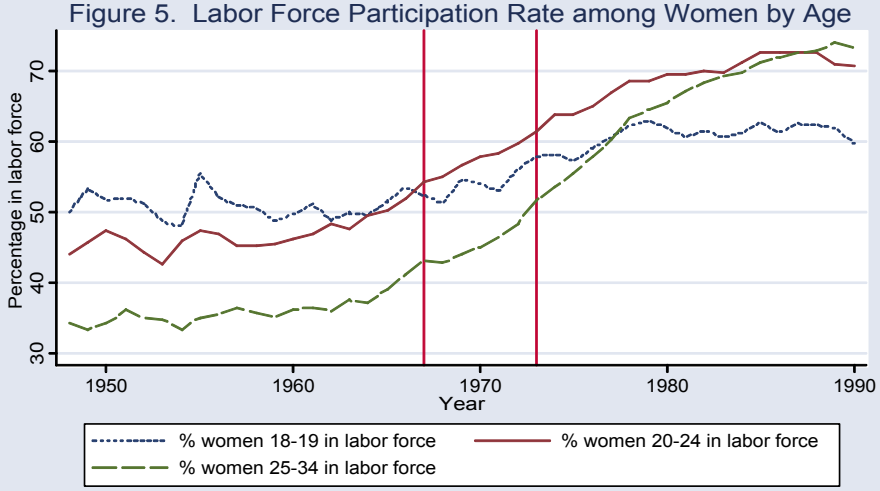
Figure 5 presents the seasonally adjusted rate of labor force participation among civilian women in each of three age groups, viz., eighteen to nineteen, twenty to twenty-four, and twenty-five to thirty-four.[127] The data in the figure are for the fourth quarter of each year from 1948 through 1990. Labor force participants are persons (i) who are presently working or (ii) who are not working but who are available for work and have sought work during the prior four weeks.[128] Labor force participants who are unemployed—the members of group (ii)—are thus persons who are motivated to work and have an attachment to work; women in this group presumably would view a pregnancy similarly to women who are employed.

127. The data in the figure are from the Current Population Survey and are published by the U.S. Bureau of Labor Statistics. U.S. Bureau of Labor Statistics, Current Population Survey, http://www.bls.gov/data/home.htm (last visited May 1, 2007); the data are accessible through the link "Historical Data for the 'A' Tables of the Employment Situation Release."

128. HANDBOOK OF U.S. LABOR STATISTICS 4, 5 (Eva E. Jacobs ed., 8th ed. 2005).

Notably, figure 5 reveals that the labor force participation rate of both women who were twenty to twenty-four years old and women who were twenty-five to thirty-four years old began to increase at least five years in advance of the period of abortion law reform. Among women eighteen to nineteen years old, the labor force participation rate remained relatively flat before 1967, but the absence of change is probably due to the growing school enrollment of women in this age group that is observable in figure 4.

Figure 5. Labor Force Participation Rate among Women by Age



D. System-level Properties and the Liberalization of State Abortion Law

Did change involving the role of women in the United States reshape law on abortion between 1967 and 1973 to expand access to the procedure? If law is a macrosociological phenomenon, the properties of society rather than the idiosyncrasies of individuals or the operation of chance determine the concepts and principles that dominate law at any particular point in history. In terms of sex roles, such properties include the level of educational attainment, extent of labor force participation, and distribution of marital status among women in the population. Because the three variables have been the focus of social science theory, their potential to account for the modification of law on abortion in the United States during the period from 1967 to 1973 was considered in figures 3, 4, and 5. In the instant part of this Article, the question whether the three variables contributed to liberalizing abortion law will be addressed with a different type of quantitative data and a different approach to analyzing the data.

The study that I report below involved the application of maximum-likelihood logistic regression—a statistical technique that is being used in-

creasingly in social science research[129]—to state-level data from the 1960 census on a number of "independent" variables, i.e., variables that are to be tested for their ability to account for the phenomenon that is to be explained. In the instant study, the phenomenon to be explained (i.e., the dependent variable) was whether states liberalized their law on abortion in the 1967-1972 period, and the independent variables were the income, educational attainment, labor force participation, and marital status of women who resided in each state in 1960. The age categories of women used for the independent variables were largely dictated by the age categories for which the Census Bureau reported data. All of the forty-eight states in the coterminous United States were included in the study.[130]

The independent variable measuring the income of women was used in the regression equation on the assumption that, as their personal income rises, women possess not only the economic resources required to abort pregnancies but, in addition, an economic incentive to do so because childrearing will compete with other activities for at least some of their income.[131] A macrosociological perspective suggests that a social system will eventually permit and endorse the solutions wanted by its members for serious problems they are experiencing. With increases in the income of women, accordingly, a social system becomes more likely to accept a solution (e.g., abortion) sought by its female members to a problem (e.g., unwanted pregnancy) that solely or disproportionately affects them.

In terms of problems faced by women, pregnancy was evidently creating social and economic difficulties for many women when states began to liberalize their statutes on abortion, because during 1960-1965, women in the United States did not want a substantial proportion of their pregnancies.[132]

---

129. DAVID W. HOSMER & STANLEY LEMESHOW, APPLIED LOGISTIC REGRESSION ix (2d ed. 2000).

130. Alaska and Hawaii were omitted from the data in order to exclude the possibility that their law on abortion was influenced by factors different from and/or additional to the factors operating in the coterminous states. If such factors were present in Alaska and/or Hawaii, the inclusion of the two states could have affected the findings from the data analysis. The possibility exists that Alaska and Hawaii were subject to different and/or additional factors because both states are geographically distant from the coterminous states and had become states just the year before the 1960 census. *See supra* note 32.

131. *See generally* Marshall H. Medoff, *Constituencies, Ideology, and the Demand for Abortion Legislation*, 60 PUB. CHOICE 185, 186 (1989). The proportion of pregnancies aborted has been found to rise with the family income of women. Badagliacco, *supra* note 94, at 64, 165.

132. Women who bore children during 1960-1965 indicated that approximately one out of five of their births was unwanted and would not have been wanted under any circumstances. The pregnancies resulting in an additional two out of five births were regarded by the women involved as occurring earlier than they desired. Larry Bumpass & Charles F. Westoff, *The Perfect Contraceptive Population*, 169 SCI. 1177, 1178-80 (1970). Because the preceding proportions refer to *births* and because an unknown number of pregnancies in this time period did not end in births due to miscarriage or induced abortion, the proportion of births that were unwanted was lower than the proportion of pregnancies that were unwanted.

Notably, in the third quarter of the twentieth century, the birth and rearing of children reduced employment among women in the United States[133] and thus interfered with women's career goals. Moreover, much of the status difference between female and male sex roles, as indicated by the extent of sex segregation in occupations during the twentieth century, had been erased before the liberalization of state abortion law started.[134] In the context of reduced sex-role inequality, the likelihood that women would seek to eliminate unwanted pregnancies would rise with their personal income, because income supplies the financial resources and incentives to terminate pregnancies. The income of women, consequently, is a potentially important variable in the reform of abortion law.

As its measure of income, the instant study used the median number of dollars of income in 1959 received by women twenty-five to thirty-four years old who had income in that year.[135] While income at age twenty-five to twenty-nine might have been preferable to income at age twenty-five to thirty-four, income at age twenty-five to thirty-four was utilized because the U.S. Bureau of the Census did not report income by state for age twenty-five to twenty-nine separately. Instead, in publishing state data on income from the 1960 census, the Bureau combined age twenty-five to twenty-nine with age thirty to thirty-four and placed the two five-year age ranges into a single ten-year age range, i.e., twenty-five to thirty-four. State-level data on income were reported for the five-year age range twenty to twenty-four. However, age twenty-five to thirty-four was deemed more appropriate for the measure of income, because many women in the twenty to twenty-four age range, but few women in the twenty-five to thirty-four age range, were still in school in 1960.[136] School enrollment, of course, is not conducive to earning current income, and as a result, income at age twenty to twenty-four is an inappropriate gauge of the income of a cohort.

Even though the twenty-five to thirty-four age bracket includes numerous women who were older than women on whom the other independent

133. HAGGSTROM, *supra* note 102, at 146; Felmlee, *supra* note 112, at 180-81.

134. Weeden, *supra* note 12, at 480 index A.

135. Because every source of income was included, not all of the income received by a woman was necessarily from paid employment. However, in the United States as a whole, nine out of ten females age fourteen and over reported earned income in 1959. U.S. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, U.S. CENSUS OF POPULATION: 1960. VOL. I, CHARACTERISTICS OF THE POPULATION. PART 1, UNITED STATES SUMMARY, at Table 98 (1964), *available at* http://www.census.gov/prod/www/abs/ decennial/1960cenpopv1.htm. Therefore, the assumption seems warranted that compensation from employment supplied most of the income received by a majority of women twenty-five to thirty-four years old.

136. In the United States as a whole, the percentage of women enrolled in school in 1960 was, for example, 19.3% among women who were twenty years old, 13.9% among women who were twenty-one years old, and 7.2% among women who were twenty-two years old. On the other hand, just 3.1% of all women twenty-five to twenty-nine years old, and 2.4% of all women thirty to thirty-four years old, were enrolled in school. *Id.* at Table 165.

variables were based (who were either age twenty to twenty-four or age twenty-five to twenty-nine), income at age twenty-five to thirty-four is important because women at this age generally have a high level of fecundity.[137] For them, unwanted pregnancy is a salient possibility, and law on abortion is a potentially important issue. Because in most situations a social system changes at a slow pace, the system is able to anticipate the approximate average income that a cohort of women, as well as a cohort of men, will earn after its members have gone through the education institution and acquired the knowledge that is available to the cohort. The experience of the cohort that is currently twenty-five to thirty-four years old is the basis for making a generally accurate prediction regarding what younger persons will collectively experience when they reach age twenty-five to thirty-four, because the cohort has been affected by the forces that have recently shaped the economy.

With regard to labor force participation and marital status, the study estimated odd ratios for both of these variables in each of two age ranges—age twenty to twenty-four and age twenty-five to twenty-nine. That is, the dependent variable (whether states revised their law to increase access to abortion during 1967-1972) was regressed on inter alia labor force participation among women twenty to twenty-four years old and among women twenty-five to twenty-nine years old. In addition, the study regressed the dependent variable on marital status among women twenty to twenty-four years old and among women twenty-five to twenty-nine years old. Both age groups are indisputably important in studying abortion: from 1973 to 1988, women in the two age categories produced approximately one-half of all lawful abortions performed annually, and because these yearly percentages were remarkably consistent over time,[138] the percentage probably characterizes 1967 to 1972, the period of interest here. The two age categories were thus included in the instant study.

Finally, the study measured the variable of education using the percentage of women twenty-five to twenty-nine years old who had finished four or more years of college. The variable involved the number of years of college completed, not the receipt of a degree (for which data are unavailable in the state reports on the 1960 census). The age range twenty-five to twenty-nine was preferable to the age range twenty to twenty-four, because college enrollment in 1960 was relatively infrequent among women

---

137. In 1960, the number of live births per 100 women in the United States was 19.7 among women who were twenty-five to twenty-nine years old and 11.3 among women who were thirty to thirty-four years old. NAT'L CENTER FOR HEALTH STATISTICS, U.S. DEP'T OF HEALTH, EDUCATION & WELFARE, VITAL STATISTICS OF THE UNITED STATES: 1960. VOL. I, NATALITY, at Table 1-E (1964), *available at* http://www.cdc.gov/nchs/products/pubs/pubd/vsus/1963/1963.htm. Women who were twenty-five to thirty-four years old accounted for a large proportion (42%) of all live births in the United States in 1960. Calculated from *id.* at Table 2-16.

138. HENSHAW & VAN VORT, *supra* note 120, at Table 1.

twenty-five to twenty-nine years old compared to women twenty to twenty-four years old.[139] By age twenty-five to twenty-nine, that is, women who will ultimately finish at least four years of college will have generally done so.

Table 1 gives the mnemonic label and a description of each of the variables in the regression equation. For every independent variable, three categories—high, medium, and low—were created from the original data (median income or percentages) in order to avoid cells with zero cases, i.e., zero states. Cells having zero cases are problematic for maximum-likelihood logistic regression,[140] and thus I collapsed the original data for each indicator into three categories even though doing so reduced the precision with which the independent variables were measured.

---

139. In the coterminous United States in 1960, just 1.5% of women twenty-five to twenty-nine years old were enrolled in college. The percentages are much higher at younger ages; for example, 15.4% of women twenty years old, 11.0% of women twenty-one years old, and 5.2% of women twenty-two years old were enrolled in college. U.S. BUREAU OF THE CENSUS, *supra* note 135, at Table 167.

140. HOSMER & LEMESHOW, *supra* note 129, at 135-38.

In principle, the measure of each independent variable in the instant study is a ratio scale, and because such a scale is continuous, the data for the independent variables in the study can be used in logistic regression without being collapsed into categories. *Id*. at 136. In practice, however, the measure of each independent variable is more appropriately treated as an ordinal scale, because the states were not spread evenly across the range of values for the variable but tended to concentrate at certain numerical values. The kurtosis coefficient indicates the degree to which the distribution of a variable is spread out (i.e., flat) or concentrated (i.e., peaked); as the distribution of a variable becomes more peaked, the coefficient increases. In the instant study, the distributions of four of the six independent variables were not close to being flat but, rather, were almost as peaked as, or more peaked than, the normal distribution. The kurtosis coefficient for the individual (i.e., uncollapsed) values of these four independent variables was between 2.8 and 3.9, and the other two independent variables had kurtosis coefficients of 2.4 to 2.6. The kurtosis coefficient for the normal distribution is 3.0. STATA CORP., 4 STATA BASE REFERENCE MANUAL 150 (2003).

The concentration of states at particular numerical values on an independent variable is probably inherent in the nature of social systems and not attributable to the number of cases furnishing the data in a study: a social system is unlikely to operate effectively unless its important dimensions are present in certain amounts or at certain levels. In most social science research on states, therefore, a limited number of categories seems to be the most suitable way to measure the gradations of an independent variable.

Table 1. Variables in Regression Model[141]

Variable (mnemonic label)	Description of variable
ABORTIONLAW	Whether the state liberalized its law on therapeutic abortion during the years 1967 through 1972, i.e., prior to the decision of the U.S. Supreme Court in *Roe v. Wade*. Each state was coded either 0 or 1. A state was coded 0 if it did *not* liberalize its law on abortion and was coded 1 if it did liberalize its law on abortion.
INCFEM2534CAT	The median income in 1959 of all women in each state who were twenty-five to thirty-four years old in 1960 and who received any income in 1959. In the regression, the variable was comprised of three categories of median income; the range of median income (and the number of states) in each category were: $967 to $1,495 (n = 16), $1,509 to $1,755 (n = 17), and $1,827 to $2,442 (n = 15).
LABOR2024CAT	The percentage of all women twenty to twenty-four years old in each state in 1960 who were in the labor force in 1960. In the regression, the variable consisted of three categories created from the percentages of women age twenty to twenty-four who were in the labor force; the range of percentages (and the number of states)

141. The data used for abortion law, the dependent variable, are from *supra* note 90. The data for the independent variables were derived or calculated from data in the report from the 1960 census for each state: U.S. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, CENSUS OF POPULATION: 1960, VOL. I, CHARACTERISTICS OF THE POPULATION (1963), *available at* http://www.census.gov/prod/www/abs/decennial/1960cenpopv1.htm. The state reports are numbered Part 2 (Alabama) through Part 52 (Wyoming). The following tables in each state report were used for the data for the independent variables:

INCFEM2534CAT- table 134
LABOR2024CAT - table 115
LABOR2529CAt - table 115
MARR2024CAT - table 105
MARR2529CAT - table 105
PCTCOLL2529CAT - tables 37 and 103

	in each category were: 33.3% to 40.8% (n = 18), 41.3% to 44.4% (n = 16), and 45.1% to 52.7% (n = 14).
LABOR2529CAT	The percentage of all women twenty-five to twenty-nine years old in each state in 1960 who were in the labor force in 1960. In the regression, the variable consisted of three categories created from the percentages of women age twenty-five to twenty-nine who were in the labor force; the range of percentages (and the number of states) in each category were: 24.4% to 30.5% (n = 15), 30.9% to 34.9% (n = 16), and 35.7% to 45.0% (n = 17).
MARR2024CAT	The percentage of all women twenty to twenty-four years old in each state in 1960 who were currently married, i.e., who in 1960 were married. In the regression, the variable was comprised of three categories constructed from the percentages of women age twenty to twenty-four who were currently married; the range of percentages (and the number of states) in each category were: 56.9% to 70.8% (n = 17), 71.0% to 72.9% (n = 14), and 73.2% to 81.1% (n = 17).
MARR2529CAT	The percentage of all women twenty-five to twenty-nine years old in each state in 1960 who were currently married, i.e., who in 1960 were married. In the regression, the variable was comprised of three categories constructed from the percentages of women age twenty-five to twenty-nine who were currently married; the range of percentages (and the number of states) in each category were: 80.4% to 87.0% (n = 17), 87.2% to 88.6% (n = 16), and 88.9% to 92.7% (n = 15).
PCTCOLL2529CAT	The percentage of all women twenty-five to twenty-nine years old in each state in 1960 who had completed at least four years of college as of 1960. In the regression, the variable con-

	sisted of three categories created from the percentages of women age twenty-five to twenty-nine who had finished four or more years of college; the range of percentages (and the number of states) in each category were: 3.95% to 6.33% (n = 17), 6.46% to 7.72% (n = 15), and 7.83% to 11.2% (n = 16).

Table 2 presents the regression results for the forty-eight coterminous states.[142] Although the table presents the level of statistical significance of each odds ratio, the discussion of the results will rely on the odds ratios alone. As explained elsewhere,[143] tests of statistical significance are inappropriate when, as here, maximum-likelihood logistic regression is applied to a small number of cases,[144] and they are unnecessary when, as here, the cases comprise the entire universe under study rather than a sample drawn from the universe.[145] Nonetheless, table 2 reports the two-tailed significance levels of the odds ratios for readers who want this information.

The regression results discussed below furnish estimates of the relationship of each independent variable to whether states changed their abortion law during 1967-1972. Whether a particular independent variable is related to the dependent variable depends on the odds ratio for the independent variable: the closer an odds ratio is to 1.000, the lower the odds are that the dependent variable is altered by increases in the independent variable, and when the odds ratio for the independent variable is exactly (or approximately) 1.000, the independent variable does not affect the dependent variable. Like other forms of multiple regression, logistic regression indicates the relationship that exists between a dependent variable and each independent variable, separately from the relationship to the dependent variable of every other independent variable in the same regression equation. In the instant analysis, logistic regression estimated, for every change in category

142. All statistical analyses were performed with Stata Release 8.2. The results in table 2 were generated by the LOGISTIC command in Stata. STATA CORP., 2 STATA REFERENCE MANUAL 296 (2003).

143. Barnett, *supra* note 47.

144. States are the cases in the instant regression analysis. As explained earlier, sixteen of the forty-eight states in the continental United States substantially revised their law during 1967-1972 to expand access to abortion. *See supra* note 90. Since the remaining thirty-two states did not liberalize their law on abortion, the number of states characterized by the least-frequent outcome on the dependent variable was sixteen. Given the latter number, the regression equation in table 2 has five too many independent variables for tests of statistical significance to be used. *See* HOSMER & LEMESHOW, *supra* note 129, at 346-47.

145. The universe for the present study is all states in the coterminous United States. *See supra* note 130.

of a given independent variable, the increase or decrease in the odds that a state eased its law on abortion.[146]

The odds ratios in table 2 indicate that just three of the independent variables had a relationship to the dependent variable (ABORTIONLAW) that was of practical importance. These three variables are the percentage of women twenty-five to twenty-nine years old who were in the labor force (LABOR2529CAT), the percentage of women twenty to twenty-four years old who were currently married (MARR2024CAT), and the percentage of women twenty-five to twenty-nine years old who had finished four or more years of college (PCTCOLL2529CAT). Since an odds ratio is converted into a percentage by subtracting 1.000 and multiplying the remainder by 100,[147] the odds that a state liberalized its abortion law rose by approximately thirty percent for each category increase in the labor force participation rate among women twenty-five to twenty-nine years old and by twenty-six percent for each category increase in the percentage of women twenty to twenty-four years old who were currently married. The odds ratio for PCTCOLL2529CAT, however, was by far the largest: the odds that a state eased its law-imposed restrictions on abortion jumped by approximately 101 percent—i.e., roughly doubled—for each category increase in the percentage of women twenty-five to twenty-nine years old who had finished four or more years of college.

146. *See* Barnett, *supra* note 47 for an explanation of the difference between probability, odds, and odds ratio.

147. *See* J. SCOTT LONG & JEREMY FREESE, REGRESSION MODELS FOR CATEGORICAL DEPENDENT VARIABLES USING STATA 146, 148 (rev. ed. 2003).

Table 2. Odds Ratios and Two-tailed Significance Levels for Regression of ABORTIONLAW on Independent Variables: 48 States

Variable (mnemonic label)	Odds ratio	Standard error	z	p>|z|
INCFEM2534CAT	0.996	.002	-2.28	0.023
LABOR2024CAT	1.116	.138	0.89	0.375
LABOR2529CAT	1.295	.150	2.24	0.025
MARR2024CAT	1.260	.169	1.72	0.085
MARR2529CAT	1.051	.343	0.15	0.878
PCTCOLL2529CAT	2.013	.517	2.72	0.006

Regression model

Number of observations	= 48
Log likelihood	= -18.956
Likelihood ratio chi-squared (6)	= 23.19
Probability > chi-square	= 0.001
Pseudo R^2	= 0.380

The odds ratios in table 2 cannot be accepted, however, until several matters are considered. The first is the possibility that the results of the regression analysis were seriously affected by one or more outliers, i.e., states whose classification (0 or 1) on the dependent variable (ABORTIONLAW) was substantially different from the classification that the regression model predicted. An indication that an influential outlier may exist is the odds ratio in table 2 for MARR2024CAT: each category increase in the percentage of women twenty to twenty-four years old who were currently married raises the odds of abortion law liberalization by states by about twenty-six percent. (Because the odds ratio for MARR2529CAT is essentially 1.000, no relationship is evident between MARR2529CAT and ABORTIONLAW.) However, the odds ratio for MARR2024CAT, in substantially exceeding 1.000, is inconsistent with the data in figure 3, according to which the marital-status variables should be unrelated to change in state abortion law. The odds ratio for MARR2024CAT is also inconsistent with theory, which suggests that increases in the prevalence of marriage among women will reduce, not raise, the odds of abortion law liberalization.

One criterion that has been recommended to identify potentially influen-

tial outliers is a Cook's Statistic that is equal to or greater than the result obtained by dividing 2.0 by the square root of the number of cases.[148] In the instant study, the criterion is $2.0 \div \sqrt{48} = 0.29$. Cook's Statistic was of this size or higher for eighteen states. Consequently, I re-estimated the odds ratios for the six independent variables by eliminating each of these states one at a time, i.e., the odds ratios were re-estimated based on forty-seven states.

Three of the regression analyses that used forty-seven states produced notable changes in the odds ratio for one or both of the two independent variables dealing with the prevalence of marriage among women. The three states involved in these analyses were Arkansas, Vermont, and Texas. Table 3 reports the odds ratios just for MARR2024CAT and for MARR2529CAT from the resulting regression analyses. To simplify the table, the odds ratios for the other four independent variables estimated in these analyses are omitted. A comparison of table 3 with table 2 reveals that Texas was responsible for the largest and most notable alteration in an odds ratio for the marital status variable. Specifically, with Texas removed from the data, the odds ratio for MARR2529CAT was 0.792. The absence of Texas also moved the odds ratio for MARR2024CAT farther above unity—from 1.260 to 1.435. Without Texas, accordingly, each increase in category of marriage prevalence among women twenty to twenty-four years old *raised* the odds of abortion law liberalization, but each increase in category of marriage prevalence among women twenty-five to twenty-nine years old *reduced* the odds of liberalization. The inconsistency in the direction of the relationship for the two age groups is illogical.

148. DAVID A. BELSLEY ET AL., REGRESSION DIAGNOSTICS 28 (2004).

Table 3. Odds Ratios and Two-tailed Significance Levels for MARR2024CAT and MARR2529CAT from the Regression of ABORTIONLAW on All of the Independent Variables: 47 States

Variable (mnemonic label)	Odds ratio	Standard error	z	p>|z|
		Coterminous states without Arkansas		
MARR2024CAT	1.197	.156	1.38	0.167
MARR2529CAT	1.341	.496	0.79	0.428
		Coterminous states without Texas		
MARR2024CAT	1.435	.250	2.07	0.039
MARR2529CAT	0.792	.288	-0.64	0.521
		Coterminous states without Vermont		
MARR2024CAT	1.448	.258	2.07	0.038
MARR2529CAT	1.200	.475	0.46	0.644

What accounts for the changes observed in the odds ratios for the two marital status variables when the three states are omitted? A number of explanations are possible. The most obvious, of course, is that one or more of the three states was indeed affecting the magnitude and direction of the relationship in the coterminous United States between the prevalence of marriage among women and the liberalization of state abortion law. Cook's Statistic is compatible with this explanation: Cook's Statistic exceeded 1.000 for each of the three states and only for these states. Since a case typically does not skew results unless its Cook's Statistic is at least 1.000,[149] one or more of the three states may have been an influential outlier. On the other hand, the striking inconsistency between the odds ratios for the marital-status variables when Texas is absent suggests that a factor other than, or in addition to, an influential outlier may have been responsi-

149. HOSMER & LEMESHOW, *supra* note 129, at 180.

ble for the changes in the odds ratios associated with the three states.

What other factor(s) might have contributed to the changes in the odds ratios for the marital-status variables produced by individual states? One possibility is that the data on marital status suffer from measurement error that is sufficiently widespread to affect the odds ratios for MARR2024CAT and MARR2529CAT. Under this view, marital status was inaccurately reported often enough to affect appreciably the proportion of women in the United States who were counted as married. Such an effect could have distorted the results of the regression analysis undertaken in the instant study for the marital-status variables. Different sources of data on the number of marriages in any particular year exhibit inconsistencies as well as suffer from errors,[150] and data on marital status in the census contain errors, too.[151]

Let me mention three reasons that marital status may have been misreported in the 1960 census with sufficient frequency to have a material effect on the odds ratios for MARR2024CAT and MARR2529CAT. First, the 1960 census gathered data using a questionnaire that respondents received by mail, and it was the first census to rely on a mailed, respondent-completed questionnaire for the country as a whole.[152] Thus, respondents in the 1960 census classified themselves as married or unmarried.[153] Second, an unknown but appreciable number of cohabiting persons in 1960 are likely to have incorrectly identified themselves as married.[154] Misidentification probably was facilitated because respondents, on their own, completed the census questionnaire. Third, the census considered individuals

150. Ellen Linna Jamison & Donald S. Akers, *An Analysis of the Differences Between Marriage Statistics from Registration and Those from Censuses and Surveys*, 5 DEMOGRAPHY 460, 461 (1968).

151. U.S. BUREAU OF THE CENSUS, *supra* note 135, at liv.

152. *Id*. at xiv. After the questionnaire was mailed, a Census Bureau enumerator conducted an interview, but the purpose of the interview was only to "correct omissions and obviously wrong entries" in the questionnaire as filled out. *Id*.

The yearly data on marital status that are the basis of figure 3 are from the Current Population Survey. *See supra* note 122. The design of the Survey has changed over time. However, since the Census Bureau assumed responsibility for the methodological aspects of the Survey in the early 1940s, each respondent in the Survey has remained in the sample for a period totaling several months, and at least the initial interview of respondents has been conducted at the home of the respondent by Census Bureau personnel unless the respondent requested a telephone interview. U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, TECHNICAL PAPER 63RV, CURRENT POPULATION SURVEY: DESIGN AND METHODOLOGY 2-1, 2-2, 7-1, 7-3, 7-4 (2002), *available at* http://www.census.gov/prod/www/workpaps.html. As a source of data on marital status, consequently, the Current Population Survey is probably more accurate than the 1960 census.

153. Jamison & Akers, *supra* note 150, at 462.

154. Catherine Fitch et al., *The Rise of Cohabitation in the United States: New Historical Estimates* 19 (Univ. of Minnesota Population Center, Working Paper No. 2005-03, 2005), *available at* http://www.pop.umn.edu/research/papers.shtml.

who were in common-law marriages to be married,[155] and respondents who did not know whether common-law marriage existed in their jurisdiction or whether a particular relationship satisfied the requirements of a common-law marriage could often have recorded marital status incorrectly. The potential extent of the misunderstanding among young adults is suggested by the relatively low educational attainment of persons who were twenty-five to twenty-nine years old in 1960: in the United States as a whole, two out of three individuals in this age range had no more than a high school education.[156]

Figure 3 and theory are consistent with the explanation that errors in marital status in the 1960 census distorted the odds ratio for at least MARR2024CAT. Figure 3 shows that, prior to 1967, change over time in the distribution of marital status among young women was minimal, and thus marital status was not a variable that could have altered state law on abortion during 1967-1972. Theory[157] suggests that an increase in the percentage of women who are married will reduce the odds of abortion law liberalization, but the odds ratio for MARR2024CAT in table 2 indicates that, in terms of marriage prevalence among women twenty to twenty-four years old, just the opposite happens. In short, the odds ratio for marriage prevalence among women twenty to twenty-four years old is suspect.

A second matter regarding the regression results—namely, collinearity[158]—will be considered just briefly. Was the correlation of any pair of independent variables sufficiently strong to keep multiple regression from estimating reliable odds ratios for the variables? The rank correlation coefficients for pairs of independent variables in table 2 were often substantial. However, the logistic regression program did not halt the computation of the odds ratio for any independent variable due to excessive collinearity with another independent variable. Because the program did not find the covariation of pairs of independent variables to be problematic, I concluded that collinearity did not exist.

Finally, I turn to the possibility that the relationship of an independent variable to the dependent variable may not be the same within all categories or at all levels of another independent variable. This is the question of interaction,[159] and the independent variables I consider here are those that theory identifies as related. Of the independent variables in the regression equations, two meet this criterion—namely, labor force participation and

155. U.S. BUREAU OF THE CENSUS, *supra* note 135, at liv; Jamison & Akers, *supra* note 150, at 462.

156. Calculated from U.S. BUREAU OF THE CENSUS, *supra* note 135, at Table 174.

157. *See supra* notes 92 & 93 and accompanying text.

158. William D. Berry, *Understanding Regression Assumptions*, 92 QUANTITATIVE APPLICATIONS IN THE SOC. SCIENCES 1, 24-27 (1993).

159. James Jaccard & Robert Turrisi, *Interaction Effects in Multiple Regression*, 72 QUANTITATIVE APPLICATIONS IN THE SOC. SCIENCES 1, 3-4 (2d ed. 2003).

marital status. Notably, a relationship between these two variables is posited by both theory in economics and theory in sociology. Economic theory has postulated that, *ceteris paribus*, the inclination of women to marry varies inversely with the appeal of their opportunities in the economy. Under this view, marriage in a society will be less beneficial to, and less popular among, women to the extent that women have enticements (e.g., high monetary compensation) to engage in paid employment outside the home. According to economic theory, then, marriage will become less common among women as the labor force provides incentives that draw women into non-household work.[160]

Sociological theory, which incorporates social values as a central concept,[161] expects marital status and employment status (of men as well as of women) to conform to the dominant values of society. In 1960, conventional values regarding marriage seem to have still been dominant in the United States,[162] and thus paid employment outside the home was envisioned for the husband but not the wife. Only later in the decade of the 1960s did traditional values concerning marriage start to come under attack and begin to erode.[163] Notably, patterns of employment in the United States in 1960 were consistent with the traditional view regarding marriage and employment among women: labor force participation at age twenty to twenty-four existed among fully seventy-three percent of never-married women in 1960 but among only thirty-one percent of currently married women whose husband was present; at age twenty-five to twenty-nine, labor force participation existed among seventy-nine percent of never-married women but among just twenty-seven percent of currently married women whose husband was present.[164]

---

160. Sara McLanahan & Lynne Casper, Growing Diversity and Inequality in the American Family, *in* 2 STATE OF THE UNION: AMERICA IN THE 1990S 1, 32-35 (Reynolds Farley ed., 1995); Francine D. Blau et al., *Understanding Young Women's Marriage Decisions: The Role of Labor and Marriage Market Conditions*, 53 INDUS. & LAB. REL. REV. 624, 626, 645 (2000).

161. *E.g.*, Francisco Parra-Luna, *An Axiological Systems Theory: Some Basic Hypotheses*, 18 SYS. RES. & BEHAV. SCI. 479, 481 (2001).

162. While this assertion cannot be documented with quantitative data from a sample survey of the U.S. population, the observation that the traditional conception of marriage prevailed at least as late as 1960 has been made by others. McLanahan & Casper, *supra* note 160, at 35. No national survey of attitudes conducted in the 1950s, or even in the early 1960s, assessed the extent to which Americans endorsed the conventional ideal of marriage. From 1969 to 1988, national sample surveys often asked interviewees to indicate whether they approved or disapproved of paid employment on the part of a married woman whose husband was "capable of supporting her" or "able to support her." During the years from 1946 through 1968, however, national surveys included no such measure. *See* RICHARD G. NIEMI ET AL., TRENDS IN PUBLIC OPINION: A COMPENDIUM OF SURVEY DATA 225 (1989).

163. *See* McLanahan & Casper, *supra* note 160, at 35; *accord*, Elizabeth S. Scott, *The Legal Construction of Norms: Social Norms and the Legal Regulation of Marriage*, 86 VA. L. REV. 1901, 1935-36 (2000).

164. Calculated from U.S. BUREAU OF THE CENSUS, *supra* note 135, at Table 196.

To ascertain the possible existence of an interaction, I created two new variables—one by multiplying the values of LABOR2024CAT and MARR2024CAT and the other by multiplying the values of LABOR2529CAT and MARR2529CAT. Both of the new variables were added to the regression equation in table 2, but the odds ratios for the two variables deviated from 1.000 by less than ±0.02 when all forty-eight states were included in the regression analysis. When Arkansas, Texas, and Vermont were omitted from the data one at a time and forty-seven states were included in the regression analysis, the odds ratios for the two variables deviated from 1.000 by no more than ±0.04. Because the two variables created to test for interaction had no relationship to the dependent variable (ABORTIONLAW), interaction was assumed to be absent from the data.

What conclusions can be drawn from the data analysis? First, increasing educational attainment of young women had the strongest relationship to liberalization of state abortion law, and the magnitude of the relationship was substantial: for each category increase in the percentage of women twenty-five to twenty-nine years old who had finished at least four years of college, the odds roughly doubled that a state eased the restrictiveness of its law on access to abortion. Second, labor force participation among women twenty-five to twenty-nine years old was related to liberalization of state abortion law: each category increase in the percentage of women in this age range who were labor force participants raised the odds of liberalization by about thirty percent. By comparison to the relationship uncovered for schooling/education, however, the relationship found for labor force participation was just modest in magnitude.

Notably, educational attainment and labor force participation exhibited relationships to the dependent variable that are consistent both with the findings of research on the attributes of women that predict the probability of aborting a pregnancy and with the trends disclosed by the time-series data in figures 4 and 5. However, the odds ratios in table 2 for the marital status variables suggest that, among women twenty to twenty-four years old, category increases in the percentage who were currently married heightened the odds of liberalization of state law on abortion. Such a relationship is inconsistent with the implication from research that has found married women are less likely than unmarried women to abort pregnancies, and of particular importance, it does not comport with the trends observed in figure 3. I have suggested that the odds ratio for the marital status variable for women twenty to twenty-four years old may be due to misreporting by Americans in the 1960 census that they were married, but this is a hypothesis that could not be tested empirically.

Before ending, table 4 should be considered given the evidence that increases in the prevalence of schooling and the duration of education among young women were important in easing restrictions that state law imposed

on access to abortion. Table 4 is confined to women in the United States who were twenty-five to twenty-nine years old in each census year from 1940 to 2000. For the year specified in the first (i.e., left-hand) column of the table, the second column reports the percentage of women twenty-five to twenty-nine years old who held at least a bachelor's degree, and for each pair of sequential percentages in the second column, the third column reports the percentage change that occurred from the earlier to the later year. The third column thus shows the percentage change from one census year to the next in the prevalence of college graduation among women who were twenty-five to twenty-nine years old.

The trend that is apparent in the second column of table 4 is consistent with the trend that is seen in figure 4 for women younger than age twenty-five and with the data that footnote 126 presents on the mounting school enrollment rate between the last part of the 1940s and last part of the 1950s among women in the age range twenty to twenty-four. Table 4 shows that the percentage of women with a bachelor's degree or higher at age twenty-five to twenty-nine rose steadily from 1940 onward and that the decadal pace of the rise accelerated from 1940 to 1970. Figure 4 and footnote 126, which complement table 4, suggest that the proportion of women who received at least a bachelor's degree while twenty to twenty-four years old climbed rapidly during the 1950s and the first half of the 1960s. As these women grew older, the percentage of women with a college degree at age twenty-five to twenty-nine increased.[165] The increase from 1960 to 1970 is particularly notable; indeed, the largest percentage change found in the third column of table 4 is that occurring between 1960 and 1970. Therefore, prior to 1967 as well as during the period of abortion law liberalization that commenced in 1967, young women were increasingly entering college and earning bachelor's and graduate degrees. These trends are indicators of a fundamental shift in the role of women, and the shift that occurred before the modification of abortion law during 1967-1973 is unlikely to be mere coincidence.

165. Most women who hold a bachelor's degree at age twenty-five to twenty-nine evidently entered college when they were eighteen or nineteen years old. *See*, *e.g.*, U.S. BUREAU OF THE CENSUS, *supra* note 135, at Table 168; U.S. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, CENSUS OF POPULATION: 1970, VOL. I, CHARACTERISTICS OF THE POPULATION. PART 1, UNITED STATES SUMMARY – SECTION 2, at Table 197 (1973), *available at* http://www.census.gov/prod/www/abs/decennial/1970cepopv1.htm. Therefore, an increase in the percentage of women with a bachelor's degree at age twenty-five to twenty-nine is an indicator of change in the female sex role that took place as much as a decade prior to the increase.

Table 4. Women 25-29 Years Old with a Bachelor's Degree or Higher, 1940-2000[166]

Year	Percentage of women age 25-29 holding at least a Bachelor's degree	Percentage change from prior year
1940	4.9%	—
1950	5.9	20.4%
1960	7.8	32.2
1970	13.3	70.5
1980	20.5	54.1
1990	22.4	9.3
2000	29.7	32.6

Finally, let me discuss another study of the relationship between the characteristics of jurisdictions and the law on abortion that existed in the jurisdictions prior to *Roe v. Wade*.[167] As I explain below, while this study (the Conway-Butler study) has the same subject matter as mine, there are critical differences in objectives, data, and procedures.

To begin, the Conway-Butler study, after an initial analysis, omitted women's educational attainment as a variable from its refined regression

166. The data in column 2 are from U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, *A Half-Century of Learning: Historical Statistics on Educational Attainment in the United States, 1940 to 2000*, at Table 2 (2006), *available at* http://www.census.gov/population/www/socdemo /education/phct41.html.

167. Karen Smith Conway & Michael R. Butler, *State Abortion Legislation as a Public Good—Before and After Roe v. Wade*, 30 ECON. INQUIRY 609 (1992).

In several social science studies that considered state differences on matters pertinent to law on abortion, the dependent variable was not differences in current law on abortion. Elizabeth Adell Cook et al., *State Political Cultures and Public Opinion about Abortion*, 46 POL. RES. Q. 771, 772 (1993); Leo H. Kahane, *Political, Ideological and Economic Determinants of Abortion Position: An Empirical Analysis of State Legislatures and Governors*, 53 AM. J. ECON. & SOC. 347, 348-50 (1994); Medoff, *supra* note 131.

models, in part because the investigators assumed that the main impact of educational attainment would be manifested through two other variables that they included in these models, namely, women's labor force participation rate and income.[168] Given the omission of education from the refined models, the study could not thoroughly evaluate the effect of the variable on abortion law or estimate the magnitude of any effect of the variable—an aspect of the study whose importance cannot be underrated in light of the trends in figure 4 *supra* and the odds ratio in table 2 *supra* for PCTCOLL2529CAT.

With regard to the variables that were included in the regression models of both the Conway-Butler study and my study, a difference in procedure between the studies markedly affected the interpretation of the regression results. Professors Conway and Butler relied on tests of significance; for reasons given earlier,[169] I did not. Using tests of statistical significance, the Conway-Butler study found that the restrictiveness of abortion law in a jurisdiction in 1970 was not associated either with the labor force participation rate among women in the jurisdiction or with the distribution of marital status among women in the jurisdiction.[170] This conclusion, however, takes into account only whether the probability of the regression coefficient for each variable was at or below .10 if no relationship with the dependent variable existed in the universe from which the investigators drew their sample.[171] If the regression coefficients themselves are considered[172] and their significance levels are disregarded, then the Conway-Butler study indicates that abortion law became more liberal with increases in the percentage of women in a jurisdiction who are married. This finding is consistent with the results of my regression analysis (at least for MARR2024CAT), but as in my study, the finding cannot be reconciled with figure 3 *supra* or with theory.[173] With regard to labor force participation, the regression results in the Conway-Butler study indicate that the odds of liberal abortion law decline with increases in the percentage of women in a jurisdiction who participate in the labor force. This finding is curious, because it is inconsistent with the odds ratios for women's labor force participation in table 2 *supra*, with figure 5 *supra*, and with theory.[174] The discrepant findings of the two

168. Conway & Butler, *supra* note 167, at 615, 618. The refined models are the models that Conway and Butler label the "'Best' Model" and the "Private Demand" model. Education, although included in the model that Conway and Butler label the "Broadest model," was not in the refined models, while labor force participation and income were in all of the preceding models. *Id.* at 618.

169. *See supra* notes 144 & 145 and accompanying text.

170. Conway & Butler, *supra* note 167, at 618.

171. The notes to Table III in Conway & Butler. *Id.* at 619.

172. *Id*. at 618 (reporting the regression coefficients).

173. *See supra* notes 92 & 93 and accompanying text.

174. *Id*.

studies as to labor force participation may be due to the omission of education as an independent variable in the Conway-Butler study and/or to one, or a combination, of the following differences between the studies.

The reader should note that the manner in which the dependent variable was measured was not the same in both studies. Professors Conway and Butler placed each state into one of three levels of restrictiveness in terms of its abortion law prior to *Roe*—viz., abortion unrestricted, significantly restricted, or prohibited[175]—while I measured the dependent variable with just two categories—viz., whether or not the state had eased its restrictions on abortion in the years preceding *Roe*. Undoubtedly of much greater potential importance to the regression results, however, is that the studies classified three states differently in terms of their abortion law before *Roe*. Professors Conway and Butler designated Florida as a state that banned abortion and designated Alabama and Massachusetts as states that significantly restricted access to abortion.[176] My study, on the other hand, classified Florida as a state that liberalized its abortion law, because the state had done so in 1972.[177] Furthermore, my study classified Alabama and Massachusetts as states that did not liberalize their abortion law, in part because the last pre-*Roe* change in abortion law that was made by these two states

175. Conway & Butler, *supra* note 167, at 616, 621-22. Another study classified states into three levels of restrictiveness in terms of their law on access to abortion before *Roe v. Wade*. Sharon Kay Parsons, Abortion Policy in the Fifty States: A Comparative Analysis 96, 166-67 (1991) (unpublished Ph.D. dissertation, Florida Atlantic University) (on file with Widener University School of Law Delaware Campus Library). However, the study by Parsons is not useful for two reasons. First, the Parsons study employed factor analysis to create clusters of independent variables, and it assessed the relationship of just the clusters to the restrictiveness of state abortion law prior to *Roe*. *Id.* at 114-19. Because a cluster is global in nature, reliance on clusters rather than on the independent variables that form the clusters precludes a direct comparison of the findings of the Parsons study with the findings of my study. The relationship of a cluster of independent variables to a dependent variable, moreover, supplies information that is much less precise than the relationships to the dependent variable of the independent variables comprising the cluster. The second reason the Parsons study is not helpful is that the study employed least-squares regression, but for analyzing relationships to a dependent variable that is measured in categories, least-squares regression is dubious and, accordingly, has been replaced by logistic regression. The results reported in the Conway-Butler study, which was carried out at almost the same time as the Parsons study, are based on logistic regression, and least-squares regression was not employed. Conway & Butler, *supra* note 167, at 615.

176. Conway & Butler, *supra* note 167, at 621-22.

To classify states in terms of the restrictiveness of their law on abortion prior to *Roe*, Professors Conway and Butler relied on information in a book authored by a social scientist. *Id*. at 613 n.6. The book explicitly discloses that its information on abortion law was current as of January 1971. NANETTE J. DAVIS, FROM CRIME TO CHOICE: THE TRANSFORMATION OF ABORTION IN AMERICA 254-57 (1985). Because the book was published fourteen years after January 1971, Professors Conway and Butler may have assumed that, from January 1971 until the Court announced *Roe* in January 1973, no other jurisdiction liberalized its law on abortion. However, such an assumption is mistaken as to Florida. *See infra* note 177 and accompanying text.

177. Act of Apr 12, 1972, ch. 72-196, 1972 Fla. Laws 608; Merz et al., *supra* note 90, at 19-20.

occurred, respectively, in 1951[178] and in 1944, not in the 1960s.[179]

An additional difference between the studies is that the Conway-Butler study included Alaska, Hawaii, and the District of Columbia,[180] but my study omitted them. I omitted Alaska and Hawaii for reasons explained earlier,[181] and I omitted the District of Columbia in order to confine the analysis to states. The difference in the jurisdictions covered by the two studies could have markedly affected the regression results of the studies, and the difference is not simply coincidence. Professors Conway and Butler included the three jurisdictions (Alaska, Hawaii, and the District of Columbia), and I excluded them, because our studies had different purposes. Professors Conway and Butler wanted to predict the content of law on abortion in each major jurisdiction of the United States if the U.S. Supreme Court overrules *Roe*, and their refined regression models thus evidently included the District of Columbia even though the investigators had identified this jurisdiction as "a very influential outlier."[182] My goal, on the other hand, was to help build a sociological theory of law, and to this end, my study examined a universe that was more circumscribed in order to reduce the likelihood of contamination by unmeasured factors.[183]

In sum, the regression results of the Conway-Butler study appear not to be helpful in isolating the causes of current law on abortion. Professors Conway and Butler focused on predicting the law on access to abortion that jurisdictions can expect to adopt if *Roe v. Wade* is overturned—an entirely

---

178. Act of Sept. 12, 1951, no. 956, 1951 Ala. Laws 1630 (amending ALA. CODE tit. 14, § 9 (1940)).

179. *See supra* note 90.

180. Conway & Butler, *supra* note 167, at 621-22.

181. *See supra* note 130.

182. Conway & Butler, *supra* note 167, at 623 n.17.

183. Two further differences between the studies should be mentioned. First, Professors Conway and Butler measured their independent variables as of 1970. *Id.* at 616. However, 1970 was either concurrent with or after the point at which action had been taken by most of the jurisdictions that eased restrictions on abortion. *See supra* note 90. In my study, on the other hand, the data on the independent variables were for 1960 (or 1959 in the case of income), a time point that *precedes* the changes in state law. Because causation involves temporal sequences, potential causes of a phenomenon should be measured at a time that is before the occurrence of the phenomenon, not at a time that is contemporaneous with the phenomenon or that is after it.

Second, Professors Conway and Butler measured their independent variables with data for women eighteen to forty-four years old. Conway & Butler, *supra* note 167, at 616-17. On the other hand, I used data for women in the age range twenty to twenty-nine to measure all of the independent variables except income, for which the data were for women twenty-five to thirty-four years old. *See supra* note 135 and accompanying text. In the decade-and-a-half from 1973 to 1988 (and presumably in the years before 1973), women twenty to twenty-nine years old were the source of approximately half of all abortions, while women thirty years of age and older accounted for fewer than one out of five abortions. HENSHAW & VAN VORT, *supra* note 120, at 172-73. Accordingly, the characteristics of females under thirty years old are probably the chief determinants of the existence and degree of pressure on a social system to allow ready access to abortion.

legitimate focus when the goal is to understand the political process. Their study, however, was not primarily concerned with a theory of law. My study, on the other hand, places a heavy emphasis on theory.

IV. THE CONCEPT OF SOCIETAL NEED

All theories contain key concepts, and the macrosociological theory that frames the instant Article is no exception. Specifically, this Article employs the concept of need and contends that need is a principal determinant of law. My focus, however, has been on the needs of society, not on the needs of individuals, and although the two may influence one another and change concurrently in content and intensity, they possess distinctly different referents. To use abortion as an illustration, a woman who seeks to end a pregnancy does so for one or more reasons *she* considers important—because, for example, the fetus she is carrying is jeopardizing her physical health or financial goals—but *her* need to terminate a pregnancy is an individual-level attribute. I have focused instead on the degree to which society, in responding to the forces affecting it, requires the availability of abortion and the existence of supporting doctrine in law. Need in my lexicon accordingly emerges from the properties of society and from the forces that mold these properties, and it involves the propensity of every social system in the long run to (i) retain and/or strengthen the commitment of its participants to the system and (ii) operate smoothly. In accounting for the rules of social life—both those that are formal (e.g., law) and those that are informal—I believe that the concept of societal need can make a distinct and important contribution.

By considering need as an attribute of society, I do not mean to disparage the concept of need as an attribute of individuals or suggest that scientific inquiry should avoid the subject of the needs of individuals. Rather, I contend that individual need is unlikely to be a particularly helpful concept in accounting for the content and evolution of doctrine in law. Law is concerned with the ways in which individuals interact, but "relations among people have a material character which is largely independent of individual control or conscious action."[184] Doctrines in law must accordingly be understood by reference to conditions beyond the individual, i.e., by reference to the society in which the doctrines exist. In particular, I maintain that law, as a macrosociological phenomenon, is a response to societal needs and cultural values and that the need for law with a particular content on a given topic is the need of the social system.

Need, whether used in reference to social systems or to individuals, is an abstract concept, i.e., a concept that is not directly observable but that has

184. Bruce H. Mayhew, *Structuralism versus Individualism: Part 1, Shadowboxing in the Dark*, 59 SOC. FORCES 335, 345 (1980).

observable manifestations. Accordingly, need is a concept with potential uses in theory. Science employs such concepts because they have the ability to provide a coherent view of the world: with theoretical concepts, numerous and varied observations can be transformed into a manageable set of ideas and organized in ways that permit events not yet observed to be anticipated. The concept of gravity, for example, is found in physics for this reason.

A theoretical concept, however, does not exist for its own sake. Science is an inherently practical undertaking, and unless a concept is useful to the scientific enterprise—i.e., unless a concept furthers understanding and aids prediction—it must and will be abandoned. The history of science contains instances of theoretical concepts that did not advance the goals of science and were dropped. In the 1700s, for example, the concept of phlogiston was believed to be an invisible substance produced by combustion that accounted for certain observable changes associated with heat, but the concept was finally discarded because it could not be reconciled with the results of experiments in the emerging discipline of chemistry.[185]

If the concept of need in social science is not to suffer the same fate as the concept of phlogiston in physical science, it must be shown to aid the scientific enterprise, i.e., contribute to the explanation and prediction of phenomena. The present Article has considered several topics, and for each, the concept of need is useful. Specifically, a defensible argument can be made that, because of change in system-level conditions, society developed a need for new law on sex roles, on the age of majority, and on abortion. Societal need, in short, offers promise as an efficacious concept in a macrosociological theory of law.

A. Functionalism

In order to understand the concept of societal need, the sociological theory from which it derives must be described, and the criticisms directed at the theory must be considered. The theory is functionalism. As an approach to the nature of social life, functionalism was the first theory propounded by sociologists, and revised versions of the theory remain influential.[186] The central premise of functionalism is that a society is composed of interrelated components that promote the operation and, in turn, the continuation of the society.[187] Specifically, functionalism considers society to be a system—i.e., an interrelated whole—and contends that the components of society facilitate the performance of the system. A component that

185. GERALD HOLTON & DUANE H. D. ROLLER, FOUNDATIONS OF MODERN PHYSICAL SCIENCE 269-73 (1958).

186. JONATHAN H. TURNER, THE STRUCTURE OF SOCIOLOGICAL THEORY 34, 37 n.31 (Wadsworth Thomson Learning 2003); SCOTT, *supra* note 4, at 139.

187. MARK ABRAHAMSON, FUNCTIONALISM 5 (1978).

becomes unable to assist the system, according to the functionalist perspective, either will change so that it once again serves the system, or it will cease to exist. A component thus does not emerge and/or persist unless it is functional for society. However, the emergence of, change in, or the disappearance of a component may not be immediate; on the contrary, these processes probably occur in the main over and/or after a substantial interval. Normally, then, the propositions of the functionalist school apply just in the long run.

What are the components of a society? In my macrosociological framework, the components are denominated "institutions,"[188] and one of them is law. Law, like every institution, possesses a distinct set of concepts and principles, i.e., doctrines, and the central doctrines of law reflect conditions in society, although usually with a time lag. Among the conditions shaping law are the values that govern the society.[189] The conformity of the content of law to social values should not be surprising, for without this conformity, the institution of law would not be accepted and could not contribute to the operation of society.

With this general outline, let me take up the principal criticisms that have been directed at the functionalist school insofar as the criticisms are relevant to doctrine in law and the theoretical framework employed in the instant Article.[190] The first criticism is that, because functionalism emphasizes stability and persistence in social systems, it cannot deal effectively with change, at least change that involves an important aspect of system structure and a major departure from established patterns. In terms of the approach I am employing to doctrines of law, the criticism is unfounded, for a theory of law based on functionalism demands that shifts in doctrine be studied. Indeed, the larger the magnitude of a doctrinal shift, the greater the importance of investigating the shift because major change is more likely than minor change to reveal (i) the societal properties and forces

188. An institution can be defined as "[a]n established law, custom, usage, practice, organization, or other element in the political or social life of a people; a regulative principle or convention subservient to the needs of an organized community or the general ends of civilization." OXFORD ENGLISH DICTIONARY 1047 (2d ed. 1989).

189. THOMAS R. MARSHALL, PUBLIC OPINION AND THE SUPREME COURT 192-93 (1989); Christopher Z. Mooney & Mei-Hsien Lee, *The Influence of Values on Consensus and Contentious Morality Policy: U.S. Death Penalty Reform, 1956-82*, 62 J. POL. 223, 234 (2000); Matthew E. Wetstein & Robert B. Albritton, *Effects of Public Opinion on Abortion Policies and Use in the American States*, 25 PUBLIUS 91, 102 (1995). Government policy generally manifests the attitudes of the public when crystallized attitudes exist. Paul Burstein, *Bringing the Public Back In: Should Sociologists Consider the Impact of Public Opinion on Public Policy?*, 77 SOC. FORCES 27, 41 (1998).

190. My review of these criticisms is based on ABRAHAMSON, *supra* note 187, at 37-49; JOHN REX, KEY PROBLEMS OF SOCIOLOGICAL THEORY 60-77 (1961); TURNER, *supra* note 186, at 23-37; Peter A. Munch, *The Concept of "Function" and Functional Analysis in Sociology*, 6 PHIL. SOC. SCI. 193 (1976); Jonathan H. Turner & Alexandra R. Maryanski, *"Is 'Neofunctionalism' Really Functional?"*, 6 SOC. THEORY 110, 115-17 (1988).

molding law and (ii) the effects of law—two issues with which any theory of law must be concerned. It is thus not happenstance that the focus of the instant Article includes abortion law. The subject was selected because of the striking change that abortion law underwent in the United States during the 1960s and 1970s, and because of the availability of considerable data to study the change.

A second criticism of functionalism has been that it is teleological, a criticism that implicates the concept of need. Functionalism relies heavily on the concept of need; indeed, the concept is "what is distinctive about functional analysis."[191] Traditionally, functionalism incorporated the concept of need by contending that every society requires a certain degree of internal integration and equilibrium in order to survive. In advancing this argument, functionalism becomes teleological if it assumes that the goal of satisfying the need produces the features of social life that accomplish the goal, and it becomes empirically untestable if at the same time it cannot generate hypotheses identifying these features in advance.[192] Specifically, to the extent functionalism argues that the needs of society call forth processes and structures that meet the needs, functionalism assumes the existence of an inherent design in society and relies on ends to explain means. Such reliance, though teleological, does not preclude empirical testing as long as functionalism also is able to predict the means that can reach the ends, and that therefore may emerge and be observed, in a given situation. Unfortunately, however, functionalist theory seems to be insufficiently developed at this point in time to permit such predictions to be consistently generated.

The preceding problem is associated with a third criticism of the functionalist school, namely, that the societal needs named by the school are so general that empirical research cannot disprove their existence. According to this criticism, functionalists have assumed that amorphous needs such as integration and equilibrium govern the social system, but the assumption cannot be rigorously tested because of the elusive nature of these needs. One prominent theorist in sociology has concluded that, because need is unverifiable as well as teleological, functionalism as an approach is of questionable scientific utility.[193]

The obscure quality and untestable character of needs in the functionalist perspective is closely linked to and largely responsible for a fourth problem that has plagued the perspective, namely, tautological reasoning. The problem arose because functionalists, having specified needs in highly abstract terms, rely upon the conditions believed to satisfy the needs as evidence

191. Turner & Maryanski, *supra* note 190, at 117.
192. *Cf. id*. at 116.
193. REX, *supra* note 190, at 76.

that the needs are a reality. According to the functionalist argument, the existence of need X is shown by the presence of condition Y, and the fact that condition Y exists and can satisfy need X is proof that need X is real. This is reasoning that is circular and tautological; when need is employed in this fashion, it is intellectually empty.

To recapitulate, the concept of societal need has introduced problems of teleology, indefiniteness, and tautology into the macrosociological theory of functionalism. These problems, however, are not inherent in the concept of need, and they can be avoided. To do so in the present Article, I defined need in specific rather than general terms—e.g., as the need of the system for a particular type of law on abortion rather than as the need for integration and equilibrium—and I identified observable variables from which conclusions can be drawn regarding the degree to which a societal need exists for a specific doctrine in law, e.g., acceptance of access to abortion. The latter step—identifying a measure of need—is particularly important and warrants further comment.

Operationalizing a theoretical concept is essential if science is to use the concept and ascertain the contribution the concept can make to explanation and prediction.[194] In the instant Article, the criterion for determining the extent of a societal need for a particular doctrine of law, and the level of this need over time, was (i) change in the distribution in the population of the characteristic (e.g., age) that is the subject of the doctrine and/or (ii) change in the magnitude of a system-level factor that prior research on individuals suggests has an influence on the behavior that is the subject of the doctrine (e.g., the termination of a pregnancy by abortion). Thus, a societal need to legalize abortion was deemed to have existed when, before restrictions imposed by law on access to abortion were removed, an increase occurred in a system-level variable that has been found to affect the probability that individual women will terminate pregnancies.

Need, however, remains a concept that organizes and summarizes observations and that is itself unobserved. Need thus continues to be a theoretical construct, but as used here, it does not introduce the problems of teleology, indefiniteness, and tautology for which functionalism has been attacked. First, need was not regarded in this Article as controlling the variable being employed to measure need. Rather, my focus was on a variable that was believed responsible for producing a need, and quantitative data on the variable were employed to judge the intensity of the need. The variable, as reflected in data on its rate or distribution in the population, was accordingly viewed as creating a need rather than as satisfying a need that already exists. Used in this manner, the concept of need does not generate a teleological explanation. Second, need was empirically assessed in

194. HOLTON & ROLLER, *supra* note 185, at 218-22.

this Article with quantitative data on phenomena that were defined in a relatively unambiguous and precise manner. The referents of need, therefore, were definite, not obscure. Third, and finally, inferences regarding the intensity of need were based on the level of and trends in the quantitative variables employed—variables such as age that were themselves the subject of the doctrines of law under study or variables that research had found influence the frequency of behaviors such as abortion that were the focus of the doctrines of law under study. In this way, conclusions regarding the existence and intensity of a need do not arise from a presumption regarding the need but, instead, from change in one or more variables that are logically antecedents of the need and that are independently measured. Such an approach involves inferences in only one direction and precludes tautological reasoning.

B. Societal Need and Abortion

Let me return to the subject of abortion. In Part III of this Article, evidence was adduced that increases in the prevalence and duration of schooling among women in their main reproductive years were key to the creation of a societal need for the nonrestrictive abortion law that materialized during the last half of the 1960s and the first half of the 1970s. The apparent impact on abortion law of schooling among females does not end the inquiry, however, for a macrosociological theory of law cannot be confined to the immediate antecedents of law doctrines if the theory is to maximize its ability to explain and predict doctrinal content and change. Rather, the theory must include the forces molding these antecedents, and an explanation, therefore, is required for the fact that, as seen in figure 4 and table 4, school enrollment and college graduation underwent an appreciable rise among young women during the 1950s and 1960s. Identification of the causes of the rise is also a prerequisite to understanding the full range of effects of the large-scale forces that altered the properties of society pertinent to the liberalization of abortion law. For example, the greater extent and length of schooling among young women seems to have been accompanied by a shift, albeit delayed, in the meaning that children have for women,[195] and all of these changes, as contributors to or concomitants of the liberalization of abortion law, may have stemmed from a common source. To obtain a complete picture of the societal setting in which abortion law evolved, an exploration of the reasons for higher rates of school enrollment and college graduation among young women is essential.

What forces expanded the pursuit of education by young women in the United States during the last half of the twentieth century? The research necessary for a definitive answer to this question remains to be done, but I

195. Nock, *supra* note 93, at 388-92.

suspect two forces were important—viz., increases in the stock of knowledge and increases in the density of population. Elsewhere I have discussed why I believe these forces enlarged the number of court decisions during the 1960s and 1970s that dealt with the constitutional guarantee of equal protection.[196] Here, I would like to outline briefly the reasons I think the two forces made school enrollment and college graduation more common among young women and, in turn, helped to produce law that accepted the use of abortion.

I begin with growth in the stock of knowledge because I believe that, with respect to abortion, it is the more influential of the two forces. Increases in the quantity and quality of knowledge, and associated advances in technology, are presumably responsible for changes observed in the occupational structure of the United States—specifically, the noticeable enlargement during the 1950s and 1960s of the part of the occupational structure devoted to information.[197] These changes can also be seen during the twentieth century in the expanding size of the professional and technical workforce, an expansion that was especially rapid after World War II: during the fifty years from 1900 to 1950, the proportion of professional and technical workers in the economically active population rose by approximately four percentage points, but in the twenty years from 1950 to 1970, the magnitude of the rise was some five percentage points.[198] Decadal growth in professional and technical workers was thus considerably larger in the two decades that followed 1950 than in the five decades that preceded it.

The effect of knowledge and its increase are not confined to the occupational structure, however, but extend to the pursuit of education, for the greater size of the professional and technical workforce has, since the middle of the twentieth century, fostered school attendance after high school.[199] Change in the volume of knowledge, that is, altered the occupational system in a way that affected the incidence of tertiary education. Consequently, the post-World War II increase among young women in school enrollment and college completion (seen in figure 4 and table 4, respectively) was not happenstance, and it was undoubtedly a key factor in the movement of employed females into the professions after 1950.[200] Collectively,

196. BARNETT, *supra* note 11, at 22-24.

197. Nass, *supra* note 57, at 206.

198. Professional, technical, and kindred workers comprised 4.3% of the economically active population in 1900, 8.6% in 1950, and 13.7% in 1970. Computed from HISTORICAL STATISTICS, *supra* note 45, at 140 (Series D 233-682).

199. Pamela Barnhouse Walters, *Occupational and Labor Market Effects on Secondary and Postsecondary Educational Expansion in the United States: 1922 to 1979*, 49 AM. SOC. REV. 659, 668 (1984).

200. JAMES P. SMITH & MICHAEL P. WARD, RAND CORP., WOMEN'S WAGES AND WORK IN THE TWENTIETH CENTURY 40 (1984).

these changes—which stemmed from the enlarged store of knowledge—promoted the rationality of society and, hence, individual choice on a variety of matters.[201] In short, the volume and growth of knowledge had a major impact on the American social system at this time, an impact manifested in changes involving the role of women and, in turn, in law pertinent to women. Law banning gender-based discrimination in employment[202] and law regulating the grounds for abortion are illustrative.

With regard to population density, it is notable that the fraction of the U.S. population residing in a relatively populous area grew steadily during the twentieth century and that the fraction was appreciable in the period preceding and accompanying the reform of abortion law. To be exact, the percentage of the U.S. population residing in a metropolitan setting doubled between 1910 and 1950 (twenty-eight percent to fifty-six percent), and it continued to mount between 1950 and 1960 (fifty-six percent to sixty-three percent) and between 1960 and 1970 (sixty-three percent to sixty-nine percent).[203] How did exposure to an urban environment of a large and expanding share of the population contribute to the evolution of abortion law? Research indicates that, because its residents are more frequently college graduates,[204] such an environment is characterized by views, and presumably actions, that deviate from tradition.[205] Indeed, the impact of urbanism on civil liberties may be greatest in terms of the role of women.[206] Therefore, increases in metropolitan residence, by fostering or at least allowing the acceptance of nontraditional behavior, probably promoted the schooling and educational attainment of women.

In sum, I believe that, for the reasons I have outlined, growth in knowledge and increases in population density were instrumental in modifying abortion law in the United States. As forces reshaping the American social order, they changed the core of society in a number of ways that encouraged young women to enroll in school and complete college. Specifically, increases in the volume of knowledge and the density of population may have altered the social system in a manner that increased the ratio of burdens to benefits from childbearing and broadened the range of nonrepro-

---

201. *See supra* notes 55-64 and accompanying text; Barnett, *supra* note 47.

202. *See supra* notes 69-75 and accompanying text.

203. FRANK HOBBS & NICOLE STOOPS, U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, DEMOGRAPHIC TRENDS IN THE 20TH CENTURY: CENSUS 2000 SPECIAL REPORTS, at A-5 (2002). A geographic area that is labeled "metropolitan" contains "a large population nucleus, together with adjacent communities having a high degree of social and economic integration with that nucleus." *Id*. at B-4.

204. Laura M. Moore & Seth Ovadia, *Accounting for Spatial Variation in Tolerance: The Effects of Education and Religion*, 84 SOC. FORCES 2205, 2214 (2006).

205. Thomas C. Wilson, *Urbanism, Migration, and Tolerance: A Reassessment*, 56 AM. SOC. REV. 117, 119-21 (1991).

206. Thomas C. Wilson, *Urbanism and Nontraditional Opinion: Another Look at the Data*, 73 SOC. SCI. Q. 610, 612 (1992), at Table 1.

ductive activities that attract women. From a functionalist perspective, society-provided constraints and inducements mold the acts of individual human beings, and growth in the stock of knowledge and the density of population may have changed the constraints and inducements that affect women with respect to bearing and rearing children. In this new social environment, the education of women began to expand and affect fertility-related decisions. As the process unfolded, society removed conspicuous restrictions imposed by law on the termination of pregnancies by adult women: since participation in and progress through the education institution, and the nonreproductive activities that stem from this participation/progress, would not be fully available to young women unless abortion was accessible, the existence of appealing alternatives to childbearing would have required that the institution of law acknowledge the importance of abortion access and eliminate doctrines regarded as major obstacles to abortion use.[207]

207. While the growing demand for education among young women was critical to easing restrictions placed on abortion by law, the change in abortion policy did not appreciably further the schooling of these women: the liberalization of abortion law between 1967 and 1973 did not raise the educational level of white women, and it added just a quarter-year to the average educational achievement of black women. Maya H. Klein, The Effects of Abortion Legislation on Women's Educational Attainment in the United States 83-84, 106, 109, 113-14 (1997) (unpublished Ph.D. dissertation, University of California, Berkeley) (on file with Widener University School of Law Delaware Campus library). This is further evidence that, prior to 1967, women who wished to terminate pregnancies were in general doing so, even if the terminations violated existing law, and that the chief benefit to society from the liberalization of law on abortion was symbolic. Barnett, *supra* note 47.

Appendix
Age of Majority Specified by Law in Each State[208]

State	Column 2: Age of majority before adoption of age of majority in column 3	Column 3: Age of majority that replaced the age in column 2	Column 4: Year of approval by legislature of age of majority in column 3
Alabama	21	19	1975
Arizona	21	18	1972
Arkansas	21 (males); 18 (females)	18	1975
California	21; 18 if married	18	1971
Colorado	21	18	1973
Connecticut	21	18	1972
Delaware	21	18	1972
Florida	21	18	1973
Georgia	21	18	1972
Idaho	21 (males); 18 (females)	18	1972
Illinois	21 (males); 18 (females)	18	1971
Indiana	21	18	1973
Iowa	21 or upon marriage 19 or upon marriage	19 or upon marriage 18 or upon marriage	1972 1973
Kansas	21; 18 if married	18	1972
Kentucky	21	18	1964
Louisiana	21	18	1972
Maine	21 20	20 18	1969 1972
Maryland	21	18	1973
Massachusetts	21	18	1973
Michigan	21	18	1971
Minnesota	21	18	1973
Mississippi	21	21	——

208. The age of majority that is given applies both to males and to females unless otherwise indicated.

Missouri	21	18	[See Missouri in Sources list for table.]
Montana	21 (males); 18 (females) 19	19 18	1971 1973
Nebraska	21 or upon marriage 20 or upon marriage	20 or upon marriage 19 or upon marriage	1969 1972
Nevada	21 (males); 18 (females)	18	1973
New Hampshire	21	18	1973
New Jersey	21	18	1972
New Mexico	21	18	1971
New York	21	18	1974
North Carolina	21	18	1971
North Dakota	21 (males); 18 (females)	18	1971
Ohio	21	18	1973
Oklahoma	21 (males); 18 (females)	18	1972
Oregon	21 or upon marriage	18 or upon marriage	1973
Pennsylvania			[See Pennsyl-vania in Sources list for table
Rhode Island	21	18	1972
South Carolina	21	18	1975
South Dakota	21 (males); 18 (females)	18	1972
Tennessee	21	18	1972
Texas	21	18	1973
Utah	21 (males); 18 (females); or upon marriage	18 or upon marriage	1975
Vermont	21	18	1971
Virginia	21	18	1972
Washington	21	18	1970, 1971
West Virginia	21	18	1972
Wisconsin	21	18	1972
Wyoming	21 19	19 18	1973 1993

Sources:

Alabama: Act of July 22, 1975, No. 77, 1975 Ala. Acts 554; *Ex parte* Bayliss, 550 So. 2d 986, 989 (Ala. 1989) ("From 1852 to 1975, the age of majority in Alabama was 21 years.").

Arizona: ARIZ. REV. STAT. § 1-215 (1956); Act of May 22, 1972, ch. 146, 1972 Ariz. Sess. Laws 1002.

Arkansas: ARK. CODE. § 57-103 (1947); Act of Apr. 4, 1975, No. 892, 1975 Ark. Acts 2321.

California: Act of Dec. 14, 1971, ch. 1748, 1971 Cal. Stat. 3736; Act of Sept. 7, 1955, ch. 183, 1955 Cal. Stat. 648.

Colorado: COLO. REV. STAT. § 2-4-211 (1989); Act of June 25, 1973, ch. 158, 1973 Colo. Sess. Laws 543.

Connecticut: Act of May 9, 1972, No. 127, 1972 Conn. Acts 129 (Reg. Sess.); Altieri v. Altieri, 155 A.2d 758, 760 (Conn. Super. Ct. 1959) ("Under the common law, which has been adopted in our jurisdiction, the age of majority is twenty-one years.").

Delaware: Act of June 16, 1972, ch. 439, 1972 Del. Laws 1351-52; Wife v. Husband, 412 A.2d 724, 725 (Del. Fam. Ct. 1980) (referring to the June 16, 1972 statutory reduction in the age of majority from twenty-one to eighteen years).

Florida: Act of May 9, 1973, ch. 73-21, 1973 Fla. Laws; Act of Nov. 6, 1829, § 1, 1829 Fla. Laws 8-9; Riley v. Holmer, 131 So. 330, 331 (Fla. 1930) ("Under our law, both males and females are minors till they reach the age of twenty-one years. This was the common law rule.").

Georgia: GA. CODE ANN. § 74-104 (1964); Act of Mar. 10, 1972, No. 862, 1972 Ga. Laws 193-99.

Idaho: IDAHO CODE ANN. § 32-101 (1932); Act of Mar. 10, 1972, ch. 117, 1972 Idaho Sess. Laws.

Illinois: Act of July 24, 1939, § 131, 1939 Ill. Laws 37; Act of Aug. 24, 1971, No. 77-1229, 1971 Ill. Laws 2201.

Indiana: IND. CODE ANN. § 34-1-67-1 (1973, repealed 1990); Act of Apr. 16, 1973, no. 313, 1973 Ind. Acts 1715-17; McClain v. Chavez, 383 N.E.2d 414, 415 (Ind. Ct. App. 1978) ("The Legislature changed the age of majority from 21 to 18 years effective as of July 26, 1973").

Iowa: IOWA CODE § 599.1 (1950); Act of April 19, 1972, ch. 1027, 1972 Iowa Acts 83; Act of Mar. 7, 1973, ch. 140, 1973 Iowa Acts 311.

Kansas: Act of Apr. 7, 1978, ch. 155, 1978 Kan. Sess. Laws 683 (reducing the age of majority to sixteen if married); Act of Mar. 26, 1972, ch.161, 1972 Kan. Sess. Laws 606; Act of Apr. 19, 1965, ch. 274, 1965 Kan. Sess. Laws 546.

Kentucky: Act of Mar. 10, 1964, ch. 21, 1964 Ky. Acts 96 (establishing eighteen as the age of majority; approved in 1964 and implemented on January 1, 1965); Showalter v. Showalter, 497 S.W.2d 420, 421 (Ky. 1973)

("In 1965 the age of majority was lowered from twenty-one to eighteen years by the General Assembly").

Louisiana: LA. CIV. CODE ANN. art. 37 (vacated by amendment 1987); Act of June 25, 1972, No. 98, 1972 La. Acts 336.

Maine: The age of majority was reduced from twenty-one to twenty in 1969 and from twenty to eighteen in 1971. Act of Oct. 1, 1969, ch. 433, 1969 Me. Laws 1150-68; Act of June 9, 1972, ch. 598, 1971 Me. Laws 164-180 (Spec. Sess.).

Maryland: Act of May 24, 1973, ch. 651, 1973 Md. Laws 1300; Monticello v. Monticello, 315 A.2d 520, 523 (Md. 1974) (quoting legislative history stating that, except for liquor, the 1973 Act "lower[s] the age of majority from twenty-one to eighteen years of age in all areas of the common law, in all sections and articles of the Annotated Code of Maryland, and in all counties of the State of Maryland").

Massachusetts: Act of Oct. 17, 1973, ch. 925, 1973 Mass. Acts 938-53; Orlandella v. Orlandella, 347 N.E.2d 665, 665 (Mass. 1976) ("Effective January 1, 1974, the age of majority was changed from twenty-one to eighteen years of age.").

Michigan: MICH. CONST. of 1963, art. III, § 7; Act of Aug. 4, 1971, no. 79, 1971 Mich. Pub. Acts 142.

Minnesota: MINN. STAT. § 645.45 (1947); Act of May 24, 1973, ch. 725, 1973 Minn. Laws 2082.

Mississippi: MISS. CODE ANN. § 1-3-27 (1999); MISS. CODE ANN. § 1-3-27 (1972).

Missouri: Owens v. Owens, 854 S.W.2d 52, 54 (Mo. Ct. App. 1993) ("In 1974 the Legislature attempted to change the age of majority from twenty-one to eighteen years of age for all purposes except for the purchase of alcoholic beverages. However, the Supreme Court held unconstitutional this blanket attempt to change the age of majority through an improper amendment. State *ex rel.* McNary v. Stussie, 518 S.W.2d 630, 634, 637 (Mo. 1974). Since then, the Legislature has piecemeal changed the age of majority to eighteen in certain instances."). *See also In re* Marriage of Orth, 637 S.W.2d 201, 205 (Mo. Ct. App. 1982) ("The age of majority is, for most purposes, eighteen in Missouri.").

Montana: The age of majority was reduced to nineteen for all persons in 1971 and to eighteen for all persons in 1973. MONT. CODE ANN. § 64-101 (1949); Act of Mar. 6, 1973, ch. 94, 1973 Mont. Laws 109; Act of Mar. 9, 1971, ch. 240, 1971 Mont. Laws 993.

Nebraska: Until 1965, majority was reached at twenty-one or, for females only, upon marriage. NEB. REV. STAT. § 38-101 (1944). From 1965 to 1969, majority was reached at twenty-one or upon marriage for both males and females. Act of May 12, 1965, ch. 207, 1965 Neb. Laws 613. The age of majority was reduced from twenty-one to twenty in 1969 and

from twenty to nineteen in 1972, with marriage conferring majority at younger ages. Act of Mar. 13, 1969, ch. 298, 1969 Neb. Laws 1072; Legis. 1086, 1972 Leg. (Neb. 1972).

Nevada: Act of May 3, 1973, ch. 753, 1973 Nev. Stat. 1577-83.

New Hampshire: N.H. CONST., pt. 2, art. 90; Act of Apr. 4, 1973, ch. 72, 1973 N.H. Laws 51.

New Jersey: Act of July 5, 1972, ch. 81, 1972 N.J. Laws 457; Act of Dec. 28, 1972, ch. 206, 1972 N.J. Laws 790; Green v. Auerbach Chevrolet Corp., 606 A.2d 1093, 1095 (N.J. 1992) ("Effective January 1, 1973, the Legislature lowered the age of majority in New Jersey from twenty-one to eighteen.").

New Mexico: Act of Apr. 2, 1971, ch. 213, 1971 N.M. Laws 727; Montoya de Antonio v. Miller, 34 P. 40, 41 (N.M. 1893) ("the common law fixes the beginning of [full legal age] on the day preceding the twenty-first anniversary of birth, and the same has not been changed by any statute of this territory.").

New York: N.Y. DOM. REL. LAW § 2 (Thompson 1964); Act of June 15, 1974, ch. 920, 1974 N.Y. Laws 2213.

North Carolina: N.C. GEN. STAT. § 4-1 (1986); Act of June 17, 1971, ch. 585, 1971 N.C. Sess. Laws 510.

North Dakota: N.D. CENT. CODE §§ 14-10-01, 14-10-02 (1960); Act of Feb. 26, 1971, ch. 145, 1971 N.D. Laws 230.

Ohio: OHIO REV. CODE ANN. § 3109.01 (1972); Act of Nov. 21, 1973, No. 1, 1973 Ohio Laws 7.

Oklahoma: OKLA. STAT. tit. 15, §§ 13, 14 (1966); Act of Apr. 7, 1972, ch. 221, 1972 Okla. Sess. Laws 332.

Oregon: OR. REV. STAT. §§ 109.510, 109.520 (1971); Act of July 20, 1973, ch. 827, 1973 Or. Laws 2417.

Pennsylvania: 23 PA. CONS. STAT. § 5101 (1991); Act of Dec. 6, 1972, No. 300, 1972 Pa. Laws 1404; 1 PA. CONS. STAT. § 1991 (1995); Act of May 28, 1937, No. 282, 1937 Pa. Laws 1019; Sutliff v. Sutliff, 528 A.2d 1318, 1322 n.4 (Pa. 1987) ("The age of majority for substantive purposes in civil matters remains twenty-one.").

Rhode Island: Act of Mar. 29, 1972, ch. 20, 1972 R.I. Pub. Laws 62, which "changed the age of majority in Rhode Island from twenty-one to eighteen." Vaillancourt v. Vaillancourt, 449 A.2d 885, 886 n.2 (R.I. 1982).

South Carolina: Act of July 2, 1976, no. 695, 1976 S.C. Acts 1886; Act of Feb. 6, 1975, No. 15, 1975 S.C. Acts 13.

South Dakota: S.D. CODIFIED LAWS § 26-1-1 (1967); Act of Feb. 17, 1972, ch. 154, 1972 S.D. Sess. Laws 185.

Tennessee: Act of Mar. 30, 1972, ch. 612, 1972 Tenn. Pub. Acts 494; Cardwell v. Bechtol, 724 S.W.2d 739, 745 (Tenn. 1987) ("That the Legislature has adopted [18 years] for attainment of majority indicates persua-

sively that conditions in society have changed to the extent that maturity is now reached at earlier stages of growth than at the time that the common law recognized the age of majority at 21 years.").

Texas: Act of June 16, 1973, ch. 626, 1973 Tex. Gen. Laws 1722; Dallas Joint Stock Land Bank of Dallas v. Dolan, 92 S.W.2d 1111, 1112 (Tex. Civ. App. 1936) ("By the common law and the law of this state, the status of minority of appellee continues up to the age of 21.").

Utah: UTAH CODE ANN. § 15-2-1 (1953); Act of Mar. 24, 1975, ch. 39, 1975 Utah Laws 121.

Vermont: VT. STAT. ANN. tit. 1, § 173 (1958); Act of Apr. 16, 1971, No. 90, 1971 Vt. Acts & Resolves 208.

Virginia: Act of Apr. 10, 1972, ch. 824-25, 1972 Va. Acts 1472-97; Hurdle v. Prinz, 235 S.E.2d 354, 355 (Va. 1977) ("On July 1, 1972, . . . [chapters 824 and 825] became effective lowering the age of majority from 21 years to 18.").

Washington: The age of majority was reduced from twenty-one to eighteen in 1970 for specified purposes (e.g., contractual obligations, civil litigation) and in 1971 for all purposes. Age Qualifications Act, ch. 292, 1971 Wash. Sess. Laws 1601; Act of Feb. 20, 1970, ch. 17, 1970 Wash. Sess. Laws 145; Act of Mar. 10, 1923, ch. 72, 1923 Wash. Sess. Laws 222.

West Virginia: W. VA. CODE § 2-1-1 (1999); Act of Mar. 11, 1972, ch. 61, 1972 W. Va. Acts 310; Dimitroff v. Dimitroff, 218 S.E.2d 743 (W. Va. 1975).

Wisconsin: WIS. STAT. § 990.01 (1958); Act of Mar. 22, 1972, ch. 213, 1971 Wis. Sess. Laws 509.

Wyoming: The age of majority was reduced from twenty-one to nineteen in 1973 and from nineteen to eighteen in 1993. WYO. STAT. ANN. § 8-1-101 (1999); Act of Feb. 16, 1993, ch. 1, 1993 Wyo. Laws 1; Act of Mar. 5, 1973, ch. 213, 1973 Wyo. Sess. Laws 312.

Earliest Known Nineteenth Century Restrictions on the Purchase and Transfer of Firearms by Minors

State	Year[1]	Statutory Text	Source[2]
Alabama	1856	"That any one who shall sell or give or lend, to any male minor, a . . . air gun or pistol, shall, on conviction be fined not less than three hundred, nor more than one thousand dollars."	An Act to Amend the Criminal Law, No. 26, § 1, 1856 Ala. Acts 17.
Delaware	1881	"That if any person shall carry concealed a deadly weapon upon or about his person other than an ordinary pocket knife, or shall knowingly sell a deadly weapon to a minor other than an ordinary pocket knife, such person shall, upon conviction thereof, be fined . . . ."	An Act providing for the punishment of persons carrying concealed deadly weapons, ch. 548, § 1, 16 Del. Laws 716 (1881).
District of Columbia	1892	"That it shall not be lawful for any person or persons within the District of Columbia, to have concealed about their person any deadly or dangerous weapons, such as daggers, air-guns, pistols . . . . That any person or persons who shall, within the District of Columbia, sell, barter, hire, lend or give to any minor under the age of twenty-one years any such weapon as hereinbefore described shall be deemed guilty of a misdemeanor . . . ."	An Act to punish the carrying or selling of deadly or dangerous weapons within the District of Columbia, and for other purposes, ch. 159, §5, 27 Stat. 116-17 (1892).

[1] Year of enactment.

[2] Where the relevant law was published in a larger compendium source, the source date often postdates the year of enactment.

State	Year[1]	Statutory Text	Source[2]
Georgia	1876	"[I]t shall not be lawful for any person or persons knowingly to sell, give, lend or furnish any minor or minors any pistol, dirk, bowie knife or sword cane. . . *Provided*, that nothing herein contained shall be construed as forbidding the furnishing of such weapons under circumstances justifying their use in defending life, limb or property."	An Act to punish any person or persons who shall sell, give, lend or furnish any minor or minors with deadly weapons herein mentioned and for other purposes, No. CXXVIIII (O. No. 63.), § 1, 1876 Ga. Acts And Resolutions 112.
Illinois	1881	"Whoever, not being the father, guardian or employer of the minor herein named, by himself or agent, shall sell, give, loan, hire or barter, or shall offer to sell, give, loan, hire or barter to any minor within this state, any pistol, revolver, derringer, bowie knife, dirk or other deadly weapon of like character, capable of being secreted upon the person, shall be guilty of a misdemeanor . . . ."	An Act to regulate the traffic in deadly weapons and to prevent the sale of them to minors, § 2, 1881 Ill. Laws 73.
Indiana	1875	"[I]t shall be unlawful for any person to sell, barter, or give to any other person under the age of twenty-one years any pistol . . . or other deadly weapon that can be worn, or carried, concealed upon or about the person, or to sell, barter, or give to any person, under the age of twenty-one years, any cartridges manufactured and designed for use in a pistol."	An Act to prohibit the sale, gift, or bartering of deadly weapons or ammunition therfor, to minors, ch. XL, § 1, 1875 Ind. Laws 59.
Iowa	1884	"That it shall be unlawful for any person to knowingly sell, present or give any pistol, revolver or toy pistol to any minor."	An Act to Prohibit the Selling or Giving of Fire Arms to Minors, ch. 78, § 1, 1884 Iowa Acts And Resolutions 86

State	Year[1]	Statutory Text	Source[2]
Kansas	1883	"Any person who shall sell, trade, give, loan or otherwise furnish any pistol, revolver or toy pistol, by which cartridges or caps may be exploded, . . . or other dangerous weapons to any minor . . . shall be deemed guilty of a misdemeanor . . . . Any minor who shall have in his possession any pistol, revolver or toy pistol, by which cartridges may be exploded, . . . or other dangerous weapon, shall be deemed guilty of a misdemeanor . . . ."	An Act to prevent selling, trading or giving of deadly weapons or toy pistols to minors, and to provide punishment therefor, ch. CV, §§ 1-2, 1883 Kan. Sess. Laws 159.
Kentucky	1873	"If any person shall carry concealed a deadly weapon upon or about his person other than an ordinary pocket knife, or shall sell a deadly weapon to a minor other than an ordinary pocket knife, such person shall, upon indictment and conviction, be fined . . . ."	Edward I. Bullock & William Johnson, Eds., The General Statutes Of The Commonwealth Of Kentucky, Ky. Gen. Stat. ch. 29, art. 29, § 1, at 359 (1873).
Louisiana	1890	"[I]t shall be unlawful, for any person to sell, or lease or give through himself or any other person, any pistol, dirk, bowie-knife or any other dangerous weapon, which may be carried concealed to any person under the age of twenty-one years."	An Act Making it a misdemeanor for any person to sell, give or lease, to any minor, any pistol, bowie-knife, dirk or any weapon, intended to be carried or used as a concealed weapon, No. 46, § 1, 1890 La. Acts 39, 39.
Maryland	1882	"[I]t shall be unlawful for any person, be he or she licensed dealer or not, to sell, barter or give away any firearm whatsoever or other deadly weapons, except shot guns, fowling pieces and rifles, to any person who is a minor under the age of twenty-one years."	An Act to prohibit the sale of "Deadly Weapons to Minors," ch. 424, § 2, 1882 Md. Laws 656.

State	Year[1]	Statutory Text	Source[2]
Mississippi	1878	"[A]ny person not being threatened with, or having good and sufficient reason to apprehend an attack, or traveling (not being a tramp) or setting out on a journey, or peace officers, or deputies in discharge of their duties, who carries concealed, in whole or in part, any bowie knife, pistol, . . . or other deadly weapon of like kind or description, shall be deemed guilty of a misdemeanor . . . . [I]t shall not be lawful for any person to sell to any minor . . . knowing him to be a minor . . . any weapon of the kind or description in the first section of this Act described, or any pistol cartridge . . . ."	An Act to prevent the carrying of concealed weapons, and for other purposes, ch. 66, §§ 1-2, 1878 Miss. Laws 175.
Missouri	1879	"If any person shall carry concealed, upon or about his person, any deadly or dangerous weapon, . . . having upon or about his person any kind of firearms, bowie-knife, dirk, dagger, slung-shot, or other deadly weapon . . . or shall, directly or indirectly, sell or deliver, loan or barter to any minor any such weapon, without the consent of the parent or guardian of such minor . . . ."	Carrying deadly weapons, etc., Mo. Rev. Stat. § 1274 (1879).

State	Year[1]	Statutory Text	Source[2]
Nevada	1885	"Every person under the age of twenty-one (21) years who shall wear or carry any dirk, pistol, sword in case, slung shot, or other dangerous and deadly weapon concealed upon his person shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be fined not less than twenty nor more than two hundred ($200) dollars, or by imprisonment in the County Jail not less than thirty days nor more than six months, or by both such fine and imprisonment."	An Act to amend an Act entitled "An Act to prohibit the carrying of concealed weapons by minors, ch. 51, § 1, 1885 Nev. Stat. 51; *see* An Act to Prohibit the Carrying of Concealed Weapons by Minors, ch. 104, § 1, 1881 Nev. Stat. 143-44 (statute that was amended in 1885 to increase the age from eighteen to twenty-one).
North Carolina	1893	"[I]t shall be unlawful for any person, corporation or firm knowingly to sell or offer for sale, give or in any way dispose of to a minor any pistol or pistol cartridge, brass knucks, bowie-knife, dirk, loaded cane, or sling-shot."	An act to prevent the sale of deadly weapons to minors, ch. 514, § 1, 1893 N.C. Pub. L. & Res. 468.
Tennessee	1856	"[I]t shall be unlawful for any person to sell, loan, or give, to any minor a pistol . . . *Provided*, that this act shall not be construed so as to prevent the sale, loan, or gift, to any minor of a gun for hunting."	An Act to amend the Criminal Laws of this State, ch. 81, § 2, 1856 Tenn. Acts 92.
Texas	1897	"[I]f any person in this State shall knowingly sell, give or barter, or cause to be sold, given or bartered to any minor, any pistol . . . without the written consent of the parent or guardian of such minor, or of some one standing in lieu thereof, he shall be punished by fine . . . ."	An Act to prevent the barter, sale and gift of any pistol, dirk, dagger, slung shot, sword-cane, spear, or knuckles made of any metal or hard substance to any minor without the written consent of the parent or guardian of such minor, or of some one standing in lieu thereof, and providing a penalty for the violation, ch. 155, § 1, 1897 Tex. Gen. Laws 221-22.

State	Year[1]	Statutory Text	Source[2]
West Virginia	1882	"If a person carry about his person any revolver or other pistol . . . or any other dangerous or deadly weapon of like kind or character, he shall be guilty of a misdemeanor . . . and if any person shall sell or furnish any such weapon as is hereinbefore mentioned to a person whom he knows, or has reason, from his appearance or otherwise, to believe to be under the age of twenty-one years, he shall be punished as hereinbefore provided; but nothing herein contained shall be so construed as to prevent any person from keeping or carrying about his dwelling house or premises any such revolver or other pistol, or from carrying same from the place of purchase to his dwelling house, or from his dwelling house to any place where repairing is done, to have it repaired, and back again."	An Act amending and re-enacting section seven of chapter one hundred and forty-eight of the code of West Virginia, and adding sections thereto for the punishment of unlawful combinations and conspiracies to injury persons or property, ch. 135, § 1, 1882 W. Va. Acts 421-22.
Wisconsin	1883	"It shall be unlawful for any minor, within this state, to go armed with any pistol or revolver, and it shall be the duty of all sheriffs, constables, or other public police officers, to take from any minor any pistol or revolver, found in his possession. . . . It shall be unlawful for any dealer in pistols or revolvers, or any other person, to sell, loan, or give any pistol or revolver to any minor in this state."	An Act to prohibit the use and sale of pistols and revolvers, ch. 329, §§ 1-2, 1883 Wis. Laws 290.

State	Year[1]	Statutory Text	Source[2]
Wyoming	1890	"It shall be unlawful for any person to sell, barter or give to any other person under the age of twenty-one years any pistol . . . or other deadly weapon that can be worn or carried concealed upon or about the person, or to sell, barter or give to any person under the age of sixteen years any cartridges manufactured and designed for use in a pistol; and any person who shall violate any of the provisions of this section shall be fined in any sum not more than fifty dollars."	Wyo. Rev. Stat. § 5052 (1899).

manner of apportioning the road hands in the county of St. Clair," be, and the same is hereby repealed. Repealed.

SEC. 2. *Be it further enacted*, That from and after the passage of this act, the Judge of Probate and Sheriff of St. Clair county, for services required of them in Article 1, Part 1, Title 13, Chapter 14, Code of Alabama, shall each receive annually fifty dollars, instead of ninety dollars as authorized by Section 1186, Code of Alabama.

APPROVED, Feb. 2, 1856.

[No. 26.] AN ACT

To amend the criminal law.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened*, That any one who shall sell or give or lend, to any male minor, a bowie knife, or knife or instument of the like kind or description, by whatever name called, or air gun or pistol, shall, on conviction be fined not less than three hundred, nor more than one thousand dollars. Penalty.

APPROVED, Feb. 2, 1856.

[No. 27.] AN ACT

To declare Luxapalila Creek in Fayette county a public highway.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened*, That from and after the passage of this act, Luxapalila Creek in Fayette county, from the State line up to Wood's Mill on said stream, be, and the same is hereby, declared a public highway.

APPROVED, February 15, 1856.

be found the court shall impose a fine on the person so found guilty of the breaking and entering, not exceeding three hundred dollars, or shall imprison him for a term not exceeding three years, or both, at the discretion of the court.

Penalty.

Passed at Dover, February 24, 1881.

CHAPTER 548.

OF OFFENSES AGAINST PUBLIC JUSTICE.

Title. AN ACT providing for the punishment of persons carrying concealed deadly weapons.

Be it enacted by the Senate and House of Representatives of the State of Delaware, in General Assembly met:

Unlawful to carry concealed deadly weapons.

Punishment.

SECTION 1. That if any person shall carry concealed a deadly weapon upon or about his person other than an ordinary pocket knife, or shall knowingly sell a deadly weapon to a minor other than an ordinary pocket knife, such person shall, upon conviction thereof, be fined not less than twenty-five nor more than one hundred dollars or imprisoned in the county jail for not less than ten nor more than thirty days, or both at the discretion of the court: *Provided,* that the provisions of this section shall not apply to the carrying of the usual weapons by policemen and other peace officers.

Discharging fire-arms in any public road, a misdemeanor. Penalty.

SECTION 2. That if any person shall, except in lawful self-defence discharge any fire-arm in any public road in this State, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by fine not exceeding fifty dollars or by imprisonment not exceeding one month, or both at the discretion of the court.

Unlawful to point a gun or pistol at another.

SECTION 3. That it shall be unlawful for any person, either in jest or otherwise, intentionally to point a gun, pistol or other fire-arms at or towards any other person at any time or place. Any person violating any provision of this section shall, upon conviction thereof, pay a fine of not less than ten dollars nor more than one hundred dollars and the cost of prosecution, and should

death result to any person by the discharge of such gun, pistol or other fire-arm while so pointed, the person pointing the same shall be guilty of manslaughter when such killing shall not amount to murder, and shall be punished accordingly. Penalty.

Passed at Dover, April 8, 1881.

CHAPTER 549.

GENERAL PROVISIONS CONCERNING CRIMES AND PUNISHMENTS.

AN ACT to amend Chapter 133 of the Revised Code, (General Provisions Concerning Crimes, &c.) Title.

Be it enacted by the Senate and House of Representatives of the State of Delaware, in General Assembly met:

SECTION 1. That Section 10 of Chapter 133 of the Revised Code, be amended by adding thereto as follows: If no order has been made by the court at the term when the sentence was made, or at a succeeding term, the resident judge of the county, shall have power to make such order upon petition and proof of inability; and the said order when made and filed with the Clerk of the Peace, shall be sufficient authority for the discharge of the prisoner. It shall be the duty of the Clerk of the Peace to furnish the sheriff at once with a certified copy of said order. Section 10, Chap. 133, R. Code, amended.

Passed at Dover, January 26, 1881.

submitting plan and estimate for its improvement; and the Chief of Engineers shall submit to the Secretary of War the reports of the local and division engineers, with his views thereon and his opinion of the public necessity or convenience to be subserved by the proposed improvement; and all such reports of preliminary examinations with such recommendations as he may see proper to make, shall be transmitted by the Secretary of War to the House of Representatives, and are hereby ordered to be printed when so made.

Reports to be sent to House of Representatives and printed.

Appropriation for examinations, etc.

SEC. 8. For preliminary examinations, contingencies, expenses connected with inspection of bridges, the service of notice required in such cases, the examination of bridge sites and reports thereon, and for incidental repairs for which there is no special appropriation for rivers and harbors, one hundred and twenty-five thousand dollars: *Provided*, That no preliminary examination, survey, project, or estimate for new works other than those designated in this act shall be made: *And provided further*, That after the regular or formal report on any examination, survey, project, or work under way or proposed is submitted, no supplemental or additional report or estimate, for the same fiscal year, shall be made unless ordered by a resolution of Congress. The Government shall not be deemed to have entered upon any project for the improvement of any water way or harbor mentioned in this act until funds for the commencement of the proposed work shall have been actually appropriated by law.

Provisos.
No survey, etc., unless provided for.

No supplemental reports, etc., to be made.

No project authorized until appropriation made.

Approved, July 13, 1892.

July 13, 1892.

CHAP. 159.—An Act to punish the carrying or selling of deadly or dangerous weapons within the District of Columbia, and for other purposes.

District of Columbia.

Carrying concealed weapons forbidden.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall not be lawful for any person or persons within the District of Columbia, to have concealed about their person any deadly or dangerous weapons, such as daggers, air-guns, pistols, bowie-knives, dirk knives or dirks, blackjacks, razors, razor blades, sword canes, slung shot, brass or other metal knuckles.

Openly carrying weapons with unlawful intent forbidden.

SEC. 2. That it shall not be lawful for any person or persons within the District of Columbia to carry openly any such weapons as hereinbefore described with intent to unlawfully use the same, and any person or persons violating either of these sections shall be deemed guilty of a misdemeanor, and upon conviction thereof shall, for the first offense,

Punishment, first offense.

forfeit and pay a fine or penalty of not less than fifty dollars nor more than five hundred dollars, of which one half shall be paid to any one giving information leading to such conviction, or be imprisoned in the jail of the District of Columbia not exceeding six months, or both such fine and imprisonment, in the discretion of the court: *Provided*, That the officers, non-commissioned officers, and privates of the United States Army, Navy, or Marine Corps, or of any regularly organized Militia Company, police officers, officers guarding prisoners, officials of the United States or the District of Columbia engaged in the execution of the laws for the protection of persons or property, when any of such persons are on duty, shall not be liable for carrying necessary arms for use in performance of their duty: *Provided, further*, that nothing contained in the first or second sections of this act shall be so construed as to prevent any person from keeping or carrying about his place of business, dwelling house, or premises any such dangerous or deadly weapons, or from carrying the same from place of purchase to his dwelling house or place of business or from his dwelling house or place of business to any place where repairing is done, to have the same repaired, and back again: *Provided further*, That nothing contained in the first or second sections of this act shall be so construed as to apply to any person who shall have been granted a written permit to carry such weapon or weapons by any judge of the police court of the District

Provisos.
Exceptions.

Lawful use of weapons.

Permits.

of Columbia, and authority is hereby given to any such judge to grant such permit for a period of not more than one month at any one time, upon satisfactory proof to him of the necessity for the granting thereof; and further, upon the filing with such judge of a bond, with sureties to be approved by said judge, by the applicant for such permit, conditioned to the United States in such penal sum as said judge shall require for the keeping of the peace, save in the case of necessary self-defense by such applicant during the continuance of said permit, which bond shall be put in suit by the United States for its benefit upon any breach of such condition.

Punishment, second offense.

SEC. 3. That for the second violation of the provisions of either of the preceding sections the person or persons offending shall be proceeded against by indictment in the supreme court of the District of Columbia, and upon conviction thereof shall be imprisoned in the penitentiary for not more than three years.

Disposition of weapons taken from offenders.

SEC. 4. That all such weapons as hereinbefore described which may be taken from any person offending against any of the provisions of this act shall, upon conviction of such person, be disposed of as may be ordered by the judge trying the case, and the record shall show any and all such orders relating thereto as a part of the judgment in the case.

Punishment for sale of weapons to minors.

SEC. 5. That any person or persons who shall, within the District of Columbia, sell, barter, hire, lend or give to any minor under the age of twenty-one years any such weapon as hereinbefore described shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, pay a fine or penalty of not less than twenty dollars nor more than one hundred dollars, or be imprisoned in the jail of the District of Columbia not more than three months. No person shall engage in or conduct the business of selling, bartering, hiring, lending, or giving any weapon or weapons of the kind hereinbefore named without having previously obtained from the Commissioners of the District of Columbia a special license authorizing the conduct of such business by such person, and the said Commissioners are hereby authorized to grant such license, without fee therefor, upon the filing with them by the applicant therefor of a bond with sureties to be by them approved, conditioned in such penal sum as they shall fix to the United States for the compliance by said applicant with all the provisions of this section; and upon any breach or breaches of said condition said bond shall be put in suit by said United States for its benefit, and said Commissioners may revoke said license. Any person engaging in said business without having previously obtained said special license shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine of not less than one hundred dollars nor more than five hundred dollars, of which one half shall be paid to the informer, if any, whose information shall lead to the conviction of the person paying said fine. All persons whose business it is to sell barter, hire, lend or give any such weapon or weapons shall be and they hereby, are, required to keep a written register of the name and residence of every purchaser, barterer, hirer, borrower, or donee of any such weapon or weapons, which register shall be subject to the inspection of the major and superintendent of Metropolitan Police of the District of Columbia, and further to make a weekly report, under oath to said major, and superintendent of all such sales, barterings, hirings, lendings or gifts. And one half of every fine imposed under this section shall be paid to the informer, if any, whose information shall have led to the conviction of the person paying said fine. Any police officer failing to arrest any person guilty in his sight or presence and knowledge of any violation of any section of this act shall be fined not less than fifty nor more than five hundred dollars

Special license for dealers in weapons.

Penalty for dealing without license.

Register of sales, etc.

Half of fine to informer.

Penalty for failure to arrest by officers.

Repeal.

SEC 6. That all acts or parts of acts inconsistent with the provisions of this act be, and the same hereby are, repealed.

Approved, July 13, 1892.

No. CXXVII.—(O. No. 230.)

SECTION 1. Punishment for cruelty to animals.

An Act to alter and amend an Act entitled an Act for the prevention of cruelty to animals, approved March 1, 1875.

Punishment for cruelty to animals

SECTION I. *Be it enacted, etc.*, That from and after the passage of this Act, that the Act entitled an Act for the prevention of cruelty to animals be altered and amended by striking out the words, in the last line of said Act, "be fined in a sum not to exceed fifty dollars," and insert in lieu thereof the words "be punished as prescribed in section 4310 of the Code of 1873."

SEC. II. Repeals conflicting laws.

Approved February 23, 1876.

No. CXXVIII.—(O. No. 63.)

SECTION 1. Furnishing deadly weapons to minors prohibited.

An Act to punish any person or persons who shall sell, give, lend or furnish any minor or minors with deadly weapons herein mentioned, and for other purposes.

Furnishing deadly weapons to minors prohibited

Penalty for violation

Proviso

SECTION I. *Be it enacted, etc.*, That from and after the passage of this Act it shall not be lawful for any person or persons knowingly to sell, give, lend or furnish any minor or minors any pistol, dirk, bowie knife or sword cane. Any person found guilty of a violation of this Act shall be guilty of a misdemeanor, and punished as prescribed in section 4310 of the Code of 1873: *Provided*, that nothing herein contained shall be construed as forbidding the furnishing of such weapons under circumstances justifying their use in defending life, limb or property.

SEC. II. Repeals conflicting laws.

Approved February 17, 1876.

No. CXXIX.—(O. No. 184.)

SECTION.
1. Penalty for escapes.
2. *Particeps criminis.*

An Act to provide a penalty for escapes from the "chain gang," and for other purposes.

Penalty for escapes

SECTION I. *Be it enacted, etc.*, That from and after the passage of this Act, if any person or persons shall be convicted of any offense below the grade of felony, and such person or persons shall escape from the "chain gang," or from any other place of

CRIMINAL CODE.

DEADLY WEAPONS.

REGULATES TRAFFIC AND PREVENTS SALE TO MINORS.

§ 1. Forbids possession or sale of slung-shots or knuckles—penalty.
§ 2. Forbids sale, loan or gift to minors, of fire-arms or other deadly weapons—penalty.
§ 3. Provides for registry of sales by dealers in deadly weapons—Form of register—penalty for failure to keep same.
§ 4. Penalty for carrying deadly weapons or display of same.
§ 5. Fines and penalties—how recovered—Increased penalty for second offense.
§ 6. Exempts sheriffs, coroners, constables, policemen or peace officers from provisions of this act.
§ 7. Repealing clause for acts in conflict.
In force July 1, 1881.

AN ACT *to regulate the traffic in deadly weapons, and to prevent the sale of them to minors.*

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That whoever shall have in his possession, or sell, give or loan, hire or barter, or whoever shall offer to sell, give, loan, hire or barter, to any person within this state, any slung-shot or metallic knuckles, or other deadly weapon of like character, or any person in whose possession such weapons shall be found, shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than ten dollars ($10) nor more than two hundred dollars ($200).

§ 2. Whoever, not being the father, guardian or employer of the minor herein named, by himself or agent, shall sell, give, loan, hire or barter, or shall offer to sell, give, loan, hire or barter to any minor within this state, any pistol, revolver, derringer, bowie knife, dirk or other deadly weapon of like character, capable of being secreted upon the person, shall be guilty of a misdemeanor, and shall be fined in any sum not less than twenty-five dollars ($25) nor more than two hundred dollars ($200).

§ 3. All persons dealing in deadly weapons, hereinbefore mentioned, at retail within this state shall keep a register of all such weapons sold or given away by them. Such register shall contain the date of the sale or gift, the name and age of the person to whom the weapon is sold or given, the price of the said weapon, and the purpose for which it is purchased or obtained. The said register shall be in the following form:

No. of weapon.	To whom sold or given.	Age of purchaser.	Kind and description of weapon.	For what purpose purchased or obtained.	Price of weapon.

Said register shall be kept open for the inspection of the public, and all persons who may wish to examine the same may do so at all reasonable times during business hours. A failure to keep such register, or to allow an examination of the same, or to record

therein any sale or gift of a deadly weapon, or the keeping of a false register, shall be a misdemeanor, and shall subject the offender to a fine of not less than twenty-five dollars ($25) nor more than two hundred dollars ($200).

§ 4. Whoever shall carry a concealed weapon upon or about his person of the character in this act specified, or razor as a weapon, or whoever, in a threatening or boisterous manner, shall display or flourish any deadly weapon, shall be guilty of a misdemeanor, and shall be fined in any sum not less than twenty-five dollars ($25) nor more than two hundred dollars ($200).

§ 5. All fines and penalties specified in this act may be recovered by information, complaint or indictment, or other appropriate remedy, in any court of competent jurisdiction; and, when recovered, shall be paid into the county treasury of the county where the conviction is had, and become a part of the current revenue of the county; or the said fines and penalties may be recovered by *qui tam* action, one-half to be paid to the informer, and the other half to be paid into the county treasury, as aforesaid. For a second violation of any of the provisions of this act the offender shall be fined in double the amount herein specified, or may be committed to the county jail for any term not exceeding twenty days, in the discretion of the court.

§ 6. Section four (4) of this act shall not apply to sheriffs, coroners, constables, policemen or other peace officers, while engaged in the discharge of their official duties, or to any person summoned by any of such officers to assist in making arrest, or preserving the peace, while such person so summoned is engaged in assisting such officer.

§ 7. All acts and parts of acts in conflict with this act are hereby repealed.

APPROVED April 16, 1881.

PENALTY FOR ADULTERATION OF BUTTER AND CHEESE.

§ 1. Manufacture of imitations or adulteration of butter and cheese prohibited—Penalty.
§ 2. Repealing clause. In force July 1, 1881.

AN ACT *to prevent the adulteration of butter and cheese, or the sale or disposal of the same, or the manufacture or sale of any article as a substitute for butter or cheese, or any article to be used as butter and cheese.*

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That whoever manufactures out of any oleaginous substances, or any compound of the same other than that produced from unadulterated milk, or cream from the same,

CHAPTER XL.

AN ACT to prohibit the sale, gift, or bartering of deadly weapons or ammunition therefor, to minors.

[APPROVED FEBRUARY 27, 1875.]

Unlawful to sell, barter or give to minors deadly weapons or cartridges for pistol.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That it shall be unlawful for any person to sell, barter, or give to any other person, under the age of twenty-one years, any pistol, dirk, or bowie-knife, slung-shot, knucks, or other deadly weapon that can be worn, or carried, concealed upon or about the person, or to sell, barter, or give to any person, under the age of twenty-one years, any cartridges manufactured and designed for use in a pistol.

Penalty.

SEC. 2. *Be it further enacted*, That any person who shall violate any of the provisions of the foregoing section shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than five dollars, nor more than fifty dollars.

CHAPTER XLI.

AN ACT in relation to the settlement of claims against decedents' estates.

[APPROVED MARCH 11, 1875.]

Claims against decedent's estate, filing examination, allowance, and payment of same.

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana*, That whenever a claim shall exist in favor of an executor or administrator against the estate he represents, which accrued before the death of such decedent, the same shall be filed against said estate, with the affidavit of the claimant attached, to the effect that the same is justly due and wholly unpaid, and placed upon the dockets of the court having jurisdiction of the estate against which said claim is filed, thirty days before the commencement of the term of said court, during which said claim is to be presented for allowance. And the Judge of said court shall represent said estate, and shall examine into the nature of

Judge shall represent estate.

CHAPTER 78.

RELATING TO SALE OF FIRE ARMS TO MINORS.

H. F. 104.

AN ACT to Prohibit the Selling or Giving of Fire Arms to Minors.

Be it enacted by the General Assembly of the State of Iowa:

Unlawful to sell or give to minors fire arms or toy pistols.

SECTION 1. That it shall be unlawful for any person to knowingly sell, present or give any pistol, revolver or toy pistol to any minor.

Fine or imprisonment.

SEC. 2. Any violation of this act shall be punishable by a fine of not less than twenty-five nor more than one hundred dollars or by imprisonment in the county jail of not less than ten nor more than thirty days.

Publication.

SEC. 3. This act being deemed of immediate importance shall be in full force and take effect from and after its publication in the Iowa State Leader and Iowa State Register, newspapers published at Des Moines, Iowa.

Approved, March 29, 1884.

I hereby certify that the foregoing act was published in the *Iowa State Leader* April 2, and *Iowa State Register* April 3, 1884.

J. A. T. HULL, *Secretary of State.*

CHAPTER 79.

CITIES AND TOWNS.

S. F. 380.

AN ACT to Amend Chapter ninety-five (95) of Laws of Sixteenth General Assembly.

Be it enacted by the General Assembly of the State of Iowa:

Chap. 95, 16th G. A., amended.

SECTION 1. That chapter ninety-five (95) of the laws of the sixteenth general assembly be amended by striking out the number "4,500" in the fifth line of section one of said chapter and inserting the number "3,500" in lieu thereof.

Loans.

Publication.

SEC. 2. This act being deemed of immediate importance the same shall take effect from and after its publication in the Iowa State Register and Iowa State Leader, newspapers published in Des Moines, Iowa.

Approved, March 29, 1884.

I hereby certify that the foregoing act was published in the *Iowa State Register* April 3, and in the *Iowa State Leader* April 2, 1884.

J. A. T. HULL, *Secretary of State.*

within thirty days after the said misdemeanor is alleged to have been committed.

SEC. 3. This act shall take effect and be in force from and after its publication in the official state paper.

Approved March 5, 1883.

I hereby certify that the foregoing is a true and correct copy of the original enrolled bill now on file in my office, and that the same was published in the official state paper, March 6, 1883. JAMES SMITH, *Secretary of State.*

CHAPTER CV.

CRIMES AND PUNISHMENTS—RELATING TO MINORS AND DEADLY WEAPONS OR TOY PISTOLS.

[House Bill No. 99.]

AN ACT to prevent selling, trading or giving deadly weapons or toy pistols to minors, and to provide punishment therefor.

Be it enacted by the Legislature of the State of Kansas:

SECTION 1. Any person who shall sell, trade, give, loan or otherwise furnish any pistol, revolver or toy pistol, by which cartridges or caps may be exploded, or any dirk, bowie-knife, brass knuckles, slung shot, or other dangerous weapons to any minor, or to any person of notoriously unsound mind, shall be deemed guilty of a misdemeanor, and shall, upon conviction before any court of competent jurisdiction, be fined not less than five nor more than one hundred dollars.

SEC. 2. Any minor who shall have in his possession any pistol, revolver or toy pistol, by which cartridges may be exploded, or any dirk, bowie-knife, brass knuckles, slung shot or other dangerous weapon, shall be deemed guilty of a misdemeanor, and upon conviction before any court of competent jurisdiction shall be fined not less than one nor more than ten dollars.

SEC. 3. This act to take effect and be in force from and after its publication in the official state paper.

Approved March 5, 1883.

Carrying away or injuring property unlawfully, but not with felonious intent.

§ 7. If any person unlawfully, but not with felonious intention, take, carry away, deface, destroy, or injure any property, real or personal, or other thing of value not his own, or willfully and knowingly, without a felonious intention, break down, destroy, injure, or remove any monument erected to designate the boundaries of this State, or any county, city, or town thereof, or the boundaries of any tract or lot of land, or any tree marked, or post or stone planted for that purpose, he shall be fined not less than ten nor more than two thousand dollars.

Destroying or injuring fruit trees, quarrying stone, injuring gates, fences, vegetables, etc.

§ 8. If any person shall willfully and unlawfully cut down or destroy, by belting, topping, or otherwise, any fruit or shade tree of another, or quarry stone on the land, pull down or open the fence or gate, destroy or injure the vegetables, trees, or shrubbery of any other person, he shall be fined not less than five nor more than five hundred dollars.

Injuring church, court-house, etc.

§ 9. If any person willfully and unlawfully pull down or injure a church, court-house, school-house, or other public building, he shall be fined not less than five nor more than five thousand dollars.

ARTICLE XXIX.

Deadly Weapons.

Carrying concealed deadly weapons.

§ 1. If any person shall carry concealed a deadly weapon upon or about his person other than an ordinary pocket knife, or shall sell a deadly weapon to a minor other than an ordinary pocket knife, such person shall, upon indictment and conviction, be fined not less than twenty-five nor more than one hundred dollars, and imprisoned in the county jail for not less than ten nor more than thirty days, in the discretion of the court or jury trying the case.

Duty of ministerial officers.

§ 2. That it shall be the duty of all ministerial officers in this State to apprehend such violator within their knowledge of this act, and to take such persons before a magistrate of the county in which said offense was committed; and if said magistrate shall, upon hearing the evidence, believe such accused person guilty of the offense charged, he shall require such accused person to give such bail as will insure his or her appearance at the next term of the circuit court for said county, to answer any indictment found against him or her in said court for said offense.

Officer failing or refusing to discharge his duty.

§ 3. If any such officer shall knowingly and willfully fail or refuse to discharge the duties imposed and required of him under this act, he shall, upon indictment found by the grand jury of his county, and on conviction, be fined in a sum of not less than one hundred nor more than five hundred dollars.

If judgment confessed, shall be for highest amount.

§ 4. That if judgment shall be confessed under this article, the penalty shall be the highest punishment imposed herein.

Lawful in the following cases.

§ 5. Carrying concealed deadly weapons shall be lawful in the following cases: 1st. When the person has reasonable grounds to believe his person or the person of some of his family, or his property is in immediate danger from violence or crime; 2d. By sheriffs, constables, marshals, policemen, and other ministerial officers, when necessary for their protection in the discharge of their official duties.

ARTICLE XXX.

Pardon Brokerage and Lobbying.

Unlawful for certain persons for fee or reward to procure the passage or rejection of a bill.

§ 1. If any person other than an officer of this Commonwealth, for fee or reward, or the promise thereof, shall engage, or assist in procuring the passage of any bill or act, or the rejection thereof, by the General Assembly, not being a member thereof, or the granting or refusing of a pardon, or remission or respite of any punishment or fine, by the Governor, he shall be fined not less than twenty nor more than five hundred dollars; but this section shall not apply to an attorney at law, or other person who may orally, or in writing, appear before any committee of the General Assembly, or either House thereof, in advocacy of the passage of a bill or act, or the rejection thereof by the General Assembly or any such committee.

Unlawful for officer or member of the General Assembly to procure the allowance of a claim or the passage or rejection of a bill.

§ 2. If any officer of this State, or a member of the General Assembly, or officer thereof, shall, for fee, reward, or promise thereof, engage or assist in the prosecution, or in procuring the allowance or payment of any claim against this State, or in procuring the passage or rejection of a bill or act by the General Assembly, or in procuring a pardon or remission of a fine, or the refusal of either by the Governor, he shall be fined not less than twenty dollars, forfeit his office and right to hold office. The proper courts of Franklin county, or of the residence of the offender, shall have jurisdiction under this and the next preceding section.

filed by the defendant, or by his counsel, the party cast in the suit, shall be considered duly notified of the judgment by the fact of its being signed by the judge;

Provided, that in the country parishes no execution shall issue in cases where an appeal lies, until ten days after the adjournment of the court by which the judgment was rendered, within which delay a party may take a suspensive appeal on filing petition and appeal bond as now provided by law. Relative to appeals in the country parishes.

S. P. HENRY,
Speaker of the House of Representatives.
JAMES JEFFRIES.
Lieut.-Governor and President of the Senate.

Approved July 1st, 1890.

FRANCIS T. NICHOLLS,
Governor of the State of Louisiana.

A true copy from the original:
L. F. MASON
Secretary of State.

No. 46.] AN ACT

Making it a misdemeanor for any person to sell, give or lease, to any minor, any pistol, bowie-knife, dirk or any weapon, intended to be carried or used as a concealed weapon.

SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana*, That, hereafter, it shall be unlawful, for any person to sell, or lease or give through himself or any other person, any pistol, dirk, bowie-knife or any other dangerous weapon, which may be carried concealed to any person under the age of twenty-one years. Makigg it a misdemeanor to sell to any minor any pistol, bowie-knife, dirk or other weapon.

SECTION 2. *Be it further enacted, etc*, That any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof, shall pay a fine of not less than twenty-five dollars nor more than one hundred dollars, and in default of the payment of said fine, by imprisonment not exceeding twenty days. Penalty.

SEC. 3. *Be it further enacted, etc.*, That all laws or parts of laws in conflict with this act be and the same are hereby repealed, and that this act take effect from and after its passage. Repealing clause.

S. P. HENRY,
Speaker of the House of Representatives.
JAMES JEFFRIES,
Lieut.-Governor and President of the Senate.

Approved July 1, 1890.

FRANCIS T. NICHOLLS,
Governor of the State of Louisiana.

A true copy from the original:
L. F. MASON,
Secretary of State.

Chapter 424.

AN ACT to prohibit the sale of "Deadly Weapons to Minors."

Cartridge toy pistol.

SECTION 1. *Be it enacted by the General Assembly of Maryland*, That it shall be unlawful for any person or persons within the State of Maryland to manufacture or to sell, barter or give away the cartridge toy pistol to any one whomsoever.

Prohibiting selling to minors.

SEC. 2. *Be it enacted*, That it shall be unlawful for any person, be he or she licensed dealer or not, to sell, barter or give away any firearm whatsoever or other deadly weapons, except shot gun, fowling pieces and rifles, to any person who is a minor under the age of twenty-one years. Any person or persons violating any of the provisions of this act shall, on conviction thereof, pay a fine of not less than fifty nor more than two hundred dollars, together with the cost of prosecution, and upon failure to pay said fine and cost, be committed to jail and confined therein until such fine and costs are paid, or for the period of sixty days, whichever shall first occur.

Effective.

SEC. 3. *And be it enacted*, That this act shall take effect from the date of its passage.

Approved May 3, 1882.

Chapter 425.

AN ACT to authorize the Commissioners of Talbot county to open water courses through private property in said county to secure the proper drainage of the public roads therein.

Open water course.

SECTION 1. *Be it enacted by the General Assembly of Maryland*, That whenever any supervisor or contractor of the public roads in Talbot county shall find it necessary to open a water course through private property in said county, to secure the proper drainage of any public road therein, he shall forthwith so inform the County Commissioners of Talbot county, and if the owner or owners of said

property consent to the opening of such water course, or if such owner or owners and the said county commissioners shall agree upon the value and price to be paid for the same, then such consent and agreement shall be entered on the books of the said county commissioners, and such water course shall be opened; but if they cannot agree, and the said county commissioners decide that the opening of such water course is necessary to drain said road, they shall authorize the said supervisor or contractor to summon a jury of twelve men to value and condemn the said water course, deducting from their estimate the value, if any, that such water course will be to the owner or owners of said property, through which it shall pass, and as soon as the money for such water course is tendered to the owner or owners of said private property, the said supervisor or contractor shall immediately cause such water course to be opened.

Disagreement—how settled.

SEC. 2. *And be it enacted*, That this act shall take effect from the date of its passage.

Effective.

Approved May 3, 1882.

Chapter 127.

AN ACT to repeal and re-enact with amendments section one of chapter three hundred and eighteen of the acts of the General Assembly of eighteen hundred and eighty, entitled "An act to fix the compensation of the sheriff of Montgomery county for keeping and boarding prisoners committed to the jail of said county."

SECTION 1. *Be it enacted by the General Assembly of Maryland*, That section one of chapter three hundred and eighteen of the acts of the General Assembly of eighteen hundred and eighty, entitled "An act to fix the compensation of the sheriff of Montgomery county for keeping and boarding prisoners committed to the jail of said county," be and the same is hereby repealed and re-enacted so as to read as follows:

Repealed and re-enacted.

CHAPTER XLVI.

AN ACT to prevent the carrying of concealed weapons, and for other purposes.

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi*, That any person, not being threatened with, or having good and sufficient reason to apprehend an attack, or traveling (not being a tramp) or setting out on a journey, or peace officers, or deputies in discharge of their duties, who carries concealed, in whole or in part, any bowie knife, pistol, brass knuckles, slung shot or other deadly weapon of like kind or description, shall be deemed guilty of a misdemeanor, and on conviction, shall be punished for the first offence by a fine of not less than five dollars nor more than one hundred dollars, and in the event the fine and cost are not paid shall be required to work at hard labor under the direction of the board of supervisors or of the court, not exceeding two months, and for the second or any subsequent offence, shall, on conviction, be fined not less than fifty nor more than two hundred dollars, and if the fine and costs are not paid, be condemned to hard labor not exceeding six months under the direction of the board of supervisors, or of the court. That in any proceeding under this section, it shall not be necessary for the State to allege or prove any of the exceptions herein contained, but the burden of proving such exception shall be on the accused.

When concealed weapons may be carried.

Penalty for carrying weapons.

Burden of proof on accused.

SEC. 2. *Be it further enacted*, That it shall not be lawful for any person to sell to any minor or person intoxicated, knowing him to be a minor or in a state of intoxication, any weapon of the kind or description in the first section of this Act described, or any pistol cartridge, and on conviction shall be punished by a fine not exceeding two hundred dollars, and if the fine and costs are not paid, be condemned to hard labor under the direction of the board of supervisors or of the court, not exceeding six months.

Minors, or persons intoxicated.

Minor under 16 years.

SEC. 3. *Be it further enacted*, That any father, who shall knowingly suffer or permit any minor son under the age of sixteen years to carry concealed, in whole or in part, any weapon of the kind or description in the first section of this Act described, shall be deemed guilty of a misdemeanor, and on conviction, shall be fined not less than twenty dollars, nor more than two hundred dollars, and if the fine and costs are not paid, shall be condemned to hard labor under the direction of the board of supervisors or of the court.

Students.

SEC. 4. *Be it further enacted*, That any student of any university, college or school, who shall carry concealed, in whole or in part, any weapon of the kind or description in the first section of this Act described, or any teacher, instructor, or professor who shall, knowingly, suffer or permit any such weapon to be carried by any student or pupil, shall be deemed guilty of a misdemeanor, and, on conviction, be fined not exceeding three hundred dollars, and if the fine and costs are not paid, condemned to hard labor under the direction of the board of supervisors or of the court.

Tax fee of justice.

SEC. 5. *Be it further enacted*, That each justice of the peace before whom a conviction is had, shall, in addition to the costs now allowed by law, be entitled to a tax fee of two dollars and a half.

Act to be read in courts

SEC. 6. *Be it further enacted*, That immediately after the passage of this Act, the Secretary of State shall transmit a copy to each circuit judge in the State, who shall cause the same to be read in open court on the day for the calling of the State docket of the court.

SEC. 7. *Be it further enacted*, That this Act take effect from and after its passage.

APPROVED, February 28, 1878.

SEC. 1271. *Abandonment of children.*—If any father or mother of any child under the age of six years, or any other person to whom such child shall have been confided, shall expose such child in a street, field or other place, with intent wholly to abandon it, he or she shall, upon conviction, be punished by imprisonment in the penitentiary not exceeding five years, or in the county jail not less than six months. (G. S. 781, § 39.)

SEC. 1272. *Mistreatment of apprentices.*—If any master or mistress of an apprentice or other person having the legal care and control of any infant, shall, without lawful excuse, refuse or neglect to provide for such apprentice or infant, necessary food, clothing or lodging, or shall unlawfully and purposely assault such apprentice or infant, whereby his life shall be endangered, or his health shall have been or shall be likely to be permanently injured, the person so offending shall, upon conviction, be punished by imprisonment in the penitentiary not exceeding three years, or by imprisonment in the county jail not exceeding one year, or by a fine of not more than one thousand dollars, or by both such fine and imprisonment. (New section.)

SEC. 1273. *Abandonment of wife or child.*—If any man shall, without good cause, abandon or desert his wife, or abandon his child or children under the age of twelve years born in lawful wedlock, and shall fail, neglect or refuse to maintain and provide for such wife, child or children, he shall, upon conviction, be punished by imprisonment in the county jail not more than one year, or by a fine of not less than fifty, nor more than one thousand dollars, or by both such fine and imprisonment. No other evidence shall be required to prove that such husband was married to such wife, or is the father of such child or children, than would be necessary to prove such fact or facts in a civil action. (Laws 1867, p. 112, amended—*m.*)

SEC. 1274. *Carrying deadly weapons, etc.*—If any person shall carry concealed, upon or about his person, any deadly or dangerous weapon, or shall go into any church or place where people have assembled for religious worship, or into any school room or place where people are assembled for educational, literary or social purposes, or to any election precinct, on any election day, or into any court room during the sitting of court, or into any other public assemblage of persons met for any lawful purpose, other than for militia drill or meetings called under the militia law of this state, having upon or about his person any kind of firearms, bowie-knife, dirk, dagger, slung-shot, or other deadly weapon, or shall, in the presence of one or more persons, exhibit any such weapon in a rude, angry or threatening manner, or shall have or carry any such weapon upon or about his person when intoxicated or under the influence of intoxicating drinks, or shall, directly or indirectly, sell or deliver, loan or barter to any minor, any such weapon, without the consent of the parent or guardian of such minor, he shall, upon conviction, be punished by a fine of not less than five nor more than one hundred dollars, or by imprisonment in the county jail not exceeding three months, or by both such fine and imprisonment. (Laws 1874, p. 43; laws 1875, p. 50, and laws 1877, p. 240, amended.)

SEC. 1275. *Above section not to apply to certain officers.*—The next preceding section shall not apply to police officers, nor to any officer or person whose duty it is to execute process or warrants, or to suppress breaches of the peace, or make arrests, nor to persons moving or traveling peaceably through this state, and it shall a good defense to the charge of carrying such weapon, if the defendant shall show that he has been threatened with great bodily harm, or had good reason to carry the same in the necessary defense of his person, home or property. (New section.)

SEC. 1276. *Fire arms not to be discharged near court house.*—Hereafter it shall be unlawful for any person in this state, except he be a sheriff or other officer in the discharge of official duty, to discharge or fire off any

(*m*) Wife held to be a competent witness to prove fact of abandonment. 43 Mo. 429. The fact that the defendant has brought suit for divorce is no defense. 52 Mo. 172.

Commissioners empowered to grant additional rights

SEC. 8. The Board of County Commissioners of said county are hereby authorized and empowered to grant to the said parties, named in Section One of this Act, their associates or assigns, such additional rights, privileges and grants as said parties, their associates and assigns, may desire or deem necessary for the full and complete enjoyment of the franchise and privileges created and granted by this Act.

License required.

SEC. 9. The Board of County Commissioners shall require of said railroad company the payment of a quarterly license for each and every car run on said railroad; also regulate the charge for fare and freights thereon; and do such other matters and things relating to said railroad as they may deem just and proper.

CHAP. CIII.—*An Act to Repeal an Act entitled "An Act to Authorize the Publication of the Laws Enacted in the Legislature of the State of Nevada," approved March 2, 1877.*

[Approved March 4, 1881.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Publication of Statutes, law repealed.

SECTION 1. An Act entitled "An Act to Authorize the Publication of the Laws Enacted by the Legislature of the State of Nevada," approved the second day of March, A. D. one thousand eight hundred and seventy-seven, is hereby repealed.

CHAP. CIV.—*An Act to Prohibit the Carrying of Concealed Weapons by Minors.*

[Approved March 4, 1881.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Minors prohibited from carrying concealed weapons, penalty, etc.

SECTION 1.—Every person under the age of eighteen (18) years who shall wear or carry any dirk, pistol, sword in case, slung shot, or other dangerous and deadly weapon concealed upon his person shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be fined not less than twenty nor more than two hundred ($200) dollars, or by

imprisonment in the County Jail not less than thirty days nor more than six months, or by both such fine and imprisonment.

SEC. 2. All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed.

SEC. 3. This Act shall take effect and be in force from and after its passage.

CHAP. CV.—*An Act Fixing the Salaries of the District Judges in the Several Judicial Districts and Matters Relating Thereto.*

[Approved March 4, 1881.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

District Judges' salaries prescribed, to take effect in 1883.

SECTION 1. The annual salaries of the Judges of the several Judicial Districts shall be as follows:

Of the First District—Six thousand ($6,000) dollars.

Of the Second District—Four thousand ($4,000) dollars; of which sum the county of Ormsby shall pay twenty-eight hundred ($2,800) dollars and the county of Douglas shall pay twelve hundred ($1,200) dollars.

Of the Third District—Five thousand ($5,000) dollars; the county of Lyon shall pay twenty-five hundred ($2,500) dollars and the county of Esmeralda shall pay twenty-five hundred ($2,500) dollars.

Of the Fourth District—Forty-five hundred ($4,500) dollars; of which sum the county of Humboldt shall pay eighteen hundred ($1,800) dollars and the county of Elko shall pay twenty-seven hundred ($2,700) dollars.

Of the Fifth District—Five thousand ($5,000) dollars; of which sum the county of Lander shall pay twenty-two hundred and fifty ($2,250) dollars, the county of Nye shall pay nineteen hundred ($1,900) dollars, and the county of Churchill eight hundred and fifty ($850) dollars.

Of the Sixth District—Six thousand five hundred ($6,500) dollars; of which sum the county of Eureka shall pay thirty-five hundred ($3,500) dollars, the county of White Pine shall pay eighteen hundred ($1,800) dollars, and the county of Lincoln shall pay twelve hundred ($1,200) dollars.

Of the Seventh Judicial District—Thirty-six hundred ($3,600) dollars.

SEC. 2. This Act shall take effect and be in force on the first Monday in January, eighteen hundred and eighty-three, and all Acts heretofore passed and in conflict with this Act are hereby repealed.

not, such person or persons, owner or owners, shall be subject to such damages as shall be equal to twice the value of the property broken into, eaten up or destroyed.

SEC. 3. All actions for damages arising under the provisions of this Act shall be tried and determined in the court having jurisdiction thereof, as in other cases made and provided. Damages.

SEC. 4. All Acts and parts of Acts, in conflict with the provisions of this Act, are hereby repealed.

SEC. 5. This Act shall take effect and be in force from and after thirty days after its approval.

CHAP. LI.—*An Act to amend an Act entitled "An Act to prohibit the carrying of concealed weapons by minors," approved March 4, 1881.*

[Approved March 2, 1885.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. Section one of said Act is hereby amended so as to read as follows:

Section one. Every person under the age of twenty-one (21) years who shall wear or carry any dirk, pistol, sword in case, slung shot, or other dangerous or deadly weapon concealed upon his person, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be fined not less than twenty nor more than two hundred ($200) dollars, or by imprisonment in the county jail not less than thirty days nor more than six months, or by both such fine and imprisonment. Minors not to carry concealed weapons. Penalty.

CHAP. LII.—*An Act for the relief of William C. Ross.*

[Approved March 2, 1885.]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. The State Land Register is hereby authorized to enter into contract with William C. Ross, on land applied for by said William C. Ross, February twenty-eighth, eighteen hundred and eighty-one, and described as follows: Lots one, two and three, and the southwest quarter of the northeast quarter of section five, in township number eleven, north of range number twenty-six east. State Land Register to contract.

CHAPTER 512.

An act to amend section thirteen, chapter three hundred and twenty, acts eighteen hundred and ninety-one.

The General Assembly of North Carolina do enact:

Chapter 320, laws 1891 (railroad commission act) amended. Telephone companies included.

SECTION 1. That chapter three hundred and twenty, section thirteen, laws eighteen hundred and ninety-one, be amended by adding after the word "telegraph" in line five, section thirteen, the words "and telephone."

To make rates for telephone lines.

SEC. 2. That section twenty-six be amended by inserting after the word "telegraph" in line seven the words "or telephone."

SEC. 3. That this act shall be in force from and after its ratification.

Ratified the 6th day of March, A. D. 1893.

CHAPTER 513.

An act to amend chapter five hundred and thirty, laws of one thousand eight hundred and ninety-one.

The General Assembly of North Carolina do enact:

Chapter 530, laws 1891, amended. Appropriation for colored orphan asylum at Oxford, N. C.

SECTION 1. That chapter five hundred and thirty of the laws of one thousand eight hundred and ninety-one be and the same is hereby amended by striking out all after the word "asylum" in line two section one of said chapter down to and including the word "orphanage" in line three of said section and inserting in lieu thereof the words "located at Oxford, North Carolina," and by striking out "one thousand dollars" and inserting the words "fifteen hundred dollars," the latter sum being the entire amount of the annual appropriation to said orphanage.

SEC. 2. That this act shall be in force from and after its ratification.

Ratified the 6th day of March, A. D. 1893.

CHAPTER 514.

An act to prevent the sale of deadly weapons to minors.

The General Assembly of North Carolina do enact:

Unlawful to knowingly sell, &c., to minor certain deadly weapons.

SECTION 1. That it shall be unlawful for any person, corporation or firm knowingly to sell or offer for sale, give or in any way dispose of to a minor any pistol or pistol cartridge, brass knucks, bowie-knife, dirk, loaded cane, or sling-shot.

SEC. 2. That any person, corporation or firm violating this act shall be guilty of a misdemeanor, and upon conviction for each and every offence shall be fined or imprisoned, one or both, in the discretion of the court. Misdemeanor.

SEC. 3. That this act shall be in force from and after its ratification.

Ratified the 6th day of March, A. D. 1893.

CHAPTER 515.

An act to amend chapter sixty, section three, of the laws of eighteen hundred and eighty-nine.

The General Assembly of North Carolina do enact:

SECTION 1. That section three, chapter sixty of the laws of one thousand eight hundred and eighty-nine be and the same is hereby repealed. Section 3, chapter 60, laws 1889, (reducing school age of Croatan Indians to ten years) repealed.

SEC. 2. That persons of the Croatan race of either sex who are not under thirteen years of age may attend the normal school for the Croatans: *Provided*, that children not under eleven years of age may be admitted who can stand an approved examination in spelling, reading, writing, primary geography and the fundamental rules of arithmetic. School age for Croatan Indian children.

SEC. 3. That this act shall be in force from and after its ratification.

Ratified the 6th day of March, A. D. 1893.

CHAPTER 516.

An act to provide for the working of convicts on the public roads of Wayne county.

The General Assembly of North Carolina do enact:

SECTION 1. It shall be the duty of the county commissioners of Wayne county immediately after the passage of this act to provide means and make all necessary arrangements and rules for the working on the public roads of said county of the convicts which shall hereafter be sentenced to work thereon under the provisions of this act; and to that end it shall be lawful for the said county commis- Commissioners of Wayne county to provide means, &c., for working convicts on roads.

CHAPTER 81.

AN ACT to amend the Criminal Laws of this State.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That when any person shall be indicted in the Circuit Courts, or any other court having criminal jurisdiction, for malicious shooting, and the jury trying the cause, after having all the evidence, shall be of the opinion that the defendant is not guilty of the malice, they shall have the power to find the defendant guilty of an assault, or an assault and battery, and judgment shall be given accordingly.

SEC. 2. *Be it enacted*, That, hereafter, it shall be unlawful for any person to sell, loan, or give, to any minor a pistol, bowie-knife, dirk, or Arkansas tooth-pick, or hunter's knife; and whoever shall so sell, loan, or give, to any minor any such weapon, on conviction thereof, upon indictment or presentment, shall be fined not less than twenty-five dollars, and be liable to imprisonment, at the discretion of the Court: *Provided*, that this act shall not be construed so as to prevent the sale, loan, or gift, to any minor of a gun for hunting.

SEC. 3. *Be it enacted*, That it shall be the duty of the Circuit Judges and the Judges of the Criminal Courts to give this act in charge to the Grand Juries: *Provided*, said minor be travelling on a journey, he shall be exempted.

SEC. 3. *Be it enacted*, That this act shall be in force from and after its passage.

NEILL S. BROWN,
Speaker of the House of Representatives.
EDWARD S. CHEATHAM,
Speaker of the Senate.

Passed February 26, 1856.

CHAPTER 82.

AN ACT to amend the Internal Improvement acts of 1852 and 1854.

Be it enacted by the General Assembly of the State of Tennessee, That, hereafter, it shall not be necessary for the Engineer in Chief to swear to the subscription list, solvency, and condition of any Railroad Company applying for State aid, but the oath required of the Engineer shall be taken by the President and Treasurer of the Com-

yeas 86, nays 1; and passed the Senate by a two-thirds vote, yeas 21, nays 6.]

[NOTE.—The foregoing act was presented to the Governor of Texas for his approval, on Friday, the twenty-first day of May, A. D. 1897, but was not signed by him nor returned to the house in which it originated with his objections thereto within the time prescribed by the Constitution, and thereupon became a law without his signature.—JNO. H. CULLOM, Acting Secretary of State.]

H. B. No. 263.] CHAPTER 154.

An Act to prohibit persons, firms or corporations engaged in running pool or billiard tables in a public place, or for profit, knowingly permitting minors in their places of business without the written consent of their parents or guardians, and to provide a penalty therefor.

SECTION 1. *Be it enacted by the Legislature of the State of Texas:* That any person, firm, or corporation engaged in running any pool or billiard table or tables, in a public place, or for profit, or agent of such person, firm, or corporation, who shall knowingly permit any minor, without the written consent of such minor's parent or guardian, in such place of business, shall be fined not exceeding two hundred dollars.

[NOTE.—The foregoing act was presented to the Governor of Texas for his approval, on Friday, the fourteenth day of May, A. D. 1897, but was not signed by him nor returned to the house in which it originated with his objections thereto within the time prescribed by the Constitution, and thereupon became a law without his signature.—J. W. MADDEN, Secretary of State.]

Takes effect 90 days after adjournment.

H. B. No. 264.] CHAPTER 155.

An Act to prevent the barter, sale and gift of any pistol, dirk, dagger, slung shot, sword-cane, spear, or knuckles made of any metal or hard substance to any minor without the written consent of the parent or guardian of such minor, or of some one standing in lieu thereof, and providing a penalty for the violation.

SECTION 1. *Be it enacted by the Legislature of the State of Texas:* That if any person in this State shall knowingly sell, give or barter, or cause to be sold, given or bartered to any minor, any pistol, dirk, dagger, slung shot, sword-cane, spear, or knuckles made of any metal or hard substance, bowie knife or any other knife manufactured or sold for the purpose of offense or defense, without the written consent of the parent or guardian of such minor, or of some one standing in lieu thereof, he shall be punished by fine of not less than twenty-five dollars nor more than two hundred dollars, or by imprisonment in the county jail not less than ten nor more than thirty days, or by both such fine and imprisonment. And during the time of such imprisonment such offender may be put to

work upon any public work in the county in which such offense is committed.

[NOTE.—The foregoing act was presented to the Governor of Texas for his approval, on Friday, the fourteenth day of May, A. D. 1897, but was not signed by him nor returned to the house in which it originated with his objections thereto within the time prescribed by the Constitution, and thereupon became a law without his signature.—J. W. MADDEN, Secretary of State.]

Takes effect 90 days after adjournment.

H. B. No. 391.] CHAPTER 156.

An Act to relinquish the title and confirm the patents to certain lands herein named.

SECTION 1. *Be it enacted by the Legislature of the State of Texas:* That the land patents numbered three hundred and eighty-eight (388), five hundred and eighty-three (583) and five hundred and eighty-four (584), Vol. No. Four (4) (of the records of the general land office of the State of Texas), and issued to Thomas M. Joseph and Henry M. Truehart on the 20th day of December, A. D. 1859, and the 23rd day of August, A. D. 1860, covering certain lands in Galveston County, State of Texas, be, and the same are hereby confirmed, and that all right and title of the State of Texas to the lands therein named, be, and the same are hereby relinquished to the parties to whom the said patents were issued, and sale made in accordance with an act approved on the 20th day of February, A. D. 1858, and an act amendatory of the same, approved on the 1st day of February, A. D. 1860, as also by a special act of the legislature of the State of Texas, approved July 29th, A. D. 1870.

[NOTE.—The foregoing act was presented to the Governor of Texas for his approval, on Wednesday, the twelfth day of May, A. D. 1897, but was not signed by him nor returned to the house in which it originated with his objections thereto within the time prescribed by the Constitution, and thereupon became a law without his signature.—J. W. MADDEN, Secretary of State.]

Takes effect 90 days after adjournment.

S. S. B. No. 320.] CHAPTER 157.

An Act to amend Title XXIII, Chapter 4, of the Revised Civil Statutes of the State of Texas, relating to county lines, by adding thereto Article 808a.

SECTION 1. *Be it enacted by the Legislature of the State of Texas:* That Chapter 4, Title XXIII, of the Revised Civil Statutes of the State of Texas, be amended by adding thereto an Article to be known as 808a, which shall read as follows:

Article 808a. Notwithstanding the preceding articles of this chapter, any county in this State may bring suit against any adjoining coun-

of his duty as such, or by any means obstruct or impede, or attempt to obstruct or impede the administration of justice in any court, he shall be guilty of a misdemeanor, and unless otherwise provided by law he shall be fined not less than twenty-five nor more than two hundred dollars, and be imprisoned in the county jail not exceeding six months. Punishment prescribed.

[Approved March 29, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CXXXV.

AN ACT amending and re-enacting section seven of chapter one hundred and forty-eight of the code of West Virginia, and adding additional sections thereto for the punishment of unlawful combinations and conspiracies to injure persons or property.

[Passed March 24, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That section seven of chapter one hundred and forty-eight of the code of West Virginia be, and the same is hereby, amended and re-enacted so as to read as follows: Code amended; section 7 of chapter 148 of.

7. If a person carry about his person any revolver or other pistol, dirk, bowie knife, razor, slung shot, billy, metalic or other false knuckles, or any other dangerous or deadly weapon of like kind or character, he shall be guilty of a misdemeanor, and fined not less than twenty-five nor more than two hundred dollars, and may, at the discretion of the court, be confined in jail not less than one, nor more than twelve months; and if any person shall sell or furnish any such weapon as is hereinbefore mentioned to a person whom he knows, or has reason, from his appearance or otherwise, to believe to be under the age of twenty-one years, he shall be punished as hereinbefore provided; but nothing herein contained shall be so construed as to prevent any person from keeping or carrying about his dwelling house or premises any such revolver or other pistol, or from carrying the same from the place of purchase to his dwelling house, or from his dwelling house to any place where repairing is done, to have it repaired, and back again. And if upon the trial of an indictment for carrying any such pistol, dirk, razor or bowie knife, the Deadly weapons; penalty for carrying. Selling certain weapons to minors; penalty. Acts of persons to which sections do not apply. Upon trial of indictment for carrying deadly

ceaied weapons, when jury to find accused not guilty.

defendant shall prove to the satisfaction of the jury that he is a quiet and peaceable citizen, of good character and standing in the community in which he lives, and at the time he was found with such pistol, dirk, razor or bowie knife, as charged in the indictment, he had good cause to believe and did believe that he was in danger of death or great bodily harm at the hands of another person, and that he was, in good faith, carrying such weapon for self defense and for no other purpose, the jury shall find him not guilty. But nothing in this section contained shall be so construed as to prevent any officer charged with the execution of the laws of the state from carrying a revolver or other pistol, dirk or bowie knife.

Provisions of section not to apply to officers of the law.

Additional sections added.

2. That the said chapter be and the same is hereby amended by adding thereto the following additional sections, as parts thereof, to-wit:

Combinations or conspiracies to injure etc., persons and property, deemed a misdemeanor.

9. If two or more persons under the name of "Red Men," "Regulators," "Vigilance Committee," or any other name or without a name, combine or conspire together for the purpose of inflicting any punishment, or bodily injury upon any other person, or persons, or for the purpose of destroying, injuring, or taking and carrying away any property, real or personal, not their own, every such person, whether he has done any act in pursuance of such combination or conspiracy or not, shall be guilty of a misdemeanor and fined not less than fifty, nor more than five hundred dollars, and may, at the discretion of the court, be confined in jail not less than one, nor more than twelve months.

Penalty.

Injury, etc., inflicted by such combination, etc., upon any person or property, deemed a felony Punishment. When such combination or conspiracy to be presumed.

10. If any person, in pursuance of such combination or conspiracy as is mentioned in the next preceding section, shall inflict any punishment or bodily injury upon another person, or shall destroy, injure, or take and carry away, any property, real or personal, not his own, he shall be guilty of a felony, and confined in the penitentiary not less than two nor more than ten years. And if, on the trial of an indictment under this section it be proved that two or more persons, the defendant being one, were present, aiding and abetting in the commission of the offense charged therein, it shall be presumed that such offense was committed in pursuance of such combination or conspiracy, in the absence of satisfactory proof to the contrary. And all persons who shall be present, aiding and abetting, at the commission of any offense mentioned in this section shall be deemed conspirators within the meaning of this, and the next preceding section.

Aiders and abettors deemed conspirators.

No witness excused from answering, because such answers would,

11. No person called as a witness for the state on the trial of any person for an offense mentioned in either of the two next preceding sections, shall be excused from answering any question which may be asked him as such

witness, and which would be otherwise legal and proper, on the ground that the answer to such question would or might degrade him, or expose him to punishment; but no such witness, who shall fully and truly answer all such questions as may be asked him touching his connection with, or knowledge of such combination or conspiracy, or of the commission of the offense charged in the indictment, in pursuance of such combination or conspiracy, shall thereafter be prosecuted or punished for the same offense mentioned in the indictment upon which the accused is being tried.

etc., degrade him or expose him to punishment.

Such witness answering truly and fully exempted from prosecution, etc., for same offense, etc.

12. Persons offending against any of the provisions of the ninth and tenth sections of this chapter, may be indicted therefor, either jointly or separately.

May be indicted jointly or separately.

13. If the death of any person shall result from the commission of any offense mentioned in the tenth section of this chapter, every person engaged in the commission of such offense shall be guilty of murder of the first degree, and punished as in other cases of murder of the first degree.

If person die conspirators guilty of murder of first degree.

14. If any person by force, or other unlawful means, shall release or rescue, or attempt to release or rescue a person in prison or other custody, charged with, or convicted of an offense under the provisions of the ninth or tenth section of this chapter, he shall be guilty of felony and confined in the penitentiary as provided in said tenth section.

To release or rescue, or attempt to release, etc., person charged, etc., with an offense under sections 9 and 10 a felony. Punishment.

15. If any person shall, by threats, menaces, or otherwise, intimidate, or attempt to intimidate, a witness for the state in any prosecution under the ninth, or any succeeding section of this chapter, for the purpose of preventing the attendance of such witness at the trial of such case, or shall in any way or manner prevent, or attempt to prevent, the attendance of any such witness at such trial, he shall be guilty of felony and confined in the penitentiary not less than one, nor more than ten years, or he may, at the discretion of the court, be confined in the jail of the county not less than three, nor more than twelve months, and fined not less than one hundred, nor more than five thousand dollars.

Intimidating, etc., witness, a felony.

Punishment.

16. The governor is hereby authorized, whenever in his opinion it is proper to do so, to offer rewards, and employ special policemen and detectives, and to employ any and all means in his power, including the employment of any portion of the military forces of the state, to secure the apprehension of any and all persons belonging to any such unlawful combination, or who shall be charged with the commission of any offense mentioned in the tenth, or any succeeding section of this chapter.

Governor to employ any and all means, etc., to secure arrest of persons belonging to such unlawful combinations, etc.

[Approved March 29, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER CXXXVI.

AN ACT amending and re-enacting chapter one hundred and fifty-four of the code of West Virginia, concerning inquests on dead bodies.

[Passed March 24, 1882.]

Be it enacted by the Legislature of West Virginia:

Code amended; chapter 154 of.

1. That chapter one hundred and fifty-four of the code of West Virginia, be and the same is hereby amended and re-enacted so as to read as follows:

CHAPTER CLIV.

Of Inquest Upon Dead Bodies—Coroner; When and by Whom Appointed, &c.

Coroner; when and how appointed. Term of office and oath.

Duty of coroner or justice upon being notified of death by violence, etc.

Warrant to issue; to whom directed and what to command.

Witnesses to be summoned.

1. It shall be the duty of the county court of every county, from time to time, to appoint a coroner for such county, who shall hold his office during the pleasure of said court, and shall take the oath of office prescribed for other county officers. It shall be his duty, or if he be absent, or unable to act, or the office be vacant, the duty of any justice of the peace, upon being notified the dead body of a person, whose death is supposed to have been caused by violence or other unlawful act, and not by casualty, is within his county, to forthwith issue his warrant directed to a constable thereof who shall proceed to execute and make return of the same, commanding such constable to summon twelve suitable residents of the county to be in attendance on such coroner or justice, as jurors, at a place and on a day and hour to be designated in the warrant, to make inquisition, upon the view of the body of the person named therein, or of a person unknown, as the case may be, how such person came to his death; and may, by indorsement on such warrant, or by subpœna, command the officer to whom the same is delivered, to summon such witnesses as the coroner or justice may designate, or as the constable may be informed, or have reason to believe, have knowledge of the circumstances attending such death, to be in attendance upon the said inquest at such time as may be designated in such indorsement or subpœna. In case of the inability or failure of

[No. 5, S.] [Published April 7, 1883.]

CHAPTER 329.

AN ACT to prohibit the use and sale of pistols and revolvers.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Relating to the sale of pistols.

SECTION 1. It shall be unlawful for any minor, within this state, to go armed with any pistol or revolver, and it shall be the duty of all sheriffs, constables, or other public police officers, to take from any minor, any pistol or revolver, found in his possession.

SECTION 2. It shall be unlawful for any dealer in pistols or revolvers, or any other person, to sell, loan, or give any pistol or revolver to any minor in this state.

SECTION 3. It shall be unlawful for any person in a state of intoxication, to go armed with any pistol or revolver. Any person violating the provisions of this act, shall be punished by imprisonment in the county jail not exceeding six months, or by fine not exceeding one hundred dollars ($100).

SECTION 4. This act shall take effect and be in force from and after its passage and publication.

Approved April 3, 1883.

[No. 38, S.] [Published April 13, 1883.]

CHAPTER 330.

AN ACT to provide for the punishment of attempts to commit felonies or other crimes, and amendatory of section 4385, revised statutes.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Relating to punishment for attempt to commit felonies and other crimes.

SECTION 1. Section 4385 of the revised statutes, is hereby amended so as to read as follows; Section 4385. Any person who shall assault another with intent to commit any burglary, robbery, rape or mayhem, or who shall advise or attempt to commit any arson, or any other felony, that shall fail in being committed, the punishment for which such assault, advice or attempt is not herein prescribed, shall be punished by imprisonment in the state prison not more than three years nor less than one year, or by fine, not exceeding one

shall not apply to a person drawing or threatening to use such dangerous or deadly weapons in defense of his person or property, or in defense of those entitled to his protection by law.

[S. L. 1890, Ch. 73, Sec. 95; R. S. Ind., Sec. 1984.]

CARRYING DANGEROUS WEAPONS.

Sec. 5051. Every person, not being a traveler, who shall wear or carry any dirk, pistol, bowie knife, dagger, sword-in-cane, or any other dangerous or deadly weapon concealed, or who shall carry or wear any such weapon openly, with the intent, or avowed purpose, of injuring his fellow-man, shall be fined not more than one hundred dollars.

[S. L. 1890, Ch. 73, Sec. 96; R. S. Ind., Sec. 1985.]

FURNISHING DEADLY WEAPONS TO MINOR.

Sec. 5052. It shall be unlawful for any person to sell, barter or give to any other person under the age of twenty-one years any pistol, dirk or bowie knife, slung-shot, knucks or other deadly weapon that can be worn or carried concealed upon or about the person, or to sell, barter or give to any person under the age of sixteen years any cartridges manufactured and designed for use in a pistol; and any person who shall violate any of the provisions of this section shall be fined in any sum not more than fifty dollars.

[S. L. 1890, Ch. 73, Sec. 97; R. S. Ind., Sec. 1986.]

DISTURBING MEETINGS.

Sec. 5053. Whoever, by any loud or unnecessary talking, hallooing, or by any threatening, abusive, profane or obscene language, or violent actions, or by any other rude behavior, interrupts, molests or disturbs any collection of any inhabitants of this state convened for the purpose of worship, or any agricultural fair or exhibition, or any person present thereat, or going to or returning therefrom; or who, in like manner interrupts, molests or disturbs any meeting of inhabitants of this state, met together for any lawful purpose, shall be fined in any sum not more than fifty dollars. Sextons of churches and officers of fairs or other meetings contemplated in this section are hereby authorized to arrest any person so disturbing such public meetings.

[S. L. 1890, Ch. 73, Sec. 98; R. S. Ind., Sec. 1988.]

CHAPTER 4.

CRIMES AGAINST PUBLIC MORALS.

Sec. 5054. Bigamy.
Sec. 5055. Incest.
Sec. 5056. Adultery and fornication.
Sec. 5057. Seduction.
Sec. 5058. Enticing females.
Sec. 5059. House of ill-fame.
Sec. 5060. Public indecency.
Sec. 5061. Selling obscene literature.
Sec. 5062. Mailing obscene literature.
Sec. 5063. Advertising private medicines.
Sec. 5064. Procurer assignation.
Sec. 5065. Pimp.
Sec. 5066. Prostitute.
Sec. 5067. Crime against nature.
Sec. 5068. Sale of liquor to minors and habitual drunkards.
Sec. 5069. Sale or gift of tobacco to minors prohibited.

BIGAMY.

Sec. 5054. Whoever, being married, marries again, the former husband or wife being alive, and the bond of matrimony being still undissolved, and no legal presumption of death having arisen, is guilty of bigamy, and shall be imprisoned in the penitentiary not more than five years.

[S. L. 1890, Ch. 73, Sec. 74; R. S. Ind., Sec. 1989.]

In re Murphy, 5 Wyo. 297.

Nineteenth Century Second Amendment State Analogues

State	Year[1]	Statutory Text	Source
Alabama	1819	"Every citizen has a right to bear arms in defence of himself and the state."	Ala. Const. art. I, § 23 (1819).
Georgia	1868	"A well-regulated militia being necessary to the security of a free people, the right of the people to keep and bear arms shall not be infringed; but the general assembly shall have power to prescribe by law the manner in which arms may be borne."	Ga. Const. art. I, § 663, Sec. 14 (1868).
Indiana	1851	"The people shall have a right to bear arms, for the defense of themselves and the State."	Ind. Const. art. I, § 32 (1851).
Kansas	1859	"The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be tolerated, and the military shall be in strict subordination to the civil power."	Kan. Const. Bill of Rights, § 4 (1859).
Kentucky	1850	"That the rights of the citizens to bear arms in defence of themselves and the State shall not be questioned; but the general assembly may pass laws to prevent persons from carrying concealed arms."	Ky. Const. art. XIII, § 25 (1850).

[1] Year of enactment.

State	Year[1]	Statutory Text	Source
Louisiana	1879	"A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be abridged. This shall not prevent the passage of laws to punish those who carry weapons concealed."	La. Const. art. 3 (1879).
Mississippi	1868	"All persons shall have a right to keep and bear arms for their defence."	Miss. Const. art. I, § 15 (1868).
Missouri	1875	"That the right of no citizen to keep and bear arms in defense of his home, person and property, or in aid of the civil power, when thereto legally summoned, shall be called in question; but nothing herein contained is intended to justify the practice of wearing concealed weapons."	Mo. Const. art. II, § 17 (1875).
North Carolina	1875	"A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed; and as standing armies in time of peace, are dangerous to liberty, they ought not to be kept up, and the military should be kept under strict subordination to, and governed by, the civil power. Nothing herein contained shall justify the practice of carrying concealed weapons, or prevent the Legislature from enacting penal statutes against said practice."	N.C. Const. art. I, § 24 (1875).
Tennessee	1834	"That the free white men of this State have a right to keep and to bear arms for their common defence."	Tenn. Const. art. I, § 26 (1834).

State	Year[1]	Statutory Text	Source
Texas	1876	"Every citizen shall have the right to keep and bear arms in the lawful defense of himself or the State; but the Legislature shall have power by law to regulate the wearing of arms with a view to prevent crime."	Texas Const. art. I, § 23 (1876).
Wyoming	1889	"The right of citizens to bear arms in defense of themselves and of the state shall not be denied."	Wyo. Const. art. I, § 24 (1889).

CONSTITUTION OF THE STATE OF ALABAMA.

Preamble.

WE, the people of the Alabama Territory, having the right of admission into the general government, as a member of the union, consistent with the constitution and laws of the United States, by our representatives, assembled in convention at the town of Huntsville, on Monday, the fifth day of July, one thousand eight hundred and nineteen, in pursuance of an Act of congress, entitled "An Act to enable the people of the Alabama Territory to form a Constitution and State Government, and for the admission of such State into the Union, on an equal footing with the original States;" in order to establish justice, ensure tranquillity, provide for the common defence, promote the general welfare, and secure to ourselves and our posterity the rights of life, liberty, and property, do ordain and establish the following constitution, or form of government; and do mutually agree with each other to form ourselves into a free and independent state, by the name of "The State of Alabama." And we do hereby recognize, confirm, and establish the boundaries assigned to said state by the act of congress aforesaid, "to wit: beginning at the point where the thirty-first degree of north latitude intersects the Perdido river, thence, east, to the western boundary line of the state of Georgia; thence, along said line, to the southern boundary line of the state of Tennessee; thence, west, along said boundary line, to the Tennessee river; thence, up the same, to the mouth of Bear creek; thence, by a direct line, to the northwest corner of Washington county; thence, due south, to the Gulf of Mexico; thence, eastwardly, including all islands within six leagues of the shore, to the Perdido river; and thence, up the same, to the beginning"—subject to such alteration as is provided in the third section of said act of congress, and subject to such enlargement as may be made by law in consequence of any cession of territory by the United States, or either of them.

ARTICLE I.

Declaration of Rights.

That the general, great, and essential principles of liberty and free government may be recognized and established, we declare:

All freemen are equal.

SEC. 1. That all freemen, when they form a social compact, are equal in rights; and that no man or set of men are entitled to exclusive, separate public emoluments or privileges, but in consideration of public services.

Political power in the people.

SEC. 2. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit: and, therefore, they have at all times an unalienable and indefeasible right to alter, reform, or abolish their form of government, in such manner as they may think expedient.

Rights of conscience

SEC. 3. No person within this state shall, upon any pretence, be deprived of the inestimable privilege of worshipping God in the manner most agreeable to his own conscience; nor be compelled to attend any place of worship; nor shall any one ever be obliged to pay any tithes, taxes, or other rate, for the building or repairing any place of worship, or for the maintenance of any minister or ministry.

not to be interfered with.

SEC. 4. No human authority ought, in any case whatever, to control or interfere with the rights of conscience.

No person molested.

SEC. 5. No person shall be hurt, molested, or restrained, in his religious profession, sentiments, or persuasions, provided he does not disturb others in their religious worship.

Civil rights not affected by religious belief.

SEC. 6. The civil rights, privileges, or capacities of any citizen, shall in no way be diminished, or enlarged, on account of his religious principles.

No established religion or religious test.

SEC. 7. There shall be no establishment of religion by law; no preference shall ever be given by law to any religious sect, society, denomination, or mode of worship: and no religious test shall ever be required as a qualification to any office or public trust under this state.

Freedom of speech, &c.

SEC. 8. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that liberty.

Searches.

SEC. 9. The people shall be secure in their persons, houses, papers, and possessions, from unreasonable seizures or searches; and no warrant to search any place, or to seize any person or thing, shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation.

Rights of accused in criminal cases.

SEC. 10. In all criminal prosecutions, the accused has a right to be heard by himself and counsel; to demand the nature and cause of the accusation, and have a copy thereof: to be confronted by the witnesses against him: to have compulsory process for obtaining witnesses in his favour; and, in all prosecutions, by indictment or information, a speedy public trial by an impartial jury of the county or district in which the offence shall have been committed: he shall not be compelled to give evidence against himself, nor shall he be deprived of his life, liberty, or property, but by due course of law.

No person accused, &c. except by law.

SEC. 11. No person shall be accused, arrested, or detained, except in cases ascertained by law, and according to the forms which the same has prescribed; and no person shall be punished; but in virtue of a law, established and promulgated prior to the offence, and legally applied.

Indictable offences, how proceeded against.

SEC. 12. No person shall, for any indictable offence, be proceeded against criminally, by information; except in cases arising in the land and naval forces, or the militia when in actual service, or, by leave of the court, for oppression or misdemeanor in office.

No person twice tried for same offence.

SEC. 13. No person shall, for the same offence be twice put in jeopardy of life or limb: nor shall any person's property be taken or applied to public use, unless just compensation be made therefor.

Courts to be open, &c. SEC. 14. All courts shall be open, and every person, for an injury done him, in his lands, goods, person, or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay.

Laws not suspended but by general assembly. SEC. 15. No power of suspending laws shall be exercised, except by the general assembly, or its authority.

Of bail and fines. SEC. 16. Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.

Bailable offences. SEC. 17. All persons shall, before conviction, be bailable by sufficient securities, except for capital offences, when the proof is evident, or the presumption great: and the privilege of the writ of "habeas corpus" shall not be suspended, unless when, in cases of rebellion, or invasion, the public safety may require it.

Debtors, when discharged. SEC. 18. The person of a debtor, where there is not strong presumption of fraud, shall not be detained in prison, after delivering up his estate for the benefit of his creditors, in such manner as shall be prescribed by law.

No ex post facto laws. SEC. 19. No ex post facto law, nor law impairing the obligation of contracts, shall be made.

No attaints. SEC. 20. No person shall be attainted of treason or felony by the general assembly. No attainder shall work corruption of blood, nor forfeiture of estate.

No forfeiture from suicide. SEC. 21. The estates of suicides shall descend or vest as in cases of natural death; if any person shall be killed by casualty, there shall be no forfeiture by reason thereof.

Assembly of citizens. SEC. 22. The citizens have a right, in a peaceable manner, to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by petition, address, or remonstrance.

May bear arms. SEC. 23. Every citizen has a right to bear arms in defence of himself and the state.

Standing armies, &c. SEC. 24. No standing army shall be kept up without the consent of the general assembly; and, in that case, no appropriation of money for its support shall be for a longer term than one year; and the military shall, in all cases, and at all times, be in strict subordination to the civil power.

Quartering troops. SEC. 25. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

No titles of nobility. SEC. 26. No title of nobility, or hereditary distinction, privilege, honour, or emolument, shall ever be granted or conferred in this state; nor shall any office be created, the appointment of which shall be for a longer term than during good behaviour.

Emigration. SEC. 27. Emigration from this state shall not be prohibited, nor shall any citizen be exiled.

Trial by jury. SEC. 28. The right of trial by jury shall remain inviolate.

Right of prosecuting, &c. SEC. 29. No person shall be debarred from prosecuting or defending any civil cause, for or against him or herself, before any tribunal in this state, by him or herself or counsel.

Enumeration of rights.

SEC. 30. This enumeration of certain rights shall not be construed to deny or disparage others retained by the people: and to guard against any encroachments on the rights herein retained, or any transgression of any of the high powers herein delegated, we declare, that every thing in this article is excepted out of the general powers of government, and shall for ever remain inviolate; and that all laws contrary thereto, or to the following provisions, shall be void.

ARTICLE II.

Distribution of Powers.

Three distinct departments.

SEC. 1. The powers of the government of the state of Alabama shall be divided into three distinct departments; and each of them confided to a separate body of magistracy, to wit: those which are legislative, to one; those which are executive, to another; and those which are judicial, to another.

Persons belonging to one not to interfere with the others.

SEC. 2. No person, or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others, except in the instances herein after expressly directed or permitted.

ARTICLE III.

Legislative Department.

Two branches.

SEC. 1. The legislative power of this state shall be vested in two distinct branches: the one to be styled the senate, the other the house of representatives, and both together "The General Assembly of the State of Alabama;" and the style of their laws shall be, "Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened."

Style of laws.

Members, how chosen.

SEC. 2. The members of the house of representatives shall be chosen by the qualified electors, and shall serve for the term of one year, from the day of the commencement of the general election, and no longer.

Election, when held.

SEC. 3. The representatives shall be chosen every year, on the first Monday and the day following in August, until otherwise directed by law.

Qualification of members.

SEC. 4. No person shall be a representative unless he be a white man, a citizen of the United States, and shall have been an inhabitant of this state two years next preceding his election, and the last year thereof a resident of the county, city, or town, for which he shall be chosen, and shall have attained the age of twenty-one years.

Of electors.

SEC. 5. Every white male person of the age of twenty-one years, or upwards, who shall be a citizen of the United States, and shall have resided in this state one year next preceding an election, and the last three months within the county, city, or town, in which he offers to vote, shall be deemed a qualified elector; provided, that no soldier, seaman, or marine, in the regular army or navy of the United States, shall be entitled to

CONSTITUTION OF 1868.

Preamble.

We, the people of Georgia, in order to form a permanent government, establish justice, insure domestic tranquility, and secure the blessings of liberty to ourselves and our posterity, acknowledging and invoking the guidance of Almighty God, the author of all good government, do ordain and establish this constitution for the State of Georgia:

ARTICLE I.

Declaration of Fundamental Principles.

§ 650. Section 1. Protection to person and property is the paramount duty of government, and shall be impartial and complete.

§ 651. Sec. 2. All persons born or naturalized in the United States, and resident in this State, are hereby declared citizens of this State, and no laws shall be made or enforced which shall abridge the privileges or immunities of citizens of the United States, or of this State, or deny to any person within its jurisdiction the equal protection of its laws. And it shall be the duty of the General Assembly, by appropriate legislation, to protect every person in the due enjoyment of the rights, privileges, and immunities guaranteed in this section.

§ 652. Sec. 3. No person shall be deprived of life, liberty, or property, except by due process of law.

§ 653. Sec. 4. There shall be within the State of Georgia neither slavery nor involuntary servitude, save as a punishment for crime after legal conviction thereof.

§ 654. Sec. 5. The right of the people to appeal to the courts, to petition government on all matters, and peaceably to assemble for the consideration of any matter, shall never be impaired.

§ 655. Sec. 6. Perfect freedom of religious sentiment shall be, and the same is hereby secured, and no inhabitant of this State shall ever be molested in person or property, or prohibited from holding any public office or trust, on account of his religious opinions; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the people.

§ 656. Sec. 7. Every person charged with an offense against the laws shall have the privilege and benefit of counsel, shall be furnished, on demand, with a copy of the accusation and a list of the witnesses on whose testimony the charge against him is founded, shall have compulsory process to obtain the attendance of his own witnesses, shall be confronted with the witnesses testifying against him, and shall have a public and speedy trial by an impartial jury.

§ 657. Sec. 8. No person shall be put in jeopardy of life or liberty more than once for the same offence, save on his or her own motion for a new trial after conviction, or in case of mistrial.

§ 658. Sec. 9. Freedom of speech and freedom of the press are inherent elements of political liberty. But while every citizen may freely speak, or write, or print on any subject, he shall be responsible for the abuse of the liberty.

§ 659. Sec. 10. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, particularly describing the place or places to be searched, and the person or things to be seized.

§ 660. Sec. 11. The social status of the citizen shall never be the subject of legislation.

§ 661. Sec. 12. No person shall be molested for his opinions, or be subject to any civil or political incapacity, or acquire any civil or political advantage in consequence of such opinions.

§ 662. Sec. 13. The writ of habeas corpus shall not be suspended unless, in case of rebellion or invasion, the public safety may require it.

§ 663. Sec. 14. A well-regulated militia being necessary to the security of a free people, the right of the people to keep and bear arms shall not be infringed; but the general assembly shall have power to prescribe by law the manner in which arms may be borne.

§ 664. Sec. 15. The punishment of all frauds shall be provided by law.

§ 665. Sec. 16. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted, nor shall any person be abused in being arrested, whilst under arrest, or in prison.

§ 666. Sec. 17. The power of the courts to punish for contempt shall be limited by legislative acts.

§ 667. Sec. 18. There shall be no imprisonment for debt.

§ 668. Sec. 19. In all prosecutions or indictments for libel the truth may be given in evidence, and the jury shall have the right to determine the law and the facts.

§ 669. Sec. 20. Private ways may be granted upon just compensation being paid by the applicant.

§ 670. Sec. 21. All penalties shall be proportioned to the nature of the offense.

§ 671. Sec. 22. Whipping, as a punishment for crime, is prohibited.

§ 672. Sec. 23. No lottery shall be authorized, or sale of lottery-ticket allowed, in this State, and adequate penalties for such sale shall be provided by law.

§ 673. Sec. 24. No conviction shall work corruption of blood, and no conviction of treason shall work a general forfeiture of estate longer than during the life of the person attained.

§ 674. Sec. 25. Treason against the State of Georgia shall consist only in levying war against the State, or the United States, or adhering to the enemies thereof, giving them aid and comfort; and no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or his own confession in open court.

§ 675. Sec. 26. Laws shall have a general operation, and no general law, affecting private rights, shall be varied, in any particular case, by special legislation, except with the free consent, in writing, of all persons to be affected thereby; and no person under legal disability to contract is capable of such free consent.

§ 676. Sec. 27. The power of taxation over the whole State shall be exercised by the general assembly only to raise revenue for the support of government, to pay the public debt, to provide a general school-fund, for common defence and for public improvement; and taxation on property shall be ad valorem only, and uniform on all species of property taxed.

§ 677. Sec. 28. The general assembly may grant the power of taxation to county authorities and municipal corporations, to be exercised within their several territorial limits.

§ 678. Sec. 29. No poll-tax shall be levied except for educational purposes and such tax shall not exceed one dollar annually on each poll.

§ 679. Sec. 30. Mechanics and laborers shall have liens upon the property of their employers for labor performed or material furnished, and the legislature shall provide for the summary enforcement of the same.

§ 680. Sec. 31. The legislative, executive, and judicial departments shall be distinct; and each department shall be confided to a separate body of magistracy. No person, or collection of persons, being of one department, shall exercise any power properly attached to either of the others, except in cases herein expressly provided.

§ 681. Sec. 32. Legislative acts in violation of this constitu-

tion, or the Constitution of the United States, are void, and the judiciary shall so declare them.

§ 682. Sec. 33. The State of Georgia shall ever remain a member of the American Union; the people thereof are a part of the American nation; every citizen thereof owes paramount allegiance to the Constitution and Government of the United States, and no law or ordinance of this State, in contravention or subversion thereof, shall ever have any binding force.

ARTICLE II.

Franchise and Elections.

§ 683. Section 1. In all elections by the people the electors shall vote by ballot.

§ 684. Sec. 2. Every male person born in the United States, and every male person who has been naturalized, or who has legally declared his intention to become a citizen of the United States, twenty-one years old or upward, who shall have resided in this State six months next preceding the election, and shall have resided thirty days in the county in which he offers to vote, and shall have paid all taxes which may have been required of him, and which he may have had an opportunity of paying, agreeably to law, for the year next preceding the election (except as hereinafter provided), shall be deemed an elector; and every male citizen of the United States, of the age aforesaid (except as hereinafter provided), who may be a resident of the State at the time of the adoption of this constitution shall be deemed an elector, and shall have all the rights of an elector, as aforesaid: Provided, That no soldier, sailor, or marine in the military or naval service of the United States shall acquire the rights of an elector by reason of being stationed on duty in this State; and no person shall vote who, if challenged, shall refuse to take the following oath:

"I do swear that I have not given or received, nor do I expect to give or receive, any money, treat, or other thing of value, by which my vote, or any vote, is affected, or expected to be affected at this election, nor have I given or promised any reward, or made any threat, by which to prevent any person from voting at this election."

CONSTITUTION OF THE STATE OF ALABAMA.

Preamble.

WE, the people of the Alabama Territory, having the right of admission into the general government, as a member of the union, consistent with the constitution and laws of the United States, by our representatives, assembled in convention at the town of Huntsville, on Monday, the fifth day of July, one thousand eight hundred and nineteen, in pursuance of an Act of congress, entitled "An Act to enable the people of the Alabama Territory to form a Constitution and State Government, and for the admission of such State into the Union, on an equal footing with the original States;" in order to establish justice, ensure tranquillity, provide for the common defence, promote the general welfare, and secure to ourselves and our posterity the rights of life, liberty, and property, do ordain and establish the following constitution, or form of government; and do mutually agree with each other to form ourselves into a free and independent state, by the name of "The State of Alabama." And we do hereby recognize, confirm, and establish the boundaries assigned to said state by the act of congress aforesaid, "to wit: beginning at the point where the thirty-first degree of north latitude intersects the Perdido river, thence, east, to the western boundary line of the state of Georgia; thence, along said line, to the southern boundary line of the state of Tennessee; thence, west, along said boundary line, to the Tennessee river; thence, up the same, to the mouth of Bear creek; thence, by a direct line, to the northwest corner of Washington county; thence, due south, to the Gulf of Mexico; thence, eastwardly, including all islands within six leagues of the shore, to the Perdido river; and thence, up the same, to the beginning"—subject to such alteration as is provided in the third section of said act of congress, and subject to such enlargement as may be made by law in consequence of any cession of territory by the United States, or either of them.

ARTICLE I.

Declaration of Rights.

That the general, great, and essential principles of liberty and free government may be recognized and established, we declare:

All freemen are equal.

SEC. 1. That all freemen, when they form a social compact, are equal in rights; and that no man or set of men are entitled to exclusive, separate public emoluments or privileges, but in consideration of public services.

Political power in the people.

SEC. 2. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit: and, therefore, they have at all times an unalienable and indefeasible right to alter, reform, or abolish their form of government, in such manner as they may think expedient.

Rights of conscience

SEC. 3. No person within this state shall, upon any pretence, be deprived of the inestimable privilege of worshipping God in the manner most agreeable to his own conscience; nor be compelled to attend any place of worship; nor shall any one ever be obliged to pay any tithes, taxes, or other rate, for the building or repairing any place of worship, or for the maintenance of any minister or ministry.

not to be interfered with.

SEC. 4. No human authority ought, in any case whatever, to control or interfere with the rights of conscience.

No person molested.

SEC. 5. No person shall be hurt, molested, or restrained, in his religious profession, sentiments, or persuasions, provided he does not disturb others in their religious worship.

Civil rights not affected by religious belief.

SEC. 6. The civil rights, privileges, or capacities of any citizen, shall in no way be diminished, or enlarged, on account of his religious principles.

No established religion or religious test.

SEC. 7. There shall be no establishment of religion by law; no preference shall ever be given by law to any religious sect, society, denomination, or mode of worship: and no religious test shall ever be required as a qualification to any office or public trust under this state.

Freedom of speech, &c.

SEC. 8. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that liberty.

Searches.

SEC. 9. The people shall be secure in their persons, houses, papers, and possessions, from unreasonable seizures or searches; and no warrant to search any place, or to seize any person or thing, shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation.

Rights of accused in criminal cases.

SEC. 10. In all criminal prosecutions, the accused has a right to be heard by himself and counsel; to demand the nature and cause of the accusation, and have a copy thereof: to be confronted by the witnesses against him: to have compulsory process for obtaining witnesses in his favour; and, in all prosecutions, by indictment or information, a speedy public trial by an impartial jury of the county or district in which the offence shall have been committed: he shall not be compelled to give evidence against himself, nor shall he be deprived of his life, liberty, or property, but by due course of law.

No person accused, &c. except by law.

SEC. 11. No person shall be accused, arrested, or detained, except in cases ascertained by law, and according to the forms which the same has prescribed; and no person shall be punished; but in virtue of a law, established and promulgated prior to the offence, and legally applied.

Indictable offences, how proceeded against.

SEC. 12. No person shall, for any indictable offence, be proceeded against criminally, by information; except in cases arising in the land and naval forces, or the militia when in actual service, or, by leave of the court, for oppression or misdemeanor in office.

No person twice tried for same offence.

SEC. 13. No person shall, for the same offence be twice put in jeopardy of life or limb: nor shall any person's property be taken or applied to public use, unless just compensation be made therefor.

Courts to be open, &c. SEC. 14. All courts shall be open, and every person, for an injury done him, in his lands, goods, person, or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay.

Laws not suspended but by general assembly. SEC. 15. No power of suspending laws shall be exercised, except by the general assembly, or its authority.

Of bail and fines. SEC. 16. Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.

Bailable offences. SEC. 17. All persons shall, before conviction, be bailable by sufficient securities, except for capital offences, when the proof is evident, or the presumption great: and the privilege of the writ of "habeas corpus" shall not be suspended, unless when, in cases of rebellion, or invasion, the public safety may require it.

Debtors, when discharged. SEC. 18. The person of a debtor, where there is not strong presumption of fraud, shall not be detained in prison, after delivering up his estate for the benefit of his creditors, in such manner as shall be prescribed by law.

No ex post facto laws. SEC. 19. No ex post facto law, nor law impairing the obligation of contracts, shall be made.

No attainte. SEC. 20. No person shall be attainted of treason or felony by the general assembly. No attainder shall work corruption of blood, nor forfeiture of estate.

No forfeiture from suicide. SEC. 21. The estates of suicides shall descend or vest as in cases of natural death; if any person shall be killed by casualty, there shall be no forfeiture by reason thereof.

Assembly of citizens. SEC. 22. The citizens have a right, in a peaceable manner, to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by petition, address, or remonstrance.

May bear arms. SEC. 23. Every citizen has a right to bear arms in defence of himself and the state.

Standing army, &c. SEC. 24. No standing army shall be kept up without the consent of the general assembly; and, in that case, no appropriation of money for its support shall be for a longer term than one year; and the military shall, in all cases, and at all times, be in strict subordination to the civil power.

Quartering troops. SEC. 25. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

No titles of nobility. SEC. 26. No title of nobility, or hereditary distinction, privilege, honour, or emolument, shall ever be granted or conferred in this state; nor shall any office be created, the appointment of which shall be for a longer term than during good behaviour.

Emigration. SEC. 27. Emigration from this state shall not be prohibited, nor shall any citizen be exiled.

Trial by jury. SEC. 28. The right of trial by jury shall remain inviolate.

Right of prosecuting, &c. SEC. 29. No person shall be debarred from prosecuting or defending any civil cause, for or against him or herself, before any tribunal in this state, by him or herself or counsel.

Enumeration of rights.

SEC. 30. This enumeration of certain rights shall not be construed to deny or disparage others retained by the people: and to guard against any encroachments on the rights herein retained, or any transgression of any of the high powers herein delegated, we declare, that every thing in this article is excepted out of the general powers of government, and shall for ever remain inviolate; and that all laws contrary thereto, or to the following provisions, shall be void.

ARTICLE II.

Distribution of Powers.

Three distinct departments.

SEC. 1. The powers of the government of the state of Alabama shall be divided into three distinct departments; and each of them confided to a separate body of magistracy, to wit: those which are legislative, to one; those which are executive, to another; and those which are judicial, to another.

Persons belonging to one not to interfere with the others.

SEC. 2. No person, or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others, except in the instances herein after expressly directed or permitted.

ARTICLE III.

Legislative Department.

Two branches.

SEC. 1. The legislative power of this state shall be vested in two distinct branches: the one to be styled the senate, the other the house of representatives, and both together "The General Assembly of the State of Alabama;" and the style of their laws shall be, "Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened."

Style of laws.

Members, how chosen.

SEC. 2. The members of the house of representatives shall be chosen by the qualified electors, and shall serve for the term of one year, from the day of the commencement of the general election, and no longer.

Election, when held.

SEC. 3. The representatives shall be chosen every year, on the first Monday and the day following in August, until otherwise directed by law.

Qualification of members.

SEC. 4. No person shall be a representative unless he be a white man, a citizen of the United States, and shall have been an inhabitant of this state two years next preceding his election, and the last year thereof a resident of the county, city, or town, for which he shall be chosen, and shall have attained the age of twenty-one years.

Of electors.

SEC. 5. Every white male person of the age of twenty-one years, or upwards, who shall be a citizen of the United States, and shall have resided in this state one year next preceding an election, and the last three months within the county, city, or town, in which he offers to vote, shall be deemed a qualified elector; provided, that no soldier, seaman, or marine, in the regular army or navy of the United States, shall be entitled to

*CONSTITUTION

OF THE

STATE OF KANSAS;

ADOPTED AT WYANDOT, JULY 29, '59.

ORDINANCE.

WHEREAS, the Government of the United States is the proprietor of a large portion of the Lands included in the limits of the State of Kansas as defined by this Constitution; and whereas the State of Kansas will possess the right to tax said lands for purposes of government, and for other purposes; Now, therefore, be it ordained by the people of Kansas, that the right of the State of Kansas to tax such lands, is relinquished forever, and the State of Kansas will not interfere with the title of the United States to such lands, nor with any regulation of Congress in relation thereto, nor tax non-residents higher than residents; *Provided always,* That the following conditions be agreed to by Congress:

SECTION 1. Sections numbered sixteen and thirty-six in each township in the State, including Indian reservations and Trust lands, shall be granted to the State for the exclusive use of Common Schools; and when either of said sections, or any part thereof, has been disposed of, other lands of equal value, as nearly contiguous thereto as possible, shall be substituted therefor.

SEC. 2. That seventy-two sections of land shall be granted to the State for the erection and maintenance of a State University.

SEC. 3. That thirty-six sections shall be granted to the State for the erection of public buildings.

SEC. 4. That seventy-two sections shall be granted to the State for the erection and maintenance of charitable and benevolent institutions.

SEC. 5. That all salt springs, not exceeding twelve in number, with six sections of land adjacent to each, together with all mines, with the lands necessary for their full use, shall be granted to the State for works of public improvement.

SEC. 6. That five per centum of the proceeds of the public lands in Kansas, disposed of after the admission of the State into the Union, shall be paid to the State for a fund, the income of which shall be used for the support of Common Schools.

SEC. 7. That the Five Hundred Thousand acres of land to which the State is entitled under the Act of Congress entitled "An Act to appropriate the proceeds of the sales of public lands and grant pre-emption rights," approved September 4th, 1841, shall be granted to the State for the support of Common Schools.

* In the edition of 1859 the paging at this point reverts to number one.

SEC. 8. That the lands hereinbefore mentioned shall be selected in such manner as may be prescribed by law; such selections to be subject to the approval of the Commissioner of the General Land Office of the United States.

PREAMBLE.

We, the people of Kansas, grateful to Almighty God for our civil and religious privileges, in order to insure the full enjoyment of our rights as American citizens, do ordain and establish this constitution of the State of Kansas, with the following boundaries, to-wit: Beginning at a point on the western boundary of the State of Missouri, where the thirty-seventh parallel of north latitude crosses the same; thence running west on said parallel to the twenty-fifth meridian of longitude west from Washington; thence north on said meridian to the fortieth parallel of north latitude: thence east on said parallel to the western boundary of the State of Missouri; thence south with the western boundary of said State to the place of beginning.

[*2] *BILL OF RIGHTS.

SECTION 1. All men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness.

SEC. 2. All political power is inherent in the people, and all free governments are founded on their authority, and are instituted for their equal protection and benefit. No special privileges or immunities shall ever be granted by the Legislature, which may not be altered, revoked or repealed by the same body; and this power shall be exercised by no other tribunal or agency.

SEC. 3. The people have the right to assemble, in a peaceable manner, to consult for their common good, to instruct their representatives, and to petition the government, or any department thereof, for the redress of grievances.

SEC. 4. The people have the right to bear arms for their defence and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be tolerated, and the military shall be in strict subordination to the civil power.

SEC. 5. The right of trial by jury shall be inviolate.

SEC. 6. There shall be no slavery in this State; and no involuntary servitude, except for the punishment of crime, whereof the party shall have been duly convicted.

SEC. 7. The right to worship God according to the dictates of conscience shall never be infringed; nor shall any person be compelled to attend or support any form of worship; nor shall any control of, or interference with the rights of conscience be permitted, nor any preference be given by law, to any religious establishment or mode of worship. No religious test or property qualification shall be required for any office of public trust, nor for any vote at any election, nor shall any person be incompetent to testify on account of religious belief.

SEC. 8. The right to the writ of habeas corpus shall not be suspended, unless the public safety requires it in case of invasion or rebellion.

SEC. 9. All persons shall be bailable by sufficient sureties except for capital offences, where proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted.

Number of members of the convention.

shall, at their next session, pass a law calling a convention, to consist of as many members as there shall be in the house of representatives, and no more; to be chosen on the first Monday in August thereafter, in the same manner and proportion, and at the same places, and possessed of the same qualifications of a qualified elector, by citizens entitled to vote for representatives; and to meet within three months after their election, for the purpose of readopting, amending, or changing this constitution; but if it shall appear by the vote of either year, as aforesaid, that a majority of all the citizens entitled to vote for representatives did not vote for calling a convention, a convention shall not then be called. And for the purpose of ascertaining whether a majority of the citizens, entitled to vote for representatives, did or did not vote for calling a convention, as above, the general assembly passing the law authorizing such vote shall provide for ascertaining the number of citizens entitled to vote for representatives within the state.

Convention to judge of the election of its members.

SECTION 2. The convention, when assembled, shall judge of the election of its members and decide contested elections, but the general assembly shall, in calling a convention, provide for taking testimony in such cases and for issuing a writ of election in case of a tie.

ARTICLE XIII.

Bill of Rights.

Declaration of rights.

That the general, great, and essential principles of liberty and free government may be recognized and established: WE DECLARE,

Equality of men.

SECTION 1. That all freemen, when they form a social compact, are equal, and that no man, or set of men, are entitled to exclusive, separate public emoluments or privileges from the community, but in consideration of public services.

Absolute power over life, liberty, & property exists nowhere in a republic, &c.

SECTION 2. That absolute, arbitrary power over the lives, liberty, and property of freemen exists no where in a republic—not even in the largest majority.

The right of property.

SECTION 3. The right of property is before and higher than any constitutional sanction; and the right of the owner of a slave to such slave, and its increase, is the same, and as inviolable as the right of the owner of any property whatever.

All power in the people.

SECTION 4. That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, happiness, security, and the protection of property. For the advancement of these ends, they have, at all times, an inalienable and indefeasible right to alter, reform, or abolish their government, in such manner as they may think proper.

Liberty of conscience.

SECTION 5. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man shall be com-

pelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent; that no human authority ought, in any case whatever, to control or interfere with the rights of conscience; and that no preference shall ever be given by law to any religious societies or modes of worship.

Religion.

SECTION 6. That the civil rights, privileges, or capacities of any citizen shall in no wise be diminished or enlarged on account of his religion.

Elections.

SECTION 7. That all elections shall be free and equal.

Trial by jury.

SECTION 8. That the ancient mode of trial by jury shall be held sacred, and the right thereof remain inviolate, subject to such modifications as may be authorized by this constitution.

Freedom of the press and speech.

SECTION 9. That printing presses shall be free to every person who undertakes to examine the proceedings of the general assembly, or any branch of government; and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write, and print on any subject, being responsible for the abuse of that liberty.

To give truth in evidence.

SECTION 10. In prosecutions for the publication of papers investigating the official conduct of officers, or men in a public capacity, or where the matter published is proper for public information, the truth thereof may be given in evidence; and in all indictments for libels, the jury shall have a right to determine the law and the facts, under the direction of the court, as in other cases.

Jury to be judges of law and fact in libels.

People to be secure from unreasonable seizures and searches.

SECTION 11. That the people shall be secure in their persons, houses, papers, and possessions, from unreasonable seizures and searches, and that no warrant to search any place or to seize any person or thing, shall issue, without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation.

Rights of persons prosecuted criminally.

SECTION 12. That in all criminal prosecutions, the accused hath a right to be heard by himself and counsel; to demand the nature and cause of the accusation against him; to meet the witnesses face to face; to have compulsory process for obtaining witnesses in his favor; and in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage; that he cannot be compelled to give evidence against himself; nor can he be deprived of his life, liberty, or property, unless by the judgment of his peers, or the law of the land.

Information.

SECTION 13. That no person shall, for any indictable offense, be proceeded against criminally by information, except in cases arising in the land or naval forces, or in the militia when in actual service, in time of war or public danger, or by leave of the court, for oppression or misdemeanor in office.

Twice in jeopardy, and property not to be taken.

SECTION 14. No person shall, for the same offense, be twice put in jeopardy of his life or limb; nor shall any

man's property be taken or applied to public use, without the consent of his representatives, and without just compensation being previously made to him.

All courts to be open.

SECTION 15. That all courts shall be open, and every person, for an injury done him in his lands, goods, person, or reputation, shall have remedy by the due course of law, and right and justice administered, without sale, denial, or delay.

Suspending laws.

SECTION 16. That no power of suspending laws shall be exercised, unless by the general assembly, or its authority.

Excessive bail.

SECTION 17. That excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.

Prisoners, when bailable.

Habeas corpus.

SECTION 18. That all prisoners shall be bailable by sufficient securities, unless for capital offenses, when the proof is evident or presumption great; and the privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

Imprisonment of debtors.

SECTION 19. That the person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison after delivering up his estate for the benefit of his creditors, in such manner as shall be prescribed by law.

Ex post facto laws

SECTION 20. That no *ex post facto* law, nor any law impairing contracts, shall be made.

Attainder.

SECTION 21. That no person shall be attainted of treason or felony by the general assembly.

SECTION 22. That no attainder shall work corruption of blood, nor, except during the life of the offender, forfeiture of estate to the commonwealth.

Felos de se and forfeiture.

SECTION 23. That the estates of such persons as shall destroy their own lives shall descend or vest as in case of natural death; and if any person shall be killed by casualty, there shall be no forfeiture by reason thereof.

Right of petition.

SECTION 24. That the citizens have a right, in a peaceable manner, to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by petition, address, or remonstrance.

Right to bear arms

SECTION 25. That the rights of the citizens to bear arms in defense of themselves and the state, shall not be questioned; but the general assembly may pass laws to prevent persons from carrying concealed arms.

Standing armies.

SECTION 26. That no standing army shall, in time of peace, be kept up, without the consent of the general assembly; and the military shall, in all cases and at all times, be in strict subordination to the civil power.

Soldiers not to be quartered.

SECTION 27. That no soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

Nobility, and limitation of office

SECTION 28. That the general assembly shall not grant any title of nobility, or hereditary distinction, nor create any office, the appointment to which shall be for a longer time than for a term of years.

Emigration.

SECTION 29. That emigration from the state shall not be prohibited.

Exception out of the general powers.

SECTION 30. To guard against transgressions of the high powers which we have delegated, WE DECLARE, that every thing in this article is excepted out of the general powers of government, and shall forever remain inviolate; and that all laws contrary thereto, or contrary to this constitution, shall be void.

SCHEDULE.

That no inconvenience may arise from the alterations and amendments made in the constitution of this commonwealth, and in order to carry the same into complete operation, it is hereby declared and ordained:

Laws and rights continued.

SECTION 1. That all the laws of this commonwealth, in force at the time of the adoption of this constitution, and not inconsistent therewith, and all rights, actions, prosecutions, claims, and contracts, as well of individuals as of bodies corporate, shall continue as if this constitution had not been adopted.

Oaths, by whom administered.

SECTION 2. The oaths of office herein directed to be taken may be administered by any judge or justice of the peace, until the general assembly shall otherwise direct.

No office shall be superseded by the adoption of this constitution.

SECTION 3. No office shall be superseded by the adoption of this constitution, but the laws of the state relative to the duties of the several officers, legislative, executive, judicial, and military, shall remain in full force, though the same be contrary to this constitution, and the several duties shall be performed by the respective officers of the state, according to the existing laws, until the organization of the government, as provided for under this constitution, and the entering into office of the officers to be elected or appointed under said government, and no longer.

Duty of general assembly that convenes in 1850.

SECTION 4. It shall be the duty of the general assembly which shall convene in the year 1850, to make an apportionment of the representation of this state, upon the principle set forth in this constitution; and until the first apportionment shall be made as herein directed, the apportionment of senators and representatives among the several districts and counties in this state, shall remain as at present fixed by law: *Provided*, that on the first Monday in August, 1850, all senators shall go out of office, and on that day an election for senators and representatives shall be held throughout the state, and those then elected shall hold their offices for one year, and no longer: *Provided further*, that at the elections to be held in the year 1850, that provision in this constitution which requires voters to vote in the precinct within which they reside, shall not apply.

APPENDIX.

CONSTITUTION OF LOUISIANA.

ADOPTED JULY 23, 1879.

PREAMBLE.

We, the people of the State of Louisiana, in order to establish justice, insure domestic tranquility, promote the general welfare and secure the blessings of liberty to ourselves and our posterity, acknowledging and invoking guidance of Almighty God, the author of all good government, do ordain the and establish this constitution.

BILL OF RIGHTS.

ART. 1. All government of right originates with the people, is founded on their will alone, and is instituted solely for the good of the whole, deriving its just powers from the consent of the governed. Its only legitimate end is to protect the citizen in the enjoyment of life, liberty and property. When it assumes other functions it is usurpation and oppression.

ART. 2. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

ART. 3. A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be abridged. This shall not prevent the passage of laws to punish those who carry weapons concealed. D. sec. 915, 2309.

ART. 4. No law shall be passed respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and petition the government for a redress of grievances.

ART. 5. There shall be neither slavery nor involuntary servitude in this State otherwise than for the punishment of crime, whereof the party shall have been duly convicted. Prosecutions shall be by indictment or information; *provided*, that no person shall be held to answer for a capital crime unless on a presentment or indictment by a grand jury, except in cases arising in the militia when in active service in time of war or public danger; nor shall any person be twice put in jeopardy of life or liberty for the same offence, except on his own application for a new trial, or where there is a mistrial, or a motion in arrest of judgment is sustained. D. 977.

ART. 6. No person shall be compelled to give evidence against himself in a criminal case or in any proceeding that may subject him to criminal prosecution, except where otherwise provided in this constitution; nor be deprived of life, liberty or property without due process of law.

ART. 7. In all criminal prosecutions the accused shall enjoy the right to a speedy public trial by an impartial jury, except that, in cases where the penalty is not necessarily imprisonment at hard labor or death the general assembly may provide for the trial thereof by a jury less than twelve in number; *provided*, that the accused in every instance shall be tried in the parish wherein the offence shall have been committed, except in cases of change of venue. Act 1880, p. 35, No. 35, sec. 4; D. sec. 1021, 1031.

ART. 8. In all criminal prosecutions the accused shall enjoy the right to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to defend himself and to have the assistance of counsel, and to have the right to challenge jurors peremptorily, the number of challenges to be fixed by statute. D. sec. 992.

ART. 9. Excessive bail shall not be required, nor excessive fines be imposed, nor cruel and unusual punishments inflicted All persons shall be bailable by sufficient sureties, unless for capital offences, where the proof is evident or the presumption great, or unless after conviction for any crime or offence punishable with death or imprisonment at hard labor. D. sec. 1010, 1011.

ART. 10. The privilege of the writ of *habeas corpus* shall not be suspended, unless when, in case of rebellion or invasion, the public safety may require it. C. P., art. 791.

ART, 11. All courts shall be open, and every person for injury done him in his rights, lands, goods, person or reputation, shall have adequate remedy by due process of law and justice, administered without denial or unreasonable delay.

ART. 12 The military shall be in subordination to the civil power.

ART. 13. This enumeration of rights shall not be construed to deny or impair other rights of the people not herein expressed.

DISTRIBUTION OF POWERS.

ART. 14. The powers of the government of the State of Louisiana shall be divided into three distinct departments, and each of them be confided to a separate body of magistracy, to-wit: Those which are legislative to one, those which are executive to another, and those which are judicial to another.

ART. 15. No one of these departments, nor any person or collection of persons holding office in one of them, shall exercise power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

LEGISLATIVE DEPARTMENT.

APPORTIONMENT.

ART. 16. Representation in the house of representatives shall be equal and uniform, and shall be regulated and ascertained by the total population. Each parish shall have at least one representative. The first enumeration to be made by the State authorities under this constitution shall be made in the year eighteen hundred and ninety; and subsequent enumerations shall be made every tenth year thereafter, in such manner as shall be prescribed by law, for the purpose of ascertaining the total population and the number of qualified electors in each parish and election district. At its first regular session after each enumeration the general assembly shall apportion the representation among the several parishes and election districts on the basis of the total population as aforesaid. A representative number shall be fixed; and each parish and election district shall have as many representatives as the aggregate number of its population will entitle it to, and an additional representative for any fraction exceeding one-half the representative number. The number of representatives shall not be more than ninety-eight nor less than seventy.

ART. 17. The general assembly, in every year in which they shall apportion representation in the house of representatives, shall divide the State into senatorial districts. No parish shall be divided in the formation of a senatorial district—the parish of Orleans excepted. Whenever a new parish shall be created it shall be attached to the senatorial district, from which most of its territory was taken, or to another contiguous district, at the discretion of the general assembly, but shall not be attached to more than one district. The number of senators shall not be more than thirty-six nor less than twenty-four, and they shall be apportioned among the senatorial districts according to the total population contained in the several districts.

CONSTITUTION OF THE STATE OF MISSISSIPPI.

Adopted in Convention, Fifteenth Day of May, A. D. 1868, and Ratified by the People, First Day of December, A. D. 1869.

To the end that justice be established, public order maintained, and liberty perpetuated, we, the people of the state of Mississippi, grateful to Almighty God for the free exercise of the right to choose our own form of government, do ordain this constitution:

ARTICLE I.

BILL OF RIGHTS.

SECTION 1. All persons resident in this state, citizens of the United States, are hereby declared citizens of the state of Mississippi.

SEC. 2. No person shall be deprived of life, liberty, or property, except by due process of law.

SEC. 3. The privilege of the writ of *habeas corpus* shall not be suspended, unless when, in case of rebellion or invasion, the public safety may require it.

SEC. 4. The freedom of speech and of the press shall be held sacred, and in all indictments for libel, the jury shall determine the law and the facts, under the direction of the court.

SEC. 5. No person's life or liberty shall be twice placed in jeopardy for the same offence.

SEC. 6. The right of the people peaceably to assemble and petition the government on any subject, shall never be impaired.

SEC. 7. In all criminal prosecutions, the accused shall have a right to be heard by himself, or counsel, or both; to demand the nature and cause of the accusation; to be confronted by the witnesses against him; to have a compulsory process for obtaining witnesses in his favor; and in all prosecutions by indictment or information, a speedy and public trial, by an impartial jury of the county where the offence was committed; and he shall not be compelled to give evidence against himself.

SEC. 8. Cruel or unusual punishment shall not be inflicted, nor shall excessive fines be imposed; excessive bail shall not be required; and all persons shall, before conviction, be bailable by sufficient sureties, except for capital offences, when the proof is evident, or presumption great.

SEC. 9. No *ex post facto* law, or laws impairing the obligation of contracts, shall ever be passed.

SEC. 10. Private property shall not be taken for public use, except upon due compensation first being made to the owner or owners thereof, in a manner to be provided for by law.

SEC. 11. There shall be no imprisonment for debt.

SEC. 12. The right of trial by jury shall remain inviolate.

SEC. 13. No property qualification shall ever be required of any person to become a juror.

SEC. 14. The people shall be secure in their persons, houses and possessions, from unreasonable seizure or search, and no warrant shall be issued without probable cause, supported by oath or affirmation, specially designating the place to be searched, and the person or thing to be seized.

SEC. 15. All persons shall have a right to keep and bear arms for their defense.

SEC. 16. The rights of married women shall be protected by law in property owned previous to marriage; and also in all property acquired in good faith by purchase, gift, devise or bequest after marriage: *provided*, that nothing herein contained shall be so construed as to protect said property from being applied to the payment of their lawful debts.

SEC. 17. No property qualification for eligibility to office shall ever be required.

SEC. 18. No property or educational qualification shall ever be required, for any person to become an elector.

SEC. 19. There shall be neither slavery nor involuntary servitude in this state, otherwise than in the punishment of crime, whereof the party shall have been duly convicted.

SEC. 20. The right to withdraw from the federal union, on account of any real or supposed grievance, shall never be assumed by this state; nor shall any law be passed in derogation of the paramount allegiance of the citizens of this state, to the government of the United States.

SEC. 21. No public money or moneys, shall be appropriated for any charitable or other public institution in this state, making any distinction among the citizens thereof; *provided*, that nothing herein contained shall be so construed as to prevent the legislature from appropriating the school fund, in accordance with the article in this constitution relating to public schools.

SEC. 22. No distinction shall ever be made by law, between citizens and alien friends, in reference to possession, enjoyment, or descent of property.

SEC. 23. No religious test, as a qualification for office, shall ever be required, and no preference shall ever be given, by law, to any religious sect or mode of worship, but the free enjoyment of all religious sentiments, and the different modes of worship shall ever be held sacred; *provided*, the rights hereby secured shall not be construed to justify acts of licentiousness, injurious to morals, or dangerous to the peace and safety of the state.

SEC. 24. The right of all citizens to travel upon all public conveyances, shall not be infringed upon, nor in any manner abridged in this state.

SEC. 25. The military shall be in strict subordination to the civil power.

SEC. 26. Treason against the state shall consist only in levying war against the same, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

SEC. 27. No person's life shall be periled by the practice of dueling; and any person who shall hereafter fight a duel, or assist in the same as second, or send, accept, or knowingly carry a challenge therefor, or go out of the state to fight a duel, shall be disqualified from holding any office under this constitution, and shall forever be disfranchised in this state.

SEC. 28. All courts shall be open, and every person, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay.

SEC. 29. No person shall ever be elected, or appointed to any office in this state, for life, or during good behavior, but the term of all offices shall be for some specified period.

SEC. 30. No person shall be debarred from prosecuting or defending any civil cause, for or against him or herself, before any tribunal in this state, by him or herself, or counsel, or both.

SEC. 31. No person shall, for any indictable offence, be proceeded against criminally, by information, except in cases arising in the land or naval forces, or the militia, when in actual service, or by leave of the court, for misdemeanor in office; *provided*, that the legislature, in cases of petit larceny, assaults, assault and battery, affray, riot, unlawful assembly, drunkenness, vagrancy, and other misdemeanors of like character, may dispense with an inquest of a grand jury, and may authorize prosecutions before justices of the peace, or such other inferior court or courts, as may be established by the legislature; and the proceedings in such cases shall be regulated by law.

SEC. 32. The enumeration of rights in this constitution shall not be construed to deny or impair others retained by, and inherent in the people.

ARTICLE II.

BOUNDARIES OF THE STATE.

The limits and boundaries of the state of Mississippi shall remain as now established by law.

CONSTITUTION

OF THE

STATE OF MISSOURI,

ADOPTED BY A VOTE OF THE PEOPLE, OCTOBER 30, 1875. WENT INTO OPERATION NOVEMBER 30, 1875.

CONTENTS.

PREAMBLE.

Constitution established.

ARTICLE I—BOUNDARIES.

SECTION
1. Boundaries of the state—jurisdiction.

ARTICLE II—BILL OF RIGHTS.

SECTION
1. Origin of political power.
2. Right to regulate internal affairs, and to abolish existing form of government.
3. Missouri a free and independent state—right of local self government.
4. The object of constitutional government.
5. Religious liberty and freedom of conscience guaranteed.
6. Religious worship.
7. No aid or preference given to churches.
8. Religious corporations established under a general law, may hold certain real estate.
9. Elections to be free and open.
10. Courts shall be open to every person.
11. Security from searches and seizures.
12. Criminal prosecutions to be by indictment or information.
13. Treason defined—corruption of blood.
14. Freedom of speech allowed—truth of publication may be given in evidence.
15. *Ex post facto* laws, and laws making irrevocable grants of special privileges, forbidden.
16. No imprisonment for debt, except, when.
17. Right to keep and bear arms.
18. Officers must devote their time to the duties of their offices.
19. Collectors and receivers, not eligible to office, when.
20. Private property taker for private use—for public use.
21. Private property taken for public use—compensation.
22. Criminal prosecutions, right of accused.
23. No self crimination, nor twice in jeopardy.
24. Bail allowed, when.
25. Excessive bail and fines, and cruel punishments, forbidden.
26. Writ of *habeas corpus* shall not be suspended.
27. Military subject to civil power.
28. Trial by jury—grand jury to consist of twelve men.
29. Right of petition and remonstrance guaranteed.
30. Due process of law.
31. Slavery and involuntary servitude forbidden.
32. Reservation of rights.

ARTICLE III—THE DISTRIBUTION OF POWERS.

SECTION
1. Powers divided into three departments.

ARTICLE IV—LEGISLATIVE DEPARTMENT.

SECTION
1. Vested in general assembly.

REPRESENTATION AND APPORTIONMENT.

2. Time of electing representatives—ratio of apportionment.
3. Division of counties into representative districts.
4. Qualifications of representatives.
5. Thirty-four senators—senatorial districts.
6. Qualifications of senators—division of counties into senatorial districts.
7. Rule of apportionment for senators and representatives—to be revised and adjusted on the basis of the United States census.
8. Number of representatives, how distributed.
9. Districts may be altered.
10. First election of senators and representatives.
11. The present senatorial districts.
12. Senators and representatives cannot hold another office—certain officers not eligible.
13. Removal of residence vacates office.
14. Writs of election to fill vacancies.
15. Oath of office, refusal to take, penalty for violation of.
16. Pay of members and expenses of committees.
17. Organization—punishment of disorderly members and other persons.
18. Quorum—compelling attendance of absent members.
19. Doors to be open.
20. Time of meeting.
21. Adjournment for more than three days.
22. Adjournment for three days or less.

PREAMBLE.

We, the people of Missouri, with profound reverence for the Supreme Ruler of the Universe, and grateful for his goodness, do, for the better government of the State, establish this Constitution.

ARTICLE I.

BOUNDARIES.

SECTION 1. The boundaries of the State as heretofore established by law, are hereby ratified and confirmed. The State shall have concurrent jurisdiction on the river Mississippi, and every other river bordering on the State, so far as the said rivers shall form a common boundary to this State and any other State or States; and the river Mississippi and the navigable rivers and waters leading to the same, shall be common highways, and forever free to the citizens of this State and of the United States, without any tax, duty, impost or toll therefor, imposed by this State.

ARTICLE II.

BILL OF RIGHTS.

In order to assert our rights, acknowledge our duties, and proclaim the principles on which our government is founded, we declare:

SECTION 1. That all political power is vested in, and derived from the people; that all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.

SEC. 2. That the people of this State have the inherent, sole and exclusive right to regulate the internal government and police thereof, and to alter and abolish their Constitution and form of government whenever they may deem it necessary to their safety and happiness: *Provided*, Such change be not repugnant to the Constitution of the United States.

SEC. 3. That Missouri is a free and independent State, subject only to the Constitution of the United States; and as the preservation of the States and the maintenance of their governments, are necessary to an indestructible Union, and were intended to co-exist with it, the Legislature is not authorized to adopt, nor will the people of this State ever assent to any amendment or change of the Constitution of the United States which may in any wise impair the right of local self-government belonging to the people of this State.

SEC. 4. That all constitutional government is intended to promote the general welfare of the people; that all persons have a natural right to life, liberty and the enjoyment of the gains of their own industry; that to give security to these things is the principal office of government, and that when government does not confer this security, it fails of its chief design.

SEC. 5. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no person can, on account of his religious opinions, be rendered ineligible to any office of trust or profit under this State, nor be disqualified from testifying, or from serving as a juror; that no human authority can control or interfere with the rights of conscience; that no person ought, by any law, to be molested in his person or estate, on account of his religious persuasion or profession; but the liberty of conscience hereby secured, shall not be so construed as to excuse acts of licentiousness, nor to justify practices inconsistent with the good order, peace or safety of this State, or with the rights of others.

SEC. 6. That no person can be compelled to erect, support or attend any place or system of worship, or to maintain or support any priest, minister, preacher or teacher of any sect, church, creed or denomination of re-

ligion; but if any person shall voluntarily make a contract for any such object, he shall be held to the performance of the same.

SEC. 7. That no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof, as such; and that no preference shall be given to, nor any discrimination made against any church, sect or creed of religion, or any form of religious faith or worship.

SEC. 8. That no religious corporation can be established in this State, except such as may be created under a general law for the purpose only of holding the title to such real estate as may be prescribed by law for church edifices, parsonages and cemeteries.

SEC. 9. That all elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

SEC. 10. The courts of justice shall be open to every person, and certain remedy afforded for every injury to person, property or character, and that right and justice should be administered without sale, denial or delay.

SEC. 11. That the people shall be secure in their persons, papers, homes and effects, from unreasonable searches and seizures; and no warrant to search any place, or seize any person or thing, shall issue without describing the place to be searched, or the person or thing to be seized, as nearly as may be; nor without probable cause, supported by oath or affirmation reduced to writing.

SEC. 12. That no person shall, for felony, be proceeded against criminally otherwise than by indictment, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; in all other cases, offenses shall be prosecuted criminally by indictment or information as concurrent remedies.

SEC. 13. That treason against the State can consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; that no person can be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on his confession in open court; that no person can be attainted of treason or felony by the General Assembly; that no conviction can work corruption of blood or forfeiture of estate; that the estates of such persons as may destroy their own lives shall descend or vest as in cases of natural death; and when any person shall be killed by casualty, there shall be no forfeiture by reason thereof.

SEC. 14. That no law shall be passed impairing the freedom of speech; that every person shall be free to say, write or publish whatever he will on any subject, being responsible for all abuse of that liberty; and that in all suits and prosecutions for libel the truth thereof may be given in evidence, and the jury, under the direction of the court, shall determine the law and the fact.

SEC. 15. That no *ex post facto* law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges or immunities, can be passed by the General Assembly.

SEC. 16. That imprisonment for debt shall not be allowed, except for the nonpayment of fines and penalties imposed for violation of law.

SEC. 17. That the right of no citizen to keep and bear arms in defense of his home, person and property, or in aid of the civil power, when thereto legally summoned, shall be called in question; but nothing herein contained is intended to justify the practice of wearing concealed weapons.

SEC. 18. That no person elected or appointed to any office or employment of trust or profit under the laws of this State, or any ordinance of any municipality in this State, shall hold such office without personally devoting his time to the performance of the duties to the same belonging.

SEC. 19. That no person who is now, or may hereafter become a collector or receiver of public money, or assistant or deputy of such collector or receiver, shall be eligible to any office of trust or profit in the State of

CONSTITUTION

OF THE

STATE OF NORTH CAROLINA,

AS AMENDED BY THE

CONSTITUTIONAL CONVENTION OF 1875.

PREAMBLE.

Preamble.

We, the people of the State of North Carolina, grateful to Almighty God, the Sovereign Ruler of nations, for the preservation of the American Union, and the existence of our civil, political and religious liberties, and acknowledging our dependence upon Him for the continuance of those blessings to us and our posterity, do, for the more certain security thereof, and for the better government of this State, ordain and establish this Constitution:

ARTICLE I.

DECLARATION OF RIGHTS.

That the great, general and essential principles of liberty and free government may be recognized and established, and that the relations of this State to the Union and government of the United States, and those of the people of this State to the rest of the American people, may be defined and affirmed, we do declare:

The equality and rights of men.

SECTION 1. That we hold it to be self-evident that all men are created equal; that they are endowed by their Creator

with certain unalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.

Political power and government.

SEC. 2. That all political power is vested in, and derived from, the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.

Internal government of the State.

SEC. 3. That the people of this State have the inherent, sole and exclusive right of regulating the internal government and police thereof, and of altering and abolishing their Constitution and form of government whenever it may be necessary to their safety and happiness; but every such right should be exercised in pursuance of law, and consistently with the Constitution of the United States.

That there is no right to secede.

SEC. 4. That this State shall ever remain a member of the American Union; that the people thereof are part of the American nation; that there is no right on the part of the State to secede, and that all attempts, from whatever source or upon whatever pretext, to dissolve said Union, or to sever said nation, ought to be resisted with the whole power of the State.

Of allegiance to the U. S. government.

SEC. 5. That every citizen of this State owes paramount allegiance to the Constitution and Government of the United States, and that no law or ordinance of the State in contravention or subversion thereof, can have any binding force.

Public debt.

SEC. 6. The State shall never assume or pay, or authorize the collection of any debt or obligation, express or implied, incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave.

Exclusive emoluments, &c.

SEC. 7. No man or set of men are entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services.

The Legislative, Executive and

SEC. 8. The legislative, executive and supreme judicial

powers of the government ought to be forever separate and distinct from each other. Judicial powers distinct.

SEC. 9. All power of suspending laws, or the execution of laws, by any authority, without the consent of the representatives of the people, is injurious to their rights, and ought not to be exercised. Of the power of suspending laws.

SEC. 10. All elections ought to be free. Elections free.

SEC. 11. In all criminal prosecutions, every man has the right to be informed of the accusation against him and to confront the accusers and witnesses with other testimony, and to have counsel for his defence, and not be compelled to give evidence against himself or to pay costs, jail fees, or necessary witness fees of the defense, unless found guilty. In criminal prosecutions.

SEC. 12. No person shall be put to answer any criminal charge, except as hereinafter allowed, but by indictment, presentment or impeachment. Answers to criminal charges.

SEC. 13. No person shall be convicted of any crime but by the unanimous verdict of a jury of good and lawful men in open court. The Legislature may, however, provide other means of trial for petty misdemeanors, with the right of appeal. Right of jury.

SEC. 14. Excessive bail should not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted. Excessive bail.

SEC. 15. General warrants, whereby any officer or messenger may be commanded to search suspected places, without evidence of the act committed, or to seize any person or persons not named, whose offence is not particularly described and supported by evidence, are dangerous to liberty and ought not to be granted. General warrants.

SEC. 16. There shall be no imprisonment for debt in this State, except in cases of fraud. Imprisonment for debt.

SEC. 17. No person ought to be taken, imprisoned or disseized of his freehold, liberties or privileges, or outlawed or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person to be taken, &c., but by law of the land.

Persons restrained of liberty.

SEC. 18. Every person restrained of his liberty is entitled to a remedy to enquire into the lawfulness thereof, and to remove the same, if unlawful; and such remedy ought not to be denied or delayed.

Controversies at law respecting property.

SEC. 19. In all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and ought to remain sacred and inviolable.

Freedom of the press.

SEC. 20. The freedom of the press is one of the great bulwarks of liberty, and therefore ought never to be restrained, but every individual shall be held responsible for the abuse of the same.

Habeas corpus.

SEC. 21. The privileges of the writ of *habeas corpus* shall not be suspended.

Property qualification.

SEC. 22. As political rights and privileges are not dependent upon, or modified by property, therefore no property qualification ought to affect the right to vote or hold office.

Representation and taxation.

SEC. 23. The people of the State ought not to be taxed, or made subject to the payment of any impost or duty, without the consent of themselves, or their representatives in General Assembly, freely given.

Militia and the right to bear arms.

SEC. 24. A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed; and, as standing armies in time of peace, are dangerous to liberty, they ought not to be kept up, and the military should be kept under strict subordination to, and governed by, the civil power. Nothing herein contained shall justify the practice of carrying concealed weapons, or prevent the Legislature from enacting penal statutes against said practice.

Right of the people to assemble together.

SEC. 25. The people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the Legislature for redress of grievances. But secret political societies are dangerous to the liberties of a free people, and should not be tolerated.

Religious liberty.

SEC. 26. All men have a natural and unalienable right to

CONSTITUTION

OF THE STATE OF TENNESSEE.

Whereas, the People of the territory of the United States, south of the river Ohio, having the right of admission into the General Government as a Member State thereof, consistent with the Constitution of the United States, and the act of cession of the State of North Carolina, recognizing the ordinance for the government of the territory of the United States north-west of the river Ohio, by their delegates and representatives in Convention assembled, did, on the sixth day of February, in the year of our Lord one thousand seven hundred and ninety-six, ordain and establish a Constitution or form of government, and mutually agreed with each other to form themselves into a free and independent State, by the name of "The State of Tennessee;" and whereas, the General Assembly of said State of Tennessee, (pursuant to the third section of the tenth article of the Constitution) by an act passed on the twenty-seventh day of November, in the year of our Lord one thousand eight hundred and thirty-three, entitled "An act to provide for the calling of a Convention," did authorize and provide for the election, by the people, of Delegates, and Representatives, to meet at Nashville, in Davidson county, on the third Monday in May, in the year of our Lord one thousand eight hundred and thirty-four, "for the purpose of revising and amending (or changing) the Constitution:"

We, therefore, the Delegates and Representatives of the People of the State of Tennessee, elected and in Convention assembled, in pursuance of the said Act of Assembly, have ordained and established the following amended Constitution and form of Government for this State, which we recommend to the people of Tennessee for their ratification; that is to say:

ARTICLE I.

DECLARATION OF RIGHTS.

SECTION 1. That all power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness; for the advancement of those ends, they have, at all times, an unalienable and indefeasible right to alter, reform or abolish the government in such manner as they may think proper.

SEC. 2. That government being instituted for the common benefit, the doctrine of non-resistance against arbitrary power and oppression, is absurd, slavish, and destructive of the good and happiness of mankind.

SEC. 3. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no man can of right be compelled to attend, erect or support any place of worship, or to maintain any Minister against his consent; that no human authority can, in any case whatever, control or interfere with the rights of conscience; and that no preference shall ever be given, by law, to any religious establishment or mode of worship.

SEC. 4. That no religious test shall ever be required as a qualification to any office or public trust under this State.

SEC. 5. That Elections shall be free and equal.

SEC. 6. That the right of trial by jury shall remain inviolate.

SEC. 7. That the people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures; and that general warrants, whereby an officer may be commanded to search suspected places, without evidence of the fact committed, or to seize any person or persons not named, whose offences are not particularly described and supported by evidence, are dangerous to liberty and ought not to be granted.

SEC 8. That no free man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers, or the law of the land.

SEC. 9. That in all criminal prosecutions, the accused hath a right to be heard by himself and his counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face; to have compulsory process for obtaining witnesses in his favor; and in prosecutions by indictment or presentment, a speedy public trial, by an impartial jury of the county or district in which the crime shall have been committed; and shall not be compelled to give evidence against himself.

SEC. 10. That no person shall, for the same offence, be twice put in jeopardy of life or limb.

SEC. 11. That laws made for the punishment of facts committed previous to the existence of such laws, and by them only declared criminal, are contrary to the principles of a free government; wherefore no *ex post facto* law shall be made.

SEC. 12. That no conviction shall work corruption of blood or forfeiture of estate. The estate of such persons as shall destroy their own lives, shall descend or vest as in case of natural death. If any person be killed by casualty, there shall be no forfeiture in consequence thereof.

SEC. 13. That no person arrested or confined in jail, shall be treated with unnecessary rigor.

SEC. 14. That no free man shall be put to answer any criminal charge but by presentment, indictment or impeachment.

SEC. 15. That all prisoners shall be bailable by sufficient sureties unless for capital offences when the proof is evident or the presumption

great. And the privilege of the writ of *habeas corpus* shall not be suspended, unless when in case of rebellion or invasion the public safety may require it.

SEC. 16. That excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

SEC. 17. That all courts shall be open; and every man, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay. Suits may be brought against the State in such manner and in such courts, as the Legislature may by law direct.

SEC. 18. That the person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison after delivering up his estate for the benefit of his creditor or creditors, in such manner as shall be prescribed by law.

SEC. 19. That the printing presses shall be free to every person who undertakes to examine the proceedings of the Legislature, or of any branch or Officer of Government; and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty. But in prosecutions for the publication of papers investigating the official conduct of officers or men in public capacity, the truth thereof may be given in evidence; and in all indictments for libels, the jury shall have a right to determine the law and the facts, under the direction of the Court, as in other criminal cases.

SEC. 20. That no retrospective law, or law impairing the obligation of contracts, shall be made.

SEC. 21. That no man's particular services shall be demanded, or property taken or applied to public use, without the consent of his representatives, or without just compensation being made therefor.

SEC. 22. That perpetuities and monopolies are contrary to the genius of a free State, and shall not be allowed.

SEC. 23. That the citizens have a right, in a peaceable manner, to assemble together, for their common good, to instruct their representatives, and to apply to those invested with the powers of government for redress of grievances or other proper purposes, by address or remonstrance.

SEC. 24. That the sure and certain defence of a free people, is a well regulated militia: and, as standing armies in time of peace are dangerous to freedom, they ought to be avoided, as far as the circumstances and safety of the community will admit; and that in all cases the military shall be kept in strict subordination to the civil authority.

SEC. 25. That no citizen of this State, except such as are employed in the army of the United States, or militia in actual service, shall be subjected to corporeal punishment under the martial law.

SEC. 26. That the free white men of this State have a right to keep and to bear arms for their common defence.

SEC. 27. That no soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner prescribed by law.

SEC. 28. That no citizen of this State shall be compelled to bear arms, provided he will pay an equivalent, to be ascertained by law.

SEC. 29. That an equal participation of the free navigation of the Mississippi, is one of the inherent rights of the citizens of this State: it cannot, therefore, be conceded to any prince, potentate, power, person or persons whatever.

SEC. 30. That no hereditary emoluments, privileges, or honors, shall ever be granted or conferred in this State.

SEC. 31. That the limits and boundaries of this State be ascertained, it is declared they are as hereafter mentioned, that is to say: Beginning on the extreme height of the Stone mountain, at the place where the line of Virginia intersects it, in latitude thirty-six degrees and thirty minutes north; running thence along the extreme height of the said mountain to the place where Watauga river breaks through it; thence a direct course to the top of the Yellow mountain, where Bright's road crosses the same; thence along the ridge of said mountain between the waters of Doe river and the waters of Rock creek, to the place where the road crosses the Iron mountain; from thence along the extreme height of said mountain, to the place where Nolichucky river runs through the same; thence to the top of the Bald mountain; thence along the extreme height of said mountain to the Painted Rock, on French Broad river; thence along the highest ridge of said mountain to the place where it is called the Great Iron or Smoky mountain; thence along the extreme height of said mountain to the place where it is called Unicoi or Unaka mountain, between the Indian towns of Cowee and Old Chota; thence along the main ridge of the said mountain to the southern boundary of this State, as described in the act of cession of North Carolina to the United States of America; and that all the territory, lands and waters, lying west of the said line, as before mentioned, and contained within the chartered limits of the State of North Carolina, are within the boundaries and limits of this State; over which the people have the right of exercising sovereignty and the right of soil, so far as is consistent with the constitution of the United States, recognizing the articles of confederation, the bill of rights, and constitution of North Carolina, the cession act of the said State, and the ordinance of Congress for the government of the territory northwest of the Ohio: *Provided*, nothing herein contained shall extend to affect the claim or claims of individuals, to any part of the soil which is recognized to them by the aforesaid cession act: *And provided, also*, that the limits and jurisdiction of this State shall extend to any other land and territory now acquired, or that may hereafter be acquired by compact or agreement with other States or otherwise, although such land and territory are not included within the boundaries herein before designated.

SEC. 32. The people residing south of French Broad and Holston, between the rivers Tennessee and Big Pigeon, are entitled to the right of pre-emption and occupancy in that tract.

ARTICLE II.

SEC. 1. The powers of the Government shall be divided into three distinct departments; the Legislative, Executive and Judicial.

CONSTITUTION.

PREAMBLE.

Humbly invoking the blessing of Almighty God, the people of the State of Texas do ordain and establish this Constitution.

ARTICLE I.

Bill of Rights.

That the general, great and essential principles of liberty and free government may be recognized and established, we declare:

Section 1. Texas is a free and independent State, subject only to the Constitution of the United States; and the maintenance of our free institutions and the perpetuity of the Union depend upon the preservation of the right of local self-government unimpaired to all the States.

Sec. 2. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient.

Sec. 3. All free men when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.

Sec. 4. No religious test shall ever be required as a qualification to any office, or public trust, in this State; nor shall any one be excluded from holding office on account of his religious sentiments, provided he acknowledge the existence of a Supreme Being.

Sec. 5. No person shall be disqualified to give evidence in any of the courts of this State on account of his religious opinions, or for the want of any religious belief, but all oaths or affirmations shall be administered in the mode most bind-

ing upon the conscience, and shall be taken subject to the pains and penalties of perjury.

Sec. 6. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent. No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion, and no preference shall ever be given by law to any religious society or mode of worship. But it shall be the duty of the Legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship.

Sec. 7. No money shall be appropriated or drawn from the treasury for the benefit of any sect, or religious society, theological or religious seminary; nor shall property belonging to the State be appropriated for any such purposes.

Sec. 8. Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press. In prosecutions for the publication of papers investigating the conduct of officers or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

Sec. 9. The people shall be secure in their persons, houses, papers and possessions from all unreasonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause supported by oath or affirmation.

Sec. 10. In all criminal prosecutions, the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and have a copy thereof. He shall not be compelled to give evidence against himself. He shall have the right of being heard by himself or counsel or both; shall be confronted with the witnesses against him, and shall have compulsory process for obtaining witnesses in his favor. And no person shall be held to answer for a criminal offense, unless on indictment of a grand jury, except in cases in which the punishment is by fine, or imprisonment otherwise than in the penitentiary, in cases of impeachment, and in cases

arising in the army or navy, or in the militia, when in actual service in time of war or public danger.

Sec. 11. All prisoners shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident; but this provision shall not be so construed as to prevent bail after indictment found, upon examination of the evidence in such manner as may be prescribed by law.

Sec. 12. The writ of habeas corpus is a writ of right, and shall never be suspended. The Legislature shall enact laws to render the remedy speedy and effectual.

Sec. 13. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law.

Sec. 14. No person, for the same offense, shall be twice put in jeopardy of life or liberty; nor shall a person be again put upon trial for the same offense after a verdict of not guilty in a court of competent jurisdiction.

Sec. 15. The right of trial by jury shall remain inviolate. The Legislature shall pass such laws as may be needed to regulate the same, and to maintain its purity and efficiency.

Sec. 16. No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made.

Sec. 17. No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person; and, when taken, except for the use of the state, such compensation shall be first made, or secured by a deposit of money; and no irrevocable or uncontrollable grant of special privileges or immunities shall be made; but all privileges and franchises granted by the Legislature or created under its authority shall be subject to the control thereof.

Sec. 18. No person shall ever be imprisoned for debt.

Sec. 19. No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

Sec. 20. No person shall be outlawed; nor shall any person be transported out of the State for any offense committed within the same.

Sec. 21. No conviction shall work corruption of blood, or forfeiture of estate; and the estates of those who destroy their own lives shall descend or vest as in case of natural death.

Sec. 22. Treason against the State shall consist only in

levying war against it, or adhering to its enemies, giving them aid and comfort; and no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on confession in open court.

Sec. 23. Every citizen shall have the right to keep and bear arms in the lawful defense of himself or the State; but the Legislature shall have power by law to regulate the wearing of arms with a view to prevent crime.

Sec. 24. The military shall at all times be subordinate to the civil authority.

Sec. 25. No soldier shall in time of peace be quartered in the house of any citizen without the consent of the owner, nor in time of war but in a manner prescribed by law.

Sec. 26. Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed; nor shall the law of primogeniture or entailments ever be in force in this State.

Sec. 27. The citizens shall have the right, in a peaceable manner, to assemble together for their common good, and apply to those invested with the power of government for redress of grievances or other purposes, by petition, address or remonstrance.

Sec. 28. No power of suspending laws in this State shall be exercised except by the Legislature.

Sec. 29. To guard against transgressions of the high powers herein delegated, we declare that everything in this "Bill of Rights" is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto, or to the following provisions, shall be void.

ARTICLE II.

The Powers of Government.

Section 1. The powers of the government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to-wit: Those which are legislative to one, those which are executive to another, and those which are judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

CONSTITUTION

—OF—

THE STATE OF WYOMING.

PREAMBLE.

We, the people of the State of Wyoming, grateful to God for our civil, political and religious liberties, and desiring to secure them to ourselves and perpetuate them to our posterity, do ordain and establish this Constitution.

ARTICLE No. I.

DECLARATION OF RIGHTS.

Power inherent in the people.

SECTION 1. All power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety and happiness; for the advancement of these ends they have at all times an inalienable and indefeasible right to alter, reform or abolish the government in such manner as they may think proper.

The equality of all.

SEC. 2. In their inherent right to life, liberty and the pursuit of happiness, all members of the human race are equal.

Political rights without distinction of race, color or sex.

SEC. 3. Since equality in the enjoyment of natural and civil rights is made sure only through political equality, the laws of this State affecting the political rights and privileges of its citizens shall be without distinction of race, color, sex, or any circumstance or condition whatsoever other than individual incompetency, or unworthiness duly ascertained by a court of competent jurisdiction.

Security against searches.

SEC. 4. The right of the people to be secure in their persons, houses papers and effects against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause, supported by affidavit, particularly describing the place to be searched or the person or thing to be seized.

Imprisonment for debt.

SEC. 5. No person shall be imprisoned for debt except in cases of fraud.

Definition of life, liberty, &c

SEC. 6. No person shall be deprived of life, liberty or property without due process of law.

Arbitrary power exists nowhere in republics.

SEC. 7. Absolute, arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority.

Courts open to every person.

SEC. 8. All courts shall be open and every person for an injury done to person, reputation or property shall have justice administered without sale, denial or delay. Suits may be brought against the State in such manner and in such courts as the legislature may by law direct.

Trial by jury shall remain inviolate in criminal cases

SEC. 9. The right of trial by jury shall remain inviolate in criminal cases, but a jury in civil cases in all courts, or in criminal cases in courts not of record, may consist of less than twelve men, as may be prescribed by law. Hereafter a grand jury may consist of twelve men, any nine of whom concurring may find an indictment, but the legislature may change, regulate or abolish the grand jury system.

Accused in criminal cases, right to defend.

SEC. 10. In all criminal prosecutions the accused shall have the right to defend in person and by counsel, to demand the nature and cause of the accusation, to have a copy thereof, to be confronted with the witnesses against him, to have compulsory process served for obtaining witnesses, and to a speedy trial by an impartial jury of the county or district in which the offense is alleged to have been committed.

In criminal cases no person compelled to testify against himself—jeopardy

SEC. 11. No person shall be compelled to testify against himself in any criminal case, nor shall any person be twice put in jeopardy for the same offense. If the jury disagree, or if the judgment be arrested after a verdict, or if the judgment be reversed for error in law, the accused shall not be deemed to have been in jeopardy.

Detaining witness in criminal case.

SEC. 12. No person shall be detained as a witness in any criminal prosecution longer than may be necessary to take his testimony or deposition, nor be confined in any room where criminals are imprisoned.

Criminal proceedings.

SEC. 13. Until otherwise provided by law, no person shall, for a felony, be proceeded against criminally, otherwise than by indictment, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger.

Bail.

SEC. 14. All persons shall be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel or unusual punishment be inflicted.

Penal code.

SEC. 15. The penal code shall be framed on the humane principles of reformation and prevention.

Jails—treatment of prisoners.

SEC. 16. No person arrested and confined in jail shall be treated with unnecessary rigor. The erection of safe and comfortable prisons, and inspection of prisons, and the humane treatment of prisoners shall be provided for.

Habeas corpus.

SEC. 17. The privilege of the writ of habeas corpus shall not be suspended unless, when in case of rebellion or invasion, the public safety may require it.

Religious liberty.

SEC. 18. The free exercise and enjoyment of religious profession and worship without discrimination or preference shall be forever guaranteed in this State, and no person shall be rendered incompetent to hold any office of trust or profit, or to serve as a witness or juror, because of his opinion on any matter of religious belief whatever; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the State.

No money given to religious society.

SEC. 19. No money of the State shall ever be given or appropriated to any sectarian or religious society or institution.

Freedom of speech.

SEC. 20. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right; and in all trials for libel, both civil and criminal, the truth, when published with good intent and for justifiable ends, shall be a sufficient defense, the jury having the right to determine the facts and the law, under direction of the court.

Right of petition.

SEC. 21. The right of petition, and of the people peaceably to assemble to consult for the common good, and to make known their opinions, shall never be denied or abridged.

Rights of labor to be protected.

SEC. 22. The rights of labor shall have just protection through laws calculated to secure to the laborer proper rewards for his service and to promote the industrial welfare of the State.

Education.

SEC. 23. The right of citizens to opportunities for education should have practical recognition. The Legislature shall suitably encourage means and agencies calculated to advance the sciences and liberal arts.

Self defense.

SEC. 24. The right of citizens to bear arms in defense of themselves and of the State shall not be denied.

Military subordinate to civil power.

SEC. 25. The military shall ever be in strict subordination to the civil power. No soldier in time of peace shall be quartered in any house without consent of the owner, nor in time of war except in the manner prescribed by law.

Treason.

SEC. 26. Treason against the State shall consist only in levying war against it, or in adhering to its enemies, or in giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court; nor shall any person be attainted of treason by the Legislature.

Elections to be free and equal.

SEC. 27. Elections shall be open, free and equal, and no power, civil or military, shall at any time interfere to prevent an untrammeled exercise of the right of suffrage.

No tax without consent—uniformity.

SEC. 28. No tax shall be imposed without the consent of the people or their authorized representatives. All taxation shall be equal and uniform.

Aliens.

SEC. 29 No distinction shall ever be made by law between resident aliens and citizens as to the possession, taxation, enjoyment and descent of property.

Perpetuities and monopolies not allowed.

SEC. 30. Perpetuities and monopolies are contrary to the genius of a free state, and shall not be allowed. Corporations being creatures of the State, endowed for the public good with a portion of its sovereign powers, must be subject to its control.

Water control in state.

SEC. 31. Water being essential to industrial prosperity, of limited amount, and easy of diversion from its natural channels, its control must be in the State, which, in providing for its use, shall equally guard all the various interests involved.

When property taken for private use.

SEC. 32. Private property shall not be taken for private use unless by consent of the owner, except for private ways of necessity, and for reservoirs, drains, flumes, or ditches on or across the lands of others for agricultural, mining, milling, domestic or sanitary purposes, nor in any case without due compensation.

Just compensation.

SEC. 33. Private property shall not be taken or damaged for public or private use without just compensation.

General laws—operation.

SEC. 34. All laws of a general nature shall have a uniform operation.

Ex post facto law, &c.

SEC. 35. No ex post facto law, nor any law impairing the obligation of contracts, shall ever be made.

Other rights not enumerated not impaired.

SEC. 36. The enumeration in this Constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

State, part of Union.

SEC. 37. The State of Wyoming is an inseparable part of the Federal Union, and the Constitution of the United States is the supreme law of the land.

ARTICLE No. II.

DISTRIBUTION OF POWERS.

SECTION 1. The powers of the government of this State are divided into three distinct departments: the legislative, executive and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this constitution expressly directed or permitted.

ARTICLE No. III.

LEGISLATIVE DEPARTMENT.

Name of legislature.

SECTION. 1. The legislative power shall be vested in a senate and house of representatives, which shall be designated "The Legislature of the State of Wyoming."

Senators, their term of office, qualifications.

SEC. 2. Senators shall be elected for the term of four (4) years and representatives for the term of two (2) years. The senators elected at the first election shall be divided by lot into two classes as nearly equal as may be. The seats of senators of the first class shall be vacated at the expiration of the first two years, and of the second class at the expiration of four years. No person shall be a senator who has not attained the age of twenty-five years, or a representative who has not attained the age of twenty-

A

TREATISE

ON THE

CONSTITUTIONAL LIMITATIONS

WHICH REST UPON

THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION.

BY

THOMAS M. COOLEY, LL.D.,

ONE OF THE JUSTICES OF THE SUPREME COURT OF MICHIGAN, AND JAY PROFESSOR OF LAW IN THE UNIVERSITY OF MICHIGAN.

FIFTH EDITION,

WITH CONSIDERABLE ADDITIONS, GIVING THE RESULTS OF THE RECENT CASES.

BOSTON:
LITTLE, BROWN, AND COMPANY.
1883

UNIVERSITY PRESS:
JOHN WILSON AND SON, CAMBRIDGE.

TABLE OF CONTENTS.

CHAPTER I.

DEFINITIONS.

Definition of a state, nation, people, sovereignty, and sovereign state . . . 1
What sovereignty consists in 2
Apportionment of sovereignty in America 2
Definition of constitution and constitutional government 2, 3
Of unconstitutional law 4
The will of the people the final law 5

CHAPTER II.

THE CONSTITUTION OF THE UNITED STATES.

What the United States government the successor of; Colonial confederacies 6
The States never in a strict sense sovereign 7
The Continental Congress 6, 7
Limitations upon its power; the Articles of Confederation, and the supersession thereof by the Constitution 8
Adoption of the Constitution by North Carolina, Rhode Island, and the New States 8, 9
United States government one of enumerated powers 10
General purpose of this government 11
Powers conferred upon Congress 11, 12
Powers under the new amendments 12–14
Executive and judicial power of the nation 15
Constitution, laws, and treaties of United States to be supreme; final decision of questions under, to rest with national judiciary . . 15
Removal of causes from State courts; decisions of State courts to be followed on points of State law 16–18
Protection to privileges and immunities of citizens 12, 21
Extradition of fugitives from justice 22
Faith and credit secured to records, &c. 22, 23

Restrictions upon the States 20
Guaranty of republican government 24
Implied prohibitions on the States 25
Reservation of powers to States and people 26
Construction of national bills of rights 26
Statutes necessary to jurisdiction of national courts 26

CHAPTER III.

THE FORMATION AND AMENDMENT OF STATE CONSTITUTIONS.

State governments in existence when Constitution of United States adopted 29
Common law in force; what it consists in 29–34
English and Colonial legislation 34
Colonial charters and revolutionary constitutions 35, 36
Constitutions of new States 36
Sovereignty of the people 36–39
Who are the people, in a political sense 37
Proceedings in the formation and amendment of constitutions . . 39–48
Restraints imposed thereon by Constitution of United States . . . 42
What generally to be looked for in State constitutions 44–46
Rights are protected by, but do not come from them 47

CHAPTER IV.

CONSTRUCTION OF STATE CONSTITUTIONS.

Interpretation and construction 49
Who first to construe constitutions 50–55
Final decision generally with the courts 55–57
The doctrine of *res adjudicata* and *stare decisis* 58–66
Construction to be uniform 67
The intent to govern 68
The whole instrument to be examined 70
Effect to be given to the whole 71
Words to be understood in their ordinary meaning 71
Common law to be kept in view 73
Words sometimes employed in different senses 74, 75
Operation of laws to be prospective 76
Implied powers 77, 78
Consideration of the mischief to be remedied 78
Proceedings of Constitutional Convention may be examined . . 79–81

Force of contemporaneous and practical construction 81–85
Unjust provisions not invalid 86
Duty in case of doubt on constitutional questions 88
Directory and mandatory provisions 88–98
Constitutional provisions are imperative 93–98
Self-executing provisions 98–101
Danger of arbitrary rules of construction 101

CHAPTER V.

THE POWERS WHICH THE LEGISLATIVE DEPARTMENT MAY EXERCISE.

Power of American legislatures compared to that of British Parliament 103–106
Grant of legislative power is grant of the complete power . . . 106
But not of executive or judicial power 106–109
Definition of legislative and judicial authority 109–111
Declaratory statutes 111–114
Statute setting aside judgments, granting new trials, &c. . . . 115, 116
Recitals in statutes do not bind individuals 116
Statutes conferring power on guardians, &c., to sell lands . . 117–125
Statutes which assume to dispose of disputed rights 125–129
Statutes validating irregular judicial proceedings 128, 129
Legislative divorces 130–135
Legislative encroachments upon executive power 135–138
Legislative power not to be delegated 139
Conditional legislation 144–147
Local option laws 147, 148
Irrepealable laws not to be passed 149, 150
Territorial limitations upon State legislative authority . . . 151–153
Inter-State comity 152
Other limitations by express provisions 153
Limitations springing from nature of free government . . . 154, 155

CHAPTER VI.

THE ENACTMENT OF LAWS.

Importance of forms in parliamentary law 156, 157
The two houses of the legislature 157
Differences in powers of 158
Meetings and adjournments 158
Contested elections, rules of proceeding, punishing disorderly behavior 159

Contempts 160, 161
Privileges of members 161
Legislative committees 162
Journal of proceedings 163
Corrupt contracts to influence legislation 164
Counsel before legislature; lobby agents 165
The introduction and passage of bills 166–169
Evasions of constitutional provisions . . . . . 167, *n.*
Three readings of bills 168
Yeas and nays 169
Vote required for the passage of a bill 169
Title of statutes 170–181
Amendatory statutes 181–184
Signing of bills by presiding officers 184
Approval of bills by the governor 184–187
Other legislative powers of the governor 187
When acts to take effect 188–191

CHAPTER VII.

THE CIRCUMSTANCES UNDER WHICH A LEGISLATIVE ACT MAY BE DECLARED UNCONSTITUTIONAL.

Authority to declare statutes unconstitutional a delicate one . 192–194
Early cases of such declaration . . . . . 194, *n.*
Will not be done by bare quorum of court 195
Nor unless a decision upon the point is necessary 196
Nor on objection by a party not interested 197
Nor solely because of unjust or oppressive provisions 197–202
Nor because conflicting with fundamental principles 202–204
Nor because opposed to spirit of the constitution 205, 206
Extent of legislative power 206
Difference between State and national governments 207
A statute in excess of legislative power void 208–211
Statutes invalid as encroaching on executive or judicial authority . 209
Or conflicting with the bill of rights 210
Legislative forms are limitations of power 211
Statutes unconstitutional in part 211–216
Constitutional objection may be waived 216, 217
Judicial doubts on constitutional questions 218–222
Inquiry into legislative motives not permitted 222–224
Consequences if a statute is void 224

CHAPTER VIII.

THE SEVERAL GRADES OF MUNICIPAL GOVERNMENT.

The American system one of decentralization 225–227
State constitutions framed in reference to it 228
Local government may be delegated to citizens of the municipality 228
Legislative control of municipalities 230–232
Powers of public corporations 233
Strict construction of charters 234
Must act through corporate authorities 236–238
Contracts *ultra vires* void 235
Corporations by prescription and implication 238–240
Municipal by-laws 240–249
Delegation of powers by municipality not admissible 249, 250
Irrepealable municipal legislation cannot be adopted 251, 252
Presumption of correct action 254–258
Power to indemnify officers 258–260
Powers to be construed with reference to purposes of their creation 260–263
Authority confined to corporate limits 263
Municipal subscriptions to works of internal improvement . . . 263
Negotiable paper of corporations 269–274
Municipal military bounties 271–282
Legislative control of municipal taxation 282–289
Legislative control of corporate property 289–295
Towns and counties 295–303
Not liable for neglect of official duty 302
Different rules govern chartered corporations 303
In what respect the charter a contract 304–310
Validity of corporate organizations not to be questioned collaterally 311
The State sometimes estopped from questioning . . . . . 311, *n.*

CHAPTER IX.

PROTECTION TO PERSON AND PROPERTY UNDER THE CONSTITUTION OF THE UNITED STATES.

Bill of Rights, importance of 313–315
Addition of, by amendments to national Constitution 316
Bills of attainder 316–321

Ex post facto laws 321–331
Laws impairing the obligation of contracts 331–357
What charters are contracts 337, 338
Contracting away powers of sovereignty 339–344
Grant of exclusive privileges 344
Changes in the general laws 345
Obligation of a contract, what it is 346–348
Modification of remedies always admissible 349–357
Appraisal laws 353
Stay laws, when void 355
Laws taking away substantial rights 355, 356
Validating imperfect contracts 357
State insolvent laws 357
The thirteenth and fourteenth amendments 358, 359

CHAPTER X.

THE CONSTITUTIONAL PROTECTIONS TO PERSONAL LIBERTY.

Villeinage in England 360–363
In Scotland 363
In America 363
Impressment of seamen 365
Unreasonable searches and seizures 365–369
Every man's house his castle 365, 374
Search warrants 369–374
Inviolability of papers and correspondence 371–374
Quartering soldiers in private houses 375
Criminal accusations, how made 376
Bail to persons accused of crime 377–379
Prisoner standing mute 379
Trial to be speedy 379
To be public 380
Not to be inquisitorial 381
Prisoner's statement and confessions 381–388
Confronting prisoner with witnesses 388, 389
Prisoner to be present at trial 390
Trial to be by jury 390
Number of jurors 391
Right of challenge 392
Jury to be of the vicinage 392
Verdict to be unanimous and free 393
Instructions of the judge, how limited 393
Power of jury to judge of law 394–398

Accused not to be twice put in jeopardy 399–402
Excessive fines and cruel and unusual punishments 402–404
Right to counsel 405–412
Protection of professional confidence 408, 409
Duty of counsel 409–412
Whether to address the jury on the law 411
Punishment of misconduct in attorneys 411
Writ of *habeas corpus* 413–427
Legal restraints upon personal liberty 414–418
Necessity of *Habeas Corpus Act* 418–421
What courts issue the writ 421–425
General purpose of writ, and practice upon 425–427
Right to discussion and petition 427
Right to bear arms 428
Jealousy of standing armies 428, 429

CHAPTER XI.

OF THE PROTECTION OF PROPERTY BY THE "LAW OF THE LAND."

Magna Charta, chap. 29 430
Constitutional provisions insuring protection "by the law of the land" . . . . . 431, *n.*
Meaning of "due process of law" and "law of the land" . . 432–439
Vested rights not to be disturbed 439
What are vested rights 440–447
Interests in expectancy are not 440
Legislative modification of estates 441
Control of rights springing from marriage 442
Legislative control of remedies 443, 444
Vested rights of action are protected 445
Confiscation of rights and property 446, 447
Statutes of limitation 448–451
Alteration in the rules of evidence 452–455
Retrospective laws 455–473
Curing irregularities in legal proceedings 457–459
Validating imperfect contracts 459–471
Pendency of suit does not prevent healing act 470
What the healing statute must be confined to 471–473
Statutory privilege not a vested right 473, 474
Consequential injuries from changes in the laws 475
Betterment laws 477–480
Sumptuary and other like laws 476

Unequal and partial legislation 481–492
Local laws may vary in different localities 482
Suspension of general laws 484
Equality the aim of the law 486
Strict construction of special grants 488–490
Privileges and immunities of citizens 491, 492
Judicial proceedings void if jurisdiction wanting 443
What constitutes jurisdiction 493
Consent cannot confer it 493, 494
Jurisdiction in divorce cases 493–499
Necessity for process 498–502
Process by publication 499–502
Courts of general and special jurisdiction 502, 503
Effect of irregularities in judicial proceedings 504, 505
Judicial power not to be delegated 506
Must be exercised under accustomed rules 506, 507
Judge not to sit in his own cause 507–511

CHAPTER XII.

LIBERTY OF SPEECH AND OF THE PRESS.

Protection of, by the Constitution of the United States 512
State constitutional provisions . . . . . 512, *n.*
Not well protected nor defined at common law 515
Censorship of the press; publication of proceedings in Parliament not formerly suffered 515
Censorship of the press in America 516
Secret sessions of public bodies in United States 518
What liberty of the press consists in 518–521
Common-law rules of liability for injurious publications . . . 521–525
Cases of privileged communications . . . . . 525–527, 563, *n.*
Libels on the government, whether punishable 528–531
Sedition law 529
Further cases of privilege; criticism of officers or candidates for office 532–544
Petitions and other publications in matters of public concern . . 534
Statements in course of judicial proceedings 545–547
by witnesses 545
by complainant, &c. 546
by counsel 547–549
Privileges of legislators 550–552
Publication of privileged communications through the press . . . 552

Accounts of judicial proceedings, how far protected 552–556
Privilege of publishers of news 556–566
Publication of legislative proceedings 567, 568
The jury as judges of the law in libel cases 569–573
Mr. Fox's Libel Act 569
"Good motives and justifiable ends," burden of showing is on defendant 573–575
What is not sufficient to show . . . . . 575, *n.*

CHAPTER XIII.

RELIGIOUS LIBERTY.

Care taken by State constitutions to protect 576
Distinguished from religious toleration 570, 571
What it precludes 580–582
Does not preclude recognition of superintending Providence by public authorities 582
Nor appointment of chaplains, fast-days, &c. 583
Nor recognition of fact that the prevailing religion is Christian 583
The maxim that Christianity is part of the law of the land . . 584–588
Punishment of blasphemy 585
And of other profanity 589
Sunday laws, how justified 589
Respect for religious scruples 589–591
Religious belief as affecting the competency or credibility of witnesses 591

CHAPTER XIV.

THE POWER OF TAXATION.

Unlimited nature of the power 593–600
Exemption of national agencies from State taxation 597–600
Exemption of State agencies from national taxation 598
Limitations on State taxation by national Constitution 600
Power of States to tax subjects of commerce 601
Discriminations in taxation between citizens of different States . 602
Elements essential to valid taxation 603
Purposes must be public 604
Legislature to judge of purposes 604–608
Unlawful exactions 608–612

Necessity of apportionment 612
Taxation with reference to benefits in local improvements . . 616–628
Local assessments distinguished from general taxation 618, 619
Apportionment of the burden in local assessments 620–636
Taxations must be uniform throughout the taxing districts . . 622–636
Road taxes in labor 635
Inequalities in taxation inevitable 636
Legislature must select subjects of taxation 637
Exemptions admissible 637–641
Constitutional provisions forbidding exemptions 640
Legislative authority requisite for every tax 641–644
Excessive taxation 644
The maxim *de minimis lex non curat* in tax proceedings 644
What errors and defects render tax sales void 645, 646
Remedies for collection of taxes 645

CHAPTER XV.

THE EMINENT DOMAIN.

Ordinary domain of State distinguished from eminent domain . . 647
Definition of eminent domain 648
Not to be bargained away; general rights vested in the States . . 649
How far possessed by the general government 650
What property subject to the right 651
Legislative authority requisite to its exercise 653
Strict compliance with conditions precedent necessary . . . 654–656
Statutes for exercise of, not to be extended by intendment . . . 656
Purpose must be public 656
What is a public purpose 657–665
Whether milldams are 662–665
Question of, is one of law 666
How property to be taken 666–668
Determining the necessity for 668, 669
How much may be taken 670, 671
What constitutes a taking 671
Consequential injuries do not 671–676
Appropriation of highway to plank road or railroad 676–691
Whether the fee in the land can be taken 691–693
Compensation to be made 693
Time of making 694–697
Tribunal for assessing 697
Principle on which it is to be assessed 698–705

Allowance of incidental injuries and benefits 703–705
What the assessment covers 705
Action where work improperly constructed 705

CHAPTER XVI.

THE POLICE POWER OF THE STATES.

Definition of police power 706
Pervading nature of 706–708
Power where vested 708, 709
Exercise of, in respect to charter contracts 710–718
License or prohibition of sales of intoxicating drinks 718–722
Payment of license fee to United States gives no right in opposition to State law 721
Quarantine regulations and health laws 722
Inspection laws; harbor regulations 723
Distinction between proper police regulation and an interference with commerce 724
State taxes upon commerce 724–726
Sunday police regulations 726
Regulation of highways by the States 727
Control of navigable waters 728–733
What are navigable 728
Congressional regulations of 731
Monopolies of, not to be granted by States 730
Power in the States to improve and bridge 731
And to establish ferries and permit dams 732
Regulation of speed of vessels 733
Destruction of buildings to prevent spread of fire 739, 740
Levees and drains 733
Regulation of civil rights and privileges 734–739
Regulation of business charges 734–739
Establishment of fire limits and wharf lines; abatement of nuisances, &c. 740, 741
Other State regulations of police 740–746
Power of States to make breach thereof a crime 745

CHAPTER XVII.

THE EXPRESSION OF THE POPULAR WILL.

People possessed of the sovereignty, but can only exercise it under legal forms 647

Elections the mode 748–750
Qualifications for office . . . . . 748, *n*, 749, *n*
Officers *de facto* and *de jure* 750, 751
Who to participate in elections; conditions of residence, presence at the polls, &c. 752–754
Residence, domicile, and habitation defined 754–756
Registration of voters 756, 757
Other regulations 758
Preliminary action by authorities, notice, proclamation, &c. . . . 759
Mode of voting; the ballot 760
Importance of secrecy; secrecy a personal privilege 760–763
Ballot must be complete in itself 763, 764
Parol explanations by voter inadmissible 765
Names on ballot should be full 765
Abbreviations, initials, &c. 766, 767
Erroneous additions do not affect 767
Evidence of surrounding circumstances to explain ballot . . . 768, 769
Boxes for different votes; errors in depositing 770
Plurality to elect . . . . . 747, n, 770, 771
Freedom of elections; bribery 771
Treating electors; service of process 772
Betting on elections, contracts to influence them, &c. 772
Militia not to be called out on election days 773
Electors not to be deprived of votes 774
Liability of officers for refusing votes 775
Elector's oath when conclusive, ... 776
Conduct of election 777
Effect of irregularities 771–779
Effect if candidate is ineligible 779
Admission of illegal votes 780
Fraud, intimidation, &c. 780–782
Canvass and return of votes; canvassers act ministerially . . 782–784
Contesting elections; final decision upon, rests with the courts . 785–791
Canvasser's certificate conclusive in collateral proceedings; courts may go behind 787
What proofs admissible 788–790
Whether qualification of voter may be inquired into by courts . . 790

INDEX 793

strument of oppression than a tyrannical monarch or any foreign power. So impatient did the English people become of the very army that liberated them from the tyranny of James II. that they demanded its reduction even before the liberation became complete; and to this day the British Parliament render a standing army practically impossible by only passing a mutiny act from session to session. The alternative to a standing army is "a well-regulated militia;" but this cannot exist unless the people are trained to bearing arms. The federal and State constitutions therefore provide that the right of the people to bear arms shall not be infringed; but how far it may be in the power of the legislature to regulate the right we shall not undertake to say.[1] Happily there neither has been, nor, we may hope, is likely to be, much occasion for an examination of that question by the courts.[2]

[1] See Wilson *v.* State, 33 Ark. 557.

[2] In Bliss *v.* Commonwealth, 2 Lit. 90, the statute "to prevent persons wearing concealed arms" was held unconstitutional, as infringing on the right of the people to bear arms in defence of themselves and of the State. But see Nunn *v.* State, 1 Kelly, 243; State *v.* Mitchell, 3 Blackf. 229; Aynette *v.* State, 2 Humph. 154; State *v.* Buzzard, 4 Ark. 18; Carroll *v.* State, 28 Ark. 99; s. c. 18 Am. Rep. 538; State *v.* Jumel, 13 La. Ann. 399; s. c. 1 Green, Cr. Rep. 481; Owen *v.* State, 31 Ala. 387; Cockrum *v.* State, 24 Tex. 394; Andrews *v.* State, 3 Heisk. 165; s. c. 8 Am. Rep. 8; State *v.* Wilburn, 7 Bax. 51; State *v.* Reid, 1 Ala. 612. A statute prohibiting the open wearing of arms upon the person was held unconstitutional in Stockdale *v.* State, 32 Ga. 225. And one forbidding carrying, either publicly or privately, a dirk, sword-cane, Spanish stiletto, belt or pocket pistol or revolver, was sustained, except as to the last-mentioned weapon; and as to that it was held that, if the weapon was suitable for the equipment of a soldier, the right of carrying it could not be taken away. As bearing also upon the right of self-defence, see Ely *v.* Thompson, 3 A. K. Marsh. 73, where it was held that the statute subjecting free persons of color to corporal punishment for "lifting their hands in opposition" to a white person was unconstitutional. And see, in general, Bishop on Stat. Crimes, c. 36, and cases cited.

to take, use, or destroy the private property of individuals to prevent the spreading of a fire, the ravages of a pestilence, the advance of a hostile army, or any other great public
[* 595] calamity.[1] Here the individual is in no degree in * fault, but his interest must yield to that "necessity" which "knows no law." The establishment of limits within the denser portions of cities and villages, within which buildings constructed of inflammable materials shall not be erected or repaired, may also, in some cases, be equivalent to a destruction of private property; but regulations for this purpose have been sustained notwithstanding this result.[2] Wharf lines may also be established for the general good, even though they prevent the owners of water-fronts from building out on soil which constitutes private property.[3] And, whenever the legislature deem it necessary to the protection of a harbor to forbid the removal of stones, gravel, or sand from the beach, they may establish regulations to that effect under penalties, and make them applicable to the owners of the soil equally with other persons. Such regulations are only "a just restraint of an injurious use of property, which the legislature have authority" to impose.[4]

So a particular use of property may sometimes be forbidden, where, by a change of circumstances, and without the fault of the owner, that which was once lawful, proper, and unobjectionable has now become a public nuisance, endangering the public health or the public safety. Mill-dams are sometimes destroyed upon

[1] Saltpetre Case, 12 Coke, 13; Mayor, &c. of New York *v.* Lord, 18 Wend. 126; Russell *v.* Mayor, &c. of New York, 2 Denio, 461; Sorocco *v.* Geary, 3 Cal. 69; Hale *v.* Lawrence, 21 N. J. 714; American Print Works *v.* Lawrence, 21 N. J. 248; Meeker *v.* Van Rensselaer, 15 Wend. 397; McDonald *v.* Redwing, 13 Minn. 38; Philadelphia *v.* Scott, 81 Penn. St. 80; Dillon, Mun. Corp. §§ 756–759. And see Jones *v.* Richmond, 18 Grat. 517, for a case where the municipal authorities purchased and took possession of the liquor of a city about to be occupied by a capturing military force, and destroyed it to prevent the disorders that might be anticipated from free access to intoxicating drinks under the circumstances. And as to appropriation by military authorities, see Harmony *v.* Mitchell, 1 Blatch. 549; s. c. in error, 13 How. 115.

[2] Respublica *v.* Duquet, 2 Yeates, 493; Wadleigh *v.* Gilman, 12 Me. 403; s. c. 28 Am. Dec. 188; Brady *v.* Northwestern Ins. Co., 11 Mich. 425; Monroe *v.* Hoffman, 29 La. An. 651; s. c. 29 Am. Rep. 345; King *v.* Davenport, 98 Ill. 305; s. c. 38 Am. Rep. 89.

[3] Commonwealth *v.* Alger, 7 Cush. 53. See Hart *v.* Mayor, &c. of Albany, 9 Wend. 571; s. c. 24 Am. Dec. 165.

[4] Commonwealth *v.* Tewksbury, 11 Met. 55. A statute which prohibited the having in possession of game birds after a certain time, though killed within the lawful time, was sustained in Phelps *v.* Racey, 60 N. Y. 10. That the State may prohibit the sale of arms to minors, see State *v.* Callicut, 1 Lea, 714.

[Opinions New/oagheade.htm]

OAG 94-14

March 3, 1994

Mr. Vic Hellard, Director

Legislative Research Commission

State Capitol

Frankfort, Kentucky 40601

Dear Mr. Hellard:

You recently requested this office to "determine whether House Bill 359 restricting possession of handguns by minors is constitutional or unconstitutional under the Second Amendment to the Constitution of the United States or Section 1, Seventh, under the Constitution of Kentucky." The bill (HB 359) is constitutional under both of these constitutional provisions.

HB 359 prohibits the possession of a handgun by a minor. The bill also makes it unlawful to provide a handgun to a minor. The application of these prohibitions is narrowed by several exceptions and limitations set forth in the bill.

The Second Amendment does not guarantee an individual right to keep and bear arms. *Stevens v. U.S.*, 440 F.2d 144 (6th Cir. 1971). Moreover, the Second Amendment serves as a limitation on Congress, not the states. *Miller v. Texas*, 153 U.S. 535, 14 S.Ct. 874, 38 L.Ed. 812 (1894); *United States v. Cruikshank*, 92 U.S. 542, 23 L.Ed. 588 (1876). Thus, the Second Amendment to the United States Constitution has been held not to operate as a bar to a municipal handgun ban. *Quilici v. Village of Morton Grove*, 695 F.2d 261 (7th Cir. 1982), certiorari denied 464 U.S. 863, 104 S.Ct. 194, 78 L.Ed.2d 170.

The Kentucky Constitution recognizes a right to bear arms as follows:

> All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned:
>
> * * *
>
> Seventh: The right to bear arms in defense of themselves and of the state, subject to the power of the general assembly [sic] to enact laws to prevent persons from carrying concealed weapons.

The Kentucky Supreme Court has yet to address squarely in a published opinion the question of whether this right extends to minors.

When the present Kentucky Constitution was ratified in 1891, the public policy of the Commonwealth as expressed through its statutes was to restrict the access of minors to deadly weapons. In fact, for over a century, from the early 1870's until the adoption of the modern Penal Code in the mid 1970's, Kentucky law prohibited the sale of most deadly weapons to minors.

In *Holland v. Commonwealth*, Ky., 294 S.W.2d 893 (1956), the Commonwealth's highest court recognized the constitutionality of KRS 435.230, since repealed, which contained a prohibition against selling deadly weapons to minors. The *Holland* court stated that "the Legislature has exercised the power granted it by enacting KRS 435.230," and then quoted the statute verbatim with approval. *Holland v. Commonwealth*, 294 S.W.2d at 85.

Given the Commonwealth's history of restricting the access of minors to deadly weapons, it is not unreasonable to conclude that the Kentucky constitutional provision recognizing a right to bear arms has no application to minors. With respect to state constitutional provisions recognizing a right to bear arms, "felons, persons of tender years, idiots and lunatics are classes that have almost universally been excluded from the arms guarantee." Dowlut and Knoop, *State Constitutions and the Right to Keep and Bear Arms*. 7 Oklahoma City University Law Review 191 (1982).

If the right to bear arms does extend to minors, it likely is a more limited right than that possessed by adults. The United States Supreme Court has long recognized the common sense proposition that some rights of minors, even constitutional ones, may be more restricted than those assured to adults. See, e.g., *Ginsberg v. New York*, 390 U.S. 629, 88 S.Ct. 1274, 20 L.Ed.2d 195 (1968).

Even the right of adults to bear arms is not absolute. The right is subject to the Kentucky General Assembly's reasonable exercise of the police power generally, as well as to the power specifically granted the General Assembly in Section 1 of the Kentucky Constitution.

Section 1 of the Kentucky Constitution expressly grants the General Assembly the power to *prevent* persons from carrying concealed weapons. Thus, while the seventh paragraph of Section 1 of the Kentucky Constitution recognizes a right to bear arms, it also, like the Florida Constitution, "was designed to protect the people . . . from the bearing of weapons by the unskilled, the irresponsible, and the lawless." *Davis v. State*, Fla., 146 So.2d 892, 894 (1962).

The case of *Bliss v. Commonwealth*, 12 Ky. 90 (1822) led to the addition of language in the 1850 Kentucky Constitution which expressly permits the General Assembly to enact laws to prevent the carrying of concealed weapons. This language was retained when the present Kentucky Constitution was ratified.

The *Bliss* opinion does not state the law under the present Constitution. Moreover, Kentucky courts have long recognized that the *Bliss* court's characterization of Kentucky's constitutional provisions as mandatory is subject to qualification. See, e.g., *Gaines v. O'Connell*, Ky., 204 S.W.2d 425, 427 (1947).

In *Eary v. Commonwealth*, Ky., 659 S.W.2d 198 (1983), the Kentucky Supreme Court held that the right to bear arms is subject to the state's reasonable exercise of its inherent police powers to protect the public health and safety. The *Eary* court concluded that KRS 527.040, which prohibits a class of persons (convicted felons) from carrying handguns, does not violate the right to bear arms recognized in the Kentucky Constitution. The *Eary* view is in accord with the majority of state courts. (See, generally, Annot., 86 ALR 4th 921, 938-939.)

Assuming, for the sake of argument only, that the Kentucky constitutional provision recognizing a right to bear arms extends to minors, HB 359 nevertheless represents both a reasonable exercise of the Commonwealth's police power and a reasonable exercise of the Kentucky General Assembly's power to prevent persons from carrying concealed weapons. Kentucky has "a policy of special protection of minors from injury." *Pike v. George*, Ky., 434 S.W.2d 626, 629 (1968). That policy is furthered by keeping handguns, which may be concealed easily and retrieved readily, out of the hands of minors.

A majority of states which have considered the question of whether a ban on the possession of handguns by all persons in the state is a reasonable exercise of the police power have concluded that it is. (See, e.g., Annot., 86 ALR 4th 921 at 939, 950-954.) HB 359 is much more limited, restricting only the possession of handguns by minors.

HB 359 does permit a minor to possess a handgun in several situations. A minor is not guilty of possession of a handgun when he or she is:

(a) In attendance at a hunter's safety course or a firearm safety course;

(b) Engaging in practice in the use of a firearm, or target shooting at an established firing range, or any other area where the discharge of a firearm is not prohibited;

(c) Engaging in an organized competition involving the use of a firearm, or participating in or practicing for a performance by a group organized under Section 501(c)(3) of the Internal Revenue Code or any successor thereto which uses firearms as a part of the performance;

(d) Hunting or trapping pursuant to a valid license issued to him or her pursuant to the statutes or administrative regulations of this Commonwealth;

(e) Traveling to or from any activity described in paragraphs (a) to (d) with any unloaded handgun in his possession;

(f) On real property which is under the control of an adult and has the permission of that adult and his or her parent or legal guardian to possess a handgun; or

(g) At his or her residence and with the permission of his or her parent or legal guardian possesses a handgun and is justified under the principles of justification set forth in KRS Chapter 503 in using physical force or deadly physical force.

HB 359 represents a reasonable balancing of competing concerns. On the one hand, the bill addresses concern over the perceived increase in violent crime perpetrated by and against the youth of this Commonwealth, particularly crimes of violence involving handguns. On the other hand, it addressses concern that minors be permitted to retain the ability to use handguns responsibly for legitimate purposes.

HB 359 does not unconstitutionally infringe on any right under the Second Amendment to the United States Constitution. Nor does HB 359 unconstitutionally infringe on the right to bear arms recognized in Section 1 of the Kentucky Constitution.

Sincerely,

CHRIS GORMAN

ATTORNEY GENERAL

Kent T. Young

Assistant Attorney General

the other said children. And thereupon, it shall and may be lawful for the said other children, and every of them, and their executors or administrators, as the case shall be, to commence and prosecute an action upon the case, at the common law, against such heir, his heirs, executors and administrators, for the recovery of their said several proportions, respectively. Action for.

XI. *And be it further enacted by the authority aforesaid,* That if any widow, seised of any such slave or slaves, as aforesaid, as of the dower of her husband, shall send, or voluntarily permit to be sent out of this colony and dominion, such slave or slaves, or any of their increase, without the lawful consent of him or her in reversion, such widow shall forfeit all and every such slave or slaves, and all other the dower which she holds of the endowment of her husband's estate, unto the person or persons that shall have the reversion thereof; any law, usage or custom to the contrary notwithstanding. And if any widow, seized as aforesaid, shall be married to an husband, who shall send, or voluntary permit to be sent out of this colony and dominion, any such slave or slaves, or any of their increase, without the consent of him or her in reversion; in such case, it shall be lawful for him or her in reversion, to enter into, possess and enjoy all the estate which such husband holdeth, in right of his wife's dower, for and during the life of the said husband. Widow, sending dower slaves out of the state, forfeits her right. So, of her husband.

CHAP. XXIV.

An act for settling the Militia.

Edi. 1733, and 1752.

FOR the setling, arming and training a militia for her majestie's service, to be ready on all occasions for the defence and preservation of this her colony and dominion, [From MS.]

Be it enacted, by the governor, council, and burgesses, of this present general assembly, and it is hereby enacted, by the authority of the same, That from and after the publication of this act, the colonel or chief officer of the militia of every county have full power and authority to list all male persons whatsoever, from sixteen to sixty years of age within his respective county, to serve in horse or foot, as in his discretion he shall Persons, from 16 to 60, liable to militia duty.

see cause and think reasonable, having regard to the ability of each person, he appoints to serve in the horse, and to order and place them and every of them under the command of such captain in the respective countys of their abode, as he shall think fitt.

Who exempted from.

Provided nevertheless, That nothing herein contained shall be construed to give any power or authority to any colonel or chief officer whatsoever, to list any person that shall be, or shall have been of her majesty's councill in this colony, or any person that shall be, or shall have been speaker of the house of burgesses, or any person that shall be, or shall have been her majesty's attorney general, or any person that shall be, or shall have been a justice of the peace within this colony, or any person that shall have born any military commission within this colony as high as the commission of a captain, or any minister, or the clerk of the councill for the time being, or the clerk of the general court for the time being, or any county court clerk during his being such, or any parish clerk or schoolmaster during his being such, or any overseer that hath four or more slaves under his care, or any constable during his being such, or any miller who hath a mill in keeping, or any servant by importation, or any slave, but that all and every such person or persons be exempted from serving either in horse or foot. Any thing in this act heretofore to the contrary notwithstanding.

Proviso, as to overseers.

Provided always, That if any overseer that is by this act exempted from being listed shall appear at any muster, either of horse or foot, he shall appear in arms fit for exercise, and shall perform his duty as other private soldiers do, on pain of paying the fine inflicted by this act upon such persons as do not provide troopers, arms and other accoutrements. But for as much as severall of the persons exempted, as aforesaid, though they be of sufficient ability to find and keep a serviceable horse and horse arms, and such men whose personal service may not only be usefull, but necessary upon an insurrection or invasion, which God prevent, by virtue of the proviso aforesaid, will perhaps account themselves free from provideing and keep the same at the places of their abode, which is not intended:

AT A

Hugh Drysdale, Esq. Governor.

General Assembly,

SUMMONED TO BE HELD AT

Williamsburg, the fifth day of December, anno domini, 1722, *in the ninth year of the reign of our sovereign lord George, by the grace of God, of Great-Britain, France, and Ireland, King, defender of the faith, &c. and by writ of prorogation, begun and holden on the ninth day of May,* 1723.

Repealed by proclamation Oct. 27, 1724.

CHAP. I.

An Act for laying a Duty on Liquors and Slaves.

CHAP. II.

An Act for the settling and better Regulation of the Militia.

Preamble.

I. WHEREAS a due regulation of the Militia is absolutely necessary for the defence of this country, and the act now in force, doth not sufficiently provide for the same,

From the age of 21 to 60, liable to militia duty.

II. *Be it therefore enacted, by the Lieutenant-Governor, Council, and Burgesses, of this present General Assembly, and it is hereby enacted by the authority of the same,* That from and after the publication of this act, the colonel, or chief officer of the militia of every county, have full power and authority to list all free male persons whatsoever, from twenty-one to sixty years of age, within his respective county, to serve in horse or foot; having regard to the ability of each person, and to order and place them under the command of such captain as he shall think fit.

Exemptions.

III. *Provided nevertheless,* That nothing herein contained, shall be construed to compel any person or persons that shall be, or shall have been, of his Majesty's

lawfully convicted, shall be adjudged a felon, and shall suffer as in cases of felony, without benefit of clergy.

The security for their redemption.

XVII. *And be it further enacted*, That the money to be raised by the duties imposed by this act, shall stand, be, and remain, as a security for the redemption of the said treasury notes so to be issued. And the said John Robinson, treasurer, or the treasurer for the time being, appointed as aforesaid, is hereby required to apply all such money as shall come to his hands, by virtue of this act, for, and towards the redemption of such treasury notes, and to no other use or purpose whatsoever.

Treasurer to give further security.

XVIII. *And be it further enacted, by the authority afore aid*, That John Robinson, esquire, treasurer of this colony, shall give such further security, as shall be approved by the governor, or commander in chief of this colony, in the sum of forty thousand pounds, for the due answering and paying all the money, by him received from time to time, and for the due and faithful performance of his said office, and in case of his death, resignation, or disability, the treasurer to be appointed in his stead, shall in like manner give such further security, before he enters into his said office.

CHAP. II.

An Act for the better regulating and training the Militia.

Preamble.

I. WHEREAS the act of Assembly made in the twelfth year of his majesty's reign, intituled, An act for the better regulation of the militia, hath proved very ineffectual, whereby the colony is deprived of its proper defence in time of danger:

All the officers of the militia to be resident in their counties.

II. *Be it therefore enacted by the Lieutenant Governor, Council, and Burgesses, of this present General Assembly, and it is hereby enacted by the authority of the same*, That from, and after the passing of this act, all county lieutenants, colonels, lieutenant colonels, and other inferior officers, bearing any commission in the

militia of this colony, shall be an inhabitant of, and resident in the county of which he is, or shall be commissioned to be an officer of the militia.

Who to be listed in the militia.

III. *And be it further enacted, by the authority aforesaid*, That the lieutenant, or in his absence, the chief officer of the militia in every county shall list all male persons, above the age of eighteen years, and under the age of sixty years, within this colony, (imported servants excepted) under the command of such captain, as he shall think fit, within two months after the passing of this act.

Who to be exempted.

IV. *Provided always*, That nothing herein contained shall be construed to compel any persons hereafter mentioned, to muster, that is to say, such as are members of the council, speaker of the house of Burgesses, receiver general, auditor, secretary, attorney general, clerk of the council, clerk of the secretary's office, ministers of the church of England, the president, masters or professors, and students of William and Mary college, the mayor, recorder, and Aldermen of the city of Williamsburg, and borough of Norfolk, the keeper of the public goal, any person being *bona fide*, an overseer over four servants or slaves, and actually residing on the plantation where they work, and receiving a share of the crop or wages, for his care and pains, in looking after such servants and slaves: Any miller having the charge and keeping of any mill, and founders, keepers, or other persons employed in or about any copper, iron or lead mine, who are all hereby exempted, from being inlisted, or any way concerned in the militia, during the time they shall continue in any such station or capacity.

How to be accoutred.

V. *And be it further enacted, by the authority aforesaid*, That every person so as aforesaid inlisted, (except the people commonly called Quakers, free Mulattoes, negroes and Indians) and placed or ranked in the horse or foot, shall be armed and accoutred in the manner following, that is to say; every horseman shall be furnished with a serviceable horse, a good saddle, with a breast-plate, crupper and curb bridle, carbine and bucket, holsters, a case of pistols, cutting sword, double cartouch box, and six charges of powder, and constantly appear with the same, at the time and place appointed for muster and exercise, and shall keep at his place of abode, one pound of powder and four pounds of ball, and bring the same into the field with

troul, and subject to the order, of the general committee of safety.

Minute men how organized, out of the militia.

And whereas it is judged necessary, for the better protection of the country in times of imminent danger, that certain portions of the militia throughout the whole colony should be regularly enlisted, under the denomination of minute-men, and more strictly trained to proper discipline than hath been hitherto customary, and, to this end, that the whole colony should be divided into proper and convenient districts:

Colony divided into districts.

Be it therefore ordained, by the authority aforesaid, That this colony be immediately formed and divided into sixteen districts, in the following manner, to wit: One district to include the counties of Accomack and Northampton; one other, the counties of Princess Anne, Norfolk, the borough of Norfolk, and the counties of Nansemond and Isle of Wight; one other, the counties of Southampton, Sussex, Surry, Brunswick, Prince George, and Dinwiddie; one other, the counties of Mecklenburg, Lunenburg, Charlotte, Halifax, and Prince Edward; one other, the counties of Amelia, Chesterfield, and Cumberland; one other, the counties of Henrico, Hanover, Goochland, and Louisa; one other, the counties of Pittsylvania, Fincastle, Bedford, and Botetourt; one other, the counties of Buckingham, Amherst, Albemarle, and Augusta; one other, the counties of Elizabeth City, Warwick, York, James City, the city of Williamsburg, and the counties of Charles City and New Kent; one other, the counties of Gloucester, Middlesex, Essex, King and Queen, and King William; one other, the counties of Lancaster, Northumberland, Westmoreland, and Richmond; one other, the counties of Culpeper, Orange, and Fauquier; one other, the counties of Caroline, Spotsylvania, King George, and Stafford; one other, the counties of Prince William, Fairfax, and Loudoun; and one other district to include the counties of Berkeley, Frederick, Dunmore, and Hampshire; and the inhabitants of West Augusta are to compose one entire district.

Regiment to be raised in district of Accomack and Northampton.

And be it farther ordained, That within the district containing the counties of Accomack and Northampton there shall be forthwith raised one regiment, consisting of six hundred and eighty men, from the ages of sixteen to fifty, to be divided into ten companies, sixty eight each rank and file, to be under the command of a colonel, lieutenant-colonel, and major, ten captains, twen-

ty lieutenants, ten ensigns, thirty serjeants; and each company shall be allowed a drummer and fifer, and the said regiment shall be allowed a chaplain, adjutant, quarter-master, surgeon, two surgeons mates, and a serjeant-major, as hereafter directed.

Battalion in the other districts.

And be it farther ordained, That within each of the other districts there shall be immediately enlisted one battalion, consisting of five hundred men rank and file, from the age of sixteen to fifty, to be divided into ten companies of fifty men each, who are to be under the command of a colonel, lieutenant-colonel, and major, ten captains, ten lieutenants, ten ensigns, and twenty serjeants; each company to be allowed a drummer and fifer, and the battalion to be allowed a chaplain, adjutant, quarter-master, surgeon, two surgeons mates, and a serjeant-major, as hereafter directed.

Officers appointed by deputation of committees.

And be it farther ordained, That the colonels, lieutenant-colonels, majors, captains, lieutenants, ensigns, and commissaries of musters, for the said regiment, and the several battalions, shall be appointed in the following manner, to wit: The committees of the counties of Accomack and Northampton shall each appoint six of their members as deputies to meet in one general committee, at such time and place as shall be appointed by the chairman of the committee of the said county of Accomack, which place shall be most central and convenient for the meeting of such deputies, and notice thereof shall be given by such chairman to the chairman of the committee of the said county of Northampton, at least ten days before the time of meeting; which deputies having met, according to such appointment, shall settle the number of minute-men to be enlisted in each county, and shall proceed to the choice of the several officers aforesaid. And to prevent inconveniencies which may arise from the deputies so to be appointed not being able to attend, the committee of each county shall appoint six others of their members to supply the places of such as are first named, and whose attendance at the general committee may be prevented by sickness or any other accidents.

And be it farther ordained, That the committees of the several counties of Elizabeth City, Warwick, York, James City, Charles City, and New Kent, shall in like manner appoint four of their members, and the committee of the city of Williamsburg two of their members, as deputies to meet in the general committee for

[Ch. LXVI in original.]

CHAP. XXVII.

An act to continue an act, intituled An act to revive and amend in part an act, intituled an act for giving further time to enter certificates for settlement rights, and for locating warrants upon pre-emption rights, and for other purposes.

Further time allowed to enter certificates for settlement rights, and locate warrants, on pre-emption rights.

I. IT being represented to this present general assembly, that many people within this commonwealth have not received the benefit of an act of the last session of assembly, intituled "An act to revive and amend in part an act, intituled an act for giving further time to enter certificates for settlement rights, and for locating warrants upon pre-emption rights, and for other purposes;"

II. *Be it enacted*, That the said act be, and is hereby continued, until the first day of June, one thousand seven hundred and eighty five, and no longer.

[Ch. LXVII in original.]

CHAP. XXVIII.

An act for amending the several laws for regulating and disciplining the militia, and guarding against invasions and insurrections.

Preamble.

I. WHEREAS the defence and safety of the commonwealth depend upon having its citizens properly armed and taught the knowledge of military duty, and the different laws heretofore enacted being found inadequate to such purposes, and in order that the same may be formed into one plain and regular system;

Who shall be enrolled in the militia.

II. *Be it enacted*, That all free male persons between the ages of eighteen and fifty years, except the members

of the council of state, members of the American congress, judges of the superior courts, speakers of the two houses of assembly, treasurer, attorney general, auditors and their clerks, solicitor general and his clerks, clerks of the council of state and treasury, register of the land-office, his deputy and clerks, custom-house officers, all inspectors of tobacco, all professors, tutors, and students at the university of William and Mary, and other public seminaries of learning, all ministers of the gospel, licensed to preach according to the rules of their sect, who shall have previously taken, before the court of their county, an oath of fidelity to the commonwealth, post-masters, keepers of the public gaol and public hospital, millers, persons concerned at iron or lead works, or persons solely employed in repairing or manufacturing fire arms, all of whom are exempted from the obligations of this act, shall be enrolled or formed into companies of five serjeants, three corporals, a drummer, and fifer, and not less than fifty-five, nor more than sixty-five, rank and file; and these companies shall again be formed into regiments of not more than one thousand, nor less than five hundred men, if there be so many in the county. Each company shall be commanded by a captain, a lieutenant, and an ensign; each regiment by a lieutenant colonel commandant, and two majors; and the whole by a county lieutenant, whose rank shall be that of a colonel; and they shall take precedence and command of each other according to rank and seniority. These officers shall be resident within their county, and before they enter on the execution of their respective offices, shall take the following oath: "I —— do swear, that I will be faithful and true to the commonwealth of Virginia, of which I profess myself to be a citizen, and that I will faithfully and justly execute the office of a ———, in the militia of the county of ————, according to the best of my skill and judgment: So help me God."—There shall be a private muster of every company once in every three months, at such convenient time and place as the captain, or next commanding officer, shall appoint; a muster of each regiment, on some day in the month of March or April, in every year, to be appointed by the commanding officer thereof, at a convenient place, near the centre of the regiment; and a general muster of the whole, on some day in the month of

Who exempted.

Companies.

Officers.

Oath of officers.

Musters.

Examples of State Laws Mandating Militia Enrollment at Age 21

State	Year[1]	Statutory Text	Source[2]
Georgia	1861	"All able bodied free white male citizens between the ages of twenty-one and forty-five years, residents in this State, and not exempted by this Code, are subject to military duty." "The militia of the State consists of all persons, not heretofore classified, within its limits subject to military duty, and not exempted therefrom by the Acts of Congress or the laws of this State, or belonging to some volunteer organization."	R. H. Clark Et Al., Eds., The Code Of The State Of Georgia, pt. 1, tit. 11, ch. 1, § 981, 1026, at 189 (1861). R. H. Clark Et Al., Eds., The Code Of The State Of Georgia, pt. 1, tit. 11, ch. 2, § 1026, at 199 (1861).
Kansas	1859	"The militia shall be composed of all able-bodied white male citizens between the ages of twenty-one and forty-five years, ..."	Kan. Const. of 1859, art. 8, § 1.
New Jersey	1829	"[F]rom and after the passing of this act, all persons under the age of twenty-one years be, and they are hereby, exempt from militia duty in time of peace."	An Act to exempt minors from Militia Duty in time of peace, in Josiah Harrison, Ed., A Compilation Of The Public Laws Of The State Of New-Jersey Passed Since The Revision In The Year 1820 266 (1833).

[1] Year of enactment.

[2] Where the relevant law was published in a larger compendium source, the source date often postdates the year of enactment.

State	Year[1]	Statutory Text	Source[2]
North Carolina	1868	"All able bodied male citizens of the State of North Carolina, between the ages of twenty-one and forty years, who are citizens of the United States, shall be liable to duty in the Militia: *Provided*, That all persons who may be adverse to bearing arms, from religious scruples, shall be exempt therefrom."	N.C. Const. of 1868, art. XII, § 1.
Ohio	1843	"That every able bodied white male inhabitant, resident within this state, who is or shall be of the age of twenty one years, and under the age of forty five years, excepting persons who may be members of volunteer companies, persons absolutely exempted by law, idiots and lunatics, shall be enrolled in the militia."	An Act to regulate the Militia, § 2, in 1843 Ohio Acts 53.
Pennsylvania	1864	"That every able bodied white male citizen, resident within this state, of the age of twenty-one years, and under the age of forty-five years, excepting persons enlisted into volunteer companies, persons exempted by the following sections, idiots, lunatics, common drunkards, vagabonds, paupers, and persons convicted of any infamous crime, shall be enrolled in the militia."	An Act For the Organization, Discipline, and Regulation of the Militia of the Commonwealth of Pennsylvania, No. 211, § 1, in 1864 Pa. Laws 221-22.

TITLE XI.

PUBLIC DEFENCE.

CHAPTER I.

PERSONS SUBJECT TO MILITARY DUTY, EXEMPTIONS, &c.

SECTION.		SECTION.	
981.	Persons subject to military duty.	989.	Commutation tax—how avoided.
982.	Persons exempt.	990.	Company drills—four in each year.
983.	Officers of militia—when exempt.	991.	Volunteers exempt from road duty.
984.	Non-commissioned officers, &c.	992.	Amount of commutation tax.
985.	Persons employed on vessels, &c.	993.	Receipt therefor.
986.	Persons subject must be registered.	994.	Transient persons—when subject.
987.	Oath of persons, &c.	995.	Free men of color—how subject.
988.	May perform service or pay tax.		

Who are subject to military duty.

§ 981. All able bodied free white male citizens between the ages of twenty-one and forty-five years, residents in this State, and not exempted by this Code, are subject to military duty.

Who are exempt.

§ 982. The following exemptions shall be recognized, viz:

1. The chief officers of the several Executive Departments of State.

2. Judges of the Supreme, Superior and City Courts, Justices of the Inferior Courts and of the Peace, Sheriffs and Deputies, Clerks of Courts and Ordinaries.

3. Members of the Legislature during the term for which they shall be elected, officers of the Legislature during its session and for seven days before and after the same.

4. Persons employed on Railroad Trains, and repairers of Railroads, Operators and Messengers of Telegraph Companies, Post-Masters and persons employed in Post-Offices and the transportation of the Mails.

5. Ferrymen, Bridge and Toll-Gate Keepers and Public Millers.

6. Ministers and Preachers of the Gospel, Professors and Students, and Tutors in all Colleges.

7. Aliens and persons not qualified to vote for members of the Legislature.

8. All persons exempted by the Acts of Congress.

9. All persons on the payment of the Commutation Tax prescribed by this Code.

10. All officers and non-commissioned officers of the militia

who may entitle themselves to the privileges as hereinafter prescribed.

11. Active members of Volunteer Corps after a prescribed term of service.

12. Regular members of any Fire Department or organization connected therewith.

Militia officers—when exempt.

§ 983. Company officers of the militia who shall uniform and equip themselves according to the regulations prescribed for the dress and uniform of the army of the Confederate States, and shall serve in their respective stations continuously for the term of eight years, shall not be liable to be called on for military duty thereafter, except in case of war, insurrection, rebellion or invasion.

Exception.

Non-commissioned officers, musicians and privates.

§ 984. Every non-commissioned officer, musician or private of every uniformed volunteer corps who shall uniform and equip himself and whose term of service shall amount to seven years, shall also be exempt from military duty, except in case of war, rebellion, insurrection or invasion.

Exception.

Persons employed on vessels, pilots, stevedores and factory laborers exempt.

§ 985. Every person employed by the year or season on board any vessel, or in the merchant service, or coasting trade, all pilots and stevedores, persons employed in any blooming furnace, or glass or porcelain factory, cotton or wool mill shall be exempt from militia duty, except in cases above enumerated.

Exception.

§ 986. Receivers of Tax Returns shall at the time of receiving returns of taxable property from the citizens of this State insert in appropriate columns in their digest the following particulars, viz:

Liability of tax payer.

1. Whether the tax payer is himself subject to militia duty.

His family & employees.

2. How many in his employ or members of his family are subject.

Cause of any exemption.

3. The cause of exemption, if any exists.

His district.

4. The company district or beat to which the tax payer belongs.

Also amount of his commutation tax

Commutation tax collected by Tax Collector.

5. The amount of commutation tax chargeable to him instead of personal service, and the amount so charged shall be collected by the Tax Collector and paid over to the Treasurer of the State with the general tax, and shall constitute the military fund of the State.

Cause of exemption to be verified by oath.

§ 987. No Receiver of Tax Returns shall enter an exemption from military duty against the name of any person without due proof of the existence of the cause on which the exemption is

claimed, and to that end the following clause shall be added to the oath, administered by the Receiver of Tax Returns: "And that I believe myself exempted from militia duty in this State for and on account of the cause set forth in this return."

Personal service in lieu of tax.

§ 988. Every citizen subject to military duty may perform the same in lieu of paying the taxes herein prescribed, but the certificate of the captain or commanding officer of the company to which he belongs and in which he is actually enrolled, shall be the only evidence which the Tax Collector is authorized to receive in place of the amount charged on the Receiver's digest, and the production of which shall be noted by the Tax Collector on his return, and he shall be allowed the same in settlement.

Certificate noted by Collector.

Commanding officers to enroll those in his district.

Notice to be given.

§ 989. The captain or commanding officer in each company district shall enroll from time to time all persons in the limits of the district subject to military duty, and shall without delay notify such persons of their enrollment, and shall give a certificate to each person performing military duty that he has faithfully performed the same, according to the requirements of the Code, for twelve months preceding the 31st day of December in each and every year, and such certificate shall be produced at the time of returning his taxable property, and on failure so to do the commutation tax for militia duty shall be charged against him on the book of the Receiver of Tax Returns.

Failure to produce certificate.

Captains muster companies four times each year.

Evidence of payment of commutation tax.

§ 990. Captains of companies shall cause to be mustered for parade and drill all persons within their company districts who do not pay the commutation tax, the only proof of which payment shall be the receipt of the officer authorized to collect the same, and who are not otherwise exempt, at least four times in each year, at such times as they may direct, but there shall be an interval of at least one month between each muster, and they shall file a copy of their company roll with the Clerk of the Inferior Court immediately after the muster which succeeds the closing of the books of the Receiver of Tax Returns, for which service they shall respectively receive the sum of one dollar.

Company roll.

Compensation therefor

Those who are exempt from road & patrol duty.

§ 991. Members of volunteer corps actually in uniform and doing duty, and the field and staff officers of volunteer regiments and battalions, so long as they remain such, shall be exempted from road and patrol duty, and taxation upon property by any municipal corporation, except such as shall be liable to taxation by law to raise a revenue for the State.

§ 992. The commutation tax for non-performance of militia

Commutation tax ten per cent. on State tax.

duty shall be ten per cent. upon the State tax, provided, it shall always amount to twenty-five cents, and shall be collected and paid as other taxes are collected and paid into the Treasury; the amount thus raised shall be set apart as a separate fund chargeable with the entire military expenses of the State.

Payment to be specified in Collector's receipt.

§ 993. The Tax Collector's receipt to the tax payer shall distinctly specify the payment of the commutation tax for militia duty, whenever paid, in order that the same be made available in case of enrollment by the captains of Militia Districts or beat companies.

Non-residents doing business in the State liable to military duty.

§ 994. Transient persons having a place of business, and doing business in the State, but having no residence or home therein, are liable to militia duty, and on failure to pay the commutation tax, or perform military service, shall be liable to an additional penalty not exceeding twenty dollars, to be adjudged by any court martial, within whose jurisdiction they may happen to be for a period of ten days.

Free men of color subject as musicians.

§ 995. Free men of color above the age of sixteen years, unless belonging to the fire department, shall be subject to the call of any volunteer military organization, if there be one in the town or city of their residence, in the capacity of musician, pioneer, mechanic or servant, and if there be no such volunteer organization, then to the militia in one of the aforesaid capacities, and they shall be entitled to the usual wages for the practice of such occupations; but on failure so to attach themselves, when required so to do, they shall pay to the Clerk of the Inferior Court, for the use of the county in which they reside, the sum of five dollars.

Entitled to wages.

Failing to serve.

CHAPTER II.

MILITARY ORGANIZATION.

ARTICLE 1. Military force—how composed.
ARTICLE 2. The Volunteers.
ARTICLE 3. Cavalry Corps.
ARTICLE 4. The Militia.
ARTICLE 5. Elections.

ARTICLE I.

MILITARY FORCE—HOW COMPOSED.

SECTION.
996. The Military force of the State.
997. The Engineer Corps of the State.

§ 996. The military force of the State embraces the Georgia Military Institute, the volunteers and the militia, to which may be added such military schools, when the institution is of a military character, as may avail themselves of the provisions herein embraced. Military force.

§ 997. The Georgia Military Institute constitutes the engineer corps of the State, and the officers in the Institute having military rank in the Academic staff, (Cadet officers excepted,) shall be commissioned as such according to their respective grades. (See Military Institute.) The engineer corps.

ARTICLE II.

THE VOLUNTEERS.

SECTION.
998. Volunteer forces of the State.
999. Battalions in their respective co's.
1000. Their rights, privileges and duties.
1001. Number of officers, &c., necessary.
1002. Companies—how organized.
1003. Arms, &c., supplied—when.
1004. Discipline and exercise prescribed.
1005. Must make annual returns.
1006. Independent companies disbanded.
1007. Resignation of Captain.
1008. Regiments and Battalions, &c.
1009. May adopt By-Laws.
1010. Fines—how imposed and collected.
1011. Elections—by whom ordered.
1012. When by Commander-in-Chief.
1013. Commissions vacated—when.
1014. Suits on bonds of officers.
1015. Disbanded companies, &c.
1016. Artillery Companies received, &c.
1017. Volunteer Companies corporate.
1018. Courts of Inquiry & Courts Martial.
1019. Volunteers exempt, &c.
1020. Cumulative provisions.

§ 998. The volunteers consist of such corps, uniformed and equiped, as now exist, or may hereafter be formed in this State. They may organize themselves into companies, battalions, regiments and brigades at their option. But the whole volunteer force shall constitute one or more divisions conforming to the organization of the Confederate States Army, except when otherwise prescribed in this Code. As soon as such shall be organized, they shall be reported to the commander-in-chief, and shall remain permanent until changed by his approval or by special enactment. The volunteer force.

Battalions, regiments, &c.

§ 999. Battalions and regiments shall be organized always within the limits of their respective counties, if there are companies enough in a county; if not, then to be added to from adjoining counties, unless companies in other counties are more accessible, to be judged of by the commander-in-chief.

Rights and duties.

§ 1000. When thus organized, they have the same rights, privileges, and are subject to the same duties as such organizations in cities. If there are not companies enough in a city to form a battalion or regiment, it may be formed by the addition of other companies in the same county, if such exist, and if not, then from adjoining counties.

Volunteer corps formed in any part of the State.

§ 1001. Volunteer corps may be formed anywhere within the State, and may consist of citizens of the same or adjoining counties. Such as may hereafter be formed shall number at least forty privates, nine non-commissioned officers, four commissioned officers, with such musicians as they may deem sufficient.

When enrolled to report to commander-in-chief.

§ 1002. When the requisite number of members are enrolled, their first duty shall be to uniform themselves according to the provisions of this Code; they shall then notify the commander-in-chief of the number enrolled and uniformed, who shall order an election for captain and subaltern officers under such superintendence as he may prescribe, and the superintendents shall transmit the return of the same to the Executive Department, and the Governor shall commission the officers elected, unless the election is contested, in which case, if in the opinion of the Governor there be sufficient grounds to set the same aside, he shall order a new election.

Election of officers.

Arms, &c., to be supplied to all volunteer corps.

§ 1003. Arms and accoutrements shall be supplied to the volunteer corps, whether uniformed or not, by requisition on the Governor in such manner and upon such terms as he may direct, from the quota of arms distributed to the several States under the laws of Congress, or from other arms belonging to this State.

Discipline and exercise.

§ 1004. The system of discipline and exercise shall, as near as may be, conform to that prescribed for the army of the Confederate States, from time to time, by Congress, but the commander-in-chief may direct such text books for use as a guide in such arms as he may think proper, and no other weapons of war than such as are used by the soldiers of the army of the Confederate States, except by order of the commander-in-chief, shall be used by the volunteers.

Arms to conform to those of C. S.

Independent corps to make annual returns to Governor.

§ 1005. All volunteer corps, except such as may be organized into regiments, shall make a full return to the Governor of the number of men in each corps actually in uniform, the number and rank of the officers, the arms and accoutrements in their possession, supplied by the State, and the number of such as may be unfit for use or expended in service, which return shall be made up to the first day of May in each year, and signed by the captain of such corps.

Independent corps disbanded—when.

Exception.

§ 1006. Whenever it shall appear to the commander-in-chief that any independent volunteer corps is deficient in the number of men required by this Code to constitute a company, he shall issue an order requiring the return of such equipments as may have been furnished by the State, and disband such corps, but the provisions of this paragraph shall not apply to any volunteer corps formed previous to the adoption of this Code, or to any corps attached to and constituting a portion of a regiment of volunteers.

Resignation of Captain.

§ 1007. The resignation of a captain of an independent volunteer corps shall not take effect until accepted by the commander-in-chief, nor until a full return is made to the Governor of all the arms and accoutrements received from the State and in possession of the corps under his command, inventoried and ready to be turned over to his successor, and as often as a captain is elected he shall receipt to his predecessor for the arms and accoutrements so turned over to him.

Returns of regimental companies.

§ 1008. When volunteer corps are organized into a regiment or a battalion, the company returns shall be made to the adjutant, and by him forwarded to the Executive Department.

Companies may adopt by-laws, &c.

§ 1009. Volunteer corps may adopt their own by-laws and regulations, not inconsistent with the laws of the State or military laws or usage, and may adapt them in such mode as they see proper to their organization into a regiment or a battalion. The commander-in-chief shall prescribe the uniform of volunteer corps, and in all matters not provided for in this Code, such corps shall be governed by military law and usage, and the custom of the army of the Confederate States, so far as they can be made applicable.

General rule of discipline.

Fines to be imposed by court martial.

§ 1010. All fines for delinquencies in military duty shall be assessed by regimental, battalion or company courts martial, as the case may be, and be collected by execution under the hand and seal of the President of the Court, and directed to the Sheriff of the county in which the delinquent resides, and the Sheriff

shall be entitled to such costs and subject to be ruled in the Superior Courts, and the execution shall have like form and effect as in civil cases. The Sheriff may procure the service of such executions by a Bailiff, he being responsible therefor as though it were his own act.

Election for officers—how ordered.

§ 1011. All elections for officers of the volunteers and to fill vacancies shall be ordered by the officer within whose immediate command the vacancy to be filled occurs. For subalterns, by captains of the companies in which the vacancy exists, unless the company be attached to a battalion or regiment; for regimental officers, by colonels; for colonels, by the brigadier general of the regiment, he being attached to a brigade; for brigadier general, by the general of division.

Elections in an independent regiment or company.

§ 1012. In case of a regiment not attached to a brigade, or of a company not attached to a regiment or a battalion, elections for colonel and captain shall be ordered by the commander-in-chief, and when an independent battalion exists, not belonging to a regiment or brigade, the election for its commander shall be ordered by the commander-in-chief.

Commissions to expire—when.

§ 1013. Whenever a volunteer corps is disbanded the commissions of its officers shall be vacated, but they shall, nevertheless, be liable to suit on the bond executed for the safe keeping and delivery of the arms entrusted to them by the State, if there should be a breach thereof.

Suits on officer's bond.

§ 1014. Suits on the bonds of officers of volunteer companies, for arms and accoutrements, shall be brought under the direction of the judge advocate general, in whose office such bonds shall be filed for safe keeping.

Corps voluntarily disbanding.

§ 1015. When any volunteer corps disbands of its own accord, the members thereof shall cause the fact to be reported to the commander-in-chief, and they shall forthwith deliver to some officer of the quartermaster general's department all the public property in their possession, and upon filing his receipt therefor with the judge advocate general, a discharge shall be entered on their bond.

$200 to be paid to Artillery companies.

§ 1016. Whenever the commanding officer of any volunteer artillery company in this State shall certify to the Governor that there are sixty (60) active members, officers and privates, upon the muster roll of such company, (a copy of which muster roll shall accompany the certificate,) and that said company has been exercised in the field with its guns, for not less than two hours at

each drill, and not less than twelve drills in each year, the Governor shall draw his warrant upon the Treasurer of the State for the sum of two hundred dollars, to be paid into the fund of said company; *Provided, nevertheless*, That the provisions of this section shall not extend to more than seven (7) companies, not including such companies as may be already organized, and who may comply with the provisions of this section.

Volunteer companies incorporated.

§ 1017. Volunteer companies of infantry, cavalry or artillery, which have been, or may hereafter be organized, with not less than forty members, and have their officers duly commissioned, are made a body corporate and politic, under their respective names and styles, and made capable in law to sue and be sued, to plead and be impleaded, to have a common seal, to hold property, real, personal or mixed, and to pass such by-laws, rules and regulations as may be necessary for their government, not inconsistent with the laws and Constitution of this State or the Confederate States.

Courts of inquiry and courts martial.

§ 1018. Courts of inquiry and courts martial, for companies incorporated by the provisions of this Code, shall be constituted and regulated by the laws in force relating to volunteer companies.

Members of volunteer corps exempt from road or militia duty.

§ 1019. Each member of any company incorporated by the provisions of this Code, shall be exempt from road or militia duty, except such as may be required of them as members of their respective companies, and except in times of insurrection, invasion, rebellion or war; *Provided*, The commanding officer of any company so incorporated shall have recorded in the offices of the Clerks of the Superior and Inferior Courts of their respective counties, a full and complete list of the members of their company, and that the above exemption shall continue no longer than actual membership.

Proviso.

Certain sections cumulative.

§ 1020. The five preceding sections shall be held to be cumulative to any act already passed, conferring privileges upon any company now existing under the laws of this State, or which may hereafter be organized.

ARTICLE III.

CAVALRY CORPS.

SECTION.
1021. A squadron of cavalry defined.
1022. How organized.
1023. What constitutes a troop, &c.
1024. Parade and drill.
1025. Fines for non-attendance.

Squadron.

§ 1021. A squadron of cavalry shall consist of not less than two or more than five troops, and shall be commanded by a major, elected by the commissioned officers of the troops composing the squadron. He shall appoint his own staff, and determine his own uniform and that of his staff, with the approbation of the commander-in-chief.

Two or more troops may form a squadron.

§ 1022. Any two or more troops of cavalry, having regard to their neghborhood and facility of communication with each other, may unite to form a squadron, and whenever such formation is determined on they shall report the same to the commander-in-chief, who shall thereupon order an election for major, at such time as he may think proper, and shall issue a commission to the officer elected.

Arms.

§ 1023. Each troop of cavalry shall consist of forty men, besides the captain, uniformed and mounted; they shall be armed with cavalry sabres or broad swords, and dragoon holsters, or such other pistols as the commander-in-chief may direct, and may carry a carbine at their option.

Major to parade squadron or detachment annually.

§ 1024. The major commanding a squadron of cavalry shall parade and exercise the same, either in squadron or detachment, at least once in each year, for a period not exceeding three days at any one parade, after the arrival at the place of rendezvous. Orders for such parade may be given verbally at any parade, or by writing. Commissioned officers shall have twenty, non-commissioned officers and men ten day's notice.

Fines for delinquencies at squadron drills.

§ 1025. Fines for non-attendance or delinquency at any squad drill, or parade, or muster, shall be imposed by a court martial, to be ordered by the officer commanding the squadron, but they shall not exceed double the amount imposed by the regulations of the troops of which the delinquent is a member, for offences of like character, and shall be collected as provided in section 1010.

ARTICLE IV.

THE MILITIA.

SECTION.
1026. The militia of the State.
1027. How organized.
1028. Companies—how organized.
1029. Grade of militia officers.
1030. New divisions, &c.—how created.
1031. Regiments—how organized.
1032. Non-commisioned officers.
1033. Captains make returns to Adjutant.
1034. Notice of drills—how given.
1035. Register of commissioned officers.

The militia.

§ 1026. The militia of the State consists of all persons, not heretofore classified, within its limits subject to military duty, and not exempted therefrom by the Acts of Congress or the laws of this State, or belonging to some volunteer organization.

Organization—how numbered and designated in commissions.

§ 1027. The militia shall be organized into companies, battalions, regiments, brigades and divisions, which shall be numbered throughout the State by order of the commander-in-chief, in such manner that every corps of the same denomination shall bear a different number, by which number every company, district, regiment, brigade or division, as the case may be, shall be designated in the commissions of the officers commanding the same.

Deficiency in numbers in any district company.

§ 1028. If, from exemptions, there are not persons enough liable to do militia duty in any district or beat, a company may be organized of those so liable from adjoining districts or beats, of not less than forty nor more than one hundred, under the direction of the colonel of the regiment, and when so done must be accurately reported.

Grades of officers.

§ 1029. The following grades of militia officers shall be recognized: Commanding each division, a major general; each brigade, a brigadier general; each regiment, a colonel, lieutenant colonel and major; a separate battalion, a major; each company, a captain, first and second lieutenants, and ensign. Wherever other grades exist, they shall continue until the same becomes vacant, when they shall respectively cease and determine.

New divisions and brigades, regimental and company districts.

§ 1030. New divisions and brigades shall be created by the Legislature; regimental and company districts by order of the commander-in-chief, on the report of the officers commanding the companies in the regimental district, but in all cases, when practicable, the regimental district shall be coterminous with the county in which it is situated.

§ 1031. There may be two or more regiments in the same county, and two or more counties may be united to form a regi-

Two or more regiments may be in same county

ment, due regard being had to the proportion thereof, but the existing arrangement in this behalf shall not be disturbed except by the Legislature, unless upon application of those interested therein.

Captain to divide company into squads.

§ 1032. The captain of each company shall divide his company into four squads, as nearly equal as may be, and appoint one fit and proper person in each as sergeant, and one as corporal, and he shall also appoint a first sergeant; they shall be responsible for the proper distribution of all orders, and may be removed by a company court martial for proper cause.

Returns to be made by Captain to Adjutant.

§ 1033. Each captain of a militia company shall make out and deliver to the adjutant of the regiment to which he belongs, a full return of the number and names of the men belonging to his company, on the first day of May in each year, for which he shall receive such compensation as is paid to the takers of the State's census, to be paid out of the military fund.

Summons to drill, &c.—by whom given.

§ 1034. A non-commissioned officer, or any other person appointed for the duty, may warn persons subject to militia duty to appear at parades, musters or drills, and he shall be furnished with a list of persons to be warned; such warning may be given verbally to the party in person, or by leaving a written summons at his most notorious place of abode, but the party may claim his exemption at the time of such warning and produce to the warning officer the evidence thereof, which may be his own oath or such other evidence as may establish the fact, and it shall be the duty of the warning officer to enter the exemption claimed against the name of the party on his list.

Roster of officers to be kept by Colonel.

§ 1035. Each colonel of the militia regiment shall by himself or his adjutant keep a roster or list of all the commissioned officers of his regiment below the rank of captain, and shall revise and correct the same as often as may be necessary, and annually, on or before the first day of June, shall forward to the adjutant general copies of the returns so delivered to the adjutant of his regiment, as well as a copy of the roster above mentioned, and for habitual failure in the premises shall be liable to be tried by a general court martial and cashiered or otherwise punished as said court may direct.

ARTICLE V.

ELECTIONS.

SECTION.
1036. Election of militia officers.
1037. Notice of—how given.
1038. Voters failing to attend.
1039. A plurality of votes will elect.
1040. Elections—by whom ordered.
1041. Officers commissioned by Governor.

Militia officers to be elected by the people.

§1036. All elections of militia officers shall be by the people; of captains and subaltern officers by the people of the several company districts subject to do militia duty; of field officers by the citizens of the counties subject to military duty under the command of such officers; brigadier and major generals by the citizens of the respective brigades and divisions subject to military duty under such commander of the brigade or division, and may be superintended by a Justice of the Peace and a freeholder, or by two freeholders or two military officers, as the authority ordering the election may see fit to prescribe.

Election—how held.

Notices of election—how given.

§1037. Notices of such elections may be given as follows: By publication in one or more gazettes, by notice at the usual place of posting legal notices, or by orders published at parade or drill. Twenty days' notice shall be given of the time and place of the election of any officer below the grade of brigadier general.

New election ordered or officer appointed—when.

§1038. In case of voters failing to attend at any election for militia officers, and no vote shall be polled, it shall be the duty of the superintendents to return the fact to the Executive Department, with a statement of the interval allowed for the reception of votes; whereupon, the commander-in-chief may in his discretion order a new election or appoint an officer to fill the vacancy and commission him accordingly.

Plurality of votes to elect.

§1039. At all elections of militia officers the person having the highest number of votes shall be declared elected, and every officer to whom a commission shall issue shall declare to the Executive Department, within a reasonable time after its reception, his acceptance or declension of the same. After two months have elapsed he shall be deemed to decline unless he shall have uniformed and equiped himself.

Elections for officers above rank of Captain.

§1040. All elections for militia officers of and above the rank of captain shall be ordered by the commander-in-chief, and below that rank by the captain or those acting as such, and on failure to elect, such captain or the commanding officer of the company may complete the same by appointment, and such ap-

pointees shall be commissioned as in case of elections. All officers of the military force of this State shall be commissioned by the Governor, whether of the line, field or staff. The commission of staff officers, except the chiefs of the staff department, will expire with the commissions of the officers on whose staff they may be appointed.

CHAPTER III.

ORGANIZATION OF THE STAFF OF THE MILITIA.

SECTION.		SECTION.	
1041.	Staff department of the militia.	1048.	Paymaster General—his duties.
1042.	Of the Commander-in-Chief.	1049.	Expenses of Staff Department.
1043.	Adjutant and Inspector, &c.	1050.	Accounts for military service.
1044.	Term of office, salary and removal.	1051.	Chief of each staff—his duties.
1045.	Staff of Division.	1052.	Adjutant & Inspector chief of staff.
1046.	Battalion entitled to a staff—when.	1053.	Governor shall appoint three aids.
1047.	Adjutant and Inspector General.		

Staff departments of the militia.

§1041. The staff departments of the militia shall be as follows, viz:

1. The Adjutant and Inspector General's Department.
2. The Quartermaster General's Department.
3. The Commissary General's Department.
4. The Paymaster General's Department.
5. The Judge Advocate General's Department.
6. The Surgeon General's Department.

Chiefs of staff departments attached to staff of Commander-in-Chief.

§1042. The chiefs of the several staff departments shall be attached to the staff of the commander-in-chief.

Appointment & rank of Adjutant and Inspector General —his duties.

§1043. The commander-in-chief, with the advice and consent of two-thirds of the Senate, shall appoint an officer to be called adjutant and inspector general, with the rank of colonel. The adjutant and inspector general shall reside and keep his office at the Seat of Government. He shall obey all orders given him by the commander-in-chief in relation to the duties of his office; and keep a fair record of all orders and communications which he shall receive from time to time. He shall require annual returns from the major and brigadier generals, from which he shall make out a general return of the whole strength of the militia and forces of the State. He shall provide accurate abstracts of annual returns for divisions, brigades, regiments and companies, both of the militia and volunteers, which forms

CONSTITUTION

OF THE

STATE OF KANSAS.

ADOPTED AT WYANDOTTE, JULY 29, 1859.

ORDINANCE.

Lands of the United States.

WHEREAS, The Government of the United States is the proprietor of a large portion of lands included in the limits of the State of Kansas, as defined by the Constitution; and

WHEREAS, The State of Kansas will possess the right to tax such lands for the purpose of government, and for other purposes; now, therefore,

Be it ordained by the people of Kansas:

Rights to tax such lands relinquished.

That the right of the State of Kansas to tax such lands, is relinquished forever, and the State of Kansas will not interfere with the title of the United States to such lands, nor with any regulation of Congress in relation thereto, nor tax non-residents higher than residents: *Provided*, always, that the following conditions be agreed to by Congress:

School sections. [See act of admission, prop. 1.]

SECTION 1. Sections numbered sixteen and thirty-six, in each township in the State, including Indian reservations and trust lands, shall be granted to the State for the exclusive use of common schools; and when either of said sections, or any part thereof, has been disposed of, other lands of equal value, as nearly contiguous thereto as possible, shall be substituted therefor.

ARTICLE VII.

PUBLIC INSTITUTIONS.

Benevolent institutions to be supported by the State.

SECTION 1. Institutions for the benefit of the insane, blind, and deaf and dumb, and such other benevolent institutions as the public good may require, shall be fostered and supported by the State, subject to such regulations as may be prescribed by law. Trustees of such benevolent institutions as may be hereafter created shall be appointed by the Governor, by and with the advice and consent of the Senate; and upon all nominations made by the Governor, the question shall be taken in yeas and nays, and entered upon the journal.

Trustees of shall be appointed by the Governor.

Penitentiary

SEC. 2. A penitentiary shall be established, the directors of which shall be appointed or elected, as prescribed by law.

Governor to fill vacancies in offices aforesaid.

SEC. 3. The Governor shall fill any vacancy that may occur in the offices aforesaid, until the next session of the Legislature, and until a successor to his appointee shall be confirmed and qualified.

Counties to provide for support of aged and infirm.

SEC. 4. The respective counties of the State shall provide, as may be prescribed by law, for those inhabitants who, by reason of age, infirmity, or other misfortune, may have claims upon sympathy and aid of society.

ARTICLE VIII.

MILITIA.

Militia composed of what.

SECTION 1. The militia shall be composed of all able-bodied white male citizens between the ages of twenty-one and forty-five years, except such as are exempted by the laws of the United States, or of this State; but all citizens, of any religious denomination whatever, who, from scruples of conscience, may be averse to bearing arms, shall be exempt therefrom, upon such conditions as may be prescribed by law.

Exemption.

The Legislature shall provide for organizing, etc.

SEC. 2. The Legislature shall provide for organizing, equipping and disciplining the militia in such manner as it shall deem expedient, not incompatible with the laws of the United States.

Officers to be elected.

SEC. 3. Officers of the militia shall be elected or appointed, and commissioned in such manner as may be provided by law.

The Governor shall be commander-in-chief

SEC. 4. The Governor shall be commander-in-chief, and shall have power to call out the militia to execute the laws, to suppress insurrection, and to repel invasion.

1830.

ship, by the town collectors of said township, and how the same has been expended, and the number of children educated in each district, between the ages of four and sixteen years, with such further information as they may think useful, to be condensed by them into a single report, and to be laid before the legislature by the said trustees.

AN ACT to exempt minors from Militia Duty in time of peace.

Passed the 6th of November, 1829.

Minors exempt in time of peace.

1. BE IT ENACTED *by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same,* That from and after the passing of this act, all persons under the age of twenty-one years be, and they are hereby, exempt from militia duty in time of peace.

Duty of officers. Rev. 575.

2. *And be it enacted,* That the enrolment of the militia of this state, shall be made agreeably to the first section of the act establishing a militia system, passed the eighteenth of February, one thousand eight hundred and fifteen; and it shall be the duty of the officer making such enrolment, to write opposite to the name of each minor, the words "*under age;*" *Provided,* that all persons under the age of twenty-one years as aforesaid, who are actually enrolled in, or shall, after the passing of this act, join any uniform corps, shall be entitled to the same privileges and subject to the same penalties as are prescribed in the above mentioned act.

AN ACT to authorize the President of the Council of Proprietors in West-Jersey, to administer oaths and affirmations to witnesses in certain cases.

Passed the 13th of January, 1830.

The President, &c. of the Council of Proprietors, may administer oaths, &c.

1. BE IT ENACTED *by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same,* That it shall and may be lawful for the President of the Council of Proprietors, or, in his absence, the Vice-President or President, pro tem., to administer oaths or affirmations to witnesses, touching any dispute or controversy, that may come before the said Council of Proprietors, for their adjudications.

Deputy surveyors authorized to

2. *And be it enacted,* That it shall and may be lawful for deputy surveyors, to take depositions or affirmations of citations being duly served, as also, in relation to corner lines

of Houses of Correction, where vagrants and persons guilty of misdemeanors shall be restrained and usefully employed.

Houses of refuge.

SEC. 5. A House or Houses of Refuge may be established whenever the public interest may require it, for the correction and instruction of other classes of offenders.

The sexes to be separated.

SEC. 6. It shall be required, by competent legislation, that the structure and superintendence of penal institutions of the State, the County jails, and city police prisons, secure the health and comfort of the prisoners, and that male and female prisoners be never confined in the same room or cell.

Provision for the poor and orphans.

SEC. 7. Beneficent provision for the poor, the unfortunate and orphan, being one of the first duties of a civilized and a Christian State, the General Assembly shall, at its first session, appoint and define the duties of a Board of Public Charities, to whom shall be entrusted the supervision of all charitable and penal State institutions, and who shall annually report to the Governor upon their condition, with suggestions for their improvement.

Orphan houses

SEC. 8. There shall also, as soon as practicable, be measures devised by the State for the establishment of one or more Orphan Houses, where destitute orphans may be cared for, educated and taught some business or trade.

Inebriates and idiots.

SEC. 9. It shall be the duty of the Legislature, as soon as practicable, to devise means for the education of idiots and inebriates.

Deaf mutes and insane.

SEC. 10. The General Assembly shall provide that all the deaf mutes, the blind, and the insane of the State, shall be cared for at the charge of the State.

Self-supporting.

SEC. 11. It shall be steadily kept in view by the Legislature, and the Board of Public Charities, that all penal and charitable institutions should be made as nearly self-supporting as is consistent with the purposes of their creation.

ARTICLE XII.

MILITIA.

Who are liable to militia duty.

SECTION 1. All able bodied male citizens of the State of North Carolina, between the ages of twenty-one and forty years, who are citizens of the United States, shall be liable to duty in

the Militia: *Provided*, That all persons who may be adverse to bearing arms, from religious scruples, shall be exempt therefrom.

Organizing, &c.

SEC. 2. The General Assembly shall provide for the organizing, arming, equipping and discipline of the Militia, and for paying the same when called into active service.

Governor Commander-in-Chief.

SEC. 3. The Governor shall be Commander-in-Chief, and have power to call out the Militia to execute the law, suppress riots or insurrection, and to repel invasion.

Exemptions.

SEC. 4. The General Assembly shall have power to make such exemptions as may be deemed necessary, and to enact laws that may be expedient for the government of the Militia.

ARTICLE XIII.

AMENDMENTS.

Convention, how called.

SECTION 1. No Convention of the people shall be called by the General Assembly unless by the concurrence of two-thirds of all the members of each House of the General Assembly.

How the Constitution may be altered.

SEC. 2. No part of the Constitution of this State shall be altered, unless a bill to alter the same shall have been read three times in each House of the General Assembly and agreed to by three-fifths of the whole number of members of each House respectively; nor shall any alteration take place until the bill, so agreed to, shall have been published six months previous to a new election of members to the General Assembly. If, after such publication, the alteration proposed by the preceding General Assembly shall be agreed to, in the first session thereafter, by two-thirds of the whole representation in each House of the General Assembly, after the same shall have been read three times on three several days in each House, then the said General Assembly shall prescribe a mode by which the amendment or amendments may be submitted to the qualified voters of the House of Representatives throughout the State; and if, upon comparing the votes given in the whole State, it shall appear that a majority of the voters voting thereon have approved thereof, then, and not otherwise, the same shall become a part of the Constitution.

AN ACT

To regulate the Militia.

Training of militia, in time of peace, dispensed with.

SEC. 1. *Be it enacted by the General Assembly of the State of Ohio*, That the training of the rank and file of the militia shall hereafter be dispensed with, in time of peace, except as provided for in this act.

Who liable to do military duty;—exemptions.

SEC. 2. That every able bodied white male inhabitant, resident within this state, who is or shall be of the age of twenty one years, and under the age of forty five years, excepting persons who may be members of volunteer companies, persons absolutely exempted by law, idiots and lunatics, shall be enrolled in the militia.

Township assessors, annually, to prepare a list of all persons liable to be enrolled.

SEC. 3. That it shall be the duty of the township assessors, annually, to prepare a list of all persons liable to be enrolled, as aforesaid, in their respective townships, and every keeper of any tavern or boarding house, and every master of any dwelling house, shall, upon application of the assessor, within whose township such house may be situated, or of any person acting under them, give information of the names of all persons residing in such house and liable to enrollment, as aforesaid; and every such person, so liable, shall, upon like application, give his name and age, and if any such keeper, master, or person, liable as aforesaid, shall refuse to give such information or shall give false information, he or they shall be fined in any sum not less than five dollars for each offence, to be collected in an action of debt before any justice of the peace for the proper township, and it is hereby made the duty of the assessor, forthwith, after the occurrence of any such offence, to commence such action, in his official capacity, in the name of the state of Ohio, against any person or persons so offending, and prosecute the same to final judgment and collection, if possible; and all moneys so collected shall be by such [assessor] immediately paid over to the treasurer of the proper township; and it is hereby made the duty of such treasurer to appropriate the same for the use of common schools in the proper township, in like manner as other school funds are now, by law, appropriated; and it shall be the duty of the township trustees to require and accept such additional security as will, in the opinion of such trustees, be sufficient to insure the faithful performance of the duties enjoined upon said assessors by this act.

Keepers of taverns, boarding houses, &c., to give information.

Penalty for refusing.

Fines—when collected, how disposed of.

Assessor to make roll list of those liable to enrollment, and place the same in the hands of the township clerk, who shall record, &c.

SEC. 4. That the township assessor shall, annually, at the time of assessing taxable property, make out a roll or list of all names of persons, liable to be enrolled as aforesaid, and shall place it in the hands of the clerk of the proper township, who shall record the same in the book of record of such township, and it shall be the duty of such clerk to return, annually, in the month of May or June, an accurate copy of such record of enrollment to the commandant of the proper brigade, said commandant of brigade shall make return to the com-

day; that in addition to the taxes, already imposed by law, all persons appointed to an office, by the governor, or elected, under the provisions of any law of this commonwealth, the gross receipts of whose office shall exceed six hundred dollars, and not exceed twelve hundred dollars, shall pay into the treasury of the state, a tax of one per centum, and on all amounts, over twelve hundred dollars, and not exceeding twenty-five hundred dollars, two per centum, and on all amounts, exceeding twenty-five hundred dollars, five per centum annually: *Provided*, That the revenue derived from this act shall, so far as is necessary, be first applicable to the payment of the ordinary expenses of government, and the residue, not needed for such purposes, shall be transferred to the sinking fund, as directed by the act of the twenty-second of April, one thousand eight hundred and fifty-eight.

Five per centum to be added on all unpaid, on first of August.

Tax upon the gross receipts of certain officers.

How revenue derived from this act to be applied.

SECTION 8. That so much of the act to reduce the state debt, and incorporate the Pennsylvania railroad company, approved twenty-ninth day of April, one thousand eight hundred and forty-four, and the several supplements thereto, requiring the appointment of revenue commissioners, from the several judicial districts of the state, be and the same are hereby repealed; and that all the powers granted to the said board, and the duties enjoined thereupon, shall hereafter be vested in a state board, to consist of the auditor general, the state treasurer, and the secretary of the commonwealth; and that all acts of assembly, inconsistent with the provisions of this act, be and the same are hereby repealed.

Revenue board abolished.

State board created, in lieu thereof.

Repeal.

HENRY C. JOHNSON,
Speaker of the House of Representatives.

JOHN P. PENNEY,
Speaker of the Senate.

APPROVED—The thirtieth day of April, Anno Domini one thousand eight hundred and sixty-four.

A. G CURTIN.

No. 211.

An Act

For the Organization, Discipline, and Regulation of the Militia of the Commonwealth of Pennsylvania.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same.* That every able bodied white male citizen, resident within this state, of the age of twenty-one years, and under the age

Who shall be enrolled in militia, and who exempt.

of forty-five years, excepting persons enlisted into volunteer companies, persons exempted by the following sections, idiots, lunatics, common drunkards, vagabonds, paupers, and persons convicted of any infamous crime, shall be enrolled in the militia; persons so convicted, after enrolment, shall forthwith be dis-enrolled; and in all cases of doubt, respecting the age of a person enrolled, the burden of proof shall be upon him.

Assessors to make a list of persons liable to enrolment.

SECTION 2. *First.* Assessors shall annually, and at the same time they are engaged in taking the assessment, or valuation of real and personal property, in their respective cities, wards, boroughs, or townships, make a list of persons living within their respective limits, liable to enrolment, and place a certified copy, in the office of the county commissioners, of each county, in the state, whose duty it shall be to record said roll, or list of names, in a book, to be provided for that purpose, in the same manner as other books of record are provided; and such record shall be deemed a sufficient notification to all persons whose names are thus recorded, that they have been enrolled in the militia.

Record thereof to be kept in office of county commissioners.

Assessors' notices to be put up in public places.

Second. As soon as the roll is completed, the assessors shall, forthwith, cause notices thereof to be put up, in three of the most public places in the city, ward, borough, or township, which notices shall set forth, that the assessors have made their roll of all persons liable to enrolment, according to law, and that a copy thereof has been left, for record, in the office of the county commissioners, where the same may be seen, or examined, by any person interested therein, until some day and place, to be specified in such notice, when, and where, the said assessors, and commissioners, of the county will meet to review such enrolment; such review shall be made at the same time, and place, the said assessors and commissioners meet to review the assessment of real and personal property, or for appeals.

Commissioners, and assessors, to review enrolment.

Persons claiming to be exempt to make affidavit.

Third. Any person claiming that he is not liable to military duty, on account of some physical defect, or bodily infirmity, or that he is exempt from the performance of military duty, by any law of this state, or of the United States, may, on or before the day specified in such notice, and not after, deliver to said assessors, an affidavit, stating such facts, on which he claims to be exempt, or not liable to do military duty; such affidavit may be made before any person authorized to administer oaths; and the assessors shall cause all such affidavits to be filed in the office of the county commissioners: and if any person shall swear falsely, in such affidavit, he shall be guilty of perjury.

Commissioners to determine who are exempt

Fourth. On the day the county, or city, commissioners meet, to review the assessment of real and personal property, or for holding appeals, they shall, also, determine who are exempt, or not liable to do military duty; and in a column prepared for that purpose, in such roll, opposite the name of each person not liable to do duty, shall insert "exempt," or "not liable," as the case may be; and opposite the names of all members of uniformed companies on such roll, shall insert "U. C;" and against the name of any military officer in commission, and liable to do duty, the title of his office; and shall, also,

of Houses of Correction, where vagrants and persons guilty of misdemeanors shall be restrained and usefully employed.

Houses of refuge.

SEC. 5. A House or Houses of Refuge may be established whenever the public interest may require it, for the correction and instruction of other classes of offenders.

The sexes to be separated.

SEC. 6. It shall be required, by competent legislation, that the structure and superintendence of penal institutions of the State, the County jails, and city police prisons, secure the health and comfort of the prisoners, and that male and female prisoners be never confined in the same room or cell.

Provision for the poor and orphans.

SEC. 7. Beneficent provision for the poor, the unfortunate and orphan, being one of the first duties of a civilized and a Christian State, the General Assembly shall, at its first session, appoint and define the duties of a Board of Public Charities, to whom shall be entrusted the supervision of all charitable and penal State institutions, and who shall annually report to the Governor upon their condition, with suggestions for their improvement.

Orphan houses

SEC. 8. There shall also, as soon as practicable, be measures devised by the State for the establishment of one or more Orphan Houses, where destitute orphans may be cared for, educated and taught some business or trade.

Inebriates and idiots.

SEC. 9. It shall be the duty of the Legislature, as soon as practicable, to devise means for the education of idiots and inebriates.

Deaf mutes and insane.

SEC. 10. The General Assembly shall provide that all the deaf mutes, the blind, and the insane of the State, shall be cared for at the charge of the State.

Self-supporting.

SEC. 11. It shall be steadily kept in view by the Legislature, and the Board of Public Charities, that all penal and charitable institutions should be made as nearly self-supporting as is consistent with the purposes of their creation.

ARTICLE XII.

MILITIA.

Who are liable to militia duty.

SECTION 1. All able bodied male citizens of the State of North Carolina, between the ages of twenty-one and forty years, who are citizens of the United States, shall be liable to duty in

the Militia: *Provided*, That all persons who may be adverse to bearing arms, from religious scruples, shall be exempt therefrom.

Organizing, &c.

SEC. 2. The General Assembly shall provide for the organizing, arming, equipping and discipline of the Militia, and for paying the same when called into active service.

Governor Commander-in-Chief.

SEC. 3. The Governor shall be Commander-in-Chief, and have power to call out the Militia to execute the law, suppress riots or insurrection, and to repel invasion.

Exemptions.

SEC. 4. The General Assembly shall have power to make such exemptions as may be deemed necessary, and to enact laws that may be expedient for the government of the Militia.

ARTICLE XIII.

AMENDMENTS.

Convention, how called.

SECTION 1. No Convention of the people shall be called by the General Assembly unless by the concurrence of two-thirds of all the members of each House of the General Assembly.

How the Constitution may be altered.

SEC. 2. No part of the Constitution of this State shall be altered, unless a bill to alter the same shall have been read three times in each House of the General Assembly and agreed to by three-fifths of the whole number of members of each House respectively; nor shall any alteration take place until the bill, so agreed to, shall have been published six months previous to a new election of members to the General Assembly. If, after such publication, the alteration proposed by the preceding General Assembly shall be agreed to, in the first session thereafter, by two-thirds of the whole representation in each House of the General Assembly, after the same shall have been read three times on three several days in each House, then the said General Assembly shall prescribe a mode by which the amendment or amendments may be submitted to the qualified voters of the House of Representatives throughout the State; and if, upon comparing the votes given in the whole State, it shall appear that a majority of the voters voting thereon have approved thereof, then, and not otherwise, the same shall become a part of the Constitution.

THE

DEBATES AND PROCEEDINGS

IN THE

CONGRESS OF THE UNITED STATES;

WITH

AN APPENDIX,

CONTAINING

IMPORTANT STATE PAPERS AND PUBLIC DOCUMENTS,

AND ALL

THE LAWS OF A PUBLIC NATURE;

WITH A COPIOUS INDEX.

VOLUME II,

COMPRISING (WITH VOLUME 1) THE PERIOD FROM MARCH 3, 1789, TO MARCH 3, 1791, INCLUSIVE.

COMPILED FROM AUTHENTIC MATERIALS,

BY JOSEPH GALES, SENIOR.

WASHINGTON:

PRINTED AND PUBLISHED BY GALES AND SEATON.

1834.

tion against the motion is, that it stops short in the regulation of the business. No provision, it is said, is made for the return of the arms to the public; and it gives a discretionary power to the officers to dispose of the property of the United States; but he conceived these difficulties were not beyond the reach of remedies; the wisdom of the House, he doubted not, would devise such as were adequate to the object. He asked by what means minors were to provide themselves with the requisite articles? Many of them are apprentices. If you put arms into their hands, they will make good soldiers; but how are they to procure them? It is said, if they are supplied by the United States the property will be lost; if this is provided against, every objection may be obviated. He then offered an addition to the motion, providing for the return of the arms to the commanding officer.

The Chairman then stated the motion with the amendment.

Mr. TUCKER observed, that the motion in its present form differed from the original proposed by the gentleman from Virginia. He conceived the gentleman had no right to alter it, nor could it be done without a vote of the committee. He preferred the motion in its original state—for the United States may, without doubt, furnish the arms—but he very much questioned their right to call on the individual States to do it.

Mr. WILLIAMSON was in favor of the question's being taken with the amendment admitted by Mr. PARKER. He wished to know whether Congress meant to tax the individual States in this unusual manner. Perhaps as they had assumed the State debts upon this principle, or rather without any principle, they might think they had a right to call upon them to furnish quotas in proportion, this would be getting something for something; and not like the other measure, losing something for nothing.

Mr. VINING said, he could not understand what was meant by saying that the amendment was dictating to the States. What is the whole bill but dictating; a law that affects every individual, touches the whole community. With respect to the constitutionality of the measure, there can be no doubt; every grant of power to Congress necessarily implies a conveyance of every incidental power requisite to carry the grant into effect.

Mr. WADSWORTH apologized for detaining the attention of the committee a moment, while he asked the gentlemen who favored the motion what was the extent of their wishes? The motion at first appeared to be in favor of poor men, who are unable to purchase a firelock; but now it seems, minors and apprentices are to be provided for. Is there a man in this House who would wish to see so large a proportion of the community, perhaps one-third, armed by the United States, and liable to be disarmed by them? Nothing would tend more to excite suspicion, and rouse a jealousy dangerous to the Union. With respect to apprentices, every man knew that they were liable to this tax, and they were taken under the idea of being provided for by their masters; as to minors, their parents or guardians would prefer furnishing them with arms themselves, to depending on the United States when they knew they were liable to having them reclaimed.

The question on Mr. PARKER's motion was lost.

On motion of Mr. HEISTER, a proviso was added to the section in the following words:

"That every citizen so enrolled, and providing himself with the arms and accoutrements required as aforesaid, shall hold the same exempt from all executions, or suits for debt, or for the payment of taxes."

Mr. FITZSIMONS moved to strike out the words "provide himself," and insert "shall be provided."

This motion was objected to by Messrs. BOUDINOT, HUNTINGTON, JACKSON, PARTRIDGE, VINING, and MADISON. It was said that it would be destructive of the bill, as it would leave it optional with the States, or individuals, whether the militia should be armed or not.

This motion was lost by a great majority. The second section comprises the characters that are to be exempted from enrolment or militia duty.

Mr. MADISON moved to strike out that part which related to members of Congress, their officers and servants, attending either House—and to insert "members of the Senate and House of Representatives whilst travelling to, attending at, or returning from the sessions of Congress." He saw no reason for a total exemption from militia service; exceptions in favor of the framers of laws ought not to be extended beyond what is evidently necessary. The members of Congress, during the recess, are at liberty to pursue their ordinary avocations, and may participate in the duties and exercises of their fellow-citizens. They ought to bear a part in the burdens they lay on others, which may check an abuse of the powers with which they are vested.

Mr. JACKSON observed, that this alteration might interfere with the public interest; in cases of alarm or invasion, the members might be called to a great distance in the militia at the moment when their presence was required to attend the session of the Legislature. It would be well therefore to consider whether their services in the militia would be of equal importance to the public interest, as their services in Congress.

Mr. BOUDINOT objected to the amendment; not that he would exempt members of Congress from burdens imposed on their fellow-citizens; but the motion he conceived was inconsistent with this very idea. The bill provides that exempts shall pay a certain equivalent; it would be unjust to impose this equivalent, and compel the members of Congress to turn out in the

Examples of State Laws Requiring Parents to Furnish or Provide Arms to Children in the Militia

State	Year[1]	Statutory Text	Source[2]
Delaware	1785	"[E]very apprentice, or other person of the age of eighteen and under twenty-one years, who hath an estate of the value of eighty pounds, or whose parent shall pay six pounds annually towards the public taxes, shall by his parent or guardian respectively be provided with a musket or firelock . . . ."	An Act for establishing a Militia, § 7, 2 Military Obligation: The American Tradition 13 (1947)
Maine	1821	"[A]ll parents, masters or guardians, shall furnish all minors enrolled in the militia, who shall be under their care respectively, with the arms, and equipments, required by this Act . . . ."	An Act to organize, govern, and discipline the Militia of this State, ch. CLXIV, § 34, 1821 Me. Laws 548, 570.
Massachusetts	1793	"[A]ll parents, masters and guardians shall furnish those of the said Militia who shall be under their care and command, with the arms and equipments aforementioned . . . ."	An Act for regulating and governing the Militia of the Commonwealth of Massachusetts, Massachusetts Acts and Laws, May Session, ch. 1, § XIX (1793).
Massachusetts	1810	"[A]ll parents, masters or guardians, shall furnish all minors enrolled in the militia, who shall be under their care respectively with the arms and equipments, required by this act . . . ."	An Act for regulating, governing, and training the Militia of this Commonwealth, ch. CVII, § 28, in 1810 Mass. Laws 151, 176.

[1] Year of enactment.

[2] Where the relevant law was published in a larger compendium source, the source date often postdates the year of enactment.

State	Year[1]	Statutory Text	Source[2]
Missouri	1825	"[A]ll parents, masters and guardians, shall furnish all minors, enrolled in the militia, who shall be under their care, respectively, with the arms and equipments required by this act."	An Act to organize, govern and discipline the Militia, ch. I, § 24, in 1825 Mo. Laws 533, 554.
New Hampshire	1776	"And be it further Enacted by the Authority aforesaid, That each and every Officer and private Soldier of said Militia, not under the control of Parents, Masters, or Guardians, and being of sufficient Ability therefore, in the Judgment of the Select-men of the Town wherein he has his usual place of Abode, shall equip himself and be constantly provided with a good Fire Arm . . . ."	An Act For forming and regulating the Militia within the State of New Hampshire, in New-England, and for repealing all the Laws heretofore made for that Purpose, Acts & Laws of the Colony of N.H., 39 (1776).
New Hampshire	1792	"That such of the infantry as are under the care of parents, masters or guardians, shall be furnished by them with such arms and accoutrements."	An Act for Forming and Regulating the Militia Within This State, and For Repealing All the Laws Heretofore Made for That Purpose N.H., 447 (1792).
New Hampshire	1820	"[A]ll parents, masters, and guardians, shall furnish all minors enrolled in the militia, who shall be under their care respectively, with the arms and equipments required by this act . . . ."	An Act for the forming, arranging and regulating the militia, § 46, 2 New Hampshire Laws Enacted Since June 1, 1815, 80 (1824).
North Carolina	1806	"And all parents and masters shall furnish those of the militia, who shall be under their care or command, with the arms and equipments above mentioned . . ."	2 William T. Dortch, John Manning, John S. Henderson, The Code Of North Carolina § 3168, at 346-47 (1883).

State	Year[1]	Statutory Text	Source[2]
Vermont	1797	"And all parents, masters or guardians, shall furnish those of the said militia who shall be under their care and command, with the arms and equipments above mentioned . . . ."	An Act, for regulating and governing the militia of this State, ch. LXXXI, No. 1, § 15, 2 Laws Of The State Of Vermont Digested And Compiled 122, 131-32 (1808).

BACKGROUNDS OF SELECTIVE SERVICE

Military Obligation:

THE AMERICAN TRADITION

A Compilation of the Enactments of Compulsion
From the Earliest Settlements
of the Original Thirteen Colonies in 1607
Through the
Articles of Confederation 1789

SPECIAL MONOGRAPH NO. 1
VOLUME II
PART 3. DELAWARE ENACTMENTS

THE SELECTIVE SERVICE SYSTEM

1947

CLEARANCE COMMITTEE

BRIG. GEN. CARLTON S. DARGUSCH, *Chairman*

COL. VICTOR J. O'KELLIHER
COL. LEWIS F. KOSCH
COL. WILLIAM HART
LT. COL. ARTHUR BOONE
LT. COL. IRVING HART
MR. KENNETH H. McGILL

PREPARED AND COMPILED BY
LT. COL. ARTHUR VOLLMER

GOVERNMENT PRINTING OFFICE
WASHINGTON : 1947

FOR SALE BY THE SUPERINTENDENT OF DOCUMENTS, U. S. GOVERNMENT PRINTING OFFICE, WASHINGTON 25, D. C.

ments, (unleſs their remaining eſtate be ſufficient to anſwer what they are then in arrear) are hereby declared fraudulent, and ſhall not prevent or avoid the ſeizing and ſelling the ſame eſtates, on any judgment that may be had on ſuits to be brought for the recovery of the monies ſo in arrear. 1785.

State treaſurer to give bond.

Sect. 15. *And be it enacted*, That the ſaid ſtate treaſurer, before the firſt day of November next, ſhall become bound unto the Delaware ſtate, with two or more ſufficient ſureties, to be approved of by the preſident or commander in chief for the time being, in an obligation of fifteen thouſand pounds, conditioned for the true obſervation of this act and the duty which to the ſaid office doth appertain; and in caſe of neglect or refuſal of the ſaid ſtate treaſurer ſo to do, or of his death in the receſs of the general aſſembly, it ſhall and may be lawful for the preſident or commander in chief, with the approbation of the privy-council, to appoint ſome other fit perſon to ſupply his place, who ſhall give ſecurity as aforeſaid.

His place how ſupplied in caſe of delinquency, &c.

Sect. 16. *And be it enacted*, That if any of the days appointed by this act for the performance of any of the duties herein required, ſhall happen to be on a Sunday, then ſuch duties ſhall be performed on the day following.

WHEREAS it appears, that ſundry collectors of the ſtate taxes directed to be raiſed for the ſervice of the years ſeventeen hundred and eighty-one, eighty-two, eighty-three and eighty-four, have through their indulgence, omitted to execute for thoſe taxes within the times limited by law, and this general aſſembly being willing to give the ſame ſummary mode to the ſaid collectors to collect the arrearages of ſuch taxes, as they could have had under the ſeveral acts of aſſembly paſſed for thoſe purpoſes.

Summary mode for collecting the arrearages of taxes.

Sect. 17. *Be it enacted*, That the collectors reſpectively of the ſaid ſeveral ſtate-taxes, heretofore appointed, or hereafter to be appointed for that purpoſe, be and they hereby are impowered to collect all arrearages and balances due of the ſaid taxes by execution, or otherwiſe, between the time of paſſing this act and the firſt day of November next, in as full and ample manner as heretofore could have been done had the ſame been done within the time limited by law.

Signed by Order of the Houſe of Aſſembly,

THOMAS DUFF, *Speaker.*

Signed by Order of the Council,

THOMAS M'DONOUGH, *Speaker.*

Paſſed at DOVER, *June* 4, 1785.

An ACT for eſtabliſhing a Militia.

Preamble.

SECTION 1. WHEREAS a well regulated Militia is the proper and natural defence of every free ſtate; and as the laws heretofore made for the regulation thereof within this ſtate are expired, and it is neceſſary that a militia be eſtabliſhed;

1785. the ſeveral counties of this ſtate, ſhall, on or before the firſt day of Auguſt next, make an exact return to the late colonel or commanding officer of the regiment to which he did formerly belong, of the names and ſurnames of every able-bodied effective male white inhabitant between the ages of eighteen and fifty years, then reſiding in the diſtrict of which he was formerly captain or commanding officer; a copy of which return the ſaid colonel or commanding officer of ſuch regiment ſhall immediately tranſmit to the preſident or commander in chief of this ſtate: And all male white perſons between the ages aforeſaid (clergymen and preachers of the goſpel of every denomination, juſtices of the ſupreme court, keepers of the public gaols, ſchool-maſters teaching a Latin-ſchool, or having at leaſt twenty Engliſh ſcholars, and indented ſervants bona fide purchaſed, excepted) who on the ſaid firſt day of Auguſt next, ſhall reſide in any diſtrict or ſub-diviſion heretofore laid off in purſuance of the late militia laws of this ſtate ſhall be conſidered as belonging to the militia company for ſuch diſtrict or ſub-diviſion.

Returns to be made to the colonels of regiments, of all able-bodied male inhabitants within the diſtricts of companies, &c.

Officers in the military line, by whom appointed.

Sect. 3. *And be it enacted*, That the preſident or commander in chief ſhall, on or before the firſt day of October next, appoint and commiſſion one colonel, one lieutenant-colonel and one major to command each of the regiments, and one captain, two lieutenants, and one enſign to command each of the companies within this ſtate; and in caſe of the vacancy of a colonel, lieutenant colonel or major, captain, lieutenant or enſign, the preſident or commander in chief ſhall appoint and commiſſion ſuch perſon to fill the ſaid vacancy as he ſhall judge moſt ſuitable for that purpoſe.

Quarter-maſters, &c. by whom appointed.

Sect. 4. *And be it enacted*, That the field officers of each regiment ſhall appoint a quarter maſter and adjutant, a drum and a fife major for the regiment, and the commiſſioned officers of each company ſhall appoint four ſergeants, four corporals, one drum and one fife for their reſpective companies.

Militia to be formed into claſſes.

Sect. 5. *And be it enacted*, That on the tenth day of April next enſuing, the captain or commanding officer of each company ſhall call the perſons belonging to the ſame together, giving due notice, and ſhall divide them into eight claſſes, as nearly equal in number to each other, as conveniently may be, allotting a ſergeant or a corporal to each claſs, and eight ſlips of paper numbered reſpectively from one to eight being prepared, every private ſhall determine, by drawing a ballot, what claſs he is to ſerve in; and in caſe any of the perſons belonging to any company ſhall neglect to attend at the time and place appointed for claſſing the ſaid company, or if preſent, ſhall refuſe to draw as aforeſaid, then the ſaid captain or commanding officer thereof ſhall appoint one diſintereſted freeholder to draw for the abſentees or perſons ſo refuſing; and when the claſſes ſhall be ſo ſettled, the captain or commanding officer of each company ſhall form a roll conſiſting of the eight claſſes, and the names and ſurnames of the men in each claſs, numbered according to the order of ballotting, which he ſhall keep for his own uſe and direction, tranſmitting forthwith a copy thereof, with a liſt of his commiſſioned and non-commiſſioned officers prefixed, to the colonel or commanding officer of the regiment, who ſhall enter the ſame in a book by him to be provided for that purpoſe: And the ſaid captain or commanding officer ſhall in the month of April in the year of our Lord one thouſand ſeven hundred and eighty-ſeven, and in the month of April in every ſucceeding year, add to the ſaid roll the names and ſurnames of all ſuch male white inhabitants between the ages aforeſaid, who on the next preceding twelve months have removed to, and are then reſiding in, that

Rolls thereof to be formed, and tranſmitted to the colonel.

1785.

Sect. 6. *And be it enacted*, That every company ſhall be duly exerciſed and inſtructed in the months of April and September annually, at ſuch time and place as the captain or commanding officer ſhall direct, he giving notice thereof by advertiſement at three of the moſt public places in his diſtrict, at leaſt five days before the day of muſter; and every regiment ſhall be reviewed on the firſt Wedneſday in June and the ſecond Wedneſday in October in every year, and be properly trained and diſciplined at ſuch place as the colonel or commanding officer ſhall direct, and at ſuch other times and places as the preſident or commander in chief ſhall think neceſſary, and ſhall order.

Militia how often to be exercised.

Sect. 7. *And be it enacted*, That every perſon between the ages of eighteen and fifty, or who may hereafter attain to the age of eighteen years, except as before excepted, whoſe public taxes may amount to twenty ſhillings a year, ſhall at his own expence, provide himſelf; and every apprentice, or other perſon of the age of eighteen and under twenty-one years, who hath an eſtate of the value of eighty pounds, or whoſe parent ſhall pay ſix pounds annually towards the public taxes, ſhall by his parent or guardian reſpectively be provided with a muſket or firelock, with a bayonet, a cartouch box to contain twenty three cartridges, a priming wire, a bruſh and ſix flints, all in good order, on or before the firſt day of April next, under the penalty of forty ſhillings, and ſhall keep the ſame by him at all times, ready and fit for ſervice, under the penalty of two ſhillings and ſix pence for each neglect or default thereof on every muſter day, to be paid by ſuch perſon if of full age, or by the parent or guardian of ſuch as are under twenty-one years, the ſame arms and accoutrements to be charged by the guardian to his ward, and allowed at ſettling the accounts of his guardianſhip.

What perſons ſhall provide arms, &c.

Penalty for neglecting to keep them in repair.

Sect. 8. *And be it enacted*, That every male white perſon within this ſtate, between the ages of eighteen and fifty, or who ſhall hereafter attain to the age of eighteen years, except as before excepted, ſhall attend at the times and places appointed in purſuance of this act for the appearance of the company or regiment to which he belongs, and if any non-commiſſioned officer or private, ſo as aforeſaid required to be armed and accoutred with his firelock and accoutrements aforeſaid in good order, or if any male white perſon between the ages aforeſaid although not required to be ſo armed and accoutred, ſhall neglect or refuſe to appear on the parade and anſwer to his name when the roll is called over, which the commanding officer is hereby directed to cauſe to be done at the diſtance of one hour after the time appointed for meeting, not having a reaſonable excuſe, to be adjudged of by a court-martial to be appointed by the commanding officer of the company, which ſhall conſiſt of a ſubaltern and four privates, the ſubaltern to be preſident thereof, every ſuch perſon ſhall forfeit and pay the ſum of four ſhillings for every ſuch neglect or refuſal; and if the ſaid court-martial ſhall adjudge, that ſuch perſon had not a reaſonable excuſe for ſuch neglect or refuſal, the juſtice to whom the captain or commanding officer of the company ſhall make return of the proceedings of ſuch court martial ſhall enter judgment and iſſue execution thereupon, unleſs it ſhall appear to him, that the defendant was ſick, or out of the county on ſome neceſſary buſineſs, and had not an opportunity of being heard before the court-martial.

Penalty on privates for non-attendance, &c.

How to be adjudged.

Sect. 9. *And be it enacted*, That every perſon required to attend as aforeſaid at the time and place of exerciſe in company, or in regiment, who ſhall then and there appear and [illegible]

For neglect of duty, the penalty.

military parade on the day pointed out by the Constitution of this State for the election of Governor, and Senators, nor on any day which may be appointed for the choice of electors of President and Vice President of the United States, or Representatives to Congress. And it shall not be lawful for any officer to parade his men on either of said days, unless in case of invasion made or threatened, or in obedience to the orders of the Commander in Chief, except as is herein before excepted.

State colours, drums, fifes, &c. to be furnished by State.

SEC. 33. *Be it further enacted*, That each regiment of infantry and each battalion of cavalry or artillery shall be furnished with the State colours; and each company of infantry, artillery, light infantry, grenadiers and riflemen, shall be furnished with a drum and fife, or bugle horn, and each company of cavalry with a trumpet; and each Brigadier General after the first day of August next ensuing, is hereby authorized to draw orders upon the Quarter Master General in favor of the Commanding officers of regiments, battalions, and companies, for the above purposes, that the several regiments, battalions and companies may be supplied as aforesaid. And the Commanding officers of regiments and battalions shall be responsible for the safe keeping of their colours; and the Commanding officers of companies shall be responsible for the safe keeping of the drums, fifes, bugle horns, and trumpets, delivered to them for the use of their companies; and it shall be the duty of the Quarter Master General to furnish such colours and musical instruments, and to present his accounts therefor to the Legislature for allowance. And the Adjutant General shall furnish blank orders for the Commanding officers of companies to order their non-commissioned officers and privates to notify their men to attend all the inspections, trainings and reviews, and meetings for the choice of officers, which shall be ordered; also blank notifications or orders, to be left with the men by the non-commissioned officers or privates, ordered to notify as aforesaid; and Clerk's complaints to Justices of the Peace; and it shall not be necessary that seals be affixed to any orders whatever.

Commanding officers responsible for safe keeping of colours, &c.

Adjutant general to furnish blank orders, &c.

Parents, masters, &c. to furnish their minors with arms and equipments.

SEC. 34. *Be it further enacted*, That all parents, masters or guardians, shall furnish all minors enrolled in the militia, who shall be under their care respectively, with the arms, and equipments, required by this Act; and if any parent, master or guardian, having any minor under his care, enrolled as aforesaid, shall neglect to provide such minor with the arms and equipments, required by this Act; or if said minor shall absent himself from any meeting of the company, to which he belongs, required by law, without sufficient excuse, the said parent, master or guardian is hereby subjected and made liable to the same forfeitures as such minor would be liable to, for a like deficiency, neglect or non-

appearance, if such minor were of age; and all persons liable by this Act to military duty, shall be allowed six months, immediately from and after their arrival at the age of eighteen years, and not afterwards, within which to furnish themselves with the arms and equipments required by law: *Provided however*, That such parents, masters, or guardians as shall produce, on or before the first Tuesday of May annually, certificates from the Overseers of the poor of the town or district in which they reside, of their inability to provide arms and equipments as aforesaid, to the Commanding officer of the company in which the minor under their care is enrolled, shall be exempted from the forfeitures aforesaid.

Six months allowed for providing arms and equipments.

Proviso respecting those unable to arm and equip.

SEC. 35. *Be it further enacted*, That no non-commissioned officer or private of any company shall be exempted from military duty on account of bodily infirmity, unless he shall obtain from the Surgeon or Surgeon's mate of the regiment to which he belongs, if either of those officers are commissioned in such regiments; if not, from some respectable physician, living within the bounds of the same, a certificate that he is unable to perform military duty on account of bodily infirmity, the nature of which infirmity is to be described in said certificate, and the Commanding officer of the company may, on the back of such certificate, discharge the non-commissioned officer or private, named therein, from performing military duty, for such a term of time, as he shall judge reasonable, not exceeding one year, which certificate, if approved and countersigned by the Commanding officer of the regiment, or battalion, to which the disabled non-commissioned officer or private belongs, shall entitle him to exemption from military duty for the time specified. And any non-commissioned officer or private, having obtained a certificate as aforesaid, and who may be refused a discharge, may apply to the Commanding officer of the regiment for further examination of his case, and if on such examination, the Commanding officer of the regiment shall be well satisfied that the bodily infirmity of such non-commissioned officer or private is such that he ought to be discharged, he is hereby authorized to discharge him from military duty for such time as he shall judge reasonable, not exceeding one year, which being certified by the Commanding officer of the regiment on the back of the certificate, shall discharge the non-commissioned officer, or private, from military duty for the time specified by the Commanding officer of the regiment.

No invalid exempts allowed without surgeon's certificate.

Certificates to be countersigned.

SEC. 36. *Be it further enacted*, That if any non-commissioned officer or private shall be killed, or die of wounds received when on any military duty required by this Act, his widow, child or children, shall receive from the Legislature such relief as shall be just and reasonable. And if any officer, non-commissioned officer or private, shall be wounded,

Pensions to be allowed in certain cases of death or wounds, when on duty.

commiſſioned officers or privates, ordered to notify as aforeſaid, and it ſhall not be neceſſary that ſeals be affixed to any orders whatever.

Parents and maſters to equip minors.

SEC. 28. *Be it further enacted*, That all parents, maſters or guardians, ſhall furniſh all minors enrolled in the militia, who ſhall be under their care reſpectively with the arms and equipments, required by this act; and if any parent, maſter, or guardian, having any minor under his care, enrolled as aforeſaid, ſhall neglect to provide ſuch minor with the arms and equipments, required by this act, he is hereby ſubjected and made liable to the ſame forfeitures, as ſuch minor would be liable to, for a like deficiency or neglect, if ſuch minor were of age: *Provided however*, That ſuch parents, maſters, or guardians as ſhall produce, on or before the firſt Tueſday of May, annually, certificates from the overſeers of the poor of the town or diſtrict in which they reſide, of their inability to provide arms and equipments as aforeſaid, to the commanding officer of the company in which the minor under their care is enrolled, ſhall be exempted from the forfeitures aforeſaid.

No perſon exempted for infirmity, without a certificate.

SEC. 29. *Be it further enacted*, That no non-commiſſioned officer or private of any company ſhall be exempted from military duty on account of bodily infirmity, unleſs he ſhall obtain from the ſurgeon or ſurgeon's mate of the regiment to which he belongs, if either of thoſe officers are commiſſioned in ſuch regiments; if not, from ſome reſpectable phyſician living within the bounds of the ſame, that he is unable to perform military duty on account of bodily infirmity, the nature of which infirmity is to be deſcribed in ſaid certificate, and the commanding officer of the company may, on the back of ſuch certificate, diſcharge the non-commiſſioned officer or private, named therein, from performing military duty, for ſuch a term of time as he ſhall judge reaſonable, not exceeding one year, which certificate, if approved and counterſigned by the commanding officer of the regiment, or battalion, to which the diſabled non-commiſſioned officer or private belongs, ſhall entitle him to exemption from military duty for the time ſpecified. And any non-commiſſioned officer or private, having obtained a certificate as aforeſaid, and who may be refuſed a diſcharge, or an approval of a diſcharge, as aforeſaid, may apply to the commanding officer of the brigade for a further

Acts *and* Laws,

Paſſed by the GENERAL COURT of *Maſſachuſetts:*

Begun and held at BOSTON, in the County of SUFFOLK, on Wedneſday the Twenty-ninth Day of MAY, ANNO DOMINI, 1793.

CHAP. I.

An Act for regulating and governing the Militia of the Commonwealth of Maſſachuſetts, and for repealing all Laws heretofore made for that Purpoſe; excepting an Act, intitled "An Act for eſtabliſhing Rules and Articles for governing the Troops ſtationed in Forts and Garriſons, within this Commonwealth, and alſo the Militia, when called into actual Service."

WHEREAS the Laws for regulating and governing the Militia of this Commonwealth, have become too complicated for practical uſe, by reaſon of the ſeveral alterations which have from time to time been made therein: Therefore, Preamble.

I. *BE it enacted by the* SENATE *and* HOUSE *of* REPRESENTATIVES *in General Court aſſembled, and by the authority of the ſame,* That the ſeveral Laws heretofore made for governing and regulating Laws repealed.

XVIII. *And be it further enacted by the authority aforeſaid*, That every non-commiſſioned Officer and Private of the infantry ſhall conſtantly keep himſelf provided with a good muſket, with an iron or ſteel rod, a ſufficient bayonet and belt, two ſpare flints, a priming wire and bruſh, and a knapſack; a cartridge-box, or pouch with a box therein, to contain not leſs than twenty-four cartridges, ſuited to the bore of his muſket; each cartridge to contain a proper quantity of powder and ball; or with a good rifle, knapſack, ſhot-pouch, powder-horn, twenty balls ſuited to the bore of his rifle, and a quarter of a pound of powder: And ſhall appear ſo armed, accoutred and provided, whenever called out, except that when called out to exerciſe only, he may appear without a knapſack, and without cartridges loaded with ball. *Provided always*, that whenever a man appears armed with a muſket, all his equipments ſhall be ſuited to his muſket; and whenever a man appears armed with a rifle, all his equipments ſhall be ſuited to his rifle: And that from and after five years from the paſſing of this Act, all muſkets for arming the Militia, as herein required, ſhall be of bores ſufficient for balls of the eighteenth part of a pound: And every citizen enrolled and providing himſelf with arms ammunition and accoutrements, required as aforeſaid, ſhall hold the ſame exempted from all ſuits, diſtreſſes, executions or ſales for debt, or for payment of taxes.

Neceſſary articles of equipments.

Proviſo.

Arms &c. to be exempted from ſuits.

XIX. *And be it further enacted by the authority aforeſaid*, That every non-commiſſioned Officer or Private of the infantry, who ſhall neglect to keep himſelf armed and equipped as aforeſaid, or who ſhall on a muſter-day, or at any other time of examination, be deſtitute of, or appear unprovided with the arms and equipments herein directed (except as before excepted) ſhall pay a fine not exceeding *twenty ſhillings*, in proportion to the articles of which he ſhall be deficient, at the diſcretion of the Juſtice of the Peace, before whom trial ſhall be had: And all parents, maſters and guardians ſhall furniſh thoſe of the ſaid Militia who ſhall be under their care and command, with the arms and equipments aforementioned, under the like penalties for any neglect: And whenever the Selectmen of any town ſhall judge any inhabitant thereof, belonging to the Militia, unable to arm and equip himſelf in manner as aforeſaid, they ſhall at the expence of the town provide for and furniſh ſuch inhabitant with the aforeſaid arms and equipments, which ſhall remain the property of the town at the expence of which they ſhall be provided; and if any ſoldier ſhall embezzle or deſtroy the arms and equipments with which he ſhall be furniſhed, he ſhall, upon conviction before ſome Juſtice of the Peace, be adjudged to replace the article or articles, which ſhall by him be ſo embezzled or deſtroyed, and to pay the coſt ariſing from the proceſs againſt him: And if he ſhall not perform the ſame within fourteen days after ſuch adjudication, it ſhall be in the power of

Fine for neglect.

Parents and maſters to equip their children & ſervants.

Perſons unable, to be furniſhed by the town.

Penalty, in caſe.

the Selectmen of the town to which he shall belong, to bind him out to service or labour, for such term of time as shall, at the discretion of the said Justice, be sufficient to procure a sum of money equal to the value of the article or articles so embezzled or destroyed, and pay cost arising as aforesaid.

Penalty for not appearing on muster days.

XX. *And be it further enacted by the authority aforesaid,* That every person liable to do military duty, who being duly warned shall refuse or neglect to appear at the time and place appointed, armed and equipped as by this act is directed, for any muster, training, view of arms, or other military duty, shall pay as a fine for such default, the sum of *ten shillings:* And every person who shall appear at any muster with his arms in an unfit condition, shall pay a fine of *three shillings* for each and every such default: *Provided nevertheless,* It shall be lawful for the Commanding Officer of a company, at any time within eight days after any muster, training, view of arms or other duty, to excuse any person for non-appearance, on the delinquent's producing to him satisfactory evidence of his inability to appear as aforesaid; and the Commanding Officer of the company shall certify the same to the Clerk within the time abovementioned, and the Clerk shall not thereafter commence any prosecution against such delinquent for his fine for non-appearance, as aforesaid.

Proviso.

Clerk to notify.

XXI. *And be it further enacted by the authority aforesaid,* That whenever the Commanding Officer shall think proper to call his company together, or shall be ordered by his superior Officer to do it, he shall issue his orders therefor, to one or more of the non-commissioned Officers, if there be any, if not to one or more of the privates belonging to his company, directing him or them to notify and warn the said company to appear at such time and place as shall be appointed; and every such person or persons, who shall receive such orders, shall give notice of the time and place appointed for assembling said company, to each and every person he or they shall be so ordered to warn, either by verbal information, or by leaving a written or printed notification thereof, at the usual place of abode of the person thus to be notified and warned; and no notice shall be deemed legal for musters for the purpose of common and ordinary trainings, unless it shall be given four days at least, previous to the time appointed therefor; but in case of invasion, insurrection or other emergency, any time specified in the orders shall be considered as legal; and every non-commissioned Officer, or other person, who shall neglect to give the said notice and warning, when ordered thereto by the Commanding Officer of the company to which he belongs, shall for such offence forfeit and pay as a fine, a sum not exceeding *forty shillings*, nor less than *twelve shillings*, at the discretion of the Justice of the Peace before whom trial shall be had; and the testimony of any person under oath, who shall have received orders agreeable to law, for notifying

Manner of notification.

Penalty.

manner aforesaid; and such musicians, master and deputy master, shall be exempted from all military duty while he or they continue to belong to any band or company as musicians as aforesaid, excepting such as shall be required of them as musicians by the proper commanding officer.

Arms and equipments to be provided and kept.

SEC. 24. *Be it further enacted*, That every officer, non-commissioned officer and private, of infantry, light infantry, cavalry, artillery, grenadiers and riflemen, shall constantly keep himself furnished and provided with arms and equipments as required by the laws of the United States; and every officer, non-commissioned officer and private of light artillery shall be armed and equipped in the same manner as the officers, non-commissioned officers and privates of cavalry, respectively, and shall constantly keep himself furnished and provided with a horse, arms and equipments, as required by the laws of the United States of the officers, non-commissioned officers and privates of cavalry; and each company of light artillery shall do duty as cavalry until proper ordnance or field artillery is provided. And all parents, masters and guardians, shall furnish all minors, enrolled in the militia, who shall be under their care, respectively, with the arms and equipments required by this act.

Minors to be furnished with arms, &c by parents, guardians or masters.

Arms, public, may be loaned to volunteer companies.

SEC. 25. *Be it further enacted*, That the commander in chief shall be and is hereby authorized to loan to any volunteer corps, or company organized under the provisions of this act, the necessary arms required by the preceding section, and to each company of field artillery, or light artillery, in addition thereto, two field pieces of such calibre as the commander in chief shall direct, with carriages and apparatus complete, an ammunition cart, tumbrils, harness, implements, laboratory and ordnance stores, which may, from time to time, be necessary for their equipment for the field, to be furnished out of the arms which are or may be appointed to this state by the United States, or which may be purchased or provided by this state for arming the militia; and the commanding officers of companies shall be accountable for the careful preservation of arms, field pieces, and all the apparatus appertaining to their equipment, and for the disposition and management thereof according to the provisions of this act; and before any arms, field pieces or apparatus, shall be delivered to any officer, he shall enter into bond to the state, with security to be approved of by the governor, in such penalty and condition as shall be required by the governor, who shall so regulate the same as to secure the due accountability of the officer; which bond shall be deposited in the office of the quarter master general, who, in case of a vio-

Commandant of company accountable for arms, &c.

To give bond

STATE OF NEW-HAMPSHIRE.

In the Year of our LORD, One Thouſand Seven Hundred and Seventy-ſix.

AN ACT

To adopt and take the Name, Stile, and Title of STATE, in Lieu of COLONY, in New-Hampſhire.

Paſſed Sept. 11, 1776.

Preamble. *WHEREAS by a late Declaration of the Honorable Continental CONGRESS, the United-Colonies of North-America are declared FREE and INDEPENDANT STATES:*

THEREFORE,

This Colony to take the Name and Stile of STATE.

BE IT ENACTED BY THE COUNCIL *and* ASSEMBLY, That henceforth this COLONY aſſume and take the Name and Stile of THE STATE OF NEW-HAMPSHIRE: And where any Law hath directed the Name and Stile of the Colony of New-Hampſhire, or the Name and Stile of the Province of New-Hampſhire, to be uſed in any Commiſſions, Proceſſes, or Writings whatever; in Lieu thereof, ſhall be now uſed the Name and Stile of THE STATE OF NEW-HAMPSHIRE, and not otherwiſe.

AN ACT

Paſſed Sept. 19, 1776.

For forming and regulating the MILITIA within the State of *New-Hampſhire*, in *New-England*, and for repealing all the LAWS heretofore made for that Purpoſe.

Preamble. *WHEREAS it is not only the Intereſt, but the Duty of all Nations to defend their Lives, Liberties and Properties, in that Land, which the Supreme Ruler of the Univerſe has beſtowed on them, againſt the unlawful Attacks and Depredations of all Enemies whatever; eſpecially thoſe who are moved by a Spirit of Avarice or Deſpotiſm.* AND WHEREAS, *the Honorable* AMERICAN CONGRESS *have recommended to the United-Colonies, to put the Militia into a proper State for the Defence of* AMERICA:------ AND WHEREAS, *the Laws now in Force, reſpecting the Regulation of the* MILITIA, *have been found inſufficient for the Purpoſes aforeſaid:*

IT

First, IT IS THEREFORE ENACTED BY THE COUNCIL, AND HOUSE OF REPRESENTATIVES *in* GENERAL-COURT *assembled, and by the* Authority *of the same.* That the several Laws, and the several Paragraphs, and Clauses of all and every the Laws of this State, enforceing, or any ways relating to the Regulation of the MILITIA, be, and hereby are repealed, and declared null and void. Repealing clause.

And be it further Enacted by the AUTHORITY *aforesaid*, That that part of the Militia of this State, commonly called the Training Band, shall be constituted of all the able-bodied Male-Persons therein, from sixteen Years old to fifty, excepting Members of the AMERICAN CONGRESS, Members of the COUNCIL, and of the Hou[illegible] of *Representatives* for the time being, the Secretary of the Colony, all Civil Officers that have been or shall be appointed by the General-Court, or either Branch of it, Officers and Students of Dartmouth-College, Ministers of the Gospel, Elders and Deacons of Churches, Church Wardens, Grammer-School-Masters, Masters of Arts, the Denomination of Christians called Quakers, Selectmen for the Time being, those who have by Commission under any Government or Congress, or by Election, in Pursuance of the Vote of any Congress of the Continent, or of this or any other Colony, held the Post of a Subaltern or higher Officer, Persons while actually employed as Masters of Vessels of more then Thirty Tons Burthen, other than Fishing Vessels, and Vessels coasting this Colony, and to and from this Colony, to the other New-England Governments, Constables, Sheriffs, and Deputy Sheriffs, Negroes, Indians and Mulattoes; and shall be under the Command of such Officers as shall be chosen, impowered, and commissionated over them, as is by this Act provided; and the Selectmen or the major part of them of each Town, shall be, and hereby are impowered, by writing under their Hands to excuse from Time to Time such Physicians, Surgeons, Ferrymen, and Millers, in their respective Towns, from common and ordinary Trainings as they shall judge it necessary to excuse: And the Council, and House of Representatives aforesaid, shall from Time to Time, as may appear to them necessary, divide the Militia of each County into Regiments, and alter and divide such Regiments from Time to Time, as they shall judge expedient, after having taken the Opinion, during any Session of the General Court, of such Members of the House as belong to the County, where the Division or Alteration is to be made, and as shall be present at the Time of such Consultation. The training band. Persons exempted. Militia to be divided.

Second. *And be it further Enacted by the* AUTHORITY *aforesaid*, That there shall be chosen by Ballot of the Council, and House of Representatives for this State, from Time to Time as may be necessary, one Major-General over the whole Militia thereof, which Major-General when so chosen shall be commissionated to that Office by the Council and House afore- One Major General to be chosen by ballot of both Houses

ſaid, and ſaid General ſhall at all Times have Power to draw forth the ſaid Militia, or any part thereof, as the ſaid General may judge expedient and neceſſary for the immediate defence of this, or any of the United States of America. And the Officers and Soldiers of ſaid Militia, ſhall pay entire obedience to his Commands accordingly, under the Penalties hereafter provided in this Act.

His Power.

Provided always, That the ſaid General and all other Officers of ſaid Militia, ſhall at all Times be under the Command of the Council and Houſe of Repreſentatives, and ſhall in drawing forth or retaining in Service the ſaid Militia or any part thereof be ſubject to ſuch Orders and Inſtructions, as they may receive from Time to Time from the ſame COUNCIL and HOUSE of REPRESENTATIVES.

To be under the command of both Houses.

3d. *And be it further Enacted by the* AUTHORITY *aforeſaid*, That there ſhall be choſen, appointed, and commiſſionated, (as is provided and directed by this Act, for the Choice and Appointment of a General Officer) over each Regiment in this State, one Colonel, one Lieutenant-Colonel, and two Majors; and the ſaid Field Officers ſo appointed and commiſſionated, or the major part of them, ſhall forthwith divide and ſet off the reſpective Regiments into Companies, as they ſhall judge expedient, to conſiſt as near as conveniently can be, of ſixty-eight Privates, excluſive of thoſe of the Alarm Liſt, and to determine the Rank of each and every Company.

Field Officers to be choſen.

Provided nevertheleſs, That no Soldier ſhall be obliged without his conſent, to join a Company belonging to any Town, in which he has not his uſual Place of Abode, unleſs where there ſhall not be Privates enough to make a Company of Thirty Soldiers, including Officers; in which Caſe, as alſo where there are any Perſons belonging to a place not incorporated, they ſhall be joined to ſuch Company as the Field Officers of the Regiments within which they are ſhall ſee fit. And the Inhabitants of every Town now in, or that ſhall be in the Continental Army, ſhall be deemed to belong to, and be a part of the Companies in their reſpective Towns, and excuſed from Duty in the Militia, while they continue part of the Army aforeſaid; and each Company when ſo formed and ſet off, ſhall together with thoſe of the Alarm Liſt, within the Limits of the ſame, by Ballot, in the preſence of one of their Field Officers, who ſhall cauſe them to be duly notified for that purpoſe, and ſhall preſide as Moderator, chuſe one Captain, two Lieutenants, and one Enſign; which choice, ſhall be immediately certified to the Secretary by ſaid Field Officers; and the Preſident of the Council thereupon, unleſs ſome material Objection againſt ſuch choice for any corrupt Practice or Irregularity, ſhall be made at or before the Time of receiving ſaid Certificates, ſhall commiſſionate ſuch Perſons purſuant to their Election,

Perſons in the army to be conſidered as part of the Militia.

Choice of Subalterns.

Election. And all the ſaid Officers when ſo commiſſionated by the Preſident of the Council, ſhall in the abſence of their Superiors, have the ſame Power in ordering, directing and marching their Regiments and Companies, as the Major General has over the whole of the ſaid Militia: And the Colonel, or commanding Officer of each Regiment, ſhall as ſoon as the Captains in his Regiment are commiſſionated, give them reſpectively under his Hand in Writing, the Limits of their reſpective Companies; their Alarm Poſts, and the manner of muſtering their Companies on all Occaſions.

4th. *And be it further Enacted by the* AUTHORITY *aforeſaid*, That the Field Officers of each and every Regiment, or the major part of them, ſhall recommend to the General-Court, a good able and ſkilful Perſon for Adjutant of their Regiment; and if either Houſe ſhall by Ballot, elect ſuch Perſon for that Office, then the Preſident of the Council ſhall, when concurred, commiſſionate him thereto. And in all Caſes determinable by Field-Officers of the ſeveral Regiments, where there ſhall be four Field Officers of any particular Regiment preſent, and they ſhall be equally divided in their Opinions reſpecting ſuch Matter, the determination ſhall be according to the Opinion of the firſt Colonel.

Adjutant to be appointed.

5th. *And be it further Enacted*, That each Company, including the Alarm Liſt, ſhall be called together by their Captain or commanding Officer, as ſoon as may be for the purpoſe of chuſing one Clerk, four Serjeants, four Corporals, one Drummer, and one Fifer; and when it ſhall appear to the Commiſſion Officers of any Company, that either of ſaid non-commiſſioned Officers ſhall neglect his Duty, they may remove and diſmiſs him from his Office, and call upon their Company, including the Alarm Liſt, to chuſe another in the Room of ſuch Delinquent; and if the ſaid Company being called together for that Purpoſe, ſhall at any Time neglect or refuſe immediately to proceed to the choice of one, or more non-commiſſioned Officer or Officers, ſo ordered to be choſen; the Commiſſion Officers of ſuch Company, or the major Part of them, ſhall by Warrant under their Hands in Writing, appoint ſuch Non-commiſſioned Officer or Officers, which the ſaid Company ſhall have refuſed to chooſe as aforeſaid.

Non-commiſſioned Officers to be choſe by the company.

6th. *And be it further Enacted by the* AUTHORITY *aforeſaid*, That each and every Officer and private Soldier of ſaid Militia, not under the controul of Parents, Maſters, or Guardians, and being of ſufficient Ability therefor, in the Judgment of the Selectmen of the Town wherein he has his uſual place of Abode, ſhall equip himſelf, and be conſtantly provided with a good Fire Arm, good Ramrod, a Worm, Priming-Wire and Bruſh, and a Bayonet fitted to his Gun, a Scabbard and Belt therefor, and a cutting Sword or a Tomahawk, or Hatchet, a Pouch containing a Cartridge-Box that will hold fifteen Rounds of Cartridges at leaſt, a hundred Buck

Equippage.

Buck Shot, a Jack Knife and Tow for Wadding, ſix Flints, one pound of Powder, forty leaden Balls, fitted to his Gun, a Knapſack and Blanket, a Canteen or Wooden Bottle, ſufficient to hold one Quart. And all Parents, Maſters, and Guardians, ſhall furniſh and equip thoſe of the Militia, which are under their care and command, with the Arms, Equipments and Accoutrements aforeſaid: And where the Selectmen of any Town ſhall adjudge any Perſons belonging to the Militia of their Town unable to equip and arm himſelf as aforeſaid, ſuch Selectmen ſhall in Writing, under their Hands certify the ſame to the Captain, or commanding Officer in whoſe Company ſuch Perſon may be, and ſhall at the Expence of ſuch Town provide for, furniſh, arm and equip ſuch Perſons with Arms and Equipments; which Arms ſo provided by ſuch Selectmen, ſhall be the Property of the Town at whoſe Expence they ſhall be provided; and if any Non-commiſſioned Officer or Soldier, ſhall embezzle or deſtroy the ſame, he ſhall be puniſhed at the Diſcretion of the Juſtice, or Court before whom he may be convicted thereof, paying double the Value of the Arms, or Accoutrements ſo wilfully deſtroyed or embezzled, and on Default thereof, to be publickly whipped not exceeding twenty Stripes: And the Selectmen of each and every Town ſhall provide at the Expence of the Colony and depoſit and keep in ſome ſafe Place for the uſe of the Militia upon an Alarm, one ſixteenth Part ſo many Spades, or Iron Shovels with Handles and fitted for Service, as there are Rateable Polls in their Town; one half as many narrow Axes, as Spades and Iron Shovels, and as many Pick Axes, as narrow Axes, all fitted for Service; And at the coſt and charge of their reſpective Towns, one Drum and one Fife for each company therein. And the Freeholders and Inhabitants of each and every Town in this Colony, qualified by Law to vote in Town Meetings, are hereby impowered at a Meeting regularly warned for that Purpoſe, to raiſe Money by Tax on the Polls and Eſtates of the Inhabitants of their Towns to defray all charges ariſing on ſaid Towns in conſequence of this Act.

Poor perſons to be equip't at the expence of the Town.

Penalty for embezzlement.

7th. *And be it further enacted by the* AUTHORITY *aforeſaid*, That each and every commiſſion Officer of ſaid Militia, who ſhall not within one Month next after receiving his Commiſſion, provide for, arm and equip himſelf, with ſuch Arms and Accoutrements, as is by this Act directed, ſhall by order of a Court Martial appointed, as by this Act is provided, be removed from his Office. And every commiſſioned Officer, who ſhall be depoſed from his Office in the Militia for neglect of Duty, or other Miſdemeanor, as by this Act is provided, ſhall receive no Benefit from any Commiſſion, which he ſhall be thus incapacitated to execute to exempt him from Military Duty.

Penalty on commiſſion officers neglecting to equip themſelves.

Eighth. *And be it further Enacted*, That the Clerk of each and every Company of ſaid Militia, ſhall once every ſix Months after the Time of his Choice or Appointment, take an exact Liſt of

jutant general of this state with the rules and regulations for the field exercise and discipline of infantry, compiled and adopted for the army of the United States, agreeably to a resolve of congress, passed December, 1814, and the plates therewith connected.—And the adjutant-general is hereby required, under the direction of his excellency the Governor, to purchase or procure the printing of the books and engraved plates in such a manner as his excellency may deem most expedient.

And the said adjutant-general shall, at the expence of this state, deliver to the commanding officer of each regiment in this state, one book, with a plate annexed, for each and every commissioned officer belonging to his regiment, taking his receipt for the same; and whenever any such officer, having received of the commanding officer of the regiment a book and plate as aforesaid, shall resign his commission, he shall immediately deliver to the commanding officer of said regiment, for the time being, such book and plate to be by him furnished to the successor in said office. *Approved June* 28, 1816.

AN ACT to constitute two companies of cavalry in the sixth regiment of militia in said state. Passed Dec. 18, 1816.

AN ACT for forming, arranging and regulating the militia. Passed Dec. 22, 1820.

SECT. 1. BE *it enacted by the senate and house of representatives, in general court convened,* That the several laws heretofore made for arranging, forming and regulating the militia, be and hereby are repealed: *Provided*, that all officers actually in commission agreeably to the laws hereby repealed, shall be continued in their command; and the clerks of companies now in office shall be continued in office, and all actions or processes depending in any court, or before any magistrate, by force of said laws, and all arrests for offences committed under said laws, and all forfeitures incurred by virtue of said laws, shall and may be carried on, tried and prosecuted to final judgment, sentence and execution, in the same manner they would have been, had said laws not been repealed. Repealing clause. Proviso.

SECT. 2. *And be it further enacted,*

1. That the companies in the town of Portsmouth shall constitute the first regiment. 1st regiment.

2. That the companies in the towns of Dover, Somers- 2d regiment.

ments required as aforesaid, and they shall deposit the same in some safe and convenient place, and shall permit the commanding officer of the company to which such private unable to provide himself as aforesaid belongs, to deliver such arms and equipments to such private whenever his company shall be ordered out for any military duty; and the said commanding officer shall be responsible for the safe return of such arms and equipments to the place of deposit.

Parents, &c. to furnish arms, &c.

SECT. 46. *And be it further enacted*, That all parents, masters, and guardians, shall furnish all minors enrolled in the militia, who shall be under their care respectively, with the arms and equipments required by this act; and if any parent, master or guardian, having any minor under his care enrolled as aforesaid, shall neglect to provide such minor with the arms and equipments required as aforesaid, he is hereby subjected and made liable to the same forfeitures as such minor would be liable to for a like deficiency or neglect, if such minor were of age: *Provided however*, that such parents, masters or guardians, as shall produce on or before the first Tuesday of May annually, certificates from the overseers of the poor of the town or district in which they reside, of their inability to provide arms and equipments as aforesaid to the commanding officer of the company in which the minor under their care is enrolled, shall be exempted from the forfeitures aforesaid.

Towns to provide.

Parents, &c. liable.

SECT. 47. *And be it further enacted*, That parents, masters and guardians shall be liable for the non-appearance and neglect of such persons as are under their care (and are liable by law to train) and are to be proceeded against for the penalty in the same manner as by this act is provided against other delinquents.

Fines for deficiency.

SECT. 48. *And be it further enacted*, That each non-commissioned officer or private who shall appear on parade not completely equipt according to law, shall for each article with which he shall neglect to appear, pay the following sums as fines for the equipments with which he shall not be provided, to wit: a gun, eighty cents; steel or iron ramrod, twenty cents; bayonet, scabbard and belt, twenty-five cents; for neglecting to have his musket and bayonet clean and in good order, fifty cents; pistol, forty cents; sword, forty cents; two spare flints, ten cents; priming wire and brush, ten cents; cartridge box capable of containing twenty-four rounds, twenty-five cents; knapsack, twenty cents; and canteen, ten cents; to be recovered as hereinafter pointed out.

Penalty for firing a gun without leave.

SECT. 49. *And be it further enacted*, That no non-commissioned officer or private soldier shall, upon any muster day, or evening of the same day, discharge or fire off a musket

Amherſt, in the county of Hillſborough, in ſaid State, on the ſecond Tueſday of May, ſhall forever hereafter be holden at Hopkinton in ſaid county, on the ſecond Tueſday of May annually. And the courts of common-pleas, which by law are to be holden at ſaid Amherſt, on the firſt Tueſday of September, and on the ſecond Tueſday of December, ſhall forever hereafter be holden at ſaid Hopkinton, on ſaid days annually. And the courts of general-ſeſſions of the peace, which by law are to be holden at ſaid Amherſt, on the Thurſday next following the firſt Tueſday of September, ſhall forever hereafter be holden at ſaid Hopkinton, on the Thurſdays next following the firſt Tueſday of September annually.

At Hopkinton.

And be it further enacted, That the act entitled, "An act for eſtabliſhing courts of law for the adminiſtration of Juſtice within this State, and deſignating their powers, and regulating their proceedings in certain caſes," ſo far as the ſaid act relates to holding ſuch of the aforeſaid courts at Amherſt, which by this act are directed in future to be holden at ſaid Hopkinton, be, and hereby is repealed.

Repealing clauſe.

And be it further enacted, That all writs, venires, recognizances, appeals, actions, indictments, warrants and proceſs of every kind, which by law were returnable to ſaid courts at Amherſt, which by this act are to be holden at ſaid Hopkinton, ſhall be returned to, and ſuſtained by ſaid courts at ſaid Hopkinton.

Writs, &c. to be ſuſtained by ſaid courts at Hopkinton.

And be it further enacted, That the ſeveral courts aforeſaid, which are to be holden at ſaid Hopkinton, ſhall be holden in, or as near the meeting-houſe in ſaid town as conveniently may be.

Courts where to be holden.

And be it further enacted, That this act, at the expiration of two years from the paſſing thereof, ſhall be null and void, unleſs a ſuitable houſe for holding ſaid courts, be erected at ſaid Hopkinton within that time, without being a county charge.

This act paſſed December 25, 1792.

Paſſed Dec. 27, 1792.

AN ACT for arranging the militia into diviſions.

BE *it enacted by the Senate and Houſe of Repreſentatives in General-Court convened*, That the militia of this State be arranged into diviſions, brigades and regiments,

And be it further enacted, That each non-commiſſioned officer and ſoldier belonging to the regiments of foot, ſhall within one year from and after the paſſing this act, furniſh himſelf with a good fire-lock, bayonet and belt, a cartouch box that will contain twenty-four cartridges, two good flints, a knapſack and canteen—and that the commiſſioned belonging to companies of foot, ſhall be ſeverally armed with a ſword or hanger, and an eſpontoon, and that the field officers be armed with a ſword or hanger. How to be armed and accoutred.

And be it further enacted, That ſuch of the infantry as are under the care of parents, maſters or guardians, ſhall be furniſhed by them with ſuch arms and accoutrements. And ſuch as are unable to furniſh themſelves, ſhall make application to the ſelectmen of the town, who are to certify to their captain or commanding officer, that they are unable to equip themſelves, and the ſaid ſelectmen ſhall, at the expence of the town, provide for, and furniſh ſuch perſons with arms and equipments; which arms and equipments ſhall be the property of the town, at whoſe expence they were provided: And if any perſon ſo furniſhed, ſhall embezzle or wilfully deſtroy the ſame, he ſhall be puniſhed by any court proper to try the ſame, upon complaint made by the ſelectmen of ſaid town, by being publicly whipped not exceeding twenty ſtripes, or fined not exceeding forty ſhillings. And that all fines recovered for embezzling or deſtroying of arms and accoutrements as provided in this act, ſhall be paid into the hands of the ſelectmen to be appropriated in purchaſing arms and accoutrements for ſuch ſoldiers as are unable to purchaſe for themſelves. Thoſe unable &c. to be equipped at the expence of the town. Fines how to be appropriated.

And be it further enacted, That parents, maſters and guardians ſhall be liable for the neglect and non-appearance of ſuch perſons as are under their care (and are liable by law to train) and are to be proceeded againſt for the penalty in the ſame manner, as by this act is provided againſt other delinquents. Parents, &c. liable to a penalty.

And be it further enacted, That the commander in chief, the officers commanding diviſions, brigades or regiments, may appoint military watches or guards when an invaſion of the State is apprehended, in ſuch place and under ſuch regulations as they may judge neceſſary; and all officers and ſoldiers under their com- Military watches, by whom to be appointed.

CHAPTER THIRTY-FIVE.

MILITIA, STATE GUARD AND MILITARY SCHOOLS.

MILITIA.

[See CONSTITUTION, ART. XII.]

SECTION.

3157. Of whom composed; exemption.
3158. How divided.
3159. How governed.
3160. Adjutant general to be appointed; term of office, and bond.
3161. Officers, by whom appointed and commissioned.
3162. Officers to take oath.
3163. White and colored militia in distinct companies.
3164. Who exempt from militia duty.
3165. Members of fire companies exempted; also persons of conscientious scruples.
3166. Further exemptions from militia duty.
3167. Officers to enroll and make return of exempts.
3168. Persons enrolled to equip themselves; forfeitures for neglect to do so.
3169. How infantry shall be divided.
3170. Regiments, brigades and divisions, how distinguished.
3171. Officers of infantry, their grade and how appointed.
3172. Governor may appoint four *aids-de-camp*.
3173. Uniform of officers.
3174. Officers to hold commissions three years and equip within twelve months; penalty.
3175. Officers to give notice of their absence.

SECTION.

3176. To deliver to their successors in office money and papers.
3177. Rules of discipline; adjutant general to distribute Upton's tactics, and how.
3178. Captain's district, how laid off; boundary lines in regiments in same county, how altered.
3179. Regulations as to company musters.
3180. Company courts-martial; how to proceed; appeal allowed; executions from courts-martial, how and to whom issued; penalty on sheriff or constable for neglect.
3181. Company musicians, how appointed; their privileges.
3182. Road hands not to be ordered out on muster day.
3183. Captains to make returns, when.
3184. Regimental or battalion musters, when held; duty of colonel; penalty for neglect of duty.
3185. Penalty on officers failing to attend reviews or musters.
3186. Commandants of regiments, &c., to give notice of reviews, &c.
3187. Commissioned officers of regiments, &c., to exercise day before review; penalty for failure.
3188. Penalties on officers and privates for misbehavior.

which such service was rendered shall be sufficient to entitle the holder thereof to such exemption.

Sec. 3167. Officers to enroll and make return of exempts. R. C., c. 70, s. 4. 1832, c. 7.

The captain or commandants of companies shall enroll and keep enrolled all within the limits of their respective districts who are exempt from performing militia duty except in time of invasion or insurrection, and shall return the number of exempts in their annual returns to the commandants of regiments, who shall make a like return of all exempts in their respective regiments in their annual returns to the brigadier and adjutant-generals, regulations for which annual reports are hereinafter prescribed.

Sec. 3168. Persons enrolled to equip themselves; forfeitures for neglect to do so. R. C., c. 70, s. 6. 1806, c. 708, ss. 1, 3, 9.

Every citizen enrolled and notified, as is directed in this chapter, shall, within six months thereafter, provide himself with a good musket, smooth-bored gun or good rifle, shot-pouch and powder-horn, and shall appear so armed and accoutered when called out to exercise or in actual service; the commissioned officers shall severally be armed with a sword, or hanger, or an espontoon; and every citizen so enrolled and providing himself with arms and accouterments as herein directed, shall hold the same exempt from all suits, executions or sales for debts, or for the payment of taxes; and if he shall fail to provide himself with arms and accouterments, as herein directed, and if the commissioned officers of his company shall deem him in sufficient circumstances to equip himself he shall forfeit and pay for the want of a good, serviceable musket, gun or rifle fifty cents. And all parents and masters shall furnish those of the militia, who shall be under their care or command, with the arms and equipments above mentioned, under the like penalty for each neglect. If the company court-martial, after examination on oath, shall adjudge any person enrolled to be incapable of providing himself with arms and accouterments, as herein required, they shall make report thereof to the next regimental or battalion court-martial, as the case may be, who may, if it shall appear necessary, exempt such person from the fines here imposed until such arms and accouterments shall be provided and delivered to him by the court-martial, who shall take

security for the safe keeping of such arms and accouterments to be returned when required.

Sec. 3169. How infantry shall be divided. R. C., c. 70, s. 7. 1806, c. 708, s. 3. 1848, c. 58, s. 12.

The infantry shall be divided into divisions, brigades, regiments, battalions and companies; each division shall consist of at least two brigades; each brigade of at least four regiments, each county forming at least one regiment; each regiment, when convenient, shall consist of at least two battalions, each battalion of five companies, and each company of forty-five privates.

Sec. 3170. Regiments, brigades and divisions, how distinguished. 1866, c. 23, s. 1.

The following are declared to be the regiments, brigades and divisions of the infantry, to be known and distinguished as here designated, namely:

Brigades.	Counties.	No. Regiment.	How Distinguished in Counties where more than one Regiment.
1st.....	Currituck.....	1	
	Camden	2	
	Perquimans	3	
	Pasquotank.....	4	
2nd.....	Chowan	5	
	Hertford.....	6	
	Gates	7	
	Bertie	8	
	"	9	
3rd.....	Martin.....	10	
	Washington.....	11	
	Tyrrell.....	12	
	Hyde and Dare.....	13	
4th.....	Beaufort.....	14	
	Craven.....	15	
	Pamlico.....	16	
	Pitt.....	17	
5th.....	Carteret.....	18	
	Jones.....	19	
	Lenoir.....	20	
	Onslow.....	21	
6th.....	New Hanover.....	22	
	Pender	23	
	Sampson.....	24	East of Big Coharrie.
	"	25	West of " "
7th.....	Duplin.....	26	
	Wayne.....	27	Upper.
	"	28	Lower.
	Greene.....	29	

CHAPTER LXXXI.

OF THE MILITIA.

N° 1.

Passed March 20, 1797.

AN ACT, for regulating and governing the militia of this ſtate.

Militia, how and by whom to be enrolled.

SECT. 1. IT *is hereby enacted by the General Aſſembly of the State of Vermont*, That each and every free, able-bodied white male citizen of this ſtate, or of any other of the United States reſiding within this ſtate, who is or ſhall be of the age of eighteen years, and under the age of forty-five years (excepting as is herein after excepted) ſhall ſeverally and reſpectively be ſubject to the requiſitions of this act, and ſhall be enrolled in the militia, by the captain or commanding officer of the company, within whoſe bounds ſuch citizen ſhall reſide, within three months from and after the paſſing of this act. And it ſhall be at all times hereafter the duty of the commanding officer of every ſuch company, to enrol every ſuch citizen as aforeſaid, and alſo thoſe who ſhall from time to time arrive at the age of eighteen years, or being of the age of eighteen years and under the age of forty-five years, and not herein after excepted, ſhall come to reſide within his bounds; and ſhall without delay notify ſuch citizen of the enrolment, by a non-commiſſioned officer or other perſon duly authorized for that purpoſe, by whom ſuch notice may be proved. And in all caſes of doubt reſpecting the age of any perſon enrolled or intended to be enrolled; the party queſtioned ſhall prove his age, to the ſatisfaction of the commanding officer of the company within whoſe bounds he may reſide.

act, ſhall be ſuch as the brigadier generals, within their reſpective brigades, ſhall direct.

SECT. 14.——That every non-commiſſioned officer and private of the infantry, ſhall conſtantly keep himſelf provided with a good muſket, with an iron or ſteel rod, a ſufficient bayonet and belt, two ſpare flints, a priming wire and bruſh, and a knapſack, a cartridge box and pouch with a box therein ſufficient to contain at leaſt, twenty-four cartridges, ſuited to the bore of his muſket; and ſhall appear ſo armed, accoutred and provided, whenever called out: *excepting*, that when called out to exerciſe only, he may appear without a knapſack. Non-comm. and privates, how armed & accoutred.

Provided always, That every citizen enrolled, and providing himſelf with arms, ammunition and accoutrements, required as aforeſaid, ſhall hold the ſame exempted from all ſuits, diſtreſſes, executions or ſales, for debt, or for payment of taxes. Arms and accoutrements exempt from execution.

SECT. 15.——That every non-commiſſioned officer or private of the infantry, who ſhall neglect to keep himſelf armed and equipped, as aforeſaid, or who ſhall on a muſter day, or at any other time of examination, be deſtitute of, or appear unprovided with, the arms and equipments herein directed (excepting as before excepted;) ſhall pay a fine, not exceeding *ſeventeen cents* for a gun, and *eight cents* for every other article, in which he ſhall be deficient: at the diſcretion of the court, before whom trial ſhall be had. And all parents, maſters or guardians, ſhall furniſh thoſe of the ſaid militia who ſhall be under their care and command, with the arms and equipments above mentioned, under the like penalties for any neglect. And when the ſelectmen of any town ſhall judge any inhabitant thereof belonging to the militia, unable to arm and equip himſelf, in manner aforeſaid; they ſhall, at the expenſe of the town, provide for and furniſh ſuch inhabitant with the aforeſaid arms, and equipments: which ſhall remain the property of the town, at the expenſe of which they ſhall be provided. And if any ſol- Non-commiſſioned officers and ſoldiers fined, for not being equip'd. Parents and guardians to furniſh arms. Selectmen to furniſh, for poor ſoldiers.

Penalty for embezzlement.

dier shall embezzle or destroy the arms, and equipments, with which he shall be furnished; he shall, upon conviction as aforesaid, be judged to replace the articles which shall be by him so embezzled or destroyed, and to pay the costs arising from the process against him. And if he shall not perform the same, within fourteen days after such adjudication, it shall be in the power of the selectmen of the town, to which he shall belong, to bind him out to service or labor, for such term of time, as, in the discretion of the said selectmen, shall be sufficient to procure a sum of money, equal to the value of the article or articles so embezzled or destroyed; and pay costs, arising as aforesaid.

Fines for sundry delinquencies.

SECT. 16.——That every person liable to do military duty, who being duly warned, shall refuse or neglect to appear, at the time and place appointed, armed and equipped as by this act is directed, for any muster, training, view of arms or other military duty; shall pay as a fine for such default, the sum of *two dollars*. And every person who shall appear at any muster, with his arms in an unfit condition, shall pay a fine of *twelve cents*, for each and every such default.

Proviso.

Provided nevertheless, That it shall be lawful for the commanding officer of a company, at any time, within eight days after any muster, training, view of arms, or other duty, to excuse any person for non-appearance, or for any deficiency of equipments, on the delinquent's producing to him satisfactory evidence of his inability to appear, or equip, as aforesaid.

2d proviso.

Provided, That if such delinquent had sufficient cause of absence, and should neglect to make his excuse within the eight days aforesaid; upon a prosecution, he shall be liable to pay costs, at the discretion of the court before whom the cause is tried.

[☞ *The two provisos of this section, repealed: See present chap.—Act* N° 8.]

Companies how warned.

SECT. 17.——That when the commanding officer of a company shall think proper to call his

Examples of State Laws Mandating the Distribution of Public Arms

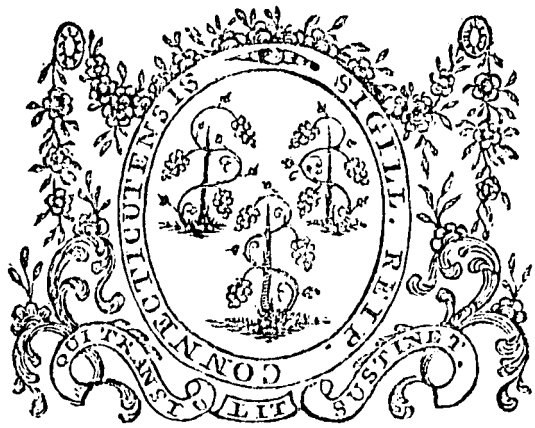
State	Year[1]	Statutory Text	Source[2]
Connecticut	1792	"That if any soldier shall in the judgment of the select-men of the town to which he belongs, be unable to arm and accouter himself . . . it shall be the duty of such select-men to certify the same to the commissioned officers of the company . . . and also, at the expense of such town to provide such soldier with arms . . . and all arms and accoutrements thus provided, shall be the property of such town . . . ."	An Act for forming and conducting the military force of this state, conformable to the act of Congress, passed the eight day of May, A.D. 1792, § XI, 1792 Conn. Acts & Laws 428-29 (Oct. Sess. 1792).
Massachusetts	1793	"[A]nd whenever the Selectmen of any town shall judge any inhabitant thereof, belonging to the Militia, unable to arm and equip himself in manner as aforesaid, they shall at the expense of the town provide for and furnish such inhabitant with the aforesaid arms and equipments, which shall remain the property of the town at the expen[s]e of which they shall be provided . . . ."	An Act for regulating and governing the Militia of the Commonwealth of Massachusetts, ch. 1 Mass. Acts & Laws, § XIX, at 297 (May Sess. 1793).

[1] Year of enactment.

[2] Where the relevant law was published in a larger compendium source, the source date often postdates the year of enactment.

State	Year[1]	Statutory Text	Source[2]
New Hampshire	1776	"And where the Selectmen of any Town shall adjudge any Persons belonging to the Militia of their Town unable to equip and arm himself as aforesaid, such Selectmen shall . . . at the Expen[s]e of such Town provide for, furnish, arm and equip such Persons with Arms and Equipments; which Arms so provided by such Selectmen, shall be the Property of the Town at whose Expense they shall be provided . . . ."	An Act for forming and regulating the Militia within the State of New Hampshire, in New-England, and for repealing all the Laws heretofore made for that Purpose, 1776 N.H. Acts & Laws 40 (1776).
New Hampshire	1792	"And such as are unable to furnish themselves shall make application to the selectmen of the town . . . and the said selectmen shall, at the expen[s]e of the town, provide for, and furnish such persons with arms and equipments; which arms and equipments shall be the property of the town, at whose expense they were provided . . . ."	An Act for forming and regulating the militia within this state, and for repealing all the laws heretofore made for that purpose, 1792 N.H. Acts & Laws 447.
Ohio	1837	"That when a part of the militia of this State shall be called into actual service, and arms shall be wanted for their use, the commander-in-chief of the division or brigade may call from any volunteer company . . . any or all the public arms in possession of such company, and place or cause the same to be placed in the hands of those who volunteer or are drafted for actual service."	An Act to organize and discipline the Militia, § 76, 1837 Ohio Gen. Laws 47.

State	Year[1]	Statutory Text	Source[2]
Vermont	1797	"And when the selectmen of any town shall judge any inhabitant thereof belonging to the militia, unable to arm and equip himself, in manner aforesaid; they shall, at the expense of the town, provide for and furnish such inhabitant with the aforesaid arms, and equipments: which shall remain the property of the town, at the expense of which they shall be provided."	An Act, for regulating and governing the militia of this state, ch. LXXXI, No. 1, § 15, 2 Laws Of The State Of Vermont Digested And Compiled 131-32 (1808).



ACTS AND LAWS,

Made and passed by the General Court or Assembly of the State of Connecticut, in America, holden at New-Haven, (in said State) on the second Thursday of October, Anno Dom. 1792.

An Act for forming and conducting the military force of this state, conformable to the act of Congress, passed the eight day of May, A. D. 1792, which is as follows:—"An Act more effectually to provide for the national defence, by establishing an uniform militia throughout the United States."

"SECTION I. BE *it enacted by the Senate, and house of Representatives, of the United States of America, in Congress assembled*, That each and every free able bodied white male citizen, of the respective states, resident therein, who is, or shall be of the age of eighteen years, and under the age of forty-five years (except as is herein after excepted) shall severally and respectively be enrolled in the militia, by the captain or commanding officer of the company, within whose bounds such citizen shall reside; and that within twelve months after the passing this act, it shall at all times hereafter be the duty of every such captain, or commanding officer of a company, to enrol every such citizen, as aforesaid; and also those who shall, from time to time, arrive at the age of eighteen years, and under the age of forty-five years (except as before excepted) shall come to reside within his bounds; and shall without delay, notify each citizen of the said enrolment, by a proper non-commissioned officer of the company, by whom such notice may be proved. That every such citizen so enrolled and notified, shall within six months thereafter, provide himself with a good musket or firelock, a sufficient bayonet and belt, two spare flints and knapsack, a pouch with a box therein to contain twenty-four cartridges, suited to the bore of his musket or firelock, each cartridge to contain a proper quantity of powder and ball; or with a good rifle, knapsack, shot-pouch and powder-horn, twenty balls suited to the bore of his rifle, and a quarter of a pound of powder; and shall appear so armed, accoutred and provided, when called out to exercise, or into service, except that when called out on company days to exercise only, he may appear without a knapsack. That the commission officers shall severally be armed with a sword or hanger, and espontoon; and that from and after five years from the passing this act, all muskets for arming the militia, as herein required, shall be of bores sufficient for balls of the eighteenth part of a pound: And every citizen so enrolled, and providing himself with the arms, ammunition and accoutrements, required as aforesaid, shall hold the same exempt from all suits, distresses, executions, or sales for debt, or for the payment of taxes."

Militia how & by whom to be enrolled.

How to be armed and accoutred.

"SEC. II. *And be it further enacted*, That the vice-president of the United States, the officers, judicial and executive, of the United States, the members of both houses of Congress, and the respective officers, all custom-house officers, with their clerks, all post-officers, and stage drivers, who are employed in the care and conveyance of the mail of the post-office of the United States, all ferrymen employed at any ferry on the post-road, all inspectors of exports, all pilots, all mariners actually employed in the sea service of any citizen or merchant within the United States, and all persons who are, or may hereafter be exempted by the laws of the respective states, shall be, and are hereby exempted from military duty, notwithstanding their being above eighteen, and under the age of forty-five years."

Executive officers, &c. exempted.

vates to furnish themselves with arms, &c. on penalty of 12s.

tia of this state, shall furnish himself with the arms, ammunition and accoutrements, required by the act of congress, and by this act, upon the penalty of forfeiting and paying a fine of *twelve shillings* lawful money, and the like penalty for every four weeks he shall be unprovided; to be levied and collected by warrant of distress, as hereafter directed; and that a horseman, or dragoon, who shall not furnish and provide himself with a horse and furniture, as required by the said act, shall be returned to, enrolled, and do duty in the infantry company in the limits of which he resides:—That the field and commissioned officers in each regiment, shall be uniformly cloathed in regimentals, at their own expence, and to be agreed upon by such officers; that the field officers of each regiment shall furnish state and regimental colours for their regiment and battalions, at the state expence, not exceeding the sum of four pounds ten shillings lawful money, to each regiment.

Officers to be uniformly clothed in regimentals. Field officers to furnish colours.

Companies to be out three days in each year, to be instructed, &c.

And be it further enacted, That every commanding officer of a company of militia, shall order out his company or troop, three days in each year, and instruct them in the use of arms and discipline of war; and the days appointed, shall be in the month of March, April, May, September, October or November, and that on the first Monday of May and October annually, such commanding officer shall cause the arms, ammunition and accoutrements, of all under his command, to be reviewed and inspected:—That the commanding officer of each regiment, shall order out his regiment by battalion or regiment, once in each year for regimental exercise, inspection and review. And if any of the privates belonging to any company of horse, artillery or infantry, shall neglect to appear compleatly armed and equipped on the place of parade, appointed by the commanding officer of his company, being duly warned, he shall forfeit and pay a fine of *nine shillings* for each day: and if any non-commissioned officer, drummer, fifer, or trumpeter, shall neglect to appear as aforesaid, he shall forfeit and pay the fine of *twelve shillings* for each day—unless any such person shall appear before the commanding officer of such company, within twelve days after such day of exercise or review, and make satisfactory excuse for his non appearance on said day; and the commanding officer of each company, battalion or regiment, shall order the correcting and punishing disorders and contempts, on days of company, battalion, or regimental exercise, inspection or review; the punishment not being greater than riding a wooden horse, for a time not exceeding one hour, or a fine not exceeding *forty shillings* lawful money:—That each commanding officer of a company, battalion, regiment, brigade or division, shall have power and authority, and full power is hereby given to ascertain and fix certain necessary limits and bounds to their respective parades, within which no spectator shall have right to enter, without liberty from said commanding officer; and in case any person shall so intrude or offend, he shall be subjected to be confined in such way and manner as the commanding officer shall direct, during the continuance of the exercise.

Arms to be inspected. Regiments to be reviwed once in each year. Privates who do not appear equipt to pay 9s. and drummers, &c. 12s. Punishment inflicted. Officers to fix limits & bounds to their parades.

Warrants by whom granted & to whom directed.

And be it further enacted, That all warrants granted by the commanding officer, of any company, battalion or regiment, for any time or times incurred by virtue of this act, or any breach thereof, shall be directed by the officer commanding a company, to the orderly sergeant of his company; which orderly sergeant he shall from time to time appoint, from the serjeants of his company; and the officer commanding a battalion or regiment, to the adjutant or sergeant-major; and to be by them levied on the goods or chattles of the respective delinquents, if upwards of twenty-one years of age—And for the want of such goods or chattles, against the body of such delinquent, and against the goods and chattles of the parents, master or guardians, of such delinquents as have not arrived to the age of twenty-one years; and for want of such goods and chattles, against the body of parent, master or guardian, and them commit and hold in goal, until such fine or fines shall be paid and satisfied, together with lawful fees for service, as in cases of execution for debt; which fines and forfeitures shall be appropriated for the use of the companies to which such delinquents respectively belong, for purchasing and maintaining colours, trumpets, drums and fifes; and should there be any overplus of fines remaining in the hands of the commanding officers of companies, they shall pay it over to the commanding officer of their regiment to which they belong; which together with the fines collected by virtue of warrants issued by the field officers, shall be applied to keeping colours in repair, and for band-music for the regiment. That whenever any commanding officer of a company shall impose any fine in any of the cases before mentioned in this act, he shall give notice to the person fined, who shall have liberty within ten days to apply to the commanding officer of the regiment, who on giving notice, and hearing the parties, may abate such fines, or any part thereof; and if such commanding officer of the regiment, thinks not proper to abate such fine, the officer imposing the same may proceed to a collection thereof.

On whom & on what levied. Fines how appropriated. Officers imposing fines, to give notice to the person fined, who shall have liberty within ten days to apply to, &c. for redress.

Provided nevertheless, That if any soldier shall in the judgment of the select-men of the town to which he belongs, be unable to arm and accoutre himself agreeable to the directions of this act, it shall be the duty of such select-men to certify the same to the commissioned officers of the company to which such soldier belongs, in order

Soldiers unable to furnish themselves, &c.

order that execution may not iſſue againſt him for deficiency in ſuch arms and accoutrements; and alſo, at the expence of ſuch town to provide ſuch ſoldier with arms, and the whole or any part of ſuch accoutrements as may be neceſſary, within forty days from the time of granting ſuch certificate, under penalty of the value of ſuch arms and accoutrements, to be recovered of any, or all of ſaid ſelect-men, by warrant from an aſſiſtant or juſtice of the peace, upon proper information, and proof of ſuch neglect, by ſaid commiſſioned officers; which warrant ſhall be directed to any ſheriff or conſtable proper to ſerve the ſame, returnable in ſixty days, and the fine payable into the treaſury of ſuch town; and all arms and accoutrements thus provided, ſhall be the property of ſuch town, and ſhall by the commanding officer of the company, be depoſited in ſuch places as he ſhall think proper, to be ready for ſuch ſoldier, as occaſion ſhall require; and ſuch officer ſhall ſtand accountable for ſuch arms and accoutrements, and ſhall be liable to pay for the ſame, if loſt through his neglect or default.

Warrant to whom directed.

Fines to be paid into the town treaſury.

Arms, &c. to be depoſited in, &c.

Provided alſo, That any of the people called *Quakers*, who ſhall produce to the commanding officer of the company in which he reſides, a certificate from the clerk of the ſociety of Quakers to which he belongs, certifying that ſuch perſon is a Quaker, he ſhall be exempt from equipping himſelf or doing military duty as required by this act, on his paying the ſum of twenty ſhillings to ſuch officer, at the expiration of each year during ſuch exemption; and in caſe ſuch Quaker refuſe to pay ſaid ſum of twenty ſhillings, the ſame ſhall be collected and diſpoſed of in the ſame manner as is heretofore provided for fines incurred by a breach of this act.

Quakers exempt on paying 20s.

And be it further enacted, That each rank and grade of officers, ſhall furniſh themſelves with the rules of diſcipline approved and eſtabliſhed by Congreſs, in their reſolution of the 29th of March, 1779, and ſhall ſubmit themſelves to the orders and directions of their ſuperior officers, or their ſenior officers, of the ſame grade; and all officers in the ſtaff and orderly departments, ſhall be vigilant and active in executing and diſpatching orders in their reſpective ſtations.

Officers to furniſh themſelves with the rules of diſcipline.

That general, field, commiſſioned, and ſtaff officers, of all grades and ranks, ſhall be amenable to, and ſubject to trial by courts martial, according to the uſage and practice of war, for all neglects of duty, for contempts or diſreſpects to a ſuperior officer, for diſobedience of orders, and for all un-officer-like conduct; which court martial ſhall conſiſt of not leſs than nine, or more than thirteen members—the ſenior officer of the higheſt grade to preſide—that another officer of the line or ſtaff, to do the duty of judge advocate to the court—that the members compoſing the court, ſhall take the following oath, before they proceed on the trial of an officer, viz.

Officers to be tried by courts martial.

Who to preſide.

Judge advocate to be of the ſtaff.

You ſwear that you will well and truly try and determine according to evidence, the matter depending between the ſtate of Connecticut and the priſoner, or priſoners, now to be tried, that you will not divulge the ſentence of the court until the ſame ſhall be approved, or diſapproved, purſuant to law; neither will you upon any account at any time whatſoever, diſcloſe or diſcover, the vote or opinion of any particular member of the court martial, unleſs required by a due courſe of law. So help you GOD.

Form of oath.

The preſident of the ſaid court martial, is hereby authorized and required to adminiſter an oath to the officer acting as judge advocate, who is hereby required to take the ſame before he proceeds further on buſineſs, viz.—*You do ſwear that you will not on any account, at any time whatſoever, diſcloſe or diſcover the vote or opinion of any particular member of the court martial, unleſs required in a due courſe of law; and that you will not divulge the ſentence of this court, till the ſame ſhall be approved or diſapproved according to law; and that you will well and truly do the duty of judge advocate, in this court, impartially and uprightly, according to the beſt of your abilities.*——So help you GOD.

Preſident of c. martial to adminiſter an oath to the judge advocate. The form.

And no other perſon whatever, ſhall be admitted to ſolicit, proſecute or defend the officer arreſted; which officer arreſted, if under the grade or rank of a field officer, ſhall have twelve days notice of the articles of charge made againſt him, by leaving a true and atteſted copy of the original articles of arreſt, under the hand of a ſuperior officer arreſting him, and the names of the witneſſes to be uſed againſt him minuted thereon, lodged with him at his uſual place of abode by the officer arreſting, or the proper orderly officer; and of the grade and rank of a field officer twenty days notice; and of the rank of a general officer thirty days notice in like manner; which court martial, for the tryal of an officer under the rank and grade of a field officer, ſhall be appointed by the commanding officer of the brigade to which he belongs, and the ſentence approved or diſapproved by the captain-general of the ſtate—for the trial of an officer of the rank and grade of a field officer, by the commanding officer of the diviſion to which he belongs; and of a general officer by the captain-general of the ſtate, and their ſentence approved or diſapproved by the legiſlature of the ſtate. That no ſentence of a court martial ſhall inflict other puniſhment than a reprimand, ſuſpenſion from office for a certain term of time, caſhiering, and caſhiering with a diſability of holding any military office in this ſtate; two thirds of the members of any ſuch court agreeing in ſuch ſentence.

No perſon admitted to ſolicit &c. Officers under the grade of field officers to have 12 days notice, &c. Field officer to have 20, & gen. officer 30 days. Court martials by whom appointed.

What puniſhment may be inflicted.

And

Acts *and* Laws,

Paſſed by the GENERAL COURT of *Maſſachuſetts:*

Begun and held at BOSTON, in the County of SUFFOLK, on Wedneſday the Twenty-ninth Day of MAY, ANNO DOMINI, 1793.

CHAP. I.

An Act for regulating and governing the Militia of the Commonwealth of Maſſachuſetts, and for repealing all Laws heretofore made for that Purpoſe; excepting an Act, intitled "An Act for eſtabliſhing Rules and Articles for governing the Troops ſtationed in Forts and Garriſons, within this Commonwealth, and alſo the Militia, when called into actual Service."

WHEREAS the Laws for regulating and governing the Militia of this Commonwealth, have become too complicated for practical uſe, by reaſon of the ſeveral alterations which have from time to time been made therein: Therefore, Preamble.

I. *BE it enacted by the* SENATE *and* HOUSE *of* REPRESENTATIVES *in General Court aſſembled, and by the authority of the ſame,* That the ſeveral Laws heretofore made for governing and regulating Laws repealed.

XVIII. *And be it further enacted by the authority aforeſaid*, That every non-commiſſioned Officer and Private of the infantry ſhall conſtantly keep himſelf provided with a good muſket, with an iron or ſteel rod, a ſufficient bayonet and belt, two ſpare flints, a priming wire and bruſh, and a knapſack; a cartridge-box, or pouch with a box therein, to contain not leſs than twenty-four cartridges, ſuited to the bore of his muſket; each cartridge to contain a proper quantity of powder and ball; or with a good rifle, knapſack, ſhot-pouch, powder-horn, twenty balls ſuited to the bore of his rifle, and a quarter of a pound of powder: And ſhall appear ſo armed, accoutred and provided, whenever called out, except that when called out to exerciſe only, he may appear without a knapſack, and without cartridges loaded with ball. *Provided always*, that whenever a man appears armed with a muſket, all his equipments ſhall be ſuited to his muſket; and whenever a man appears armed with a rifle, all his equipments ſhall be ſuited to his rifle: And that from and after five years from the paſſing of this Act, all muſkets for arming the Militia, as herein required, ſhall be of bores ſufficient for balls of the eighteenth part of a pound: And every citizen enrolled and providing himſelf with arms ammunition and accoutrements, required as aforeſaid, ſhall hold the ſame exempted from all ſuits, diſtreſſes, executions or ſales for debt, or for payment of taxes.

Neceſſary articles of equipments.

Proviſo.

Arms &c. to be exempted from ſuits.

XIX. *And be it further enacted by the authority aforeſaid*, That every non-commiſſioned Officer or Private of the infantry, who ſhall neglect to keep himſelf armed and equipped as aforeſaid, or who ſhall on a muſter-day, or at any other time of examination, be deſtitute of, or appear unprovided with the arms and equipments herein directed (except as before excepted) ſhall pay a fine not exceeding *twenty ſhillings*, in proportion to the articles of which he ſhall be deficient, at the diſcretion of the Juſtice of the Peace, before whom trial ſhall be had: And all parents, maſters and guardians ſhall furniſh thoſe of the ſaid Militia who ſhall be under their care and command, with the arms and equipments aforementioned, under the like penalties for any neglect: And whenever the Selectmen of any town ſhall judge any inhabitant thereof, belonging to the Militia, unable to arm and equip himſelf in manner as aforeſaid, they ſhall at the expence of the town provide for and furniſh ſuch inhabitant with the aforeſaid arms and equipments, which ſhall remain the property of the town at the expence of which they ſhall be provided; and if any ſoldier ſhall embezzle or deſtroy the arms and equipments with which he ſhall be furniſhed, he ſhall, upon conviction before ſome Juſtice of the Peace, be adjudged to replace the article or articles, which ſhall by him be ſo embezzled or deſtroyed, and to pay the coſt ariſing from the proceſs againſt him: And if he ſhall not perform the ſame within fourteen days after ſuch adjudication, it ſhall be in the power of

Fine for neglect.

Parents and maſters to equip their children & ſervants.

Perſons unable, to be furniſhed by the town.

Penalty, in caſe.

the Selectmen of the town to which he shall belong, to bind him out to service or labour, for such term of time as shall, at the discretion of the said Justice, be sufficient to procure a sum of money equal to the value of the article or articles so embezzled or destroyed, and pay cost arising as aforesaid.

Penalty for not appearing on muster days.

XX. *And be it further enacted by the authority aforesaid,* That every person liable to do military duty, who being duly warned shall refuse or neglect to appear at the time and place appointed, armed and equipped as by this act is directed, for any muster, training, view of arms, or other military duty, shall pay as a fine for such default, the sum of *ten shillings:* And every person who shall appear at any muster with his arms in an unfit condition, shall pay a fine of *three shillings* for each and every such default: *Provided nevertheless,* It shall be lawful for the Commanding Officer of a company, at any time within eight days after any muster, training, view of arms or other duty, to excuse any person for non-appearance, on the delinquent's producing to him satisfactory evidence of his inability to appear as aforesaid; and the Commanding Officer of the company shall certify the same to the Clerk within the time abovementioned, and the Clerk shall not thereafter commence any prosecution against such delinquent for his fine for non-appearance, as aforesaid.

Proviso.

Clerk to notify.

XXI. *And be it further enacted by the authority aforesaid,* That whenever the Commanding Officer shall think proper to call his company together, or shall be ordered by his superior Officer to do it, he shall issue his orders therefor, to one or more of the non-commissioned Officers, if there be any, if not to one or more of the privates belonging to his company, directing him or them to notify and warn the said company to appear at such time and place as shall be appointed; and every such person or persons, who shall receive such orders, shall give notice of the time and place appointed for assembling said company, to each and every person he or they shall be so ordered to warn, either by verbal information, or by leaving a written or printed notification thereof, at the usual place of abode of the person thus to be notified and warned; and no notice shall be deemed legal for musters for the purpose of common and ordinary trainings, unless it shall be given four days at least, previous to the time appointed therefor; but in case of invasion, insurrection or other emergency, any time specified in the orders shall be considered as legal; and every non-commissioned Officer, or other person, who shall neglect to give the said notice and warning, when ordered thereto by the Commanding Officer of the company to which he belongs, shall for such offence forfeit and pay as a fine, a sum not exceeding *forty shillings*, nor less than *twelve shillings*, at the discretion of the Justice of the Peace before whom trial shall be had; and the testimony of any person under oath, who shall have received orders agreeable to law, for notifying

Manner of notification.

Penalty.

STATE OF NEW-HAMPSHIRE.

In the Year of our LORD, One Thouſand Seven Hundred and Seventy-ſix.

AN ACT

To adopt and take the Name, Stile, and Title of STATE, in Lieu of COLONY, in New-Hampſhire.

Paſſed Sept. 11, 1776.

Preamble. *WHEREAS by a late Declaration of the Honorable Continental CONGRESS, the United-Colonies of North-America are declared FREE and INDEPENDANT STATES:*

THEREFORE,

This Colony to take the Name and Stile of STATE.

BE IT ENACTED BY THE COUNCIL *and* ASSEMBLY, That henceforth this COLONY aſſume and take the Name and Stile of THE STATE OF NEW-HAMPSHIRE: And where any Law hath directed the Name and Stile of the Colony of New-Hampſhire, or the Name and Stile of the Province of New-Hampſhire, to be uſed in any Commiſſions, Proceſſes, or Writings whatever; in Lieu thereof, ſhall be now uſed the Name and Stile of THE STATE OF NEW-HAMPSHIRE, and not otherwiſe.

AN ACT

Paſſed Sept. 19, 1776.

For forming and regulating the MILITIA within the State of *New-Hampſhire*, in *New-England*, and for repealing all the LAWS heretofore made for that Purpoſe.

Preamble. *WHEREAS it is not only the Intereſt, but the Duty of all Nations to defend their Lives, Liberties and Properties, in that Land, which the Supreme Ruler of the Univerſe has beſtowed on them, againſt the unlawful Attacks and Depredations of all Enemies whatever; eſpecially thoſe who are moved by a Spirit of Avarice or Deſpotiſm.* AND WHEREAS, *the Honorable* AMERICAN CONGRESS *have recommended to the United-Colonies, to put the Militia into a proper State for the Defence of* AMERICA:------ AND WHEREAS, *the Laws now in Force, reſpecting the Regulation of the* MILITIA, *have been found inſufficient for the Purpoſes aforeſaid:*

IT

First, IT IS THEREFORE ENACTED BY THE COUNCIL, AND HOUSE OF REPRESENTATIVES *in* GENERAL-COURT *assembled, and by the* Authority *of the same.* That the several Laws, and the several Paragraphs, and Clauses of all and every the Laws of this State, enforceing, or any ways relating to the Regulation of the MILITIA, be, and hereby are repealed, and declared null and void. Repealing clause.

And be it further Enacted by the AUTHORITY *aforesaid*, That that part of the Militia of this State, commonly called the Training Band, shall be constituted of all the able-bodied Male-Persons therein, from sixteen Years old to fifty, excepting Members of the AMERICAN CONGRESS, Members of the COUNCIL, and of the Hou[illegible] of *Representatives* for the time being, the Secretary of the Colony, all Civil Officers that have been or shall be appointed by the General-Court, or either Branch of it, Officers and Students of Dartmouth-College, Ministers of the Gospel, Elders and Deacons of Churches, Church Wardens, Grammer-School-Masters, Masters of Arts, the Denomination of Christians called Quakers, Selectmen for the Time being, those who have by Commission under any Government or Congress, or by Election, in Pursuance of the Vote of any Congress of the Continent, or of this or any other Colony, held the Post of a Subaltern or higher Officer, Persons while actually employed as Masters of Vessels of more then Thirty Tons Burthen, other than Fishing Vessels, and Vessels coasting this Colony, and to and from this Colony, to the other New-England Governments, Constables, Sheriffs, and Deputy Sheriffs, Negroes, Indians and Mulattoes; and shall be under the Command of such Officers as shall be chosen, impowered, and commissionated over them, as is by this Act provided; and the Selectmen or the major part of them of each Town, shall be, and hereby are impowered, by writing under their Hands to excuse from Time to Time such Physicians, Surgeons, Ferrymen, and Millers, in their respective Towns, from common and ordinary Trainings as they shall judge it necessary to excuse: And the Council, and House of Representatives aforesaid, shall from Time to Time, as may appear to them necessary, divide the Militia of each County into Regiments, and alter and divide such Regiments from Time to Time, as they shall judge expedient, after having taken the Opinion, during any Session of the General Court, of such Members of the House as belong to the County, where the Division or Alteration is to be made, and as shall be present at the Time of such Consultation. The training band. Persons exempted. Militia to be divided.

Second. *And be it further Enacted by the* AUTHORITY *aforesaid*, That there shall be chosen by Ballot of the Council, and House of Representatives for this State, from Time to Time as may be necessary, one Major-General over the whole Militia thereof, which Major-General when so chosen shall be commissionated to that Office by the Council and House afore-

One Major General to be chosen by ballot of both Houses

ſaid, and ſaid General ſhall at all Times have Power to draw forth the ſaid Militia, or any part thereof, as the ſaid General may judge expedient and neceſſary for the immediate defence of this, or any of the United States of America. And the Officers and Soldiers of ſaid Militia, ſhall pay entire obedience to his Commands accordingly, under the Penalties hereafter provided in this Act.

His Power.

Provided always, That the ſaid General and all other Officers of ſaid Militia, ſhall at all Times be under the Command of the Council and Houſe of Repreſentatives, and ſhall in drawing forth or retaining in Service the ſaid Militia or any part thereof be ſubject to ſuch Orders and Inſtructions, as they may receive from Time to Time from the ſame COUNCIL and HOUSE of REPRESENTATIVES.

To be under the command of both Houses.

3d. *And be it further Enacted by the* AUTHORITY *aforeſaid*, That there ſhall be choſen, appointed, and commiſſionated, (as is provided and directed by this Act, for the Choice and Appointment of a General Officer) over each Regiment in this State, one Colonel, one Lieutenant-Colonel, and two Majors; and the ſaid Field Officers ſo appointed and commiſſionated, or the major part of them, ſhall forthwith divide and ſet off the reſpective Regiments into Companies, as they ſhall judge expedient, to conſiſt as near as conveniently can be, of ſixty-eight Privates, excluſive of thoſe of the Alarm Liſt, and to determine the Rank of each and every Company.

Field Officers to be choſen.

Provided nevertheleſs, That no Soldier ſhall be obliged without his conſent, to join a Company belonging to any Town, in which he has not his uſual Place of Abode, unleſs where there ſhall not be Privates enough to make a Company of Thirty Soldiers, including Officers; in which Caſe, as alſo where there are any Perſons belonging to a place not incorporated, they ſhall be joined to ſuch Company as the Field Officers of the Regiments within which they are ſhall ſee fit. And the Inhabitants of every Town now in, or that ſhall be in the Continental Army, ſhall be deemed to belong to, and be a part of the Companies in their reſpective Towns, and excuſed from Duty in the Militia, while they continue part of the Army aforeſaid; and each Company when ſo formed and ſet off, ſhall together with thoſe of the Alarm Liſt, within the Limits of the ſame, by Ballot, in the preſence of one of their Field Officers, who ſhall cauſe them to be duly notified for that purpoſe, and ſhall preſide as Moderator, chuſe one Captain, two Lieutenants, and one Enſign; which choice, ſhall be immediately certified to the Secretary by ſaid Field Officers; and the Preſident of the Council thereupon, unleſs ſome material Objection againſt ſuch choice for any corrupt Practice or Irregularity, ſhall be made at or before the Time of receiving ſaid Certificates, ſhall commiſſionate ſuch Perſons purſuant to their Election,

Perſons in the army to be conſidered as part of the Militia.

Choice of Subalterns.

Election. And all the ſaid Officers when ſo commiſſionated by the Preſident of the Council, ſhall in the abſence of their Superiors, have the ſame Power in ordering, directing and marching their Regiments and Companies, as the Major General has over the whole of the ſaid Militia: And the Colonel, or commanding Officer of each Regiment, ſhall as ſoon as the Captains in his Regiment are commiſſionated, give them reſpectively under his Hand in Writing, the Limits of their reſpective Companies; their Alarm Poſts, and the manner of muſtering their Companies on all Occaſions.

4th. *And be it further Enacted by the* AUTHORITY *aforeſaid*, That the Field Officers of each and every Regiment, or the major part of them, ſhall recommend to the General-Court, a good able and ſkilful Perſon for Adjutant of their Regiment; and if either Houſe ſhall by Ballot, elect ſuch Perſon for that Office, then the Preſident of the Council ſhall, when concurred, commiſſionate him thereto. And in all Caſes determinable by Field-Officers of the ſeveral Regiments, where there ſhall be four Field Officers of any particular Regiment preſent, and they ſhall be equally divided in their Opinions reſpecting ſuch Matter, the determination ſhall be according to the Opinion of the firſt Colonel.

Adjutant to be appointed.

5th. *And be it further Enacted*, That each Company, including the Alarm Liſt, ſhall be called together by their Captain or commanding Officer, as ſoon as may be for the purpoſe of chuſing one Clerk, four Serjeants, four Corporals, one Drummer, and one Fifer; and when it ſhall appear to the Commiſſion Officers of any Company, that either of ſaid non-commiſſioned Officers ſhall neglect his Duty, they may remove and diſmiſs him from his Office, and call upon their Company, including the Alarm Liſt, to chuſe another in the Room of ſuch Delinquent; and if the ſaid Company being called together for that Purpoſe, ſhall at any Time neglect or refuſe immediately to proceed to the choice of one, or more non-commiſſioned Officer or Officers, ſo ordered to be choſen; the Commiſſion Officers of ſuch Company, or the major Part of them, ſhall by Warrant under their Hands in Writing, appoint ſuch Non-commiſſioned Officer or Officers, which the ſaid Company ſhall have refuſed to chooſe as aforeſaid.

Non-commiſſioned Officers to be choſe by the company.

6th. *And be it further Enacted by the* AUTHORITY *aforeſaid*, That each and every Officer and private Soldier of ſaid Militia, not under the controul of Parents, Maſters, or Guardians, and being of ſufficient Ability therefor, in the Judgment of the Selectmen of the Town wherein he has his uſual place of Abode, ſhall equip himſelf, and be conſtantly provided with a good Fire Arm, good Ramrod, a Worm, Priming-Wire and Bruſh, and a Bayonet fitted to his Gun, a Scabbard and Belt therefor, and a cutting Sword or a Tomahawk, or Hatchet, a Pouch containing a Cartridge-Box that will hold fifteen Rounds of Cartridges at leaſt, a hundred Buck

Equippage.

Buck Shot, a Jack Knife and Tow for Wadding, ſix Flints, one pound of Powder, forty leaden Balls, fitted to his Gun, a Knapſack and Blanket, a Canteen or Wooden Bottle, ſufficient to hold one Quart. And all Parents, Maſters, and Guardians, ſhall furniſh and equip thoſe of the Militia, which are under their care and command, with the Arms, Equipments and Accoutrements aforeſaid: And where the Selectmen of any Town ſhall adjudge any Perſons belonging to the Militia of their Town unable to equip and arm himſelf as aforeſaid, ſuch Selectmen ſhall in Writing, under their Hands certify the ſame to the Captain, or commanding Officer in whoſe Company ſuch Perſon may be, and ſhall at the Expence of ſuch Town provide for, furniſh, arm and equip ſuch Perſons with Arms and Equipments; which Arms ſo provided by ſuch Selectmen, ſhall be the Property of the Town at whoſe Expence they ſhall be provided; and if any Non-commiſſioned Officer or Soldier, ſhall embezzle or deſtroy the ſame, he ſhall be puniſhed at the Diſcretion of the Juſtice, or Court before whom he may be convicted thereof, paying double the Value of the Arms, or Accoutrements ſo wilfully deſtroyed or embezzled, and on Default thereof, to be publickly whipped not exceeding twenty Stripes: And the Selectmen of each and every Town ſhall provide at the Expence of the Colony and depoſit and keep in ſome ſafe Place for the uſe of the Militia upon an Alarm, one ſixteenth Part ſo many Spades, or Iron Shovels with Handles and fitted for Service, as there are Rateable Polls in their Town; one half as many narrow Axes, as Spades and Iron Shovels, and as many Pick Axes, as narrow Axes, all fitted for Service; And at the coſt and charge of their reſpective Towns, one Drum and one Fife for each company therein. And the Freeholders and Inhabitants of each and every Town in this Colony, qualified by Law to vote in Town Meetings, are hereby impowered at a Meeting regularly warned for that Purpoſe, to raiſe Money by Tax on the Polls and Eſtates of the Inhabitants of their Towns to defray all charges ariſing on ſaid Towns in conſequence of this Act.

Poor perſons to be equip't at the expence of the Town.

Penalty for embezzlement.

7th. *And be it further enacted by the* AUTHORITY *aforeſaid*, That each and every commiſſion Officer of ſaid Militia, who ſhall not within one Month next after receiving his Commiſſion, provide for, arm and equip himſelf, with ſuch Arms and Accoutrements, as is by this Act directed, ſhall by order of a Court Martial appointed, as by this Act is provided, be removed from his Office. And every commiſſioned Officer, who ſhall be depoſed from his Office in the Militia for neglect of Duty, or other Miſdemeanor, as by this Act is provided, ſhall receive no Benefit from any Commiſſion, which he ſhall be thus incapacitated to execute to exempt him from Military Duty.

Penalty on commiſſion officers neglecting to equip themſelves.

Eighth. *And be it further Enacted*, That the Clerk of each and every Company of ſaid Militia, ſhall once every ſix Months after the Time of his Choice or Appointment, take an exact Liſt of

Amherſt, in the county of Hillſborough, in ſaid State, on the ſecond Tueſday of May, ſhall forever hereafter be holden at Hopkinton in ſaid county, on the ſecond Tueſday of May annually. And the courts of common-pleas, which by law are to be holden at ſaid Amherſt, on the firſt Tueſday of September, and on the ſecond Tueſday of December, ſhall forever hereafter be holden at ſaid Hopkinton, on ſaid days annually. And the courts of general-ſeſſions of the peace, which by law are to be holden at ſaid Amherſt, on the Thurſday next following the firſt Tueſday of September, ſhall forever hereafter be holden at ſaid Hopkinton, on the Thurſdays next following the firſt Tueſday of September annually.

At Hopkinton.

And be it further enacted, That the act entitled, "An act for eſtabliſhing courts of law for the adminiſtration of Juſtice within this State, and deſignating their powers, and regulating their proceedings in certain caſes," ſo far as the ſaid act relates to holding ſuch of the aforeſaid courts at Amherſt, which by this act are directed in future to be holden at ſaid Hopkinton, be, and hereby is repealed.

Repealing clauſe.

And be it further enacted, That all writs, venires, recognizances, appeals, actions, indictments, warrants and proceſs of every kind, which by law were returnable to ſaid courts at Amherſt, which by this act are to be holden at ſaid Hopkinton, ſhall be returned to, and ſuſtained by ſaid courts at ſaid Hopkinton.

Writs, &c. to be ſuſtained by ſaid courts at Hopkinton.

And be it further enacted, That the ſeveral courts aforeſaid, which are to be holden at ſaid Hopkinton, ſhall be holden in, or as near the meeting-houſe in ſaid town as conveniently may be.

Courts where to be holden.

And be it further enacted, That this act, at the expiration of two years from the paſſing thereof, ſhall be null and void, unleſs a ſuitable houſe for holding ſaid courts, be erected at ſaid Hopkinton within that time, without being a county charge.

This act paſſed December 25, 1792.

Paſſed Dec. 27, 1792.

AN ACT for arranging the militia into diviſions.

BE *it enacted by the Senate and Houſe of Repreſentatives in General-Court convened*, That the militia of this State be arranged into diviſions, brigades and regiments,

And be it further enacted, That each non-commiſſioned officer and ſoldier belonging to the regiments of foot, ſhall within one year from and after the paſſing this act, furniſh himſelf with a good fire-lock, bayonet and belt, a cartouch box that will contain twenty-four cartridges, two good flints, a knapſack and canteen—and that the commiſſioned belonging to companies of foot, ſhall be ſeverally armed with a ſword or hanger, and an eſpontoon, and that the field officers be armed with a ſword or hanger. How to be armed and accoutred.

And be it further enacted, That ſuch of the infantry as are under the care of parents, maſters or guardians, ſhall be furniſhed by them with ſuch arms and accoutrements. And ſuch as are unable to furniſh themſelves, ſhall make application to the ſelectmen of the town, who are to certify to their captain or commanding officer, that they are unable to equip themſelves, and the ſaid ſelectmen ſhall, at the expence of the town, provide for, and furniſh ſuch perſons with arms and equipments; which arms and equipments ſhall be the property of the town, at whoſe expence they were provided: And if any perſon ſo furniſhed, ſhall embezzle or wilfully deſtroy the ſame, he ſhall be puniſhed by any court proper to try the ſame, upon complaint made by the ſelectmen of ſaid town, by being publicly whipped not exceeding twenty ſtripes, or fined not exceeding forty ſhillings. And that all fines recovered for embezzling or deſtroying of arms and accoutrements as provided in this act, ſhall be paid into the hands of the ſelectmen to be appropriated in purchaſing arms and accoutrements for ſuch ſoldiers as are unable to purchaſe for themſelves. Thoſe unable &c. to be equipped at the expence of the town. Fines how to be appropriated.

And be it further enacted, That parents, maſters and guardians ſhall be liable for the neglect and non-appearance of ſuch perſons as are under their care (and are liable by law to train) and are to be proceeded againſt for the penalty in the ſame manner, as by this act is provided againſt other delinquents. Parents, &c. liable to a penalty.

And be it further enacted, That the commander in chief, the officers commanding diviſions, brigades or regiments, may appoint military watches or guards when an invaſion of the State is apprehended, in ſuch place and under ſuch regulations as they may judge neceſſary; and all officers and ſoldiers under their com- Military watches, by whom to be appointed.

AN ACT

To organize and discipline the Militia.

Every able bodied white male citizen to be enrolled in the militia, and equip themselves.

Sec. 1. *Be it enacted by the General Assembly of the* State *of Ohio*, That each and every able bodied white male citizen of the United States, who resides in this State; who now is or hereafter shall be, of the age of eighteen years and under forty-five years of age, except as hereinafter excepted, shall be enrolled in the militia of this State for the purpose of performing military duty, and be equiped as hereinafter provided.

Captain or commandant of company to enroll; to notify new members of the time and place of muster, unless herein exempted.

Sec. 2. That it is hereby made the duty of the captain or commandant of each company, within the bounds of whose company each person may reside, within ten days next after he shall be informed of such residence, and at all times hereafter, such commanding officers shall enroll each person aforesaid, and cause him to be notified of the same, and of the time and place of muster, and also of those who may from time to time, arrive at the age of eighteen years, and being under the age of forty-five years, excepting as hereinafter excepted, who shall come to reside within the bounds of said company.

The State organized into 23 Divisions.

What counties compose each Division.

Sec. 3. That the militia of this State shall be organized into divisions as follows, viz: The county of Hamilton shall form the first division; the counties of Pike, Jackson, Lawrence and Scioto, shall form the second division; the counties of Coshocton, Knox, Holmes and Tuscarawas, shall form the third division; the counties of Perry, Licking and Morgan, shall form the fourth division; the counties of Clark, Champaign and Greene, shall form the fifth division; the counties of Columbiana, Stark and Carroll, shall form the sixth division; the counties of Fairfield, Hocking, Franklin and Pickaway, shall form the seventh division; the counties of Adams, Brown and Clermont, shall form the eighth division; the counties of Cuyahoga, Lorain, Medina and Wayne, shall form the ninth division; the counties of Montgomery, Dark of Miami and Shelby, shall form tenth division; the counties of Richland, Huron and Crawford, shall form the eleventh division; the counties of Logan, Hardin, Allen, Mercer and Vanwert. shall form the twelfth division; the counties of Madison, Union, Delaware and Marion, shall form the thirteenth division; the counties of Jefferson and Harrison, shall form the fourteenth division; the counties of Muskingum and Guernsey, shall form the fifteenth division; the counties of Ross, Highland, Clinton and Fayette, shall form the sixteenth division; the counties of Sandusky, Seneca, Hancock and Putnam, shall form the seventeenth division; the counties of Lucas, Wood, Henry, Williams and Paulding, shall form the eighteenth division; the counties of Butler, Preble and Warren, shall form the nineteenth division; the counties of Portage and Trumbull, shall form the twentieth division; the counties of Ashtabula, and Geauga, shall form the twenty-

superceded by a regular contractor or purchasing commissary, shall deliver over to such contractor or commissary, all supplies he may have on hand, and the contractors and commissaries shall be bound to receive the same and receipt therefor to such special commissary at the prices given for such articles, with the additional expense incurred thereon at the time of delivery, which receipt shall be deposited with the Auditor of State, and the amount thereof charged to such regular contractor or commissary.

Suits brot for any thing done in pursuance of this act, &c

Sec. 73. That if any suit or suits shall be brought or commenced against any person or persons for any thing done in pursuance of this act, the defendant may plead the general issue, and give this act and the special matter in evidence.

Quar. master of div. to take charge of and superintend all public ar's, ammunition, military stores and property of his division

His further duty.

Sec. 74. That all the public arms, ammunition, accoutrements, camp equippage and military stores belonging to any division of the militia of this State, shall be under the care and superintendence of the assistant quarter master general of such division, who shall have power to employ suitable persons to clean and repair any arms or articles which may require it, and certify any reasonable and just account which may be rendered for cleaning and repairing, and for transporting such arms and military stores to any place where they may be ordered by the commander-in-chief of divisions, which account thus certified shall be allowed by the Auditor of State, and paid as other accounts against the State are paid; and such assistant quarter master general shall receipt for all articles delivered to his charge, and account for the same at any time when called on so to do, by the commandant of division or quarter master general of this State.

Any person selling public arms or other property belonging to the State, shall forfeit, &c.

How collected

How fines are disposed of.

Sec. 75. That if any person shall sell or dispose of any of the public arms or any other camp equippage, or other property belonging to the State, every person so offending, shall forfeit and pay for every musket, sabre or pistol, or other article, double the value of the cost of such arms or other property, to be recovered by action of debt before any justice of the peace or other court having jurisdiction of the amount, in the name of the quarter masters of the proper regiment, squadron or battalion, on complaint of any person who may prosecute for the same; and all fines and forfeitures collected by virtue of the provisions of this section, shall be paid by the justice to the proper quarter master, and be by him transmitted to the paymaster general of the militia of this State.

When arms are wanted for service, they may be recalled from volunteer corps, who do not volunteer.

Sec. 76. That when a part of the militia of this State shall be called into actual service, and arms shall be wanted for their use, the commander-in-chief of division or brigade may call from any volunteer company which does not volunteer their services, any or all the public arms in possession of such company, and place or cause the same to be placed in the hands of those who volunteer or are drafted for actual service.

Sec. 77. That the militia of this State, when in actual ser-

CHAPTER LXXXI.

OF THE MILITIA.

N° 1.

Passed March 20, 1797.

AN ACT, for regulating and governing the militia of this ſtate.

SECT. 1. IT *is hereby enacted by the General Aſſembly of the State of Vermont*, That each and every free, able-bodied white male citizen of this ſtate, or of any other of the United States reſiding within this ſtate, who is or ſhall be of the age of eighteen years, and under the age of forty-five years (excepting as is herein after excepted) ſhall ſeverally and reſpectively be ſubject to the requiſitions of this act, and ſhall be enrolled in the militia, by the captain or commanding officer of the company, within whoſe bounds ſuch citizen ſhall reſide, within three months from and after the paſſing of this act. And it ſhall be at all times hereafter the duty of the commanding officer of every ſuch company, to enrol every ſuch citizen as aforeſaid, and alſo thoſe who ſhall from time to time arrive at the age of eighteen years, or being of the age of eighteen years and under the age of forty-five years, and not herein after excepted, ſhall come to reſide within his bounds; and ſhall without delay notify ſuch citizen of the enrolment, by a non-commiſſioned officer or other perſon duly authorized for that purpoſe, by whom ſuch notice may be proved. And in all caſes of doubt reſpecting the age of any perſon enrolled or intended to be enrolled; the party queſtioned ſhall prove his age, to the ſatisfaction of the commanding officer of the company within whoſe bounds he may reſide.

Militia, how and by whom to be enrolled.

act, ſhall be ſuch as the brigadier generals, within their reſpective brigades, ſhall direct.

SECT. 14.——That every non-commiſſioned officer and private of the infantry, ſhall conſtantly keep himſelf provided with a good muſket, with an iron or ſteel rod, a ſufficient bayonet and belt, two ſpare flints, a priming wire and bruſh, and a knapſack, a cartridge box and pouch with a box therein ſufficient to contain at leaſt, twenty-four cartridges, ſuited to the bore of his muſket; and ſhall appear ſo armed, accoutred and provided, whenever called out: *excepting*, that when called out to exerciſe only, he may appear without a knapſack. Non-comm. and privates, how armed & accoutred.

Provided always, That every citizen enrolled, and providing himſelf with arms, ammunition and accoutrements, required as aforeſaid, ſhall hold the ſame exempted from all ſuits, diſtreſſes, executions or ſales, for debt, or for payment of taxes. Arms and accoutrements exempt from execution.

SECT. 15.——That every non-commiſſioned officer or private of the infantry, who ſhall neglect to keep himſelf armed and equipped, as aforeſaid, or who ſhall on a muſter day, or at any other time of examination, be deſtitute of, or appear unprovided with, the arms and equipments herein directed (excepting as before excepted;) ſhall pay a fine, not exceeding *ſeventeen cents* for a gun, and *eight cents* for every other article, in which he ſhall be deficient: at the diſcretion of the court, before whom trial ſhall be had. And all parents, maſters or guardians, ſhall furniſh thoſe of the ſaid militia who ſhall be under their care and command, with the arms and equipments above mentioned, under the like penalties for any neglect. And when the ſelectmen of any town ſhall judge any inhabitant thereof belonging to the militia, unable to arm and equip himſelf, in manner aforeſaid; they ſhall, at the expenſe of the town, provide for and furniſh ſuch inhabitant with the aforeſaid arms, and equipments: which ſhall remain the property of the town, at the expenſe of which they ſhall be provided. And if any ſol- Non-commiſſioned officers and ſoldiers fined, for not being equip'd. Parents and guardians to furniſh arms. Selectmen to furniſh, for poor ſoldiers.

Penalty for embezzlement.

dier shall embezzle or destroy the arms, and equipments, with which he shall be furnished; he shall, upon conviction as aforesaid, be judged to replace the articles which shall be by him so embezzled or destroyed, and to pay the costs arising from the process against him. And if he shall not perform the same, within fourteen days after such adjudication, it shall be in the power of the selectmen of the town, to which he shall belong, to bind him out to service or labor, for such term of time, as, in the discretion of the said selectmen, shall be sufficient to procure a sum of money, equal to the value of the article or articles so embezzled or destroyed; and pay costs, arising as aforesaid.

Fines for sundry delinquencies.

SECT. 16.——That every person liable to do military duty, who being duly warned, shall refuse or neglect to appear, at the time and place appointed, armed and equipped as by this act is directed, for any muster, training, view of arms or other military duty; shall pay as a fine for such default, the sum of *two dollars*. And every person who shall appear at any muster, with his arms in an unfit condition, shall pay a fine of *twelve cents*, for each and every such default.

Proviso.

Provided nevertheless, That it shall be lawful for the commanding officer of a company, at any time, within eight days after any muster, training, view of arms, or other duty, to excuse any person for non-appearance, or for any deficiency of equipments, on the delinquent's producing to him satisfactory evidence of his inability to appear, or equip, as aforesaid.

2d proviso.

Provided, That if such delinquent had sufficient cause of absence, and should neglect to make his excuse within the eight days aforesaid; upon a prosecution, he shall be liable to pay costs, at the discretion of the court before whom the cause is tried.

[☞ *The two provisos of this section, repealed: See present chap.—Act* N° 8.]

Companies how warned.

SECT. 17.——That when the commanding officer of a company shall think proper to call his