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Why Does A Free Press Matter?

BACKGROUND ESSAY

First Amendment freedoms like press, petition, and assembly are rights essential to self-government. The Founders saw press freedom as a way to both protect free republican government and to make sure the government promotes justice.

What Is The History of Press Freedom?

Press freedom is a traditional right, although its practical definition has changed over time. William Blackstone, an English judge and politician, wrote in *Commentaries on English Law* (1765-70) that freedom of the press was important to a free state and that it required that government could not change what someone could say before it was published or stop them from publishing it. Others, like the Enlightenment philosophers of the early 1700s, saw the press as a way to fight the abuse of power by telling people about government offenses.

Nearly all of the American colonies protected the freedom of the press. At the time, freedom of the press was understood to mean that government could not censor [delete or change] material it did not like in advance of publication—a practice known as “prior restraint.” Governments could, and

did, punish people for what they wrote after the fact. The Founders highly valued a free press for its ability to limit government power. The Virginia Declaration of Rights (1776) called the freedom of the press a “great bulwark [protection or support] of liberty.” James Madison agreed and said during the debate over the Bill of Rights that because a free press helps to protect liberty, the freedom of the press must not be violated.

The Founders also valued newspapers because they keep citizens informed. This allows citizens to make good, knowledgeable decisions about government. Because the government’s power comes from the people, the government can’t make good choices unless its citizens are well-informed. Newspapers were a means of informing the public in a society dedicated to self-government. The First Amendment, protecting the freedom of the press, was ratified in 1791.

The meaning of the First Amendment would be debated when Congress, with a Federalist majority, passed the Sedition Act of 1798. The law stated that people could be fined or imprisoned for criticizing the president or members of Congress. President John Adams, also a

Federalist, claimed the law was not politically-motivated and was needed to avoid war with France. However, all 25 people arrested for breaking the law were his political opponents. Founders James Madison and Thomas Jefferson each wrote criticisms of Congress for passing the law, arguing that it violated the First Amendment.

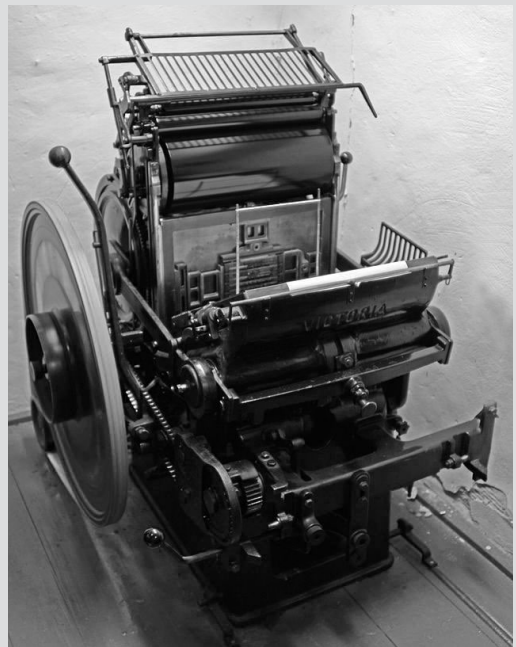
Although some states supported the law, public opposition to the Sedition Acts was so great that many Federalists, including President Adams, were turned out of office, and Thomas Jefferson, leader of the Republicans, took office in 1801. The new, Republican-controlled Congress allowed the law to expire. The Supreme Court was never asked to rule on the Sedition Act's constitutionality. If it had, a main defense of the Sedition Act would likely have been that it was not a prior restraint. Citizens were free to publish their thoughts. They were not, however, protected from criminal punishment after the fact. This traditional understanding of press freedom—no prior restraints—may explain the fact that some of the same officials who approved the First Amendment also approved the Sedition Act.

A Free Press and State Governments

The First Amendment protected the press from federal government censorship. State governments, however, routinely censored

newspapers. For example, before and during the Civil War, some southern states with economies relying on slave labor censored anti-slavery newspapers. At the same time, pro-slavery newspapers were censored in some northern states. Regulation of the press by state governments continued until 1931 when the Supreme Court applied the First Amendment's protection of press freedom to the states.

The case of *Near v. Minnesota* (1931) involved a state policy that required newspapers to get government approval before publication. Publishers had to show the government that they had a good reason for what they wanted to print. If they could not, the paper would be censored. The Court held that this kind of prior restraint on



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publication was the type of censorship the First Amendment was designed to prevent. The Court also held that, except in very rare circumstances, neither federal nor state governments could stop the publication of materials in advance.

The tough requirements to justify prior restraints mean that general claims of national security are not enough for government to stop publication in advance. In the case of *New York Times v. U.S.* (1971), the federal government attempted to prevent *The New York Times* and *The Washington Post* from publishing excerpts [small pieces or long quotes] from the Pentagon Papers. The Pentagon Papers were illegally leaked [given to the public] classified [secret] documents that revealed U.S. government misconduct during the Vietnam War. The Nixon Administration claimed that making them public would be dangerous to national security.

The Supreme Court found the prior restraint unconstitutional. They said the word 'security' is too general to justify taking away the First Amendment guarantee of freedom of the press: "In the First Amendment the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed, not the governors. Only a free and unrestrained press can effectively expose deception in government. In revealing the workings of government that led to the Vietnam War, the newspapers nobly did precisely that

which the Founders hoped and trusted they would do."

In this case, the Supreme Court emphasized that a key reason for the First Amendment was to make sure citizens could keep government accountable to the people. Since there was no specific threat to national security, the government failed to justify using prior restraint to limit citizens' First Amendment rights.

What About Libel?

Like all individual rights, freedom of the press has limits defined by the equal rights of others. One example is libel – written or printed speech that is false and harms someone's reputation. Like the definition of press freedom, the legal definition of libel has changed over time.

In the 1800s and before, truth was not always a defense for libel. In the case of *People v. Croswell* (1804), Harry Croswell was convicted of libel for printing a story critical of President Thomas Jefferson in his newspaper. Croswell appealed his conviction. Alexander Hamilton, the Founder who represented Croswell on appeal, argued that truth should be a defense for libel. Croswell's conviction was upheld, but the case led New York to change its law to allow truth as a defense. Though the case was not decided by the Supreme Court, *People v. Croswell* was a very important case because Hamilton's arguments led New York to reject the definition of libel from English tradition and in the Sedition Act, leading to

greater press freedom for individuals.

In 1960, the Civil Rights Movement [the social and political movement to give equal rights and treatment to people of all races] was gaining strength. Civil rights leaders ran a full-page ad in the *New York Times* to raise funds to help civil rights leaders, including Martin Luther King, Jr. Sixty well-known Americans signed it. The ad described what it called a “wave of terror” of police violence against peaceful protesters in Montgomery, Alabama. What it described was mostly accurate [correct or true], but some of the charges in the ad were not true. For example, the ad said that police “ringed” [surrounded] a college campus where protestors were, but this charge was exaggerated [made to seem larger or more important than it really is]. The ad also stated, falsely, that state authorities locked the dining hall shut in response to the protest “in an attempt to starve them into submission.”

L.B. Sullivan was one of three people in charge of police in Montgomery. He sued the *New York Times* for libel. The ad did not mention Sullivan’s name, but Sullivan claimed that the ad suggested that he was responsible for the actions of the police and that the ad damaged his reputation in the community. In the Alabama court, Sullivan won his case and the *New York Times* was ordered to pay \$500,000 in damages.

The *Times* appealed the decision to the U.S. Supreme Court in *Sullivan v. New York Times* (1963). The newspaper argued that it did not mean to hurt L.B.

Sullivan. The newspaper had no reason to believe that the advertisement included false statements, so it did not check their accuracy. The *Times* argued that if a newspaper had to check the accuracy of every criticism of every public official a free press would be severely limited.

In a unanimous decision, the Supreme Court ruled in favor of the *New York Times*. In order to prove libel, a “public official” must know that the newspaper acted with “‘actual malice’— that is, with knowledge that it was false or with reckless [irresponsible] disregard” for the truth. The Court stated that America has a “national commitment” to the idea that debate about public issues should be free and open. Free and open debate about the conduct of public officials, the Court reasoned, was more important than occasional, honest factual errors that might hurt officials’ reputations.

The result of the Sullivan decision is that, generally speaking, it is very difficult for public officials to win in court if they accuse a publisher of libel. The Court ruled in 1987 that public officials cannot sue for emotional distress in libel cases unless the publication contained a false statement made with “actual malice.”

Press Freedom Today

New technology and the growing concern about national security have created new opportunities for press freedom as well as new threats to it. On the one hand, the internet lets

citizens publish their ideas and share them with a wide audience in ways that were never possible before. Prior restraint is much harder for government to impose when news can be posted online. Video sites like YouTube enable citizens to report on government action immediately. On the other hand, there have been several cases in which citizens recording police action have had their cameras taken by police and have even faced prosecution. American companies like Google must also

decide whether to disable certain search terms or otherwise help oppressive governments censor the information people in their countries can access online.

In a time when anyone with a keyboard, a camera, and an internet connection can be a journalist, it is incredibly important that citizens are aware of the importance of press freedom, and their own role in keeping government within its constitutional limits.



Critical Thinking Questions

1. Historically, how has press freedom been understood?
2. The Sedition Act of 1798 seems unconstitutional to modern readers. How might someone in 1798 have argued that it was constitutional?
3. Summarize the Court's ruling in *New York Times v. U.S.* Do you agree with the Court's reasoning?
4. What was the Court's reasoning for its ruling in *New York Times v. Sullivan*? Would you have come to the same conclusion if you had been deciding the case?
5. What do you think is the greatest threat to press freedom today? What can citizens do to ensure our press freedom is protected?