

First, Second and Third Amendments of the United States Constitution

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Abstract

In this paper, the author examines the First, Second, and Third Amendments to the Constitution of the United States of America. These are three of the ten amendments that make up the Bill of Rights, which was ratified on December 15, 1791. Each amendment is stated verbatim followed by a consideration of the historical development, as well as the clauses and rights that we, the people, are afforded because of each addition to the U.S. Constitution. Finally, noteworthy court cases that made it to the Supreme Court due to the questioning of Constitutionality for the First, Second and Third Amendments and their rulings are explained in detail. The author then discusses how the Second and Third Amendments relate back individually to the First Amendment.

The First, Second and Third Amendments of the U.S. Constitution

First Amendment

The First Amendment states:

“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 assembly and to petition the government for a redress of grievances.”

(Jayson & Killian, 1973, p. 911)

Development

In 1787, just 11 years after the founding of the United States of America, delegates from each of the 13 states gathered together in Philadelphia to create a framework for self-government. “The Constitution of the United States was written to create a system of checks and balances that would include a strong executive branch, a representative legislature and a federal judiciary” (The Bill of Rights: A Brief History, 2018). As remarkable as the Constitution was, it was missing some key details that were necessary to the true freedom of the people.

The biggest issue was the lack of a declaration of rights of both the people and the government within the Constitution. It also was not applicable to all. “The consent of the governed” meant specifically propertied Caucasian men. A section had to be added that addressed these issues, and thus, the Bill of Rights was born.

The First Amendment is arguably the most important amendment to the Constitution. This amendment “prohibits the establishment of a state supported church and guarantees the

freedoms of worship, of speech and the press, the rights to assemble peacefully, association and petition” (Illinois First Amendment Center, 2015).

Religion

Because of the religious oppression that most settlers sought refuge from, by the time the Bill of Rights was being considered, the freedom of religion was widely considered an inalienable right, and was highly supported by many.

The freedom of religion was presented in two clauses: the establishment clause as well as the free exercise clause. The establishment clause prohibits the government from establishing an official church, while the free exercise clause grants the right to worship as one pleases. (Ushistory.org, 2018) It is necessary to note that the phrase “separation of church and state” is not included in the First Amendment. That phrase was coined by President Thomas Jefferson in 1802 when he wrote that the First Amendment’s religious freedom clause was designed to build “a wall of separation between church and state.”

The interpretation of the religious freedom clause has led to several noteworthy court cases due to the changing cultural climate of the United States. One of which was *Reynolds v. United States*, where George Reynolds was charged for polygamy and argued that he practiced it because he was a member of the Church of Jesus Christ of Latter-Day Saints. The Supreme Court upheld the law against polygamy and reasoned that Congress could “not outlaw a belief in the correctness of polygamy, but it could outlaw the practice thereof” (Oyez, 2018). This response was due to marriage generally being regulated by law in civilized societies, so it was decided that people cannot avoid the law due to their religion.

Speech and Press

“Speech and Press” include talking, writing, printing, broadcasting, using the internet, and other forms of symbolic expression such as wearing an armband, burning a cross or displaying a flag. (Constitution Center, 2018) Generally, if speech is restricted because of its content, the First Amendment is probably being violated. There are three situations in which the restriction of speech is constitutional. Certain types of speech are considered to have “low” First Amendment value such as defamation, true threats, “fighting words,” obscenity, child pornography and commercial advertising. In a case about constitutional rights to speech and press, these issues are likely to be ruled against in the court of law.

The “clear and present danger” test is a basic principle for determining the limits of the free speech clause. In the *Schenck v. the United States*, Charles Schenck was arrested for sending leaflets to prospective army draftees encouraging that they ignore their draft notices. The US claimed that Schenck was a threat to national security. The ruling decided established that free speech would not be protected if an individual were a “clear and present danger” to United States security (Ushistory.org, par. 6, 2018).

Assembly

The freedom of assembly clause protects the rights of the people to gather, protest or picket in a peaceful and lawful manner. The key to this clause is the word “peaceably.” It was never intended to be a granted right that allowed riots or an overthrow of the government, but an opportunity for groups to gather and publicly acknowledge an unrest with an organization or government. In 1963, 187 African American high school and college students gathered peacefully at the Statehouse to protest segregation. They were arrested for breach of the peace. When *Edwards v. South Carolina* reached the Supreme Court, the convictions were reversed.

“The circumstances in this case reflect an exercise of these constitutional rights in their most pristine and classic form,” Justice Potter Stewart wrote for the court (Hudson, 2017, 18-19).

Petition

The First Amendment also grants the right to “petition the government with a redress of grievances.” This clause grants the freedom to present arguments to the government, in short, to communicate with government officials. Most often, this right presents itself as an individual or group lobbying government officials or petitioning courts with the filing of a lawsuit (Volkh, 2010). In the 1940 *Thornhill v. Alabama* case, Byron Thornhill was arrested and fined for picketing as a protest against an employer. According to Alabama state law, it was considered illegal to picket. The Supreme Court ruled that this Alabama law was unconstitutional, and Thornhill’s First Amendment right to petition had been infringed upon.

Second Amendment

The Second Amendment states:

A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed (Jayson & Killian, 1973, p. 1035).

Development

The Second Amendment is arguably the single most controversial and highly disputed amendment included in the Bill of Rights. The founders of the United States saw that soldiers were often used for the oppression of the civilians. It was thought that the possibility of this happening could be downsized by permitting the government to have armies which consisted of full-time paid troops only when they were necessary to fight foreign enemies. For other occasions and emergencies, such as sudden invasions, the government could rely on a militia

made up of civilians who supplied their own weapons and received some unpaid part time military training.

The realization that a sudden war may not allow time to raise up and train an army was an imminent threat, and the Revolutionary War proved that militia forces could not be relied on for national defense. Because of this, the Constitutional Convention decided that the federal government should have almost unfettered authority to establish peacetime standing armies and to regulate the militia (Constitution Center, 2018). The shift of power from the states to the federal government generated one of the main objections that the proposed Constitution would take away the from the states their principal means of defense against a government uprising.

The Second Amendment was easily accepted because of the popular opinion that the federal government should not have the power to infringe the right of the people to keep and bear arms. The difficulty now is deciding whether or not this amendment is still appropriate or outdated. One of the more recent court cases that set a major precedent in the interpretation of the Second Amendment was the case of *District of Columbia v. Heller*. Dick Anthony Heller was a special police officer in D.C. and was authorized to carry a handgun while on duty. Due to District of Columbia's strict gun laws, it was illegal to carry an unregistered firearm and the ability to register a handgun was prohibited. The strict laws also included a code that required owners of registered firearms to have them nonfunctional if they were not in immediate use. Officer Heller applied for a one-year license to carry a handgun and was denied his application. After suing the District of Columbia, the case made it to the Supreme Court where it was decided that his Second Amendment right to keep and bear arms had been infringed (Oyez, 2018).

Comparison

The Interpretation of the First and Second Amendments have been argued and debated for the last 200 years. Many cases have come through the Supreme Court with different details and spins on the situation causing difficulty and occasionally scandal in the upholding of the standard that both rights grant to the people. There are a few stand out differences. The First Amendment rights are undeniably, inalienable individual rights of the people. This amendment was specifically created to protect the rights of the individual citizen. The Second Amendment rights, especially recently, are not quite as firm as the First. This Amendment is so highly debated and difficult to interpret.

Another difference in the two Amendments is the set up and size of each. While the First Amendment covers a broad range of freedoms with its multiple clauses, the Second Amendment is solely based on giving the people gun rights and the ability to regulate militia.

Third Amendment

The Third Amendment states:

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war but in a manner to be prescribed by law (Jayson & Killian, 1973, p. 1037).

Development

When the Third Amendment was written, the issue of quartering troops in private homes seemed to be highly significant. Over the course of time, the English developed a distaste for being required to house soldiers in their homes by the British. However, they were also reluctant to house the troops in barracks away from the civilians. The English did not want troops in their homes, but they were also afraid that if the troops were separate, they would become a military threat to the well-being of the civilian population. This issue was discussed over a matter of

years, and presented itself still unfixed during the Seven Years War and again when Quartering Act required that soldiers be housed in private American homes during peacetime. They were not only expected to house the soldiers, but to also provide comfort and food. This exact situation is what is believed to have caused the Boston Massacre in 1770.

Therefore, when the time came for the writing of the Third Amendment, it seemed valuable to include. The major phrase of this amendment is “without the consent of the owner.” This allowed for only those who wanted to house soldiers to be able to do so without the government forcing the responsibility of housing troops onto all civilians. At that point, the language that made up the Third Amendment was common and was even used in other bills such as the Delaware Declaration of Rights of 1776 that read, “that no soldiers ought to be quartered in any house in time of peace without the consent of the owner, and in time of war in such manner only as the legislature shall direct” (Constitution Center, 2018). The Third Amendment was not a new idea at the time of its creation, but simply declared what had at that point become conventional American wisdom.

The Third Amendment is the least disputed of all the amendments, and the Supreme Court has never decided a case on the basis of it. The one instance comes with a case called *Engblom v. Carey*, when Governor Hugh L. Carey had people removed from their residences at Mid-Orange Correctional Facility in order for members of the National Guard to be housed. Marianne E. Engblom argued that her Third Amendment right to not be forced to house troops without consent had been violated. The initial ruling was that the plaintiffs did not legitimately own possession of the housing, so the Third Amendment did not protect them. The case moved from court to court and the judge finally ruled that “as a matter of law plaintiffs' Third Amendment rights were not ‘clearly established’ at the time of the events in question and

therefore that the defendants are protected by a qualified immunity and entitled to summary judgment” (United States District Court, 1983).

Comparison

The First Amendment and Third Amendment are different in many ways. The First Amendment is a wide range of undeniable, inalienable human rights for all individuals. The Third Amendment is one specific standard of protocol for when a specific situation comes into play: If troops need to be quartered in the United States, the owners of any available housing must give consent before those troops are able to stay. The First Amendment is also always going to be the most relevant of all the Amendments. The Third Amendment is presently the least relevant amendment in the Bill of Rights. The First Amendment has been considered in court case after court case while the Third Amendment has one, maybe two very obscure situations in which it was considered.

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