

62(a) LH

Draft

Published in *Die Religion in Geschichte und Gegenwart*, 4. Aufl. (Tübingen: J.C.B. Mohr, 1998; repr. 2007)

### **Bürgerrecht und Religion III. Nordamerika**

The United States Constitution (1787) and its twenty-seven amendments (1791-1992) prohibit governmental deprivations of life, liberty, and property without due process of law; guarantee equal protection of the law and freedom of religion, speech, press, and assembly; provide procedural protections in criminal and civil trials; and maintain affirmative rights to vote and to hold public office.

Since 1950, these constitutional guarantees of civil rights have been greatly embellished through federal legislation and adjudication. The most important legislation is the Civil Rights Acts of 1957 to 1965, and their amendments, which outlaw public and private discrimination on the basis of religion, race, color, sex, or national origin in voting, education, employment, public services and accommodations, and other contexts. More than 1,000 Supreme Court cases since 1950 have interpreted these constitutional and statutory guarantees expansively, and extended them to protect "fundamental rights" to welfare, education, travel, and sexual privacy.

While some religious groups in America have persistently resisted rights language and protections, many religious groups have been instrumental in securing these guarantees. Eighteenth century Evangelicals, Puritans, and Quakers participated in the formation of the original American federal and state constitutions and bills of rights. From 1790-1940, these same groups, joined by Catholics, Jews, and parachurch groups, helped to drive the movements against slavery, for women's voting rights, and for the protection and education of children. Beginning in the early 1950s, African-American churches and organizations such as the Southern Christian Leadership Conference led the great civil rights movement in America -- often allied with other Christian and Jewish leaders and human rights groups. From the early 1980s onward, the U.S. Catholic Bishops Conference and various Evangelical groups have played leading roles in human rights lobbying and litigation.

American law provides ample protection for religion. The First Amendment to the U.S. Constitution provides both freedom for religion under its Free Exercise Clause and freedom from religion under its Establishment Clause. The Supreme Court has interpreted the Free Exercise Clause expansively to protect the rights of believers to religious speech, worship, dress, diet, conscientious objection, mission activity, observance of holy days and rites, and parental control over their children's education and religious upbringing. The Court has also read the Free Exercise Clause to protect the rights of religious groups to organize, to hold corporate property, to establish

religious schools and charities, and to maintain standards of religious law and discipline. The exercise of religion may not violate the fundamental rights of others (such as children or neighbors) nor violate criminal laws (such as those prohibiting polygamy, drug use, or racial discrimination). The Court has been notably churlish of late in extending Free Exercise protections to Native Americans, Scientologists, religious prisoners, and various New Age claimants -- much to the dismay of many political and religious leaders.

The Supreme Court has interpreted the Establishment Clause expansively to outlaw direct governmental sponsorship, preferences, or endorsement for religious acts, beliefs, persons, or groups. In cases involving state schools, the Court has been zealous in outlawing prayer, moments of silence, and various religious teachings, rituals and symbols and prohibiting any use of religious teachers, texts, or traditions.

Similar civil rights guarantees are set out in the Canadian Charter of Rights and Freedoms (1982), and its prototype, the Canadian Bill of Rights (1960). The Canadian Charter goes beyond American law in its expansive protections of religious, cultural, and linguistic minorities, and in its strong guarantees of social, cultural, and economic rights for all. The Charter also differs from American law in guaranteeing only "freedom of conscience, religion, thought, belief, opinion, and expression" with no requirement for a disestablishment of religion.

## Bibliography

W.W. Bassett, *Religious Organizations and the Law* (1997), 2 vols.

G.A. Beaudoin and E. Ratushny, *The Canadian Charter of Rights and Freedoms*, 2d ed. (1989)

R.B. Flowers & R. T. Miller, *Toward Benevolent Neutrality: Church, State, and the Supreme Court*, 5th ed. (1997), 2 vols.

A. P. Stokes, *Church and State in the United States* (1950), 3 vols.

J. Witte, Jr. & J.D. van der Vyver, *Religious Human Rights in Global Perspective* (1996), 2 vols.

Prof. John Witte, Jr.  
Emory University  
Atlanta, Georgia, USA