

Introduction to Media

Kelli Britten and Matt Waite

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Preface

This book is a work of passion from the authors and the result of a deluge of requests from students.

More to come.

1 A First Amendment Primer

“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.” – The First Amendment to the U.S. Constitution

Catch all that? It’s only 45 words but they may be among the most important 45 words in American life.

Put simply: The First Amendment of the Constitution guarantees five freedoms:

1. Speech - you are free to speak your mind.*
2. Press - the government has to stay out of media.*
3. Religion - the government can’t start a religion and can’t stop you from practicing yours.*
4. Assembly - you can peacefully gather for whatever you want.*
5. Petition - you can tell the government what you don’t like.*

* Some restrictions apply; more on this over this entire course.

! Who are you protected from by the First Amendment?

Arguably the most important word of the First Amendment is the very first: Congress. What does the amendment mean by Congress? Just the 535 Senators and Representatives in Washington? No. **Congress means The Government** from the President down to the local dog catcher. Any layer of government is covered by Congress in that first word of the first amendment.

As you will find, nothing in media and its intersection with culture is simple. There are tons of quirks, exceptions, wrinkles and situations that just don’t fit simple narratives. And the history of a free press and free expression in the United States is often impacted by the direction the wind is blowing. As this is a course in media, we’re going to focus on freedom of expression – speech and press specifically.

1.1 Origins of the freedom of the press

For most of history around the world, expression was not free. The last thing you wanted to do was say something bad about the king, or the khan or the Pope for that matter. People

with a lot of power tend to want to protect it, which is why history is littered with stories of people being hung, burned, banished and worse for speaking out against the government.

The advent of the Gutenberg Press in 1450 is one of the most significant inventions in world history. It made written materials more widely available to the masses. Literacy flourished. And so did censorship.

For centuries, the English crown regulated the printing press through licensing the printers and authors, appointing censors to decide what could and could not be printed (Blasi (1995)). But in 1640, a new Parliament implemented a series of changes that amounted to the suspension of the licensing regime. The result: an explosion of publishing of religious and political ideas that weren't seen before. One historian found that in 1640, 22 pamphlets — think of a kind of a cross between a book and a magazine, not the throwaway folded paper we have now — were published. In 1642, the number jumped to 1,966.

But in 1642, civil war broke out in England between royalist and anti-royalist factions. And in 1643, Parliament re-instituted government licensing of printers, and with it the attending censorship.

Enter John Milton of *Paradise Lost* fame. As in one of the greatest writers in the English language. The circumstances of Milton coming to write one of the greatest works of writing about the importance of a free press are interesting — see Blasi (1995) — but in 1644 he wrote *Areopagitica*, a work that appealed to Parliament to do away with government control of the printing press. Milton's argument? How can people understand arguments if they can't get all sides? For example: How can they understand Good if they don't also understand Evil? (Milton (1882))

It was from out the rinde of one apple tasted, that the knowledge of good and evill as two twins cleaving together leapt forth into the World. And perhaps this is that doom which Adam fell into of knowing good and evill, that is to say of knowing good by evill. As therefore the state of man now is; what wisdom can there be to choose, what continence to forbear without the knowledge of evill? He that can apprehend and consider vice with all her baits and seeming pleasures, and yet abstain, and yet distinguish, and yet prefer that which is truly better, he is the true wayfaring Christian.

Also in *Areopagitica* is one of the most influential passages on what became early American thinking about freedom of the press: That government controls of speech hurt the search for the truth, and that the free exchange of ideas does more to suppress bad ones than the government can.

And though all the windes of doctrin were let loose to play upon the earth, so Truth be in the field, we do injuriously, by licencing and prohibiting to misdoubt her strength. Let her and Falshood grapple; who ever knew Truth put to the wors, in a free and open encounter. Her confuting is the best and surest suppressing.

The American colonists experience with the crown and the English experience with government shaped the creation of the U.S. Constitution.

One significant milestone was the trial of John Peter Zenger, publisher of the *Weekly Journal*, in 1735. Zenger's publication criticized an unpopular royal governor of New York - see Linder (2001) for just how unkind history is to this governor. Zenger faced trial for "seditious libel", a trial where the unpopular governor attempted to influence things by rigging the jury pool. At trial, Zenger's attorney, Andrew Hamilton, was not allowed to defend Zenger with the truth – a foundational principle in libel law to this day. Instead, with no law to back him up, Hamilton could only appeal to the jury's sense of justice (Linder (2001)). Hamilton told the jury:

It is natural, it is a privilege, I will go farther, it is a right, which all free men claim, that they are entitled to complain when they are hurt. They have a right publicly to remonstrate against the abuses of power in the strongest terms, to put their neighbors upon their guard against the craft or open violence of men in authority, and to assert with courage the sense they have of the blessings of liberty, the value they put upon it, and their resolution at all hazards to preserve it as one of the greatest blessings heaven can bestow...

The verdict: Not guilty. Linder (2001) says no law changed that day, but the signal that colonial feelings about freedom of expression were made clear.

Indeed, 53 years later, in Federalist 84, written in 1788, Alexander Hamilton actually argues *against* a Bill of Rights, arguing that putting popular rights into words isn't necessary. In fact, saying that putting these rights into words would open the door to people who would seek to infringe upon them. In other words: Why say what the government can't do when the Constitution never gave them the power in the first place? (Hamilton, Madison, and Jay (2009)).

I go further, and affirm that bills of rights, in the sense and to the extent in which they are contended for, are not only unnecessary in the proposed Constitution, but would even be dangerous. They would contain various exceptions to powers not granted; and, on this very account, would afford a colorable pretext to claim more than were granted. For why declare that things shall not be done which there is no power to do? Why, for instance, should it be said that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed? I will not contend that such a provision would confer a regulating power; but it is evident that it would furnish, to men disposed to usurp, a plausible pretense for claiming that power. They might urge with a semblance of reason, that the Constitution ought not to be charged with the absurdity of providing against the abuse of an authority which was not given, and that the provision against restraining the liberty of the press afforded a clear implication, that a power to prescribe proper regulations concerning it was intended to be vested in the national government. This may serve as a specimen of the numerous handles which would

be given to the doctrine of constructive powers, by the indulgence of an injudicious zeal for bills of rights.

Hamilton's argument would not win, and the First Amendment, along with the Bill Of Rights, was ratified in 1791 when Virginia becomes the 11th state to approve of them.

But by 1798, Hamilton is proved right, ironically by his own political party. The Federalist majority in Congress passed the Alien and Sedition Acts aimed at silencing criticism of President John Adams, a Federalist, and the Congress, controlled by Federalists. The Sedition Act made "any false, scandalous and malicious writing" against Congress or the President illegal.

Imagine the Sedition Act in the age of Twitter.

But really, you don't have to. The acts were, to put it mildly, unpopular.

Within weeks of the passage of the Alien and Sedition Acts, thousands of people swarmed into the small town of Lexington, Kentucky, and passed ten angry resolutions that called the acts void and the entire Federalist agenda "unconstitutional, impolitic, unjust and a disgrace to the American name." As the summer wore on, the assault on the recent legislation spread from Kentucky to the crucial states of Virginia, Pennsylvania, New Jersey and New York. Bradburn (2008)

John Adams, the Federalist president at the time, would go on to lose the next presidential election to Thomas Jefferson and by 1802, most of the Alien and Sedition Acts had been repealed.

They would not be the last attempts by the U.S. Government to restrict the press.

- In 1864, Abraham Lincoln would order two newspapers closed after they published a forged presidential proclamation calling for another military draft (the papers reopened after the forgers were arrested).
- In 1917, another Sedition Act passed Congress that imposed severe penalties for any criticism of the government's efforts around World War I. About 900 people would be convicted under the law.
- It isn't until 1931 that prior restraint – the government stopping the publication of something it doesn't like – is found to be unconstitutional by the Supreme Court. The court left room for prior restraint, saying it a right to a free press wasn't absolute. But in 1971, in the Pentagon Papers case, the court ruled there was a "heavy presumption" in favor of the First Amendment and that "national security" was far too speculative to overrule the right.

1.2 Models of expression

- Authoritarian
- State
- Libertarian
- Social Responsibility

1.3 What Is Censorship and What Isn't It?

Alien and Sedition Acts

Lincoln closing newspapers

Prior restraint

Trump getting the boot from Twitter

1.4 What is not protected by the First Amendment?

Sedition

Copyright infringement

Libel Times V Sullivan

Obscenity

Violation of privacy rights ... which is complicated

1.5 More Reading

- Read 15.2, 15.3 and 15.4 in Understanding Media and Culture
- Read pages 1-33 of The Knight Foundation's [FREE EXPRESSION ON CAMPUS: WHAT COLLEGE STUDENTS THINK ABOUT FIRST AMENDMENT ISSUES](#) and note that the survey was taken in 2018 – before the pandemic and in the middle of the Trump Presidency. Think about what might have changed and what hasn't since this report.

2 Summary

In summary, this book has no content whatsoever.

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