

# THE CONSTITUTION OF THE UNITED STATES OF AMERICA

## REPRESENTATIVE GOVERNMENT

### LESSON 09 SESSION 02

#### 9.9 Enumeration of constitutional rights

Individual rights formally guarded *by* original constitutional provisions: No ex-post facto laws. No bill of attainder. No suspension of privileges of habeas corpus.

1. Trial by jury and at places where the crimes were committed.
2. Definition of treason and limiting punishment.
3. Guaranty of immunity and privileges of all States to the citizens of each State.
4. No religious test before admission to public office.
5. To which the Bill of Rights added:
6. Right of peaceable assembly and petition to the Government for redress of grievances.
7. Freedom of religion, speech, and press.
8. Right of the people to keep and bear arms — militia.
9. Quartering of soldiers only as provided by law.
10. Protection against unreasonable searches.
11. Right of accused to indictment by grand jury with certain exceptions.
12. No compulsory testimony against self.
13. No deprivation of rights without due process of law.
14. No confiscation of private property for public use without just compensation.
15. Right of a speedy and public trial by an impartial jury.
16. Right to demand information concerning the nature and cause of accusation.
17. To be confronted with witnesses against him.
18. Compulsory process for obtaining witnesses in his favor.
19. Have assistance of counsel for defense.
20. Right of trial by jury in suits of common law where value and controversy shall exceed \$20.
21. Protection of verdict of said jury.
22. No excessive bail required.
23. No imposition of excessive fines.
24. No infliction of cruel and unusual punishment.
25. Rights retained by the people shall not be denied nor disparaged.
26. Powers not delegated to the United States by the Constitution nor prohibited by it to the States are reserved to the States or to the people.

## **9.10 Government by representation**

The framers of the Constitution were opposed to direct government. The remedy sought was to be found in representative government. Madison declared that the object to which their efforts were to be directed was how to prevent a majority rule and to preserve the spirit and form of popular government. The representative form of government was their answer. The United States shall guarantee to every State in the Union a republican form of government. — *Constitution, Article IV, Sect. 4*

Sovereignty was placed in the hands of the people. No authority was delegated to any department either of National or State Government except by the people through the provisions contained in the Constitution.

There could be no question but that by a republican form of government was intended a government in which not only would the people's representatives make laws and the agents administer them, but the people would also directly or indirectly choose the Executive. — *Cooley*.

## **9.11 Compromises**

In the establishment of our dual form of government a spirit of compromise prevailed. The instrument offered by the makers of the Constitution was the result of compromise, especially in regard to the matter of representation; the smaller States demanded equal representation with the larger. The compromise established two Houses of Congress: the Senate, in which each State was given equal representation; the House of Representatives, in which the membership was apportioned to the population. The functions of the two Houses of Congress were specifically stated and their powers definitely limited.

## **9.12 Separation of powers**

Members of the convention of 1787 feared the oppression of highly concentrated power, whether on the part of an individual or the ascendancy of a parliamentary majority. Any suggested scheme to be satisfactory must limit the power of government rather than expand it.

Their plan of government provided for the division of power into three departments:

1. A legislative body working together in a representative capacity having power of appointment, power of legislation, power to raise revenues, power to appropriate funds for public expenditure.
2. An executive department whose duty was law enforcement and administration of the departments.

3. A judicial or law-interpreting department, at the head of which stands the Supreme Court.

### **9.13 Checks and balances**

These departments were separated from each other as far as possible, cooperating when necessary. Checks were placed upon each, preventing anyone from becoming absolute or despotic. They were likewise balanced against each other in such a manner as to preserve the equilibrium of government : States are balanced against the Central Government; House of Representatives is balanced against the Senate; Senate is balanced against the House of Representatives; executive authority is balanced by the legislative; legislative department is balanced by the executive; judiciary is balanced against the legislative, executive, and State governments; Senate is balanced against the President in all appointment to offices and all treaties; people hold a balance against their own representatives through periodical elections.

Among the curbs and restrictions on the powers of the Central Government, the strongest checks are: Establishment of a smaller legislative body with less changing personnel and longer terms based on equality of representation, having coordinate legislative authority, with the exception of revenue bills, which originate in the House of Representatives, and treaties and appointments, which are committed to the President and the Senate; the public sentiment of an intelligent and conservative people; popular elections; short terms of office.

131. Federal judiciary. — To accomplish the uniform interpretation of the Constitution a Federal court system was necessary, and it was provided that the judges should be appointed by the President, "with the advice and consent of the Senate."

Through the system of checks and balances the safeguarding of the Constitution is charged to the Supreme Court. However, every judge in the land is also bound, under oath or affirmation, to support it and declare void any enactment which violates its provisions.

When a State court fails to fulfill this obligation "its action is reviewable and reversible by the Supreme Court of the United States."

This system which makes the judges the guardians of the Constitution provides the only safeguard which has hitherto been invented against unconstitutional legislation. — *Dicey*.

The courts keep each authority within its proper sphere, but they have the power to interfere only when a concrete case is brought before them for judicial consideration.

One method of assault may be to effect in the form of the Constitution alterations which will impair the energy of the system and thus undermine what cannot be directly overthrown. — *Washington — Farewell Address*.

A Constitution may be undermined by the passing of laws which, without nominally changing its provisions, violate its principles. — *Dicey*.

One of the exceptional features of our republican form of government is the independence of the Federal judiciary whose jurisdiction extends to all cases arising under the Constitution itself; cases arising under the Federal laws and treaties; cases affecting ambassadors, consuls, etc.; cases of admiralty and maritime jurisdiction; cases in which the United States is a party; controversies between States; cases commenced by a State against the citizens of another State; controversies between the citizens of the same State under land grants from different States; cases between American citizens and foreign states, citizens or subjects.

The balance of power has been preserved. The Constitution as a whole stand unshaken with but slight encroachments of one department upon the other.