

Our Living Shield: The First Amendment

The authors of the Constitution of the United States created a magnificent list of liberties which were, at the time ascribed, to most people belonging to the United States. The main author, James Madison, transported the previous ideas of fundamental liberties from the great libertarians around the world, such as John Lilburne, John Locke, William Walwyn and John Milton. Madison and other previous libertarians of his time were transposed into seventeen different rights which were to be secured to all those in the United States. These seventeen civil liberties were compressed into ten different groupings which were designated as the "Bill of Rights." In this document lay the First Amendment which stated that the people of the United States had the "freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government..." The First Amendment was drafted by federalist Madison mainly as a political tactic to abolish anti-federalist resistance to the Constitution. After its passage in December of 1791, the First Amendment remained more idealistic than realistic. The First Amendment remained a set of ideals which were not to be carried out during its first century, then progressed to more realistic terms during its latter half of utilization.

During the first century of the First Amendment, the First Amendment

was paid a glance by all when it came to actually carrying out the freedoms guaranteed by this amendment. For example, in 1794, Pennsylvanian backcountry farmers protested a whiskey tax. The protesters were not violent such as those of the previous Shay's Rebellion. George Washington sent in a militia to crush the rebellion denying them of their First Amendment right to "peaceably assemble." Later, in 1836, anti-slavery newspaper editor James G. Birney had been warned that his newspaper "The Philanthropist" was not desirable in the city of Cincinnati. When Birney refused to cooperate, mob action took rule and, "scattered the type into the streets, tore down the presses and completely dismantled the office." This contradicted the First Amendment which stated that, "freedom...of the press," is a constitutional right. The Supreme Court could do nothing about these situations when in *Barron v. Baltimore*, the Court ruled that, "These amendments contain no expression indicating an intention to apply them to state governments. This court cannot so apply them." Thus, the Supreme Court could not interfere when First Amendments are being violated within a state. These acts were representative of the lack of recognition for our First Amendment rights during the first half of the Bill of Right's acceptance.

The second half of the Bill of Rights was marked by a rebirth in which the Bill of Rights was no longer a set of ideals. The second half began when in 1925, the court ruled in *Gitlow v. New York* that the First Amendment supersedes state laws. This nullified the Court's ruling in *Barron v. Baltimore*, which took place 92 years earlier. Also, in 1931, the Court overturned

Minnesota's conviction of Jay M. Near, whose anti-Semitic "Saturday Press" violated Minnesota law which prohibited "malicious, scandalous and defamatory" remarks towards politicians and other public officials. The Court stamped Minnesota's law in violation of the First amendment. In 1937, Chief Justice Charles Evans Hughes overturned the conviction of Oregon Communist Dirk De Jonge. De Jonge had been detained for attending a meeting to protest the police shooting of striking longshoremen. The Court ruled that "Peaceable assembly for lawful discussion cannot be made a crime." More recently, in 1985, the Supreme Court ruled that burning the American flag is protected by the First Amendment when the Court reversed the conviction of Gregory Lee Johnson, who was arrested for violation of the Flag Protection Act of 1989. The Court then ruled the Flag Protection Act of 1989 unconstitutional. These instances clearly portray the rebounding of libertarian beliefs.

The First Amendment of the Constitution started off as a set of beliefs meant to supply reason for one being patriotic rather than supply those inalienable rights discussed in the Declaration of Independence. It then developed into a powerful document which is the only living manuscript which specifically lists out the peoples rights. One cannot look back without looking ahead. The supreme court currently is overwhelmingly conservative. Without the balance of conservatism and liberalism, a deficiency evolves. And this deficiency is human rights. The Supreme Court ruled in 1990 that two American Indians were not protected by the First Amendment when they

religiously smoked peyote. This is only a sample of the conservatism which will eventually plague America. The Court's decisions are close to eternal and decisions made now will affect America's future. And whether or not we should put America's future in one group's hands is out of the question. The court is currently dangerously conservative.