

Free Speech, Power, and Censorship in American History

LECTURE OUTLINE

In this lesson, you will learn:

- The 5 freedoms guaranteed by the First Amendment
- Some significant examples from the 18th, 19th, and 20th centuries of the government suppressing minority views

THE FIRST AMENDMENT

“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.”

Your First Amendment Freedoms

- Religion – Freedom to worship or not worship as you like; prohibition of government from officially favoring any religion over others
- Speech – Freedom to say what you like and not to be compelled to say things you don’t agree with
- Press – The right to publish without interference or censorship from the government
- Assembly – is the right of individuals to gather peacefully for expressive purposes, including dissent
- Grievances – Freedom to complain to the government (by petition) without fear of punishment for doing so

GRASP-ing Your First Amendment Rights

- Grievances
- Religion
- Assembly
- Speech
- Press

KEY CONCEPT #1:

Throughout much of American history, America’s government censored speech and punished speakers in ways that would be considered unconstitutional today

THE SEDITION ACT (1798)

- The Sedition Act was signed by President John Adams in 1798, and prohibited “false” statements against the government and criticism of the President
- Was written to expire in 1800, after the presidential election

SEDITION ACT BACKGROUND

Late 1790’s were a time of extreme political polarization and partisanship

Main political party rivals were the Federalist Party, led by John Adams, and the Democratic-Republican Party, led by Thomas Jefferson

- Americans divided over support for French Revolution, and over support for France in War with Great Britain
- Federalist government gave favorable status to Britain in trade relations, a move denounced as treasonous by Republicans
- In early America, the top two finishers in presidential elections were appointed President and Vice President (no running mates!), meaning Adams and Jefferson led the government while bitterly opposing each other

SEDITION ACT TEXT

Prohibited: “[W]riting, printing, uttering or publishing any false, scandalous and malicious writing or writings against the government of the United States, or either house of the Congress of the United States, or the President of the United States[.]”

The Sedition Act in Practice

- Many of those targeted and jailed under the Sedition Act were outspoken supporters of Thomas Jefferson and the Republicans
- This was no coincidence: The Sedition was passed in the hopes of protecting John Adams and the Federalist government from attack by Republican opponents
- Jefferson made opposition to the Sedition Act a part of his platform in 1800, and defeated Adams in one of the most divisive elections in American history

KEY CONCEPT #2:

Throughout history, anti-free speech laws have been used by those in political power to suppress opposition and silence the the less powerful. The strengthening of the First Amendment has given countless people and movements the means to fight these imbalances.

FREE SPEECH AND MAJORITY RULE

Elected governments tend to reflect the views and preferences of the majority of voters

Majority rule can take multiple forms: racial or ethnic background, socioeconomic status, gender, religious affiliation

It also generally reflects the popularity of certain ideas.

DANGER: THE TYRANNY OF THE MAJORITY

When government reflects the preferences only of the people who voted for its leaders, it is easy for government only to work for the interests of its supporters and to neglect, or oppress, those in the minority

In his 1859 book “On Liberty,” philosopher John Stuart Mill described this phenomenon as the “tyranny of the majority”

KEY CONCEPT #3:

The most important and influential social movements in American history were often unpopular with the majority. Because they represented ideas that were in the minority at the time, they were often treated as dangerous and subversive, and targeted for censorship and retaliation.

EXAMPLE: CENSORING ANTISLAVERY SPEECH

In 1836, Congress passed a “gag rule” prohibiting the discussion of antislavery proposals. This affected the right to petition, under the First Amendment because it discriminated against antislavery petitions due to their viewpoint

This is known as viewpoint discrimination, which has frequently been ruled unconstitutional

Censoring anti-slavery speech tended to have the opposite of its intended effect: many saw it as unfair, and more attention was drawn to the abolitionists’ cause

Can you think of any recent examples of censorship having the effect of drawing additional attention to an issue and converting more people to its cause?

PROTECTING SLAVE OWNERS

Among the most significant pre-civil war free speech debates surrounded the right of abolitionists to speak out against slavery.

Censors argued that antislavery speech was dangerous because it could produce slave revolts, threatened the Union, and inflicted “emotional injury” on slave owners.

Intimidation and threats were used to scare abolitionists from speaking and publishing, and authorities frequently failed to protect their rights.

Example: Some writers who took antislavery and anti-racist positions found their printing presses destroyed by angry mobs; some abolitionists were even killed for daring to publish antislavery ideas

In Boston in 1860, an abolitionist gathering was disrupted violently by Northerners fearful of the “dangerous” talk of ending slavery. Anti-slavery speakers were shouted down and intimidated.

“Millions of Northerners and Southerners agreed: these abolitionist fanatics must be silenced, for the greater good of the nation.” - “Silencing the fanatics,” New York Times, December 2, 2010

THE ESPIONAGE AND SEDITION ACTS (1917-18)

The Espionage Act was passed in 1917 as part of an effort to protect the American effort in World War I from interference and subversion

The Espionage Act included a series of amendments known as the Sedition Act of 1918, which criminalized speech critical of the American government

While the Sedition Act was repealed in 1920, the Espionage Act remains in effect today

THE SEDITION ACT RETURNS

Criminalized “disloyal, profane, scurrilous, or abusive language” against the U.S. Government, President, and armed forces

Permitted U.S. Postmaster General to refuse to deliver any materials deemed detrimental to the U.S. war effort

ESPIONAGE AND SEDITION ACT VICTIMS

- Robert Goldstein – Produced film *The Spirit of '76*, sentenced to 10 years in prison for alleged anti-British content (Britain at the time a WWI ally)
- Eugene V. Debs – Socialist Party member and orator jailed for criticizing American entry into WWI (ran for president from prison in 1920)
- Emma Goldman – Anarchist political activist and author jailed for protesting U.S. military draft

Note: The Supreme Court would likely reject all of these punishments as unconstitutional today!

WOMEN’S SUFFRAGE AND THE ESPIONAGE ACT

Suffragists sought exemption from Espionage Act to protect their right to protest for voting rights

Exemption was rejected, and several activists were jailed

Uprou caused Pres. Woodrow Wilson to publicly support amendment giving women right to vote

ANTI-COMMUNISM, 1900-1950

During the first half of the 20th century, there were several “Red Scares” (government campaigns exploiting fears of communism and socialism) in America.

Some activists lost their careers, went to jail, or were deported.

To be eligible for public employment, many were required to sign “loyalty oaths” specifically denouncing communism

FIRST RED SCARE, 1917-1920

Period of widespread fear of communism and radical political agitation coinciding with the Russian Revolution and domestic bombings.

The Espionage Act was used to restrict and prosecute protest and to encourage positive views of America’s involvement in WWI.

Leaders of groups that opposed the war (like the socialist party and labor unions) were prosecuted for giving speeches urging resistance to the draft.

SECOND RED SCARE/MCCARTHYISM

The Smith Act was almost a verbatim reproduction of the earlier Sedition Act.

It was passed in 1940 as a way to control domestic groups sympathetic with Nazi Germany.

The law stated “whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States....by force or violence....shall be fined under this title or imprisoned not more than twenty years.”

The bill became the center of anti-Communist efforts.

THE MCCARTHY YEARS

Senator Joseph McCarthy zealously pursued people suspected of having communist ties.

This led to “blacklists” - lists of people who should not be hired because they were accused of having the wrong beliefs or associations.

Some famous people investigated, questioned, or blacklisted under McCarthyism include Lucille Ball, Albert Einstein, and Charlie Chaplin.

CENSORING THE CIVIL RIGHTS MOVEMENT

The National Association for the Advancement of Colored People (NAACP) faced many attempts to deny their First Amendment rights to speak and associate, since they were considered controversial.

The NAACP resisted these violations of their members’ constitutional rights by filing lawsuits. The resulting court decisions helped to shape important First Amendment law that benefits all Americans who cherish their right to free speech and to advocate for unpopular causes.



CIVIL RIGHTS MOVEMENT

For example, in 1959 the NAACP in Miami refused to produce records or check to see if members were on a list of suspected communists.

The U.S. Supreme Court ultimately ruled that “the constitutional right of association includes the right of any person to associate with ...people of all kinds of beliefs, popular or unpopular.”

Civil rights activists like Martin Luther King endured many attempts to suppress their free speech, but persisted and prevailed.

COVERING CIVIL RIGHTS:

New York Times v. Sullivan

- Some Southern officials attempted to block reporting of civil rights struggles by claiming defamation in news reports.
- The ad led to a libel lawsuit and a \$500,000 award in an Alabama Court.
- The officials who sued said that the Times had portrayed them in a negative light.
- The case went to the Supreme Court.

THE NEW YORK TIMES WINS AT THE SUPREME COURT

- The Supreme Court ruled that public officials must show “actual malice” in an inaccurate news story to prove libel.
- This was a big win for freedom of the press and for the First Amendment.
- The Sullivan case removed obstacles that hindered media reports on the conditions African-Americans faced in the South and helped to turn the tide of public opinion in favor of increased Civil Rights for all.

SUMMING UP

The Abolitionist, Suffragist, and Civil Rights movements, among others, remind us of the battles fought to ensure that the First Amendment protects those holding views.

TERMS AND CONCEPTS

- Grievance
- Censor/Censorship
- Abolitionist
- Suffragist
- Communist
- Sedition
- Zealously

CHECK YOUR MEMORY

- Can you list the 5 Freedoms Guaranteed by the First Amendment?
- Remember the acronym GRASP
- They are:
 - Grievances
 - Religion
 - Assembly
 - Speech
 - Press

DISCUSSION QUESTIONS

Do free speech laws apply even to speech that most people dislike?

Who should be in charge of deciding what speech is allowed? Does might make right?

Are those in the majority always right? What should happen to people who disagree with the majority (those in the minority)? What does the law say?