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Analysis of Treaty of Peace & Friendship 1786

Part I – Introduction

Sunday, January 3rd, 2016 / 1 p.m. — 3 p.m.

Blog Talk: *Mhhs—Eyes Wide Open*

Chat Room OR Call In: 347 945-5899

Definitions For Review:

Emperor - EMPEROR. The title of the sovereign ruler of an empire. This designation was adopted by the rulers of the Roman world after the decay of the republic, and was assumed by those who claimed to be their successors in the "Holy Roman Empire," as also by Napoleon. "The sovereigns of Japan and Morocco are often, though with little propriety, called emperors." 10 Encyc. Amer. (1929), p. 300. In western speech the former sovereigns of Turkey and China were called emperors. Cent. Diet.

The title "emperor" seems to denote a power and dignity superior to that of a "king." It appears to be the appropriate style of the executive head of a federal government, constructed on the monarchical principle, and comprising in its organization several distinct kingdoms or other *quasi* sovereign states; as was the case with the German empire from 1871 to 1918. "The proper meaning of *emperor* is the chief of a confederation of states of which kings are members." Cent. Dict., quoting Encyc. Brit. "In general, an *emperor* is the holder of a sovereignty extending over conquered or confederated peoples, a *king* is ruler of a single people. Thus * * * the 'King of England' is 'Emperor of India.'" *Webster's New Int. Dict.* Before the dissolution of the Austro-Hungarian empire in November, 918, its monarch was known as the Emperor of Austria and King of Hungary.

Congress - CONGRESS. In International Law. An assembly of envoys,

commissioners, deputies, etc., from different sovereignties who meet to concert measures for their common good, or to adjust their mutual concerns.

In American Law. The legislative assembly of the United States, composed of the senate and house of representatives (*q. v.*). U. S. *Const. art. 1, § 1.*

Assemble - ASSEMBLAGE. A collection of persons. Also the act of coming together. *State v. Breen*, 110 Kan. 817, 205 P. 632, 633. Public address upon public grounds. *In re Whitney*, 57 *Cal.App.2d* 167, 134 *P.2d* 516, 521.

ASSEMBLE. When applied to a machine, "assemble" means to collect or gather together the parts and place them in their proper relation to each other to constitute the machine. *Citizens' Vat. Bank v. Bucheit*, 14 *Ala.App.* 511, 71 *So.* 82, 38.

Constitute - CONSTATE. To establish, constitute, or ordain. "*Constituting instruments*" of a corporation are its charter, organic law, or the grant of powers to it. See examples of the use of the term, Green's *Brice*, *Ultra Vires*, p. 39; *Ackerman v. Halsey*, 37 *N.J.Eq.* 363.

CONSTITUENT. He who gives authority to another to act for him. The term is used as a correlative to "attorney," to denote one who constitutes another his agent or invests the other with authority to act for him. *Kunz v. Lowden*, *C.C.A.Kan.*, 124 *F.2d* 911, 913.

It is also used in the language of politics, as a correlative to representative," the constituents of a legislator

being those whom he represents and whose interests he is to care for in public affairs; usually the electors of his district.

CONSTITUERE. Lat. To appoint, constitute, establish, ordain, or undertake. Used principally in ancient powers of attorney, and now supplanted by the English word "constitute."

CONSTITUIMUS. A Latin term, signifying *we constitute* or *appoint*.

CONSTITUTED AUTHORITIES. Officers properly appointed under the constitution for the government of the people.

CONSTITUTIO. In the Civil law. An imperial ordinance, decree, or constitution, distinguished from *Lex*, *Senatus-Consultum*, and other kinds of law and having its effect from the sole will of the emperor. Dig. 1, 4, 1, Cooper's notes. An establishment or settlement. Used of controversies settled by the parties without a trial. Calvin.

A sum paid according to agreement. *Du Cange*. In Old English Law An ordinance or statute. A provision of a statute.

Minister - MINISTER. Ecclesiastical law. A person ordained according to the usages of some church or associated body of Christians for the preaching of the gospel and filling the pastoral office. Foreign minister. An ambassador, minister, or envoy from a foreign government. *Cherokee Nation v. Georgia*, 5 *Pet.* 56, 8 *L.Ed.* 25. International law. An officer appointed by the government of one nation as a mediator or arbitrator between two other nations who are engaged in a controversy, with their consent, with a view to effecting an amicable adjustment of the dispute.

A general name given to the diplomatic representatives sent by one state to another, including ambassadors, envoys, and residents.

Practice. An officer of justice, charged with the execution of the law, and hence termed a "ministerial officer;" such as a sheriff, bailiff, coroner, sheriff's officer. *Britt. c. 21.* An agent; one who acts not by any inherent authority, but under another. Public law. One of the highest functionaries in the organization of civil government, standing next to the sovereign or executive head, acting as his immediate auxiliary, and being generally charged with the administration of one of the great bureaus or departments of the executive branch of government. Otherwise called a "cabinet minister," "secretary of state," or "secretary of a department."

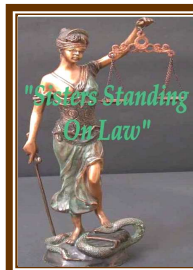
Public Minister. A general term comprehending all the higher classes of diplomatic representatives, as ambassadors, envoys, residents,—but not including the commercial representatives, such as consuls.

Plenipotentiary - PLENIPOTENTIARY. One who has full power to do a thing; a person fully commissioned to act for another. A term applied in international law to ministers and envoys of the second rank of public ministers. *Wheat. Hist. Law Nat. 266.*

Negotiate - NEGOTIATE. To transact business, to treat with another respecting a purchase and sale, to hold intercourse, to bargain or trade, to conduct communications or conferences. It is that which passes between parties or their agents in the course of or incident to the making of a contract and is also conversation in arranging terms of contract.

Werner v. Hendricks, 121 Pa. Super. 46, 182 A. 748, 749.

To discuss or arrange a sale or bargain; to arrange the preliminaries of a business transaction. Also to sell or discount negotiable paper, or assign or transfer it by indorsement and delivery. *Palmer v. Ferry, 6 Gray, Mass., 420; Newport Nat. Bank v.*



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Board of Education, 114 Ky. 87, 70 S.W. 186.

To conclude by bargain, treaty, or agreement. *Morton Furniture Co. v. Dubuque Fire & Marine Ins. Co., 287 Mass. 170, 191 N.E. 637, 638.*

An instrument is "negotiated" when transferred from one person to another so as to constitute transferee holder thereof. *Ficklin v. Nickles, 238 Ky. 591, 38 S.W.2d 456, 459.*

Ambassador - AMBASSADOR. In international law, a public officer, clothed with high diplomatic powers, commissioned by a sovereign prince or state to transact the international business of his government at the court of the country to which he is sent. The commissioner who represents one country in the seat of government of another. He is a public minister, which, usually, a consul is not. Brown. A person sent by one sovereign to another, with authority, by letters of credence, to treat on affairs of state. Jacob. The personal representatives of the head of the state which sends them, entitled to special honors and special privileges and having varied duties; mouth-piece of communications, government informant, and protector of citizens of his country. *Russian Government v. Lehigh Valley R. Co., D.C.N.Y., 293 F. 133.* See Letter of Credence; Minister. A distinction was formerly made between 'Ambassadors Extraordinary', who were sent to conduct special business or to remain for an indeterminate period, and 'Ambassadors Ordinary', who were sent on permanent missions; but this distinction is no longer observed.

Commission - COMMISSION. A warrant or authority or letters patent, issuing from the government, or one of its departments, or a court, empowering a person or persons named to do certain acts, or to exercise jurisdiction, or to perform the duties and exercise the authority of an office, (as in the case of an officer in the army or navy.) *Bledsoe v. Colgan, 138 Cal. 34, 70 P. 924.* Also, in private affairs, it signifies the authority or instructions under which one person transacts business or negotiates for another.

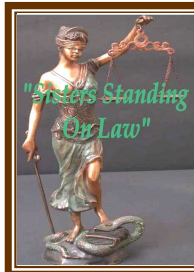
In a derivative sense, a body of persons to whom a commission is directed. A board or committee officially appointed and empowered to perform certain acts or exercise certain jurisdiction of a public nature or relation; as a "commission of assise."

Civil Law. A species of bailment, being an undertaking, without reward, to do something in respect to an article bailed; equivalent to "mandate."

Commercial Law

The recompense or reward of an agent, factor, broker, or bailee, when the same is calculated as a percentage on the amount of his transactions or on the profit to the principal. In this sense, however, the word occurs perhaps more frequently in the plural. *Gray v. Stern, 85 Wash. 645, 149 P. 26, 28. Jackson v. Stanfield, 137 Ind. 592, 57 N.E. 14, 23 L.R.A. 588. Sinclair Coal Co. v. Pittsburg and Ashland Coal and Dock Co., 178 Minn. 114, 226 N.W. 206, 208.* But the term may mean simply a compensation; *Smith v. Starke, 196 Mich. 311, 162 N.W. 998, 999;* and

does not necessarily imply a mere per centum valuation; *Jenkins v. Locke-Paddon Co.*, 30 Cal.App. 52, 157 P. 537. Also, a compensation to an administrator for the faithful discharge of his duties. *In re Jula's Estate*, 3 N.J.Misc. 976, 130 A. 733, 735.



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Criminal Law

Doing or perpetration; the performance of an act. *Groves v. State*, 116 Ga. 516, 42 S.E. 755, 59 L.R.A. 598

Practice

An authority or writ issuing from a court, in relation to a cause before it, directing and authorizing a person or persons named to do some act or exercise some special function; usually to take the depositions of witnesses.

COMMISSIONS. The compensation or reward paid to a factor, broker, agent, bailee, executor, trustee, receiver, etc., usually calculated as a percentage on the amount of his transactions or the amount received or expended. See Commission.

Commissioner - COMMISSIONER. A person to whom a commission is directed by the government or a court. *State v. Banking Co.*, 14 N.J.L. 437; *In re Canter*, 81 N.Y.S. 338, 40 Misc. 126. In the governmental system of the United States, this term denotes an officer who is charged with the administration of the laws relating to some particular subject-matter, or the management of some bureau or agency of the government. Such are the commissioners of education, of patents, of pensions, of fisheries, of the general land-office, of Indian affairs, etc. In the state governmental systems, also, and in England, the term is quite extensively used as a designation of various officers having a similar authority and similar duties. In the commission form of municipal government, the term is applied to any of the several officers constitut-

ing the commission. *Gardner v. Board of Park Directors*, 35 Cal.App. 597, 170 P. 672, 673.

—**Commissioners of bail.** Officers appointed to take recognizances of bail in civil cases.

—**Commissioners of bankrupts.** The name given, under the former English practice in bankruptcy, to the persons appointed under the great seal to execute a commission of bankruptcy (*q. v.*).

—**Commissioners of circuit courts.** Officers appointed by and attached to the former circuit courts of the United States, performing functions partly ministerial and partly judicial. *In re Com'rs of Circuit Court*, C.C.N.C., 65 F. 317. Their office was abolished by the Act of May 28, 1896 (34 Stat. 184) and they have been succeeded by "United States commissioners." See that title.

—**Commissioners of deeds.** Officers empowered by the government of one state to reside in another state, and there take acknowledgments of deeds and other papers which are to be used as evidence or put on record in the former state.

--**Commissioners of highways.** Officers appointed in each county or township, in many of the states, with power to take charge of the altering, opening, repair, and vacating of highways within such county or township.

—**Commissioner of patents.** The title given by law to the head of the patent office. See 35 USCA § 2.

—**Commissioners of sewers.** In English law. Commissioners ap-

pointed under the great seal, and constituting a court of special jurisdiction; which is to overlook the repairs of the banks and walls of the seacoast and navigable rivers, or, with consent of a certain proportion of the owners and occupiers, to make new ones, and to cleanse such rivers, and the streams communicating therewith. *St. 3 & 4 Wm. IV. c. 22, § 10*; 3 *Steph. Comm.* 442.

—**Commissioner of woods and forests.** An officer created by act of parliament of 1817, to whom was transferred the jurisdiction of the chief justices of the forest. *Inderwick, The King's Peace.*

—**County commissioners.** See County.

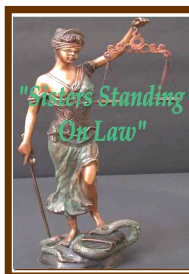
Propositions - PROPOSITION. A single logical sentence; also an offer to do a thing. *Perry v. Dwelling House Ins. Co.*, 67 N.H. 291, 33 A. 731, 68 *Am.St.Rep.* 668.

Prosecute - PROSECUTE. To follow up; to carry on an action or other judicial proceeding; to proceed against a person criminally. To "prosecute" an action is not merely to commence it, but includes following it to an ultimate conclusion. *Service & Wright Lumber Co. v. Sumpter Valley Ry. Co.*, 81 Or. 32, 152 P. 262, 264.

Commerce - COMMERCE. The exchange of goods, productions, or property of any kind. *Jeu Jo Wan v. Nagle*, C.C.A. Cal., 9 F.2d 309, 310. Intercourse by way of trade and traffic between different peoples or states and the citizens or inhabitants

thereof, including not only the purchase, sale, and exchange of commodities, but also the instrumentalities and agencies by which it is promoted and the means and appliances by which it is carried on, and the transportation of persons as well as of goods, both by land and by sea. *Brennan v. Titusville*, 14 S.Ct. 829, 153 U.S. 289, 38 L. Ed. 719; *Railroad Co. v. Fuller*, 17 Wall. 568, 21 L.Ed. 710; *Hoke v. United States*, 33 S.Ct. 281, 283, 227 U.S. 308, 57 L.Ed. 523, 43 L.R.A.,N.S., 906, Ann.Cas.1913E, 905. Also interchange of ideas, sentiments, etc., as between man and man. *U. S. v. Eason Oil Co.*, D.C.Okl., 8 F.Supp. 365, 368. Commerce, in its simplest signification, means an exchange of goods; but in the advancement of society, labor, transportation, intelligence, care and various mediums of exchange, become commodities and enter into commerce; the subject, the vehicle, the agent, and their various operations become the objects of commercial regulation. *Lorenzetti v. American Trust Co.*, D.C.Cal., 45 F.Supp. 128, 132. "Commerce" is not traffic alone, but is intercourse between nations and parts of nations in all its branches. *Blumenstock Bros. Advertising Agency v. Curtis Pub. Co.*, 252 U.S. 436, 40 S.Ct. 385, 387, 64 L.Ed. 649. The words "commerce" and "trade" are often used interchangeably; but, strictly speaking, commerce relates to intercourse or dealings with foreign nations, states, or political communities, while trade denotes business intercourse or mutual traffic within the limits of a state or nation, or the buying, selling, and exchanging of articles between members of the same community. *Hooker v. Vandewater*, 4 Denio, N.Y., 353, 47 Am. Dec. 258; *Jacob; Wharton*.

—Commerce among the states. Transportation from one state to another, and also all commercial intercourse between the different states, and all component parts of such in-



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tercourse. *Dahnke- Walker Milling Co. v. Bondurant*, 257 U.S. 282, 42 S.Ct. 106, 108, 66 L.Ed. 239.

—Commerce with foreign nations. Commerce between citizens of the United States and citizens or subjects of foreign governments; commerce which, either immediately or at some stage of its progress, is extraterritorial. *U. S. v. Holliday*, 3 Wall. 409, 18 L.Ed. 182; *Veazie v. Moor*, 14 How. 573, 14 L.Ed. 545; *Lord v. Steamship Co.*, 102 U.S. 544, 26 L.Ed. 224. The same as "foreign commerce," which see *infra*. Power of Congress to regulate "commerce with foreign nations" comprehends every species of commercial intercourse. *U.S.C.A.Const. art. 1, § 8, cl. 3. Board of Trustees of University of Illinois v. U. S.*, Cust. & Pat.App., 53 S.Ct. 509, 289 U.S. 48, 77 L.Ed. 1025.

—Commerce with Indian tribes. Commerce with individuals belonging to such tribes, in the nature of buying, selling, and exchanging commodities, without reference to the locality where carried on, though it be within the limits of a state. *U. S. v. Holliday*, 3 Wall. 407, 18 L.Ed. 182; *U. S. v. Cisna*, 25 Fed.Cas. 424.

—Domestic commerce. Commerce carried on wholly within the limits of the United States, as distinguished from foreign commerce. Also, commerce carried on within the limits of a single state, as distinguished from interstate commerce. *Louisville & N. R. Co. v. Tennessee R. R. Com'n*, C.C. Tenn., 19 Fed. 701.

—Foreign commerce. Commerce or trade between the United States and foreign countries. *Com. v. Housatonic R. Co.*, 143 Mass. 264, 9 N.E. 547; *Foster v. New Orleans*, 94 U.S. 246, 24 L.Ed. 122. The term is sometimes applied to commerce between ports of two sister states not lying on the same coast, e. g., New York and San Francisco.

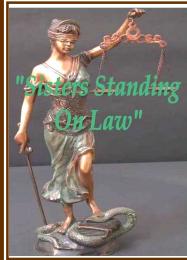
—Internal commerce. Such as is carried on between individuals within the same state, or between different parts of the same state. *Lehigh Val. R. Co. v. Pennsylvania*, 145 U.S. 192, 12 S.Ct. 806, 36 L.Ed. 672; *Steamboat Co. v. Livingston*, 3 Cow. (N.Y.) 713. Now more commonly called "intrastate" commerce.

—International commerce. Commerce between states or nations entirely foreign to each other. *Louisville & N. R. Co. v. Tennessee R. R. Com'n*, C.C.Tenn., 19 F. 701.

—Interstate commerce. Such as is carried on between different states of the Union or between points lying in different states. See *Interstate Commerce*.

—Intrastate commerce. Such as is begun, carried on, and completed wholly within the limits of a single state. Contrasted with "interstate commerce" (*q. v.*). *State v. Reed*, 53 Mont. 292, 163 P. 477, 479, Ann.Cas.1917E, 783. And see *Southern Pac. Co. v. State*, 19 Ariz. 20, 165 P. 303, 306.

Pursuance - PURSUANT. A following after or following out; line in accordance with or by reason of something; conformable; in accor-



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dance; agreeably, conformably; a carrying out or with effect, the act of executing; that which is pursuant; consequence; acting or done in consequence or in prosecution of anything; hence, agreeable. *Suppiger v. Enking, 60 Idaho 292, 91 P.2d 362, 366.*

Attestations - ATTESTATION. The act of witnessing an instrument in writing, at the request of the party making the same, and subscribing it as a witness. In re *Jones' Estate, 101 Wash. 128, 172 P. 206, 207.* The act of witnessing the execution of a paper and subscribing the name of the witness in testimony of such fact. In re *Carlson's Estate, 156 Or. 597, 68 P.2d 119, 121.*

Execution and *attestation* are clearly distinct formalities; the former being the act of the party, the latter of the witnesses only. *Subscription* differs from *attestation*, in that the former is the mere manual or mechanical act of signing—the act of the hand, whereas the latter signifies the mental act of bearing witness to—the act of the senses. In re *Smith's Estate, 130 Neb. 739, 266 N.W. 611, 613.*

Annexed - ANNEX. Derived from the Latin "annectere," meaning to tie or bind to. To attach, and often, specifically, to subjoin. In re Annexation to City of Easton of Tract of Land in *Williams Tp., Northampton County, 139 Pa.Super. 146, 11 A.2d 662, 664.* To add to; to unite. The word expresses the idea of joining a smaller or subordinate thing with another, larger, or of higher importance. *Waterbury Lumber & Coal Co. v. Asterchinsky, 87 Conn. 316, 87 A. 739, 740, Ann.Cas. 1916B,*

613. To consolidate, as school districts. *Evans v. Hurlburt, 117 Or. 274, 243 P. 553, 554.* To make an integral part of something larger. It implies physical connection or physically joined to, yet physical connection may be dispensed with, and things may be annexed without being in actual contact, when reasonably practicable. *Elliott Common School Dist. No. 48 v. County Board of School Trustees, Tex.Civ.App., 76 S. W.2d 786, 789.*

In the law relating to *fixtures*, the expression "annexed to the freehold" means fastened to or connected with it; mere juxtaposition, or the laying of an object, however heavy, on the freehold, does not amount to annexation. *Merritt v. Judd, 14 Cal. 64.*

Reminder Notes for Future Classes:

State - A People permanently occupying a fixed territory, bound together by common-law, habits, and custom into one body politic exercising, through the medium of an organized government, independent sovereignty and control over all persons and things within its boundaries, capable of making war and peace and of entering into international relations with other communities of the globe. *Black's Law Dictionary 4th Edition.*

Parties to the Constitution – United States:

1. **Moors** – Supreme Authority, *and*
2. **Union [United] States of America** – Europeans, the People adopted into the Nation.

Status – The etymology of the word **state** comes from the latin "Status" – stare – to stand; Status – manner of standing, attitude, position, carriage, manner, dress, apparel; and other senses.

All **legislative powers** herein granted shall be vested in a **Congress of the United States** - Moors, which shall **consist-[stands together with]** of a **Senate and House of Representatives** – [members elected from the Union States]

The 3 Great Departments of Government:

- ♦ **Legislative** – pass law – this is appropriate if you comprehend that the Moors make up the United States and only the sovereign of the land can make any laws.
- ♦ **Executive** – approve and execute the laws that have been passed.
- ♦ **Judicial** – expound and enforce the laws that have been passed.

