

The Constitution and Freedom of Religion and Speech

The first amendment of the Constitution starts with "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech ..." (Dye, 88) These few short lines were ratified on December 15, 1791 as part of the ten amendments known as the "Bill of Rights". All the related legislation goes back to these words and tries to decipher their meaning and adjust the lower level laws to the Constitution's intent.

The very first part of the sentence is known as the "No Establishment Clause". Over the years its interpretation has changed. The first one was probably the closest to the authors - who were familiar with Montesquieu's notion of separating state and church - had in mind: no single church should be recognized by the government as a national church. A broader interpretation might be that no religion should be treated in a more favorable manner officially than any of the others. In 1947 Justice Hugo Black gave the most expansive and still upheld explanation of the law, known as the "wall-of-separation doctrine" that "prevents government from endorsing, aiding, sponsoring, or encouraging any or all religious activities." (Dye, 509) Thus this doctrine protects us from any form of government intervention into our private religious affairs.

The second statement referring to religion in the Constitution's first amendment ("...prohibiting the free exercise thereof...") is known as the "Free Exercise Clause". This is an even clearer restriction on government's power related to the citizen's rights. A clear example of how this clause protects freedom of religion was the case when it was used against a state that wanted to force all children to attend public schools. Private, religious schools could continue to exist thanks to this law. However in real life the Supreme Court had to make a separation between beliefs and practices. The first is always protected by the Constitution, but the later is not. Religious practitioners have to comply with all laws of the country and those practices cannot be followed that violate some, e.g. the use of illegal drugs or human sacrifice is not permissible. Nevertheless I believe that the Constitution reached its intended purpose and the US is one of the freest countries regarding religious practice.

The wording of the First Amendment about freedom of speech seems rather definitive: "Congress shall pass no law ... abridging the freedom of speech". This would clearly mean that all speech is protected and none can be restricted. However the government has to protect its citizens and the country from various dangers and this duty might contradict with the freedom of speech. So the legislators tried to set up rules to limit certain types of speech without violating too much the individual's rights. The process has to find a balance between protecting the citizen's rights and the country's interests. Justice Holmes' "clear and present danger doctrine" from 1919 strived to do so. It stated that "only speech that creates a serious and immediate danger to society may be restricted." (Dye, 512) Another concept I must mention here is the "preferred position" that refers to "the tendency of the courts to give preference to the First Amendment rights to speech, press, and assembly when faced with conflicts." (Dye, 513)

Freedom of speech combined with the other guarantees of the First Amendment about press and assembly is referred to as freedom of expression. The courts, including the Supreme Court has to wrestle sometimes to find the minute details on what kind of expression should be protected and which ones violate other laws to such an extent that they

should not be tolerated. The related questions include what to do with expression or speech that may incite the audience to public disorder. Or “hate speech” that is “usually defined as hostile or prejudicial attitudes expressed toward another person’s or group’s characteristics, notably sex, race, ethnicity, religion or sexual orientation.” (Dye, 518) Balance also has to be established regarding commercial speech (advertisements) and public interest. This is done through regulation.

I am very impressed by both the Constitution’s intent and wording regarding these freedoms and also by the 200 years history of interpretation. In more cases than not the legislators involved managed to find the balance between providing the widest possible freedom to the citizens to practice their religion and protecting the general public. These kinds of freedoms made the country so appealing for immigrants, like me.

Works Cited

Dye, Thomas R. (2001). *Politics in America*. Prentice-Hall.