and proposing abstract propositions, of which the judgment may not be convinced. I venture to say, that if we confine ourselves to an enumeration of simple, acknowledged principles, the ratification will meet with but little difficulty."[380] That the "simple, acknowledged principles" embodied in the First Amendment have occasioned controversy without end both in the courts and out should alert one to the difficulties latent in such spare language.

Insofar as there is likely to have been a consensus, it was no doubt the common law view as expressed by Blackstone. "The liberty of the press is indeed essential to the nature of a free state; but this consists in laying no *previous* restraints upon publications, and not in freedom from censure for criminal matter when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press: but if he publishes what is improper, mischievous, or illegal, he must take the consequences of his own temerity. To subject the press to the restrictive power of a licenser, as was formerly done, both before and since the Revolution, is to subject all freedom of sentiment to the prejudices of one man, and make him the arbitrary and infallible judge of all controverted points in learning, religion and government. But to punish as the law does at present any dangerous or offensive writings, which, when published, shall on a fair and impartial trial be adjudged of a pernicious tendency, is necessary for the preservation of peace and good order, of government and religion, the only solid foundations of civil liberty. Thus, the will of individuals is still left free: the abuse only of that free will is the object of legal punishment. Neither is any restraint hereby laid upon freedom of thought or inquiry; liberty of private sentiment is still left; the disseminating, or making public, of bad sentiments, destructive to the ends of society, is the crime which society corrects."[381]

Whatever the general unanimity on this proposition at the time of the proposal of and ratification of the First Amendment,[382] it ap-

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[380] Id. at 738.

[381] 4 W. Blackstone's Commentaries on the Laws of England 151–52 (T. Cooley, 2d rev. ed. 1872). *See* 3 J. Story, Commentaries on the Constitution of the United States 1874–86 (1833). The most comprehensive effort to assess theory and practice in the period prior to and immediately following adoption of the Amendment is L. Levy, Legacy of Suppression: Freedom of Speech and Press in Early American History (1960), which generally concluded that the Blackstonian view was the prevailing one at the time and probably the understanding of those who drafted, voted for, and ratified the Amendment.

[382] It would appear that Madison advanced libertarian views earlier than his Jeffersonian compatriots, as witness his leadership of a move to refuse officially to concur in Washington's condemnation of "[c]ertain self-created societies," by which the President meant political clubs supporting the French Revolution, and his suc-