also observed, "[t]here is no constitutional right to have all general propositions of law once adopted remain unchanged." [389]

But, in *Schenck v. United States*,[390] the first of the post-World War I cases to reach the Court, Justice Holmes, in his opinion for the Court upholding convictions for violating the Espionage Act by attempting to cause insubordination in the military service by circulation of leaflets, suggested First Amendment restraints on subsequent punishment as well as on prior restraint. "It well may be that the prohibition of laws abridging the freedom of speech is not confined to previous restraints, although to prevent them may have been the main purpose . . . . We admit that in many places and in ordinary times the defendants in saying all that was said in the circular would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done. . . . The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. . . . The question in every case is whether the words used are used in such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent."

Justice Holmes, along with Justice Brandeis, soon went into dissent in their views that the majority of the Court was misapplying the legal standards thus expressed to uphold suppression of speech that offered no threat to organized institutions.[391] But it was with the Court's assumption that the Fourteenth Amendment restrained the power of the states to suppress speech and press that the doctrines developed.[392] At first, Holmes and Brandeis remained in dissent, but, in *Fiske v. Kansas*,[393] the Court sustained a First Amendment type of claim in a state case, and in *Stromberg v. California*,[394] voided a state statute on grounds of its interference with free speech.[395]

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[389] Patterson v. Colorado, 205 U.S. 454, 461 (1907).

[390] 249 U.S. 47, 51–52 (1919) (citations omitted).

[391] Debs v. United States, 249 U.S. 211 (1919); Abrams v. United States, 250 U.S. 616 (1919); Schaefer v. United States, 251 U.S. 466 (1920); Pierce v. United States, 252 U.S. 239 (1920); United States ex rel. Milwaukee Social Democratic Pub. Co. v. Burleson, 255 U.S. 407 (1921). A state statute similar to the federal one was upheld in Gilbert v. Minnesota, 254 U.S. 325 (1920).

[392] Gitlow v. New York, 268 U.S. 652 (1925); Whitney v. California, 274 U.S. 357 (1927). The Brandeis and Holmes dissents in both cases were important formulations of speech and press principles.

[393] 274 U.S. 380 (1927).

[394] 283 U.S. 359 (1931). By contrast, it was not until 1965 that a federal statute was held unconstitutional under the First Amendment. Lamont v. Postmaster General, 381 U.S. 301 (1965). *See also* United States v. Robel, 389 U.S. 258 (1967).

[395] *See also* Near v. Minnesota ex rel. Olson, 283 U.S. 697 (1931); Herndon v. Lowry, 301 U.S. 242 (1937); DeJonge v. Oregon, 299 U.S. 353 (1937); Lovell v. City of Griffin, 303 U.S. 444 (1938).