

Historical Perspectives on Freedom of Speech and Law

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ABSTRACT

This paper examines the historical evolution, legal interpretations, and contemporary challenges of freedom of speech, with particular emphasis on the First Amendment of the United States Constitution. Beginning with foundational ideas rooted in Enlightenment philosophy and natural rights theory, the analysis traces how legal and cultural conceptions of free expression have developed over time in different political and historical contexts. From the early ratification debates in the United States to global perspectives and the rise of digital communication, the paper underscores the dynamic tensions between liberty and order, and between speech and censorship. The analysis includes comparative views of international human rights law, the influence of technology on speech dissemination, and case studies from both historical and modern-day challenges to free expression. By examining the intersections of speech, law, and society, this study provides a comprehensive view of the enduring struggle to balance individual liberties with collective societal interests.

Keywords: Freedom of Speech, First Amendment, Censorship, Enlightenment, International Human Rights, Free Market of Ideas, Digital Expression, Legal History.

INTRODUCTION

The First Amendment states that "Congress shall make no law Abridging the freedom of speech, or of the press" Although freedom of speech is a fundamental right, it is not absolute. The issue evokes emotional responses in a democracy where both liberty and order are essential. Freedom of speech was considered crucial by the Founding Fathers during the ratification debates. However, the determination of what constitutes free speech can be problematic. Often, words get twisted, leading to misinterpretations labeled as freedom of speech. Criticism of the First Amendment as outdated rhetoric is common. In 1879, the Supreme Court reaffirmed the importance of freedom of speech and religion, and despite years of deliberation, the complexity of the First Amendment remains daunting for writers trying to reach conclusions. There are questions surrounding what people portray as free speech; many do not express their true intentions. Additionally, differences between political candidates can hinge on nuances in language. Some discussions of the First Amendment involve intimate topics that individuals wouldn't openly share publicly. Ultimately, these discussions explore whether to elect one candidate over another, raising questions about the freedoms afforded under the First Amendment, as demonstrated by a teenage girl's behavior that wouldn't be tolerated in many other countries [1, 2].

The Origins of Freedom of Speech

The focal point of regulation of expressive conduct by criminal punishment, and the questions of authority, jurisdiction, and legitimacy, as to the power of governments to implement regulation, whether in punishment or both with civil sanctions, invade the liberty of people to express themselves. Regulation of speech may involve measures other than punishment, and censorship, prior restraint of publication or other dissemination of speech usually implies an executive order to a publisher or other distributor to prevent publication or other dissemination of speech. The arguments addressed in this inquiry apply equally well to such conduct and cases, unless otherwise specified. The free market of ideas is a metaphor for the pursuit of truth and correct beliefs. It is disputed which market should be said to be like a free market the ideological market, the market for some commodities, or a stock market for values on claims or beliefs on truth or generally acceptability of modes of believing. From economics, economics is the study of the allocation of scarce resources, which have alternatives. A free market is one where there is no regulation of its trade (different types of regulation are sometimes speculated). A free market of ideas is

supposed to have a different meaning, that the full free dissemination of ideas or beliefs is necessary to change minds set on wrong beliefs or untested beliefs, or to develop new ideas. A historical perspective of an assumed consensus understanding of the First Amendment demands an extensive narrative. Except for certain specified limitations, no law shall be made by Congress restricting the freedom of speech or the press is taken to constitute that guarantee. However, as a historical perspective of that assumed shared understanding is still sought, it can prove quite elusive. Contrary to the popular narrative, powerful and viciously energetic attempts at suppression of dissent and subversion of the freedoms, often deleterious to the domestic order, the Founders concerted this prohibition more broadly. Provisions rooting expression in natural rights outside the law in the society conserved the liberty to express beliefs while tolerating a sphere of expression where either collective agreements or disapproval by public cliques could affect the social order, as well as civil sanctions brought by censors [3, 4].

The Enlightenment Era

The Enlightenment was a philosophical movement that began in Western Europe in the mid-to-late 17th century and thrived in the 18th century. It aimed to enlighten minds and enhance human life. Philosophers sought truths about the world, particularly relating to nature and humanity, believing that discovering these truths could lead to happiness. A key focus was on freedom and its protection. This included debates about free will and whether human nature is predetermined or contingent. However, the more pressing issue was understanding and enacting freedom and the social or political structures necessary to safeguard it. Central to this was the question: What is freedom? Freedom of expression, religion, and toleration were vital aspects of broader discussions on freedom. The Enlightenment thought proliferated rapidly through various media, reaching beyond the private writings of the educated elite. Engaging across languages and distances, men of letters sometimes became well-known figures, although the spread of ideas was often slow and incomplete compared to Western Europe. Networks of correspondence facilitated the exchange of ideas, overcoming barriers of distance and language. Enlightenment thinkers frequently faced challenges from censorship and linguistic differences, but some navigated these obstacles. Understanding the intellectual histories of the Habsburg Empire requires recognizing the cross-linguistic context to grasp how enlightenment ideas circulated and evolved [5, 6].

Freedom of Speech in the United States

In recent decades, debate has raged over the current scope of protection provided under the First Amendment and how it ought to be interpreted in the future. One of the cornerstones of this ongoing debate is the nature of the freedom guaranteed, in particular, the question of what sort of “speech” is meant to be protected. The differing views on the issue can be classified into two major schools of thought. It is the duty of one organization “to protect and defend the bill of rights of the United States Constitution and the ability of all persons to enjoy the freedoms guaranteed by that bill.” Of the amendments contained in it, this organization considers the First Amendment “the most reliable guardian of human liberty.” Its rationale is unattributed, but reading between the lines, the sentiment seems to be that, taken to some degree, any infraction of any liberties weakens all liberties. This organization strives mightily to provide protection for that amendment and each of its four clauses. Applauding the efforts of this organization, another observer notes, “They are right in holding to be sacrosanct almost all speech is either helped or hurt.” What they disagree about is which idea is more important for enduring democracy. The observer agrees that freedom of speech is important, but believes that in order for democracy to endure, a difficult balance must be struck between liberty and order. Hyperbolizing the position of this organization, the observer argues that excessive freedom is destructive of democracy. The difference between the two schools of thought is magnified in today’s society of mass communications, where speech takes on various forms, including books, pamphlets, leaflets, movies, radio, and television. Each medium of speech presents society, legislators, and the courts with a whole new array of problems and issues. In addition to the multitude of pressures on society and government are a number of civil rights problems, either in themselves or a derivative of their conduct. From this situation, the government becomes a vengeful deity avenging real or imagined wrongs at liberty. As the government again grasps for vengeful powers, a question arises in the continuance of freedom of speech [7, 8].

Comparative Perspectives

Globally, international law and the overwhelming majority of domestic legal regimes seek to safeguard the right to freedom of expression. The United States’ First Amendment represented the early historical protection of speech, a protection which today is recognized and embraced around the world and reflected in their constitutions and bills of rights. However, the nature and extent of this protection varies worldwide. The one important position held by the United States is as the country that plainly stands alone in excluding countervailing or competing considerations of equality, dignity, or privacy interests that would favor restrictions on speech. In other societies, more than one interest is deemed significant in

a quest for a just society and a well-ordered community. Free expression is a necessary condition of democracy, but in these other societies, speech can be limited if other rights, which can stand as a legally recognized check to the right to communicate, social, political, and personal, feel threatened. The rights to freedom of expression and of speech, like all other rights, are not absolute and can be subject to restrictions. In the view of the majority of nations around the world, the First Amendment is decidedly a constitutional outlier. Fixing the balance is particularly important for the United States at this moment in history. That means lowering the barriers to the limitation of speech, especially hate speech; taking the steps necessary to promote equality, dignity, and privacy of historically marginalized and subordinated groups. By so doing, the United States would comply with the binding international human rights law and standards that it has ratified. It would also avoid the shameful isolation that it now presents, along with a handful of other countries. Broadly speaking, speech that vilifies or incites violence against the members of a legally protected social group based on their race, ethnicity, national origin, religion, sexuality, gender, age, or disability should, with strict safeguards to prevent abuse, be proscribed criminally and civilly everywhere [9, 10].

Censorship and Its Historical Context

Censorship suppresses speech, communication, and literature, manifesting in various legal forms such as content regulation and access control. It can be enforced by governments or conducted discreetly by private entities like religious groups or political parties. Each culture defines "acceptable" speech differently, with historical practices spanning centuries. Censorship has long been present alongside the written word; in Ancient Rome, it was seen as a noble duty to influence public morality. Roman censors assessed individuals against societal values through a census. Similarly, in China, political and religious authorities strictly governed what could be published. Before movable type, controlling writers was practically impossible, but major inventions transformed art and education across civilizations. The printing press, while promoting free thought, also enabled the rapid dissemination of all kinds of literature, both true and false. In colonial governance, the FLO-1710 imposed rigid regulations, with justices overseeing book printing. The Governor's approval was essential for editions, and the Licensing Order of 1643 established strict controls, including pre-publication licensing. This made it extremely difficult for controversial works to reach the public, as all printed material required official sanction. Punishments for unauthorized content included searches, seizures, and destruction of offending books [11, 12].

The Role of Technology

Speech now exists in a different landscape: the Internet, specifically the World Wide Web. Almost all speech in America reaches at least some of the millions of users of the Internet. Billions can reach some. Traditional media permitted the rich and the powerful to speak; effectively, they silenced all but the most prosperous competing voices. The Internet allows individuals of limited means to reach a mass audience beyond what was ever possible previously. You no longer have to know a television producer to reach millions; you need only an idea, some creativity, and (until recently) cheap technology. In 1960, speaking on television could cost millions of dollars, and it usually required complex technologies. The phone company controlled both transmission and access, and you had to go before the Federal Communications Commission to get a license. The average cost of a full-page black-and-white advertisement in the New York Times was \$2,500. You needed massive expenditures to pay for vehicles accessible only to the wealthy and the powerful. Today, anyone with a computer, a camera, or an idea can transmit to the masses. Blog software is free or very cheap. YouTube and other video sites welcome you at little or no cost. A camera with a microphone and a modem now costs less than a television, and modern computers can duplicate camera technology better than the networks can afford. Electronic bulletin boards connect millions. The use of Twitter by protestors in Iran is both an example and an analogue to traditional journalism; it disseminated information and made it accessible to a new audience. But while all journalists communicate with each other and hone each other's stories, Twitter is a free-for-all. False rumors, inaccurate statements, and poorly sourced stories can just as easily spread [13, 14].

Contemporary Issues in Freedom of Speech

The following article represents a collection of historical perspectives on freedom of speech and law from scholars at a wide range of career stages and professions. Each scholar began with a historical angle on freedom of speech. Some previous drafts focused on legal history rather than freedom of speech as a primary concern. Each scholar's methodology for interpreting the sources varies, with some focused on jurisprudential shifts, others on political or cultural turns. Responses included thoughts on contemporary issues as well as historical ones. Some scholars completed this assignment earlier than others, despite the original deadline. Drafts came in the form of written essays, animations, video lectures, and infographics. These drafts were also produced in direct response to writings discussed earlier in the course, including

both early drafts from peer-review workshops and published scholarship. In addition to those drafts with explicit references to these writings included below, other drafts with formats or subjects outside the scope of this article are preceded, but they are not included here. Contemporary issues in freedom of speech were a surprise. In the weeks leading up to the assigned date for this reflection, new controversies surrounding the First Amendment erupted around the U.S. in terms of who could speak, what could be said, where it could be said, and who could “cancel” speech before it was heard. Whether the notion of “free speech” has existed for millennia or newly asserted post-Reformation, it has never existed unchallenged [15, 16].

International Human Rights Framework

International freedom of speech imposes obligations on states to refrain from interfering with publications and speech acts of private and state bodies unless it is necessary in a democratic society to do so for one of the purposes mentioned. Such restrictions must not be vague or ambiguous; they must, in terms of their purpose and purport, be carefully restricted and defined; and the terms of any limitation must be reasonably precise. Measures for shutting down the operation of some media, be it printing houses or broadcasting stations, as well as submission of those media to ex post facto police censorship, must be regarded as a drastic measure of interference which is not likely to nourish democracy in society. Generally, at the international level, only certain agencies are capable of forcibly enforcing international human rights standards. However, unlike specific bodies, international bodies entrusted with the task of enforcing human rights treaties are dependent on states’ cooperation for the enforcement of their decisions. Judicial enforcement at the national level may vary from country to country. With the demise of Apartheid, South Africa introduced a new constitution and a new bill of rights with watchdog institutions such as the Human Rights Commission. The new constitution goes in favour of free speech. As with others, the courts and judiciary established under the new Constitution were slow to take on the wide executive powers granted to the executive and the new provisions made rights enforceable. However, as abuses and miscarriages of justice by the executive came to light, particularly to suppress criticism by the media, courts began to assert rights and independently interpret the Constitution. Until the Holocaust, protected ideologies included Nazism and Fascism. Hate speech also serves the presently equally sanctioned ideologies like racism and anti-semitism. Certain conventions guarantee the freedom of opinion and expression, but contain numerous exceptions enabling governments to impose limits on those rights. These exceptions have been content-based and time-tested. This paper seeks to highlight some pertinent questions on how these approaches to exceptions on freedom of speech have evolved [17, 18].

Case Studies

The fifth chapter presents case studies on free speech, looking at a variety of topics in a variety of contexts that arose in different historical traditions. Although some examples might be better grouped under broader themes, case studies were presented individually in an effort to discuss these ideas afresh with the hope of generating new insights, especially regarding connections with contemporary issues. Specific examples include free speech in early South Carolina, moralists, free speech debates in an evangelical Presbyterian and a Mainline Protestant setting, free speech during the civil rights movement, and a contemporary case arising from the mob attack on the U.S. Capitol. The final example examines connections between existing cases and the rise of anti-intellectualism, cancel culture, and efforts to criminalize freedom of thought in areas such as education. Many countries claim to be committed to freedom of speech, but this commitment to free speech takes on different cultural meanings and has been implemented in different ways. The case of freedom of speech during the 1760s in colonial South Carolina is an example of how even English-speaking settlements coming from a common British root could arrive at different cultural articulations of that right. At the same time, it demonstrates a commendable ability to embrace and coexist with diversity in practice and the establishment of an admirable legacy. The great joke is that the founding fathers, who fled to America as refugees from repression and who put free speech in the First Amendment, tried to silence dissent and impose their view of what was acceptable. The best example of an important case that speaks to a contemporary issue arises from a time long ago, far from the capital, and amidst practices now considered quaint due to their associations with historical pre-feminist and pre-civil rights thinking. The case highlighted a pernicious aspect of living in a free society; the moral superiority of evangelicalism challenged the principle of free speech as scriptural interpretation allowed textual discrepancies in the Bible to be identified [19, 20].

The Future of Freedom of Speech

Judging by the strict originality of the presentation at the symposium, one might faint a little while after being told that it would be a part, inseparable from the collective work recorded in the published volume. Jaded readers would have a somewhat pleasant or curious surprise. It is rare that the record of scholarly

proceedings, along with the distinctive and durable style of presentation, becomes accessible to the public. It is thus fortunate that the Wenzhou Theory of Law and the Department of Law at Wenzhou University have made the symposium a reality. Scholars, practitioners, and stakeholders from around the world gathered together to exchange views on the topics of freedom of speech and law. They were so motivated by intellectual curiosity that bilingual presentations would be made, adopting different academic traditions from each other. The belated Chinese translation aggravates the regret that a part of, could not be included because of the delayed contact. It was hoped that the two would get into print sooner. Internet freedom is continuously a hot topic of research and discussion. The challenges ahead can be foreseen by scholars, researchers, and practitioners, including those from China. The presentation by the sponsor in the symposium was inspired by the foresight they took from arguments that the First Amendment first came to life in the early twentieth century, focusing on the protection of speakers from government. Today, speakers are more like moths: their supply is endless, and they tend to congregate on brightly lit matters of public controversy. The fundamental challenge comes from the cheapness of speech, making it easier to weaponize as a tool of speech control. The unfortunate truth is that speech may be used to attack, harass, and silence as much as it is used to enlighten. The use of speech as a tool to suppress speech is challenging for the First Amendment to deal with. The protection of a healthy speech environment demands a rethinking of what it means to protect political speech. There may be more work to be done now in areas such as libel law. Stronger and faster First Amendment protection has arguably become necessary [21, 22].

CONCLUSION

The history of freedom of speech reflects a constant negotiation between individual liberty and societal control. From Enlightenment ideals to the foundational principles of the U.S. Constitution, freedom of expression has been both fiercely defended and frequently curtailed. As this right evolved through case law, political thought, and societal practice, its contours became increasingly complex. In the modern era, digital technology has expanded the reach of speech but also amplified the consequences of misinformation, hate speech, and cultural polarization. Comparatively, while the United States remains a staunch protector of unabridged speech under the First Amendment, many nations impose balanced restrictions to safeguard other human rights like dignity, equality, and safety. The ongoing debate underscores that freedom of speech is not a static concept but a dynamic principle shaped by historical context, legal frameworks, and cultural values. Ultimately, preserving this right requires constant vigilance, critical interpretation, and a collective commitment to democratic ideals that respect both freedom and responsibility.

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