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THE CONSTITUTION OF THE UNITED STATES AND THE FIRST TEN AMENDMENTS

By E. J. NOLAN

The fanciful idea is prevalent, that the Constitution was fashioned at a single effort and at a given time by a group of about fifty Colonial statesmen. No less an authority than Wm. Ewart Gladstone, one-time Prime Minister of England is responsible for a statement to the effect that, "The American Constitution is the most wonderful work ever struck off at a given time, by the brain and purpose of man."

The truth is that the Constitution is a great and noble monument to centuries of unceasing striving on the part of English speaking peoples for freedom, justice and liberty. It has its very roots in the magnificent and compelling past of the English race. Altho the Constitution is very much more than an adaption of the British Constitution, yet its underlying spirit is that of the common law. Aiding the framers of the Constitution, were the spirits of such men as Simon de Montfort, Coke, Bacon, Elliot and Hampden.

Today, the Constitution of the United States, formulated by our forefathers at the close of the Revolution, stands as the oldest comprehensive written form of government in the world, the classic model on which hundreds of later documents have been patterned.

What is this document about which so much has been written and of what does it consist? Only seven articles, and the first ten amendments, really an integral part of the original, compose this guide of our Republican form of government.

To understand the various elements that entered into the making of the Constitution, it is necessary to have some idea of the background, the different attempts at government that were tried before the Constitution was framed and adopted.

In accordance with a recommendation made by Massachusetts a body called The First Continental Congress met in 1774. In its inception, it was intended to do nothing but deliberate on the state of public affairs in the colonies. By the agreement of

all the colonies, however, it proceeded to take measures in regard to the starting and carrying on of a war for independence. The Second Continental Congress, which succeeded this body, provided for raising and equipping an army, framed, adopted and promulgated the Declaration of Independence, and established the Articles of Confederation, the first general form of government to exist on this continent.

As one eminent writer has said: "The Continental Congress was a revolutionary body. It was not authorized by any pre-existing law or ordinance. Its acts and determinations were entirely outside the pale of ordinary law. It was not intended to be permanent, nor was it intended to be a national or confederate government. It was merely raised up as an extraordinary institution, to meet the special exigencies of the situation of the colonies."[1]

The defects of the form of government in force under the Articles of Confederation were obvious to all. It had no executive, no courts, no power to raise supplies. It was dependent entirely on the states, and there was no force provided whereby the national government might insure its self-preservation. Consequently, in the words of the Constitution, it "became necessary to form a more perfect Union", by establishing a constitution giving the central government adequate powers and the means of enforcing such powers.

A Constitutional Convention, called for the purpose of revising the Articles of Confederation, met in 1787. It was composed of delegates from all the states, with the single exception of Rhode Island, the refractory child among the colonies. Nothing in the resolution of Congress that called this convention contemplated anything more radical than a proper revision of the Article, but the Convention by unanimous consent utterly ignored the purpose for which it was called and bent its efforts to the framing of an entirely new structure of government, which it offered to be discussed and ratified before it should become operative.

After the delegates from the various colonies had been chosen, the Convention finally convened on May 25, 1787, and inaugurated its proceedings by choosing George Washington, delegate from

1 cf. Black's Constitutional Law—Page 37.

Virginia and one-time commander-in-chief of the Continental armies as its presiding officer. To him, the soldier and statesman, is due, more than anyone else, the idea of a federated Union, for without his influence, the result would no doubt never have been secured. It is reported that on one occasion he said to a group of delegates: "It is too probable that no plan we propose will be adopted. Perhaps another dreadful conflict is to be sustained. If, to please the people, we offer what we ourselves disapprove, how can we afterwards defend our work? Let us raise a standard to which the wise and just can repair. The event is in the hand of God."[2] True words from a wise and trusted leader of men.

The Convention began its work by adopting rules of order, and it is to be noted that foremost among these was the rule of absolute secrecy as to the happenings and speeches in the convention itself. This rule was enlarged to state that no disclosure should be made during the lives of the members. And it is also noteworthy that the majority of the members died without disclosing the secrets of the deliberations. All the records were burnt with the exception of the minutes which were put in the custody of Washington. Nothing was known of the form or result of the labors until the Constitution itself was given to the people for their decision.

The only comprehensive statement of the more formal proceedings that is left to posterity is to be found in the writings of James Madison, so as a consequence, we have very little material from which to determine how the delegates arrived at their results, which have proved of such inestimable value in the government of this country of vast and varied interests and problems. Even the journal consisted of little more than daily memoranda from which minutes should have been written but were never so made up. This itself was never published until 1819, or thirty-two years after the final adjournment of the Constitutional Convention.

After the rules of order and the nature of the proceedings were determined, the Convention was opened by an address by Randolph of Virginia in which he submitted what is known as the Virginia plan of government, composed of fifteen points. In his

2 cf. Constitution of the United States—Beck—Page 80.

own language, "they were not intended for a federal government" (a league of states), but "a strong central Union". It provided for a national legislature of two houses, the lower to be elected by the people and the upper by the lower on nomination of the legislatures of the several states. The executive and judiciary powers were also provided for, and given the authority "to examine every act of the national legislature before it shall operate. and every act of a particular legislature, before negative thereon shall be final."[3]

After the submission of the Virginia plan, Pinckney, the brilliant young lawyer from South Carolina, at that time only twenty-nine years of age, submitted to the Convention the plan of Federal government. In all parts, the plan submitted by this youth is the United States Constitution in essence. It is to be noted however that the only copy of this plan was furnished years afterwards to Madison for his Debates, so we may cast the eye of suspicion on the perfection of Pinckney's wisdom.

The Convention then resolved itself into a committee of the whole to consider the propositions of the Virginia plan. At the time, due no doubt to the prejudice against the youth of Pinckney, his plan was not considered.

The debate was entirely on the underlying principles of government, and indicate the care with which the members had studied the governments of both ancient and modern times. In Beck's work on the Constitution, he calls attention to the fact that references were made to the forms of government of no less than twenty-two nations at various times in their history.

It was during this period that the seemingly insurmountable obstacles of representation of the various states proved to be of such a vital importance. The fear of the small states led to bitter and heated arguments over the idea of representation on a basis of populaiton. On June 15 the small states presented their draft, now known as the New Jersey plan as it was proposed by Patterson of that state. Its chief advance was in the provision for a federal executive and a federal judiciary, but otherwise, the government remained a mere league of states, under which the central government could only act by a vote of nine states. It provided that "the acts of Congress shall be the supreme law . . .

3 cf. Section 8 of the Virginia plan.

and that the judiciary of the states shall be thereby bound".[4] And in addition, "if any state or body of men shall oppose . . . . such acts and treaties, the executive shall call forth the power of the states . . . to enforce and compel such obedience to the acts and treaties".[5]

The debate at times between the small and large states became bitter in the extreme. Threats of secession finally ended in the ultimatum that unless representation should be on a basis of equality, they would leave the Convention. At this juncture, Franklin moved for an adjournment for a period of forty-eight hours, for the purpose of allowing the members to discuss their differences among themselves, and attempt to come to some form of agreement. After this recess, a committee of eleven, one from each state, was appointed to report on the question and reported in favor of proportionate representation in the House and equal representation in the Senate. This suggestion was the product of the Nestor of the convention, Dr. Franklin. On July 16 the compromise was finally adopted, much to the disgust of the members from New York who carried out the threat of secession and did not return, with the exception of Hamilton who occasionally attended subsequent meetings.

Other debates took place on many and varied subjects, and finally the Constitution was framed and it was presented to the several states for their necessary ratification. The fear of George Washington as to its adoption, which has already been quoted, was shared to a great extent by the majority of the delegates. It did not seem possible to them at the time that the varying degrees of opinion that existed could be reconciled so as to allow a union to be formed.

This Constitution that they submitted to the people is, considering its immense field of application, one of the simplest and most concise instruments ever written by the hand of man.

By it there are sixty-five powers given to the Federal government and seventy-nine withheld, of which 13 are denied both to the Government and the constituent states. Forty-three of sixty-five powers given to the Federal government are denied the

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4 cf. New Jersey Plan—Section 6.
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states, while as to eighteen of those powers, the grant is concurrent.[6]

Apparently the Constitution deals only with practical and essential details of government, but the discerning mind will observe that beneath these there is a broad and accurate political philosophy which embodies the essential principles of the Constitution.

The first and foremost of these essential principles is the idea of representative government. There was nothing more feared by the members of the Constitutional Convention than what they termed "democracy", or the power of the people to legislate directly, and it is evident on perusal of the result of their deliberations that their efforts were directed to formulating a plan whereby chosen men would do the legislating, and the power would be as far removed as possible from the passions and prejudices of the multitude. Perhaps the attitude of the members is best expressed by Madison, who said, "A pure democracy, by which I mean a State consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. Such democracies have ever been spectacles of turbulence and contention, and have often been found incompatible with the personal security and rights of property, and have generally been as short in their lives as they have been violent in their deaths."[7]

A few of their number, Franklin principally, recognized the genius of English speaking people for self rule and doubted the efficacy of the Constitution, unless, like a pyramid, broad based on the will of the people.

The spirit of representative government has greatly changed since the Constitution was adopted. The representative, instead of voting as judgment and conscience dictate, has become merely the mouthpiece of the people who have selected him. It would appear in the light of present conditions that in time, the theory of the framers that the limit of democracy lies in the selection of tried and true representatives, may yet be justified.

The second of these principles and by far the most novel of them all is the unique form of dual government. Under the Constitution the governmental power is divided into three parts,

6 American Constitution and Property Rights—Stimson.
7 Federalist Papers—No. 10.

the power granted to the Central government, the power granted to the states, and lastly, the powers reserved strictly to the people.

The inevitable tendency in American politics is toward centralization, and the need today is to keep as far as possible a check on this inevitable tendency. However, it would be erroneous to say that the system is a failure, for in a large degree it is powerful today, and the success with which the makers of the Constitution reconciled national supremacy and efficiency with local self-government is one of the great achievements in the history of mankind and nations.

The third and last philosphic principle is the guaranty of individual liberty thru constitutional limitations. In all previous government the state was sovereign and could grant individuals certain privileges or exemptions, which were called liberties. Thus the Magna Charta granted the barons by King John were exemptions from the power of the government. The founders of our government believed that each individual had certain "inalienable rights" which neither the state nor the people could rightfully take from him. The worth and dignity of the human soul, the free competition of man and man, the nobility of labor, the right to work, free from the tyranny of state or class, was their gospel.

Some writers also place among these principles, that of an independent judiciary. Under the Constitution, the judiciary was granted unprecedented powers. The Supreme Court of the United States is a tribunal that has won the respect of the entire world for its impregnability and prestige. Its decrees are accepted without question in spite fo the fact that it has no power to enfoce its mandates; they are obeyed implicitly by all powers from the lowest to the most high. The people of the United States have had from all time the confidence that the Supreme Court will protect their liberties.

As one eminent writer has said, "if the American Constitution had done nothing else than to establish in this manner the supremacy of law, even as against the overwhelming sentiment of the people, it would have justified the well-known encomium of Mr. Gladstone."[8]

8 Constitution of United States—Beck—Page 316.

After these underlying principles, we come to a discussion of the Constitution itself, its origin and its history, and no better way exists to secure a thorough understanding of the subject than to discuss it article by article, showing in each case how the steady growth of governmental ideas left its influence on the framers of the Constitution and determine their course of action. It must be remembered that among the delegates were men who had been educated in the history of government. Of the fifty-five members, thirty-one were lawyers, and had a firm foundation of knowledge on which to base their judgments. The principles of the Constitution were not formulated in a day. During the period of charter government many of the colonists lived under administrations that permitted of greater liberties than were enjoyed by English people themselves. Many of the provisions of our Constitution merely state principles of English law as the colonists thought they should be applied to meet their requirements for a new form of government.

Article I provides for the legislative powers of the United States to be vested in a Congress consisting of a Senate and a House of Representatives, and provides for the method of election, as well as for their qualifications, and states the powers of each body. Also included in this article are the methods of passing a bill and the kinds of bills that may be passed.

While Congress, under the Articles of Confederation, had consisted of only one house, an important change was made by the Convention in adopting its first resolution declaring for a Congress of two houses. By this act it modeled itself closer to the English fashion, which since the reign of Edward III (1341) had had a parliament composed of two houses. It is to be supposed that the prime motive force in this act was to avoid the secession of the smaller states, which was threatened if they did not secure equal representation. Under this plan, each state has equal representation in the Senate, and proportionate representation in the House of Representatives. It will also be noted that this first article contains no reference as to the sex of representatives, and thus the anomalous situation arose in 1916 when a woman was elected to Congress, four years before the national suffrage amendment had been adopted.

The provision in this article for assembly once each year was designed to prevent the occurrence of such an affair as had

happened thruout the history of England, when the sovereign repeatedly dissolved the parliament for its refusal to comply with his arbitrary wishes. One of the complaints in the Declaration of Independence was that George III had "repeatedly dissolved representative houses for opposing with manly firmness his invasion of the rights of the people; he has refused for a long time after such dissolution to cause others to be elected."

The privilege of freedom of debate is also guaranteed by this article, as a distinct following of the custom that prevailed in the Parliament of England. At only one time in English history was the right denied to members; that is during the reign of Elizabeth and immediately thereafter. Later the right was firmly established, and the step that forced Charles I into civil war was his attempt to seize five members within the walls of the house. An eminent historian wrote, "at the very moment when the subjects of Charles were returning to him with feelings of affection, he had aimed a deadly blow at all their dearest rights, the privileges of Parliament, the principle of trial by jury."[9] The creation of an executive department, under the second article of the Constitution, is an outgrowth of the feeling of the people from the time of Cromwell, that for true liberty, there exists a need for an executive power, separate and distinct from the legislative body.

Hamilton emphasizes this need by writing, "Energy in the executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of laws; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction and of anarchy."[10]

By this clause, the delegates remedied one of the most glaring and obvious defects of the Articles of Confederation, and created a person in whose authority should be concentrated the whole administrative force of the government. The president is as much a creation of the Constitution as the legislative body or the supreme court, and in consequence is just as independent of either of them as they are of him.

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9 Macaulay's History of England—Vol. I. p. 107.
10 Hamilton in, "The Federalist"—No. LXXX.

At a cursory glance, it would seem as though the president is little else than a figure-head, being subject to removal and doing little save to execute the laws of the Legislature. However, within his sphere, he is powerful and independent. James Bryce has said that Abraham Lincoln wielded more authority than any Englishman since Oliver Cromwell.

The qualifications of this office, as expressed in the Constitution, are: "No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years and been fourteen years a resident of the United States."

As has been mentioned before, the framers of the Constitution had no great faith in the powers of discernment of the people as a whole, and in order to remove the office from the passions and prejudices of the people, provided for the election of the President and Vice-President by an electoral college, to be appointed by the legislature of the state.

By Article II, section 1, paragraph 6, in the case of the vacancy of the presidential office, by death, resignation, or inability to perform the duties, the duties descend to the Vice-President, and the same would probably be the case in event of the vacation of the office by the impeachment of the President. The order of succession, by an act of January 19, 1886, is as follows: Secretary of State, Secretary of the Treasury, Secretary of War, Attorney-General, Postmaster-General, Secretary of Navy, Secretary of Interior, and Secretary of Labor, provided that the officer designated has been appointed with the advice and consent of the Senate, fulfills the elegibility rules of the Constitution, and is not under impeachment proceedings.

His powers are Commander-in-Chief of the Army and Navy of the United States, and the militia of the several states when it is called into actual service of the United States. He has the power, with the advice and consent of the Senate, to make appointments to office, and to remove them. The power of reprieve and pardon is also inherent in the office of the Executive, and is forbidden by the Constitution only in cases of impeachment.[11]

11 Art. II, Section 2, paragraph 1—Constitution.

He likewise has the power to make treaties, "by and with the advice and consent of the Senate."

As chief executive of the nation, he has exclusive control of diplomatic relations with foreign nations, which are carried on thru the Secretary of State.

In the Constitutional Convention, there were many who favored a plural executive, consisting of two or more men. However the obvious points in favor of a single executive were recognized and the contention of the Federalists that plurality tends to conceal faults and destroy responsibility, was understood and adopted. The compensation of the Chief Executive was stipulated, together with the provision that it should neither be increased or diminished for the period for which he shall have been elected. Of this provision Hamilton says "They can neither weaken his fortitude by operating upon his necessities, nor corrupt his integrity by appealing to his avarice . . . . . nor will he be at liberty to receive any other emolument than that which may have been determined by the first act. He can of course have no pecuniary inducement to renounce or desert the independence intended for him by the Constitution."[12]

The provision for impeachment for conviction for treason, bribery, or other high crimes and misdemeanors, was caused by the example of corruption in the public life of England at the time. Scarcely an office in the whole English governmental system, but was filled with corruption. It even extended to high offices, and at the time of the Convention, 1787, Warren Hastings, the first Viceroy to Bengal, was impeached by the House of Commons for "high crimes and misdemeanors".

The judicial system of the United States is established by the provisions of the third article of the Constitution, and the jurisdiction of its courts is defined and limited. "The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body."[13]

If it were not for the system of Federal courts extending thruout the union, the Constitution could never have been made

12 Hamilton in "The Federalist"—No. LXXIII.
13 Hamilton in "The Federalist"—No. LXXVIII.

an efficient working mode of government. The judges of this tribunal are the most independent members of any judiciary in the world, past or present. This independence is secured to them for all time by the words of the Constitution, under which they hold "their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office."[14] The wisdom of the framers in this provision is manifest. Their tenure of office is not dependent on the will of anyone, nor may the legislative body force their action by increase or diminution of their compensation. As a universal rule, they are men of unimpeachable character and ability, selected for their distinguished attainments on the bench or at the bar. Only once in the history of the court has a justice been impeached and it is the concensus of opinion, that the charges brought against Chase were more political in their nature than they were personal.

Noting the trouble that was raging in France, between Louis XV and the Parliament, which combined judicial and legislative powers, the delegates wisely separated the two functions in the American mode of government. The Constitution made the Supreme Court the final conscience of the nation with respect to the powers of government, and it has continued to be such a conscience with unbroken success to the present day. It has been noted previously in this treatise that the independent judiciary was one of the most startling innovations in the method of government at the time the Constitution was written.

No better praise has ever been penned for the Supreme Court than the following, "Always the Supreme Court stands as a great lighthouse, and even when the waves beat upon it with terrific violence, yet after they have spent their fury, the great lamp of the Constitution—as that of another Pharos—illumines the troubled surface of the waters with the benignant rays of those immutable principles of liberty and justice, which alone can make a nation free as well as strong."[15]

"Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in

14 Constitution—Art. III. Sec. 1.
15 Constitution of The United States—Beck—Page 231.

which such acts, records and proceedings shall be proved, and the effect thereof."[16]

The above is one of the so-called nationalizing clauses of the Constitution. It is one of the clauses that go to make what might merely be an assembly of states, a solid and perfect union, in which every citizen is guaranteed his rights and immunities on an equal basis with the citizens of every other state. This same clause is found in one of the resolutions passed in 1777 by the Continental Congress, and later appears in the articles of Confederation.

Under it, a citizen going to or transacting business in a foreign state is entitled in the latter state to all the privileges and immunities enjoyed by its citizens. Any law which attempts to destroy this right is void as being in conflict with this clause.

In the fourth article is also found the law with respect to extradition, or the removal of a fugitive from justice from a state where he has taken refuge to the state demanding that he be punished for a crime committed in its jurisdiction.

Other clauses provide for the admission of new states into the Union, and the manner in which Congress may do this, and also guarantee to every state the right to a republican form of government. Whether or not a republican form of government exists, and what is such a form, is a question for the legislative power to determine, and not for the judiciary. This question arose out of Dorr's rebellion in 1842, when persons in the military service of the state broke into and searched the rooms of persons who were in the insurrection. In an action for damages brought by persons whose rooms had been entered, the defendants justified themselves on the ground that as officers of the State they were helping it defend itself from insurrection under the declaration by it of martial law. The plaintiff rejoined that the former state government "had been displaced and annulled by the people of Rhode Island" and that the persons who were said to be in insurrection were in fact "engaged in supporting the lawful authority of the State". In a decision by Chief Justice Taney it was said that in forming the constitutions of the different states after the Declaration of Independence, and in the various changes which had since been made, "the political division has always de-

16 Constitution—Art. IV, Sec. 1.

termined whether the proposed constitution or amendment was ratified or not by the people of the state, and the judicial power has followed its decision."[17]

The fifth Article provides the ways in which the Constitution of the United States shall be amended, provided "that no amendment which shall be made prior to the year 1808 shall in any manner effect the first and fourth clauses in the ninth section of the first article", and that no state shall without its consent be deprived of equal suffrage in the Senate. This last is merely an additional guarantee to the small states, against being prejudiced by the larger ones.

By the sixth article, the Union assumed the debts contracted before the adoption of the Constitution and recognized them as valid claims against the United States. This was thought necessary because of the lowness of the credit of the colonies. Had it not been for the French and Dutch bankers the war for freedom would have failed, and it was thought best to give them some assurance that their debts would be paid.

The second section defines what shall be the supreme law of the land, namely the Constitution, and the laws made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be such supreme law.

The third section requires all executive and judicial officers of the states and the United States, to take an oath to support the Constitution, but specifies that no religious test shall be required as a qualification to any office or public trust under the United States.

The last article of the original Constitution provides that the ratification of nine states shall be sufficient to establish the Constitution as between the states so ratifying.

New Hampshire was the ninth one to so ratify, doing it on the 21st of June, 1788. Rhode Island held out to the bitter end and only applied for admission in 1790, when the new government began to deal with it as a foreign nation and subjected it to taxes on its exports.

The chief objection among the dissenting states to the ratification of the Constitution was the absence in its provisions for what is called a Bill of Rights. Even in the Convention, there had

17 Luther v. Borden—7 Howard 1—or—48 U. S. 1.

been considerable discussion on the matter and in the Madison Papers we find the following selection of the debate on this subject. In the Convention, "Randolph, animadverting on the indefinite and dangerous power given by the Constitution to Congress, expressing the pain he felt at differing from the body of the Convention on the close of the great and awful subject of their labors, and anxiously wishing for some accommodating expedient which would relieve him from his embarrassments, made a motion importing that amendments to the plan might be offered by the state conventions which should be submitted to, and finally decided on by another general convention."[18]

In 1774 a Declaration of Rights had been issued by the Colonies thru deputies sitting "in general Congress" at Philadelphia. In this, they made specific charges, citing the arbitrary proceedings of Parliament and declaring that the foundation of liberty is the right to share in legislative councils, that a standing army in the Colonies was against the law, that restraint of the right to assemble and petition was illegal, and that acts providing for the trial of colonists in England were unjust and without authority.

Massachusetts, New York, Virginia and some of the other states wanted a Bill of Rights in the Constitution, and it was only with the tacit understanding that they should have one that they ratified it. This Bill of Rights contains nothing new or unusual, being merely a transplantation of the guaranties and immunities that are inherited from the English law.

Madison on June 8, 1789, offered guaranties of rights in the form of twelve amendments to the Constitution. Of the twelve amendments, two of them dealing with membership in the House of Representatives by population, and of the taking effect of a law varying the compensation of senators and representatives until an election should have intervened, failed of adoption. Ten were finally adopted and proposed to the states, September 25, 1789, and ratified finally by Virginia on December 15, 1791. No record that the legislators of Massachusetts, Connecticut or Georgia ever ratified them exists, but they went into effect without such ratification.

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18 Madison Papers—III, 1593.

Article I provides that Congress "shall make no law respecting an establishment of a religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people to peaceably assemble and petition the government for redress of grievances."[19]

However under this clause, it has been decided that no freedom exists for "the practice of polygamy and all other open offences against the enlightened sentiment of mankind notwithstanding the pretense of religious convictions by which they may be advocated and practiced."

Also, in spite of the freedom of the press, there is no justification for the publication of what is improper, mischievous, or illegal. The right of assembly was already existing in customary law, and even the Colonial Declaration of Rights held it legal to assemble and petition the King for redress of grievances. Such assembly must be peaceable however in the universal concensus of all the authorities.

The second refers to the right to bear arms, and has application to the militia of the States, and not to arms used by the lawless. This prohibition on the nation, for it must be borne in mind that these ten amendments have application to the Federal government alone, means that the government can never interfere with the people who make up the militia of the states.

The third denies the right to quarter soldiers in any house in time of peace, or in war save by manner prescribed in law. The English parliament required that the colonists provide quarters for troops, and it was one of the moving forces in the colonists' revolutionary action. They knew these soldiers only as an instrument of lawless power that they resented, and made formal complaint in the Declaration of Independence.

The fourth amendment provides the right of freedom from search and seizure and forbids the issue of a warrant save on probable cause. It is the boast of the English race that a man's home is his castle, and as such is immune from the entry of any force. This same rule or idea was to be found in the law of ancient Rome. This does not extend to the state governments, but is a restriction on the legislature and judiciary of the Union. However, all of the states have similar provisions in their constitutions to guard the sanctity of the home.

19 Constitution of United States—Art. I, Bill of Rights.

By the fifth, "no person shall be held to answer for any capital or infamous crime, unless on indictment of the grand jury, save in cases arising in the land or naval forces, or in militia, when in actual service in time of war or public danger."[20] The object of this was to secure to the person charged, the protection against tyranny, and to prevent his being placed in jeopardy more than once for the same offense. A person is considered to have been put in jeopardy when there is a valid indictment, a court of jurisdiction, and a jury impaneled and sworn. Neither can he be, as a result of this, deprived of life, liberty or property without due process of law, nor can any property be taken for a public use without due compensation being made to him. "The appropriation of property is an act of public administration, and the form and manner of its performance are such as the legislature in its discretion may provide."[21]

The sixth article provides that in criminal prosecutions, "the accused shall enjoy the right of a speedy and public trial, by an impartial jury" in the district where the crime was committed. This provision for trial in the local jurisdiction can be traced to the part of the Declaration of Independence, where it was complained that persons were taken to England for trial for an offense committed in the Colonies. The accused also has the right to meet the witnesses face to face and have the opportunity to cross-examine them on the nature of their testimony. This did away with the unjust and pernicious custom in the English courts of allowing depositions to be taken and read in the trial of the case. There are records, where men were convicted of capital offenses on the deposition of a single suborned witness, the most notable example being the case of Sir Walter Raleigh, who was convicted on the deposition of a witness who before the execution recanted his deposition. However, it was a well established rule that the dying declaration was an exception to the right of meeting a witness face to face and such rule is in force to the present day.

The seventh amendment, though it provides in general terms that the right of trial by jury shall be preserved, is intended to apply only to proceedings in the courts of the United States and not to the state courts, but all the states have such a guarantee

20 Constitution of United States—Art. V, Bill of Rights.
21 People v. Smith, 21 N. Y. 595.

in their own constitutions. The Workmens' Compensation law was held not to be unconstitutional on the ground that the seventh amendment does not apply to the state courts.

Under the eighth, no "excessive bail shall be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted." Long imprisonments had so enraged the English people that at the time of the accession of William and Mary to the throne, that they were required in a Declaration of Rights to agree to a provision substantially the same as that in our own Constitution. To require bail in such great amount that it would be impossible for the prisoner to obtain it, and by such means keep him in captivity a long time, would be a gross abuse of justice and grievous oppression.

The wording of the ninth amendment, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."[22]

This is a statement of the rule of construction that an affirmation in partciular cases implies a negation in all others. The amendment indicates that the National government is one of enumerated powers as well as delegated, and they are all the powers that the United States possesses. Any step beyond the enumeration is unconstitutional and void.

The tenth says that all powers "not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the states respectively, or to the people".[23] This amendment and the preceding one, show the fear that the National government might slip to tyranny and oppression in an attempt to exercise powers which it did not possess.

This is the last of the amendments in the Bill of Rights, written in restraint of the power of the government against the people and the states.

The greatest purpose of the Constitution was not alone to balance the relative powers of the nation and states, but to maintain in the scales of justice a balance for the power of the people independent of the power of the government.

The utmost a government can do is to protect men against the wrongs of others and to promote the slow and upward progress of civilization. If this is the true test, then the fathers of

22 Constitution of United States—Art. IX, Bill of Rights.
23 Constitution of United States—Art. X, Bill of Rights.

this nation builded wisely and well, and their magnum opus, the Constitution, is still a living document, the guiding light of the destinies of the greatest nation of history .

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