DOWNLOAD PDF PRESS AS GUARDIAN OF THE FIRST AMENDMENT

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Chapter 2 : What First Amendment?

The Press as Guardian of the First Amendment. By John Lofton. (Columbia: University of South Carolina Press, xv + pp. Notes, bibliography, and index. $).

Madison was a Virginia representative who would later become the fourth president of the United States. He created the Bill of Rights during the 1st United States Congress, which met from to â€" the first two years that President George Washington was in office. The Bill of Rights, which was introduced to Congress in and adopted on December 15, , includes the first ten amendments to the U. Freedom of speech gives Americans the right to express themselves without having to worry about government interference. Supreme Court often has struggled to determine what types of speech is protected. Some types of speech are not protected under the First Amendment. Freedom Of The Press This freedom is similar to freedom of speech, in that it allows people to express themselves through publication. There are certain limits to freedom of the press. While not explicitly stated, this amendment establishes the long-established separation of church and state. Right To Assemble, Right To Petition The First Amendment protects the freedom to peacefully assemble or gather together or associate with a group of people for social, economic, political or religious purposes. It also protects the right to protest the government. The right to petition can mean signing a petition or even filing a lawsuit against the government. In this case, the Supreme Court upheld the conviction of Socialist Party activist Charles Schenck after he distributed fliers urging young men to dodge the draft during World War I. In this case, the Supreme Court viewed draft resistance as dangerous to national security. New York Times Co. This landmark Supreme Court case made it possible for The New York Times and Washington Post newspapers to publish the contents of the Pentagon Papers without risk of government censorship. Eisenhower , John F. Kennedy and Lyndon B. Johnson had all misled the public about the degree of U. This Supreme Court Case invalidated statutes in Texas and 47 other states prohibiting flag-burning.

Chapter 3 : What Is the Fate of the First Amendment in the Digital Age? | The Nation

*The Press as Guardian of the First Amendment [John Lofton] on blog.quintoapp.com *FREE* shipping on qualifying offers. University of South Carolina Press hardcover, John Lofton (Denmark Vesey's Revolt: The Slave Plot That Lit a Fuse to Fort Sumter).*

Hamilton The Establishment Clause: Hamilton An accurate recounting of history is necessary to appreciate the need for disestablishment and a separation between church and state. The religiosity of the generation that framed the Constitution and the Bill of Rights of which the First Amendment is the first as a result of historical accident, not the preference for religious liberty over any other right has been overstated. In reality, many of the Framers and the most influential men of that generation rarely attended church, were often Deist rather than Christian, and had a healthy understanding of the potential for religious tyranny. This latter concern is to be expected as European history was awash with executions of religious heretics: Protestant, Catholic, Jewish, and Muslim. Three of the most influential men in the Framing era provide valuable insights into the mindset at the time: Franklin saw a pattern: If we look back into history for the character of the present sects in Christianity, we shall find few that have not in their turns been persecutors, and complainers of persecution. The primitive Christians thought persecution extremely wrong in the Pagans, but practiced it on one another. The first Protestants of the Church of England blamed persecution in the Romish Church, but practiced it upon the Puritans. These found it wrong in the Bishops, but fell into the same practice themselves both here [England] and in New England. The father of the Constitution and primary drafter of the First Amendment, James Madison, in his most important document on the topic, Memorial and Remonstrance against Religious Assessments , stated: During almost fifteen centuries has the legal establishment of Christianity been on trial. What have been its fruits? More or less in all places, pride and indolence in the Clergy, ignorance and servility in the laity, in both, superstition, bigotry and persecution. What influence, in fact, have ecclesiastical establishments had on society? In some instances they have been seen to erect a spiritual tyranny on the ruins of the Civil authority; in many instances they have been seen upholding the thrones of political tyranny; in no instance have they been the guardians of the liberties of the people. Two years later, John Adams described the states as having been derived from reason, not religious belief: It will never be pretended that any persons employed in that service had any interviews with the gods, or were in any degree under the influence of Heaven, any more than those at work upon ships or houses, or laboring in merchandise or agriculture; it will forever be acknowledged that these governments were contrived merely by the use of reason and the senses. Thirteen governments [of the original states] thus founded on the natural authority of the people alone, without a pretence of miracle or mystery, which are destined to spread over the northern part of that whole quarter of the globe, are a great point gained in favor of the rights of mankind. Massachusetts and Pennsylvania are examples of early discord. In Massachusetts, the Congregationalist establishment enforced taxation on all believers and expelled or even put to death dissenters. Baptist clergy became the first in the United States to advocate for a separation of church and state and an absolute right to believe what one chooses. Baptist pastor John Leland was an eloquent and forceful proponent of the freedom of conscience and the separation of church and state. Even so, the Quakers set in motion a principle that became a mainstay in religious liberty jurisprudence: Read the full discussion here. The reason for this proliferation of distinct doctrines is that the Establishment Clause is rooted in a concept of separating the power of church and state. These are the two most authoritative forces of human existence, and drawing a boundary line between them is not easy. The further complication is that the exercise of power is fluid, which leads both state and church to alter their positions to gain power either one over the other or as a union in opposition to the general public or particular minorities. The following are some of the most important principles. A Massachusetts law delegated authority to churches and schools to determine who could receive a liquor license within feet of their buildings. The Supreme Court struck down the law, because it delegated to churches zoning power, which belongs to state and local government, not private entities. According to the Court: The challenged statute thus enmeshes churches in the processes of government and creates the danger

of [p]olitical fragmentation and divisiveness along religious lines. Grumet , the state of New York designated the neighborhood boundaries of Satmar Hasidim Orthodox Jews in Kiryas Joel Village as a public school district to itself. Thus, the boundary was determined solely by religious identity, in part because the community did not want their children to be exposed to children outside the faith. The Court invalidated the school district because political boundaries identified solely by reference to religion violate the Establishment Clause. The phrase, however, is misleading. The Supreme Court has never interpreted the First Amendment to confer on religious organizations a right to autonomy from the law. In fact, in the case in which they have most recently demanded such a right, arguing religious ministers should be exempt from laws prohibiting employment discrimination, the Court majority did not embrace the theory, not even using the term once. Therefore, if the dispute brought to a court can only be resolved by a judge or jury settling an intra-church, ecclesiastical dispute, the dispute is beyond judicial consideration. This is a corollary to the absolute right to believe what one chooses; it is not a right to be above the laws that apply to everyone else. For the Court and basic common sense, these are arguments for placing religion above the law, and in violation of the Establishment Clause. They are also fundamentally at odds with the common sense of the Framing generation that understood so well the evils of religious tyranny. Hamilton Senior Fellow, Robert A. Cardozo School of Law.

Chapter 4 : Timeline: a history of free speech | Media | The Guardian

In barring news outlets like the New York Times, CNN and the Guardian from a White House press briefing on Friday, the president has declared war on the first amendment.

The next point which the resolution requires to be proved is, that the power over the press exercised by the Sedition Act is positively forbidden by one of the amendments to the Constitution. The amendment stands in these words: That the "freedom of the press" is to be determined by the meaning of these terms in the common law. That the article supposes the power over the press to be in Congress, and prohibits them only from abridging the freedom allowed to it by the common law. Although it will be shown, on examining the second of these positions, that the amendment is a denial to Congress of all power over the press, it may not be useless to make the following observations on the first of them: It is deemed to be a sound opinion, that the Sedition Act, in its definition of some of the crimes created, is an abridgment of the freedom of publication, recognised by principles of the common law in England. The freedom of the press under the common law is, in the defences of the Sedition Act, made to consist in an exemption from all previous restraint on printed publications by persons authorized to inspect and prohibit them. It appears to the committee that this idea of the freedom of the press can never be admitted to be the American idea of it; since a law inflicting penalties on printed publications would have a similar effect with a law authorizing a previous restraint on them. It would seem a mockery to say that no laws should be passed preventing publications from being made, but that laws might be passed for punishing them in case they should be made. The essential difference between the British Government and the American Constitutions will place this subject in the clearest light. In the British Government the danger of encroachments on the rights of the people is understood to be confined to the executive magistrate. The representatives of the people in the Legislature are not only exempt themselves from distrust, but are considered as sufficient guardians of the rights of their constituents against the danger from the Executive. Hence it is a principle, that the Parliament is unlimited in its power; or, in their own language, is omnipotent. They are merely legislative precautions against executive usurpations. Under such a government as this, an exemption of the press from previous restraint, by licensers appointed by the King, is all the freedom that can be secured to it. In the United States the case is altogether different. The People, not the Government, possess the absolute sovereignty. The Legislature, no less than the Executive, is under limitations of power. Encroachments are regarded as possible from the one as well as from the other. Hence, in the United States the great and essential rights of the people are secured against legislative as well as against executive ambition. They are secured, not by laws paramount to prerogative, but by constitutions paramount to laws. This security of the freedom of the press requires that it should be exempt not only from previous restraint by the Executive, as in Great Britain, but from legislative restraint also; and this exemption, to be effectual, must be an exemption not only from the previous inspection of licensers, but from the subsequent penalty of laws. The state of the press, therefore, under the common law, cannot, in this point of view, be the standard of its freedom in the United States. But there is another view under which it may be necessary to consider this subject. It may be alleged that although the security for the freedom of the press be different in Great Britain and in this country, being a legal security only in the former, and a constitutional security in the latter; and although there may be a further difference, in an extension of the freedom of the press, here, beyond an exemption from previous restraint, to an exemption from subsequent penalties also; yet that the actual legal freedom of the press, under the common law, must determine the degree of freedom which is meant by the terms, and which is constitutionally secured against both previous and subsequent restraints. The committee are not unaware of the difficulty of all general questions which may turn on the proper boundary between the liberty and licentiousness of the press. They will leave it, therefore, for consideration only how far the difference between the nature of the British Government and the nature of the American Governments, and the practice under the latter may show the degree of rigor in the former to be inapplicable to and not obligatory in the latter. The nature of governments elective, limited, and responsible, in all their branches, may well be supposed to require a greater freedom of animadversion than might be tolerated by the genius of such a

government as that of Great Britain. In the latter it is a maxim that the King, an hereditary, not a responsible magistrate, can do no wrong, and that the Legislature, which in two-thirds of its composition is also hereditary, not responsible, can do what it pleases. In the United States the executive magistrates are not held to be infallible, nor the Legislatures to be omnipotent; and both being elective, are both responsible. Is it not natural and necessary, under such different circumstances, that a different degree of freedom in the use of the press should be contemplated? Is not such an inference favoured by what is observable in Great Britain itself? Notwithstanding the general doctrine of the common law on the subject of the press, and the occasional punishment of those who use it with a freedom offensive to the Government, it is well known that with respect to the responsible members of the Government, where the reasons operating here become applicable there, the freedom exercised by the press and protected by public opinion far exceeds the limits prescribed by the ordinary rules of law. The ministry, who are responsible to impeachment, are at all times animadverted on by the press with peculiar freedom, and during the elections for the House of Commons, the other responsible part of the Government, the press is employed with as little reserve towards the candidates. The practice in America must be entitled to much more respect. In every State, probably, in the Union, the press has exerted a freedom in canvassing the merits and measures of public men of every description which has not been confined to the strict limits of the common law. On this footing the freedom of the press has stood; on this footing it yet stands. And it will not be a breach either of truth or of candour to say, that no persons or presses are in the habit of more unrestrained animadversions on the proceedings and functionaries of the State governments than the persons and presses most zealous in vindicating the act of Congress for punishing similar animadversions on the Government of the United States. The last remark will not be understood as claiming for the State governments an immunity greater than they have heretofore enjoyed. Some degree of abuse is inseparable from the proper use of every thing, and in no instance is this more true than in that of the press. It has accordingly been decided by the practice of the States, that it is better to leave a few of its noxious branches to their luxuriant growth, than, by pruning them away, to injure the vigour of those yielding the proper fruits. And can the wisdom of this policy be doubted by any who reflect that to the press alone, chequered as it is with abuses, the world is indebted for all the triumphs which have been gained by reason and humanity over error and oppression; who reflect that to the same beneficent source the United States owe much of the lights which conducted them to the ranks of a free and independent nation, and which have improved their political system into a shape so auspicious to their happiness? Had "Sedition Acts," forbidding every publication that might bring the constituted agents into contempt or disrepute, or that might excite the hatred of the people against the authors of unjust or pernicious measures, been uniformly enforced against the press, might not the United States have been languishing at this day under the infirmities of a sickly Confederation? Might they not, possibly, be miserable colonies, groaning under a foreign yoke? To these observations one fact will be added, which demonstrates that the common law cannot be admitted as the universal expositor of American terms, which may be the same with those contained in that law. The freedom of conscience and of religion are found in the same instruments which assert the freedom of the press. It will never be admitted that the meaning of the former, in the common law of England, is to limit their meaning in the United States. Whatever weight may be allowed to these considerations, the committee do not, however, by any means intend to rest the question on them. They contend that the article of amendment, instead of supposing in Congress a power that might be exercised over the press, provided its freedom was not abridged, was meant as a positive denial to Congress of any power whatever on the subject. To demonstrate that this was the true object of the article, it will be sufficient to recall the circumstances which led to it, and to refer to the explanation accompanying the article. When the Constitution was under the discussions which preceded its ratification, it is well known that great apprehensions were expressed by many, lest the omission of some positive exception, from the powers delegated, of certain rights, and of the freedom of the press particularly, might expose them to the danger of being drawn, by construction, within some of the powers vested in Congress, more especially of the power to make all laws necessary and proper for carrying their other powers into execution. In reply to this objection, it was invariably urged to be a fundamental and characteristic principle of the Constitution, that all powers not given by it were reserved; that no powers were given beyond

those enumerated in the Constitution, and such as were fairly incident to them: It is painful to remark how much the arguments now employed in behalf of the Sedition Act are at variance with the reasoning which then justified the Constitution, and invited its ratification. From this posture of the subject resulted the interesting question, in so many of the Conventions, whether the doubts and dangers ascribed to the Constitution should be removed by any amendments previous to the ratification, or be postponed in confidence that, as far as they might be proper, they would be introduced in the form provided by the Constitution. The latter course was adopted; and in most of the States, ratifications were followed by propositions and instructions for rendering the Constitution more explicit, and more safe to the rights not meant to be delegated by it. Among those rights, the freedom of the press, in most instances, is particularly and emphatically mentioned. The firm and very pointed manner in which it is asserted in the proceedings of the Convention of this State will be hereafter seen. In pursuance of the wishes thus expressed, the first Congress that assembled under the Constitution proposed certain amendments, which have since, by the necessary ratifications, been made a part of it; among which amendments is the article containing, among other prohibitions on the Congress, an express declaration that they should make no law abridging the freedom of the press. Without tracing farther the evidence on this subject, it would seem scarcely possible to doubt that no power whatever over the press was supposed to be delegated by the Constitution, as it originally stood, and that the amendment was intended as a positive and absolute reservation of it. But the evidence is still stronger. The proposition of amendments made by Congress is introduced in the following terms: Under any other construction of the amendment relating to the press, than that it declared the press to be wholly exempt from the power of Congress, the amendment could neither be said to correspond with the desire expressed by a number of the States, nor be calculated to extend the ground of public confidence in the Government. Nay, more; the construction employed to justify the Sedition Act would exhibit a phenomenon without a parallel in the political world. It would exhibit a number of respectable States, as denying, first, that any power over the press was delegated by the Constitution; as proposing, next, that an amendment to it should explicitly declare that no such power was delegated; and, finally, as concurring in an amendment actually recognising or delegating such a power. Is, then, the Federal Government, it will be asked, destitute of every authority for restraining the licentiousness of the press, and for shielding itself against the libellous attacks which may be made on those who administer it? The Constitution alone can answer this question. If no such power be expressly delegated, and if it be not both necessary and proper to carry into execution an express power--above all, if it be expressly forbidden, by a declaratory amendment to the Constitution--the answer must be, that the Federal Government is destitute of all such authority. And might it not be asked, in turn, whether it is not more probable, under all the circumstances which have been reviewed, that the authority should be withheld by the Constitution, than that it should be left to a vague and violent construction, whilst so much pains were bestowed in enumerating other powers, and so many less important powers are included in the enumeration? Might it not be likewise asked, whether the anxious circumspection which dictated so many peculiar limitations on the general authority would be unlikely to exempt the press altogether from that authority? The peculiar magnitude of some of the powers necessarily committed to the Federal Government; the peculiar duration required for the functions of some of its departments; the peculiar distance of the seat of its proceedings from the great body of its constituents; and the peculiar difficulty of circulating an adequate knowledge of them through any other channel; will not these considerations, some or other of which produced other exceptions from the powers of ordinary governments, all together, account for the policy of binding the hand of the Federal Government from touching the channel which alone can give efficacy to its responsibility to its constituents, and of leaving those who administer it to a remedy, for their injured reputations, under the same laws, and in the same tribunals, which protect their lives, their liberties, and their properties? But the question does not turn either on the wisdom of the Constitution or on the policy which gave rise to its particular organization. It turns on the actual meaning of the instrument, by which it has appeared that a power over the press is clearly excluded from the number of powers delegated to the Federal Government. And, in the opinion of the committee, well may it be said, as the resolution concludes with saying, that the unconstitutional power exercised over the press by the Sedition Act ought, "more than any other, to produce universal alarm; because it is levelled against that right of freely examining public characters

and measures, and of free communication among the people thereon, which has ever been justly deemed the only effectual guardian of every other right. The Constitution supposes that the President, the Congress, and each of its Houses, may not discharge their trusts, either from defect of judgment or other causes. Hence they are all made responsible to their constituents, at the returning periods of election; and the President, who is singly intrusted with very great powers, is, as a further guard, subjected to an intermediate impeachment. Should it happen, as the Constitution supposes it may happen, that either of these branches of the Government may not have duly discharged its trust; it is natural and proper, that, according to the cause and degree of their faults, they should be brought into contempt or disrepute, and incur the hatred of the people. Whether it has, in any case, happened that the proceedings of either or all of those branches evince such a violation of duty as to justify a contempt, a disrepute, or hatred among the people, can only be determined by a free examination thereof, and a free communication among the people thereon. Whenever it may have actually happened that proceedings of this sort are chargeable on all or either of the branches of the Government, it is the duty, as well as right, of intelligent and faithful citizens to discuss and promulge them freely, as well to control them by the censorship of the public opinion, as to promote a remedy according to the rules of the Constitution. And it cannot be avoided that those who are to apply the remedy must feel, in some degree, a contempt or hatred against the transgressing party. As the act was passed on July 14, , and is to be in force until March 3, , it was of course that, during its continuance, two elections of the entire House of Representatives, an election of a part of the Senate, and an election of a President, were to take place. That consequently, during all these elections, intended by the Constitution to preserve the purity or to purge the faults of the Administration, the great remedial rights of the people were to be exercised, and the responsibility of their public agents to be screened, under the penalties of this act. May it not be asked of every intelligent friend to the liberties of his country, whether the power exercised in such an act as this ought not to produce great and universal alarm? Whether a rigid execution of such an act, in time past, would not have repressed that information and communication among the people which is indispensable to the just exercise of their electoral rights? And whether such an act, if made perpetual, and enforced with rigor, would not, in time to come, either destroy our free system of government, or prepare a convulsion that might prove equally fatal to it? In answer to such questions, it has been pleaded that the writings and publications forbidden by the act are those only which are false and malicious, and intended to defame; and merit is claimed for the privilege allowed to authors to justify, by proving the truth of their publications, and for the limitations to which the sentence of fine and imprisonment is subjected. To those who concurred in the act, under the extraordinary belief that the option lay between the passing of such an act and leaving in force the common law of libels, which punishes truth equally with falsehood, and submits the fine and imprisonment to the indefinite discretion of the court, the merit of good intentions ought surely not to be refused. A like merit may perhaps be due for the discontinuance of the corporal punishment, which the common law also leaves to the discretion of the court. This merit of intention, however, would have been greater, if the several mitigations had not been limited to so short a period; and the apparent inconsistency would have been avoided, between justifying the act, at one time, by contrasting it with the rigors of the common law otherwise in force; and at another time, by appealing to the nature of the crisis, as requiring the temporary rigor exerted by the act. But, whatever may have been the meritorious intentions of all or any who contributed to the Sedition Act, a very few reflections will prove that its baleful tendency is little diminished by the privilege of giving in evidence the truth of the matter contained in political writings. In the first place, where simple and naked facts alone are in question, there is sufficient difficulty in some cases, and sufficient trouble and vexation in all, of meeting a prosecution from the Government with the full and formal proof necessary in a court of law. But in the next place, it must be obvious to the plainest minds, that opinions and inferences, and conjectural observations, are not only in many cases inseparable from the facts, but may often be more the objects of the prosecution than the facts themselves; or may even be altogether abstracted from particular facts; and that opinions, and inferences, and conjectural observations, cannot be subjects of that kind of proof which appertains to facts, before a court of law. For, omitting the inquiry, how far the malice of the intent is an inference of the law from the mere publication, it is manifestly impossible to punish the intent to bring those who administer the Government into

disrepute or contempt, without striking at the right of freely discussing public characters and measures; because those who engage in such discussions must expect and intend to excite these unfavorable sentiments, so far as they may be thought to be deserved. To prohibit, therefore, the intent to excite those unfavorable sentiments against those who administer the Government, is equivalent to a prohibition of the actual excitement of them; and to prohibit the actual excitement of them is equivalent to a prohibition of discussions having that tendency and effect; which, again, is equivalent to a protection of those who administer the Government, if they should at any time deserve the contempt or hatred of the people, against being exposed to it by free animadversions on their characters and conduct. Nor can there be a doubt, if those in public trust be shielded by penal laws from such strictures of the press as may expose them to contempt, or disrepute, or hatred, where they may deserve it, that, in exact proportion as they may deserve to be exposed, will be the certainty and criminality of the intent to expose them, and the vigilance of prosecuting and punishing it; nor a doubt that a government thus intrenched in penal statutes against the just and natural effects of a culpable administration will easily evade the responsibility which is essential to a faithful discharge of its duty. Let it be recollected, lastly, that the right of electing the members of the Government constitutes more particularly the essence of a free and responsible government. The value and efficacy of this right depends on the knowledge of the comparative merits and demerits of the candidates for public trust, and on the equal freedom, consequently, of examining and discussing these merits and demerits of the candidates respectively, It has been seen that a number of important elections will take place while the act is in force, although it should not be continued beyond the term to which it is limited. Should there happen, then, as is extremely probable in relation to some or other of the branches of the Government, to be competitions between those who are and those who are not members of the Government, what will be the situations of the competitors? Not equal; because the characters of the former will be covered by the Sedition Act from animadversions exposing them to disrepute among the people, whilst the latter may be exposed to the contempt and hatred of the people without a violation of the act. What will be the situation of the people?

Chapter 5 : First Amendment / FOI Bibliography | Poynter

Amendment I Freedom of Religion, Speech, Press, Assembly, and Petition Passed by Congress September 25, Ratified December 15, The first 10 amendments form the Bill of Rights.

Anti-Federalism In , the second year of the American Revolutionary War , the Virginia colonial legislature passed a Declaration of Rights that included the sentence "The freedom of the press is one of the greatest bulwarks of liberty, and can never be restrained but by despotic Governments. However, these declarations were generally considered "mere admonitions to state legislatures", rather than enforceable provisions. Other delegatesâ€"including future Bill of Rights drafter James Madison â€"disagreed, arguing that existing state guarantees of civil liberties were sufficient and that any attempt to enumerate individual rights risked the implication that other, unnamed rights were unprotected. Supporters of the Constitution in states where popular sentiment was against ratification including Virginia, Massachusetts, and New York successfully proposed that their state conventions both ratify the Constitution and call for the addition of a bill of rights. Constitution was eventually ratified by all thirteen states. The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed. The people shall not be deprived or abridged of their right to speak, to write, or to publish their sentiments; and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable. The people shall not be restrained from peaceably assembling and consulting for their common good; nor from applying to the Legislature by petitions, or remonstrances, for redress of their grievances. Establishment Clause Thomas Jefferson wrote with respect to the First Amendment and its restriction on the legislative branch of the federal government in an letter to the Danbury Baptists a religious minority concerned about the dominant position of the Congregational church in Connecticut: Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore to man all his natural rights, convinced he has no natural right in opposition to his social duties. United States the Supreme Court used these words to declare that "it may be accepted almost as an authoritative declaration of the scope and effect of the amendment thus secured. Congress was deprived of all legislative power over mere [religious] opinion, but was left free to reach [only those religious] actions which were in violation of social duties or subversive of good order. In the preamble of this act [. Originally, the First Amendment applied only to the federal government, and some states continued official state religions after ratification. Massachusetts , for example, was officially Congregational until the s. Board of Education , the U. Supreme Court incorporated the Establishment Clause i. The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion to another. That wall must be kept high and impregnable. We could not approve the slightest breach. Watkins , the Supreme Court ruled that the Constitution prohibits states and the federal government from requiring any kind of religious test for public office. Grumet , [12] The Court concluded that "government should not prefer one religion to another, or religion to irreligion. Perry , [14] McCreary County v. ACLU , [15] and Salazar v. Buono [16] â€"the Court considered the issue of religious monuments on federal lands without reaching a majority reasoning on the subject. President Thomas Jefferson wrote in his correspondence of "a wall of separation between church and State". It had been long established in the decisions of the Supreme Court, beginning with Reynolds v. United States in , when the Court reviewed the history of the early Republic in deciding the extent of the liberties of Mormons. Chief Justice Morrison Waite , who consulted the historian George Bancroft , also discussed at some length the Memorial and Remonstrance against Religious Assessments by James Madison, [18] who drafted the First Amendment; Madison used the metaphor of a "great barrier". Everson laid down the test that establishment existed when aid was given to religion, but that the transportation was justifiable because the benefit to the children was more important. In the school prayer cases of the early s, Engel v. Vitale and Abington School District v. Schempp , aid seemed irrelevant; the Court ruled on the basis that a legitimate action both served a

secular purpose and did not primarily assist religion. Tax Commission , the Court ruled that a legitimate action could not entangle government with religion; in Lemon v. Kurtzman , these points were combined into the Lemon test , declaring that an action was an establishment if: The Lemon test has been criticized by justices and legal scholars, but it remains the predominant means by which the Court enforces the Establishment Clause. Felton , the entanglement prong of the Lemon test was demoted to simply being a factor in determining the effect of the challenged statute or practice. Simmons-Harris , the opinion of the Court considered secular purpose and the absence of primary effect; a concurring opinion saw both cases as having treated entanglement as part of the primary purpose test. Some relationship between government and religious organizations is inevitable", the court wrote. Douglas that "[w]e are a religious people whose institutions presuppose a Supreme Being". Free Exercise Clause "Freedom of religion means freedom to hold an opinion or belief, but not to take action in violation of social duties or subversive to good order. United States , the Supreme Court found that while laws cannot interfere with religious belief and opinions, laws can regulate some religious practices e. The Court stated that to rule otherwise, "would be to make the professed doctrines of religious belief superior to the law of the land, and in effect permit every citizen to become a law unto himself. Government would exist only in name under such circumstances. While the right to have religious beliefs is absolute, the freedom to act on such beliefs is not absolute. Verner , [33] the Supreme Court required states to meet the " strict scrutiny " standard when refusing to accommodate religiously motivated conduct. This meant that a government needed to have a "compelling interest" regarding such a refusal. The case involved Adele Sherbert, who was denied unemployment benefits by South Carolina because she refused to work on Saturdays, something forbidden by her Seventh-day Adventist faith. Yoder , the Court ruled that a law that "unduly burdens the practice of religion" without a compelling interest, even though it might be "neutral on its face", would be unconstitutional. Smith , [37] which held no such interest was required under the Free Exercise Clause regarding a neutral law of general applicability that happens to affect a religious practice, as opposed to a law that targets a particular religious practice which does require a compelling governmental interest. Since the ordinance was not "generally applicable", the Court ruled that it needed to have a compelling interest, which it failed to have, and so was declared unconstitutional. In City of Boerne v. Freedom of speech in the United States and United States free speech exceptions Wording of the clause The First Amendment bars Congress from "abridging the freedom of speech, or of the pressâ€¦. The practice in America must be entitled to much more respect. In every state, probably, in the Union, the press has exerted a freedom in canvassing the merits and measures of public men, of every description, which has not been confined to the strict limits of the common law. Madison believed that legislation to be unconstitutional, and his adversaries in that dispute, such as John Marshall , advocated the narrow freedom of speech that had existed in the English common law. For example, the Supreme Court never ruled on the Alien and Sedition Acts ; three Supreme Court justices riding circuit presided over sedition trials without indicating any reservations. Sullivan , [52] the Court noted the importance of this public debate as a precedent in First Amendment law and ruled that the Acts had been unconstitutional: Specifically, the Espionage Act of states that if anyone allows any enemies to enter or fly over the United States and obtain information from a place connected with the national defense, they will be punished. United States , Debs v. United States , Frohwerk v. United States , and Abrams v. In the first of these cases, Socialist Party of America official Charles Schenck had been convicted under the Espionage Act for publishing leaflets urging resistance to the draft. United States, the court again upheld an Espionage Act conviction, this time that of a journalist who had criticized U. United States, the Court elaborated on the "clear and present danger" test established in Schenck. Debs , a political activist, delivered a speech in Canton, Ohio , in which he spoke of "most loyal comrades were paying the penalty to the working class â€” these being Wagenknecht , Baker and Ruthenberg , who had been convicted of aiding and abetting another in failing to register for the draft. In upholding his conviction, the Court reasoned that although he had not spoken any words that posed a "clear and present danger", taken in context, the speech had a "natural tendency and a probable effect to obstruct the recruiting services". The Supreme Court denied a number of Free Speech Clause claims throughout the s, including the appeal of a labor organizer, Benjamin Gitlow, who had been convicted after distributing a manifesto calling for a

"revolutionary dictatorship of the proletariat". New York , the Court upheld the conviction, but a majority also found that the First Amendment applied to state laws as well as federal laws, via the Due Process Clause of the Fourteenth Amendment. California , [70] in which Communist Party USA organizer Charlotte Anita Whitney had been arrested for " criminal syndicalism ", Brandeis wrote a dissent in which he argued for broader protections for political speech: Those who won our independence. United States , [75] the Court upheld the law, 6â€”2. The demands of free speech in a democratic society as well as the interest in national security are better served by candid and informed weighing of the competing interests, within the confines of the judicial process. United States , the Supreme Court limited the Smith Act prosecutions to "advocacy of action" rather than "advocacy in the realm of ideas". Advocacy of abstract doctrine remained protected while speech explicitly inciting the forcible overthrow of the government was punishable under the Smith Act. Though the Court upheld a law prohibiting the forgery, mutilation, or destruction of draft cards in United States v. Ohio , [84] expressly overruling Whitney v. California , [89] the Court voted 5â€”4 to reverse the conviction of a man wearing a jacket reading "Fuck the Draft" in the corridors of a Los Angeles County courthouse. California , [91] the Court struck down a Los Angeles city ordinance that made it a crime to distribute anonymous pamphlets. Justice Hugo Black wrote in the majority opinion: Anonymous pamphlets, leaflets, brochures and even books have played an important role in the progress of mankind. Ohio Elections Commission , [93] the Court struck down an Ohio statute that made it a crime to distribute anonymous campaign literature. Keene , [95] the Court upheld the Foreign Agents Registration Act of , under which several Canadian films were defined as "political propaganda", requiring their sponsors to be identified. Federal Election Commission In Buckley v. Valeo , [97] the Supreme Court reviewed the Federal Election Campaign Act of and related laws, which restricted the monetary contributions that may be made to political campaigns and expenditure by candidates. The Court affirmed the constitutionality of limits on campaign contributions, stating that they "serve[d] the basic governmental interest in safeguarding the integrity of the electoral process without directly impinging upon the rights of individual citizens and candidates to engage in political debate and discussion. Federal Election Commission The Supreme Court upheld provisions which barred the raising of soft money by national parties and the use of soft money by private organizations to fund certain advertisements related to elections. In Federal Election Commission v. Wisconsin Right to Life, Inc. The Court overruled Austin v. Michigan Chamber of Commerce , [] which had upheld a state law that prohibited corporations from using treasury funds to support or oppose candidates in elections did not violate the First or Fourteenth Amendments. Federal Election Commission , [] the Court ruled that federal aggregate limits on how much a person can donate to candidates , political parties , and political action committees , combined respectively in a two-year period known as an "election cycle," violated the Free Speech Clause of the First Amendment. Street was arrested and charged with a New York state law making it a crime "publicly [to] mutilate, deface, defile, or defy, trample upon, or cast contempt upon either by words or act [any flag of the United States]. California , [] found that because the provision of the New York law criminalizing "words" against the flag was unconstitutional, and the trial did not sufficiently demonstrate that he was convicted solely under the provisions not yet deemed unconstitutional, the conviction was unconstitutional. The Court, however, "resist[ed] the pulls to decide the constitutional issues involved in this case on a broader basis" and left the constitutionality of flag-burning unaddressed. The Supreme Court reversed his conviction in a 5â€”4 vote.

Chapter 6 : First Amendment | Constitution | US Law | LII / Legal Information Institute

The First Amendment (Amendment I) to the United States Constitution prevents the government from respecting an establishment of religion, prohibiting the free exercise of religion, or abridging the freedom of speech, the freedom of the press, the right to peaceably assemble, or to petition for a governmental redress of grievances.

It draws a vivid contrast between the whistleblowerâ€”human, paranoid, fugitive, vulnerable, literally hiding under a blanketâ€”with the surveillance agencies, which are mysterious, powerful, and seemingly everywhere. In this narrow respect, we might think of the NSA and Snowden as mirror images of one another. This is probably more true now, in the digital age, than ever before. The digital age, our age, will give rise to many novel and vexing questions relating to the scope and substance of First Amendment freedoms. They were decided before the advent of the Internet, the rise of technology giants like Apple and Microsoft, the invention of the search engine, the arrival on the world stage of transnational transparency activists, the development of end-to-end encryption, and the emergence of social media. Some of the factual assumptions that underlie seemingly settled First Amendment principles may no longer be sound. At the very least, over the next decade or two, the courts will have to determine whether to apply old precedents to very different contexts. What is the government entitled to know about us, and what are we entitled to know about it? The First Amendment had something to say about surveillance, secrecy, and privacy before the era of smartphones and social media. Questions about surveillance, official secrecy, and individual privacy will be among the most significant that the First Amendment will have to answer. What we learned from the Snowden disclosures is that intelligence agencies have become immensely powerful; that their surveillance capabilities have been directed increasingly towards us; and that the institutions that were meant to protect individual rights against the encroachment of surveillance power have failed quite spectacularly. Thanks to advances in technology and investments in physical infrastructure, signals intelligence agencies like the NSA can now continuously collect staggering amounts of data, retain it indefinitely, and analyze it with powerful tools that can identify patterns and connections nearly instantaneously. The agency, which is estimated to have some 40, employees, is said to be the largest employer of mathematicians in the world. The phone in your pocket is a surveillance device that permits the tracking of your movements, communications, purchases, and associations. By examining your use of social media and search engines, an analyst can readily deduce your intellectual interests, religious views, politics, medical history, and intimate partners. Courts have begun to tackle some implications of these new technologies from the perspective of privacy and the Fourth Amendment. In United States v. The collection and retention of all this information is likely to have far-reaching implications for the freedoms of speech, assembly, and the press, though the change in our behavior may be subtle and gradual. A teenager who believes a record is being made of her activity on the web may hesitate before using a search engine to explore issues of sexuality. Each of the hesitations may be innocuous or insignificant in itself, but the accumulation of them will amount to a transformation in the way we engage with the world and with each other. Perhaps more consequential than the fact that everything is collected may be the fact that nothing is deleted. There are no second acts in lives lived on the Internet, as F. The personal and political and intellectual risks you take today, and the mistakes you make as result, will be attached to you in one way or another for the rest of your life. In a world in which everything is tracked, conformity has a gravitational pull. Sometimes surveillance requires conformity. There was a story in The New York Times about a civil servant who had sued the French government over a regulation that banned smiling in passport photos. The law was necessary, the government said, because facial recognition software functions best when facial expressions are neutral. An instance of surveillance prohibiting free expression, quite literally. And there are less trivial examples. Over the last couple of years, the FBI has proposed that designers of computer hardware and software be required to build their systems in such a way as to facilitate government surveillance. Their products can be diverse in every way, the FBI says, but in this particular way they must all be the same. Social activity must accommodate itself to the overriding requirements of government surveillance. A decade before that, the Court heard the case of Edward Rumely, a bookseller who had declined to comply with a congressional

subpoena commanding him to divulge the names of those who had purchased his books. The Court held that the subpoena was unenforceable, and in a concurrence, Justice William O. Douglas reflected at length on the dissuasive effect that unchecked surveillance would certainly have on the exercise of First Amendment rights. During the demonstrations that preceded the revolution in the Ukraine, protesters attending a pro-democracy demonstration in Kiev received this text message: Two years ago, researchers for Human Rights Watch and the ACLU interviewed journalists at American media organizations about the impact of government surveillance on their professional activities. New technology has given us new ways of communicating and new ways of understanding. So many more possibilities are open to us now than were open to us only a generation ago. And yet, as the possibilities are expanding, our willingness to explore them may be contracting. Surveillance by governments and corporations may be making us risk averse and fearful. But it might as well have. If the freedoms of speech and the press are to remain vital and meaningful in the digital ageâ€”if they are to survive the digital ageâ€”the next generation of First Amendment cases will have to grapple with the implications of surveillance. The secrecy surrounding surveillance was indicative of a broader trend. The Associated Press reported last year that the Obama administration had set a new record for denying requests under the Freedom of Information Act. Another measure of government secrecy: The Obama administration has prosecuted more people under the Espionage Act than all previous administrations combined. The government has been demanding more and more information about us, but disclosing less and less about itself. So the surveillance state has grown, but the empire of secrecy has grown, too. The essayist Elaine Scarry observed more than a decade ago that citizens were becoming more visible at exactly the time the government was becoming less visible. The Supreme Court has recognized that a core purpose of the First Amendment is to protect the free discussion of governmental affairs. It has recognized a right of access to criminal proceedings, and lower courts have recognized a right of access to civil proceedings and to certain judicial documents. The First Amendment might also have something to say about the rights of government whistleblowers, without whose disclosures we would know far less about American military involvement overseas and surveillance policies at home. At a time in which the President, the Director of National Intelligence, and the CIA director acknowledge that too much is classified, a criminal statute that fails to distinguish information justifiably kept secret from information that should never have been withheld should be regarded as constitutionally suspect, at the very least. Ready to Fight Back? All over the worldâ€”from Tehran, to Kiev, to Baltimoreâ€”protesters who would otherwise have been isolated from one another have relied on social media to organize, to persuade others to join their causes, to coordinate their actions, and to bring their complaints to public attention. After the elections in Iran, it was cellphone video depicting the paramilitary killing of Neda Agha-Sultan that galvanized the opposition. Apparently inspired by American racial-justice advocates, activists in Nigeria, the Ivory Coast, Guinea, and elsewhere in West Africa have begun to use cellphone video as a way of calling attention to abuses by their governments. The digital revolution that has enabled an unprecedented expansion of government surveillance capabilities has also given ordinary citizens new means of holding the powerful accountable. We should expect the next generation of First Amendment cases to grapple with the expansion of surveillance power, but also with the partial democratization of it. The image has little in common with the ones we most often associate with the First Amendment. As Richard Kluger observes in his biography of Zenger, challenges to First Amendment freedoms take many forms, and subtle and indirect threats can sometimes be more perilous than overt and direct ones. Jameel Jaffer Jameel Jaffer is founding director of the Knight First Amendment Institute at Columbia University, which works to defend and expand the freedoms of speech and the press in the digital age. To submit a correction for our consideration, click here. For Reprints and Permissions, click here. Comment 1 Leave a Comment In order to comment, you must be logged in as a paid subscriber.

Chapter 7 : Guardians Stand Up For 1st Amendment Rights - The Guardians of Martin County

The First Amendment to the U.S. Constitution is what guarantees the freedom of the press in the United States. Here it is: "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.

Never mind that Trump has taken steps to block publication of a critical book, assures a typical Wall Street Journal editorial â€”he would never follow through, and the courts would never go along. American journalists on a recent panel co-hosted by the Newseum and the Committee to Protect Journalists described struggling to do their work in an unprecedented atmosphere of hostility, suspicion, stonewalling, and even fear. Death threats are routine. Foreign journalists are paying an even bigger price, prompting some conservatives to finally speak up. McCain cited journalists arrested and systematically discredited in China, Egypt, Russia, Turkey, Venezuela, and elsewhere. Since Hillary Clinton opposed that ruling, conservatives argue, she posed a greater First Amendment threat than Trump. But he warned that there is no guarantee that an extraordinary event, such as a terrorist attack, might not prompt Trump to push hard to federalize libel laws. Such surveys reflect a larger news industry crisis in confidence, and come amid soul-searching forums like the one at the Newseum , and another this week at The Washington Post. And progressives, too, have failed to consistently defend free speech. Campus political protests, while often overblown and even egged on by conservative provocateurs, have raised legitimate First Amendment concerns. President Barack Obama kept a tight rein on information, was not transparent, and aggressively prosecuted whistleblowers, according to Reporters Without Borders. Last year, 34 American journalists were arrested , many when they were covering protests, and one photojournalist went to trial and was acquitted for a felony offense. American journalists still enjoy far greater institutional protections than journalists in, say, Turkey, where 73 journalists are now imprisoned , notes Alexandra Ellerbeck, North American program coordinator at the Committee to Protect Journalists. Attorney General Jeff Sessions has signaled plans to revise Obama administration media guidelines , making it easier for the Trump administration to subpoena reporters. Obama prosecuted eight leakers under the Espionage Act, according to CPJ, but the Trump administration has 27 leak investigations open. None of this seems to worry supposed First Amendment champions on the right. For many on the right, the First Amendment is less important as a tool to protect speech than to protect money, and those who spend it. If they just change the subject to Hillary Clinton or Neil Gorsuch, Republicans seem to think, all will be well. Nor is it the first time the GOP has elevated partisan politics above long-cherished principles. This article has been updated.

Chapter 8 : Amendment I - The United States Constitution

Guardians Stand Up For 1st Amendment Rights Environmental Advocates Stand Up for Free Speech The Guardians of Martin County recently joined with Environmental Advocate Nathaniel Reed in a local First Amendment rights case that is generating State and National attention.

First Amendment First Amendment: An Overview The First Amendment of the United States Constitution protects the right to freedom of religion and freedom of expression from government interference. The Supreme Court interprets the extent of the protection afforded to these rights. The First Amendment has been interpreted by the Court as applying to the entire federal government even though it is only expressly applicable to Congress. Freedom of Religion Two clauses in the First Amendment guarantee freedom of religion. The Establishment Clause prohibits the government from passing legislation to establish an official religion or preferring one religion over another. It enforces the "separation of church and state. For example, providing bus transportation for parochial school students and the enforcement of " blue laws " is not prohibited. The right to freedom of speech allows individuals to express themselves without government interference or regulation. The Supreme Court requires the government to provide substantial justification for the interference with the right of free speech where it attempts to regulate the content of the speech. Generally, a person cannot be held liable, either criminally or civilly for anything written or spoken about a person or topic, so long as it is truthful or based on an honest opinion, and such statements. A less stringent test is applied for content-neutral legislation. The Supreme Court has also recognized that the government may prohibit some speech that may cause a breach of the peace or cause violence. For more on unprotected and less protected categories of speech see advocacy of illegal action , fighting words , commercial speech and obscenity. The right to free speech includes other mediums of expression that communicate a message. The level of protection speech receives also depends on the forum in which it takes place. Despite popular misunderstanding the right to freedom of the press guaranteed by the First Amendment is not very different from the right to freedom of speech. It allows an individual to express themselves through publication and dissemination. It is part of the constitutional protection of freedom of expression. It does not afford members of the media any special rights or privileges not afforded to citizens in general. Implicit within this right is the right to association and belief. The Supreme Court has expressly recognized that a right to freedom of association and belief is implicit in the First, Fifth, and Fourteenth Amendments. This implicit right is limited to the right to associate for First Amendment purposes. It does not include a right of social association. The government may prohibit people from knowingly associating in groups that engage and promote illegal activities. The government may also, generally, not compel individuals to express themselves, hold certain beliefs, or belong to particular associations or groups. The right to petition the government for a redress of grievances guarantees people the right to ask the government to provide relief for a wrong through the courts litigation or other governmental action. It works with the right of assembly by allowing people to join together and seek change from the government. Last Updated in June of by Tala Esmaili.

Chapter 9 : First Amendment - HISTORY

The Guardian - Back to home. We were muddled to say in the article below that 'the First Amendment of the US Bill of Rights guarantees four freedoms: of religion, speech, the press and the.