

JUDICIAL SETTLEMENT OF CONTROVERSIES BETWEEN STATES OF THE AMERICAN UNION

I.

RISE OF JUDICIAL PROCEDURE BETWEEN STATES OF THE AMERICAN UNION.

THE preamble to the Constitution declares that the people of the United States— meaning, as Chief Justice Marshall said in the case of *McCulloch v. Maryland* (4 Wheaton, 316, 403), decided in 1819, the people of the States acting within the States—ordained and established it for the United States of America 'in Order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common Defense, promote the general Welfare, and secure the blessings of Liberty to ourselves and our Posterity'. To accomplish this purpose the framers of this now venerable instrument endowed the more perfect Union with a government composed of legislative and executive branches and a judiciary, apportioning the sovereign powers of a general nature to the government of the Union to be exerted in behalf of all the States instead of any one State or group of States, and leaving with the several States the powers which they already possessed as free, sovereign, and independent States, to be exercised by them in matters solely or primarily affecting the States as such.

Objects of the Constitution to be achieved by division of the sovereign power.

The modicum of legislative power which the framers granted to the Union of the States was vested in a Congress of the United States, and they enumerated this power under eighteen heads in the first article of the Constitution; intending, however, that, in the exercise of these powers, the Congress should pass any and all laws necessary and proper to carry them into effect, and all other powers vested by the Constitution in the Government of the United States.

Legislative power of Congress

The executive power, which is necessarily coextensive with the legislative, as it is to execute the will of the legislative department as far as it is exercised in accordance with the terms of the Constitution, is vested in a President, to be chosen by electors appointed by the States composing the Union, and to serve for a period of four years, who, before assuming office, swears or affirms faithfully to 'execute the Office of President of the United States', and, to the best of his ability, to 'preserve, protect, and defend the Constitution of the United States', subject to impeachment for failure to perform the duties appertaining to his office.

Executive power of the President.

The judicial power of the more perfect Union—for the government of the Confederation, superseded by that of the Constitution, had no adequate judicial machinery—was vested by the framers 'in one Supreme Court, and in such inferior Courts as the Congress may from time to time establish'. To make the judges independent of either branch of the government, they were, upon appointment by the President, to be confirmed by the Senate, 'to hold their Offices during good Behaviour', and to receive 'at stated Times', compensation for their services, which was not to be 'diminished during their Continuance in Office'.

Judicial power of the Supreme Court.