

Unit 2

CONSTITUTIONAL LAW

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October 25, 2010

Freedom of Speech, History

In 1754, the America's were settled enough that the "Albany Congress" was formed. The Native American's were feared to join forces with France, and the present seven Colonies met in Pennsylvania, with members from the tribes. The idea was to "form" a union. They sent a draft to England, which was rejected (1) However, Benjamin Franklin had proposed drafts since 1751, and was appointed to compile text for the congress which was meeting. It was adopted and signed July 3rd, 1754, called the Albany Papers. It basically called for emancipation from the King of England.

In 1765, the Congress passed the (Virginia) Declaration of Rights. George Mason and James Madison both had a heavy hand in writing the document. This formed the guideline for the Bill of Rights, which wasn't formed until June 12, 1776.

On a Friday, May 25, 1787, the Constitutional Convention finally opened, after the delegates all arrived in Annapolis, Maryland... One hundred, fourteen days later, the final draft of the Constitution was signed on September 17, 1787. The Bill of Rights contained the 1st Amendment, the Freedom of Religion, Press and Expression (2). Our rights were ratified by the States in 811 days.

FREEDOM OF SPEECH

- AMENDMENT 1 OF THE U.S. CONSTITUTION: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a [redress](#) of grievances.
- “In drafting the Constitution, the delegates consulted the wisdom of the ages, sifting through the contemporary political tracts of their own day, as well as the histories of ancient civilizations. They understood power to be corrupting and humans to be subject to their worst instincts” (3).
- CONCEPTS:
 - (1) The right to receive information freely: using the internet, reading a newspaper or a book; listening to the radio, TV, or a speech.
 - (2) The right to maintain ideas and beliefs: wearing religious garments, reading the Bible or Koran, etc.
 - (3) The right to communicate your ideas to others: talking openly with your friends in a public place, going to a theatre and taking part in a play.
 - (4) The right to engage in ideological silence: refusing to declare the Pledge of Allegiance.
 - (5) The right to engage in symbolic speech (4). You can talk about anti-war feelings during wartime, but you can't act out against a veteran returning from the war.

ANALYSYS

James Madison “solution” was for a strong Federal government. He believed that there were so many smaller interest groups among the states, that no one would be able to voice their opinion in state matters. Madison further aimed to block the ability of one stronghold controlling the country, thereby reassuring our three branches of government work together as a team(4).

The Framers met to keep from returning to the ways of England and other European countries from which they came. Our ancestors came to America to avoid persecution from religious views, slavery, speaking out against the government, paying exorbitant taxes, starvation, prohibition of rights, etc, just to name a few. Everything that is in the Bill of Rights was felt to be something that was a God given right of every man, woman and child. The Framers of the Constitution met in Pennsylvania, “taking drafts from great English documents of more modern times on popular freedom. Also, the colonial charters became the foundation of the America’s claim to the “rights of Englishmen”, and were the predecessors of the State Constitutions, which owed their origins to the American Revolution” (6)

One point to be made is this. The rights and liberties were already there prior to the Bill of Rights and Constitution. What the framers did was *SECURE* our rights. Most limitations in the Freedom of Speech can be noted by looking at what is not

acceptable by the majority of society at the time. At that time, police powers come into play, and that is also our protection. The Framers also excluded obscenity and child pornography, fighting words, threats, and incitement to immediate unlawful action. These carry no First Amendment coverage.

Excerpt from Speech by Eugene V. Debs, June 16, 1918

“I have just returned from a visit from yonder (pointing to workhouse) where three of our most loyal com-rades are paying the penalty for their devotion to the cause of the working class. They have come to realize, as many of us have, that it is extremely dangerous to exercise the constitutional right of free speech in a country fighting to make democracy safe for the world. I realize in speaking to you this afternoon that there are certain limitations placed upon the right of free speech. I must be extremely careful, prudent, as to what I say, and even more careful and prudent as to how I say it. I may not be able to say all I think, but I am not going to say anything that I do not think.”

References

- (1) <http://www.usconstitution.net/consttime.html>
- (2) http://www.usconstitution.net/xconst_Am1.html
- (3) http://www.archives.gov/exhibits/charters/charters_of_freedom_zoom_pages/charters_of_freedom_zoom_6.2.1.html
- (4) Kanovitz, J.R. (2010). *Constitutional Law* (12th Ed.). New Providence, NJ: Matthew Bender
- (5) <http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/convention1787.html>
- (6) http://www.archives.gov/exhibits/charters/constitution_q_and_a.html