



A history of free speech in America

Russell Coates

June 8, 2023

Free speech is an immensely important aspect of what has made the United States the country it is today. The right to free speech in America is enshrined as a fundamental right in the First Amendment to the Constitution, meaning that individuals must be free to express their opinions, ideas, and beliefs without fear of censorship or government reprisal.

In other words, **Americans have a constitutional right to put forth dissenting ideas and openly criticize their government and political representatives** — something individuals can be fined for or thrown in jail over in many other countries.

The significance of free speech in America is deeply rooted in history. Indeed, freedom of speech and religion played an important role in the Founding Fathers' believing that a free exchange of ideas and opinions — a free market of ideas — was essential to a functioning society and political system.

Moreover, free speech has played a critical role in many key moments in U.S. history, including the civil rights movement, anti-war protests, and efforts to promote justice and equality under the law. It has allowed individuals to challenge the status quo, speak truth to power, and effect positive change.

Free speech and the American Revolution

The history of free speech in the United States is a complex and fascinating topic, deeply rooted in the nation's founding principles. The First Amendment to the U.S. Constitution, ratified in 1791, protects the right to free speech, along with freedom of religion, the press, assembly, and petition.

The origin of free speech and religious freedom in early American history can be traced back to the colonial era. Many of the colonists who came to the New World were seeking refuge from religious persecution in Europe, and thus placed a great deal of value on the ability to practice their faith freely. The idea of religious tolerance and individual conscience was deeply ingrained in their worldview and would come to shape the development of the United States in significant ways.

However, in the early days of the colonies, freedom of speech and religious freedom were not always guaranteed. Many of the colonies were established with a specific religious denomination in mind, and dissenters were often met with harsh punishment. For example, in the Massachusetts Bay Colony, the Puritan authorities routinely censored publications and punished those who spoke out against their strict religious laws.

Despite these early restrictions, the concept of free speech and religious freedom gained traction over time. One key figure in this movement was Roger Williams, a Puritan minister banished from the Massachusetts Bay Colony for his dissenting views.

Williams went on to found the colony of Rhode Island, where he established a government that upheld religious toleration and freedom of conscience. This tradition was continued by figures such as William Penn, who founded Pennsylvania as a refuge for Quakers, and Thomas Jefferson, who famously wrote about the importance of religious freedom in the Virginia Statute for Religious Freedom.

As the colonies grew and began to chafe under British rule, the ideas of free speech and religious freedom became even more important. While freedom of speech may not be explicitly mentioned in the famous 27 grievances listed in the Declaration of Independence, the concepts and restrictions related to freedom of speech can be inferred by examining the language and context of those grievances. Here's how we can establish these connections:

1. **Obstruction of Public Dissent:** The grievances accuse the British government of obstructing public dissent and criticism of its policies. This suggests a curtailment of the colonists' ability to freely express their opinions and concerns. The right to voice dissenting viewpoints and criticize the government is a fundamental aspect of freedom of speech.
2. **Censorship and Suppression:** The grievances imply that the British Crown hindered the colonists' ability to express themselves by employing censorship and suppressing publications. By controlling the flow of information and limiting access to dissenting views, the British government restricted the free dissemination of ideas, which is a hallmark of freedom of speech.
3. **Interference with Petitioning for Grievances:** The colonists assert that the British government hindered their right to petition for grievances. This restriction implies that the government was suppressing a means by which citizens express their discontent and seek redress for their grievances — a form of protected speech.
4. **Religious Freedom Restrictions:** The grievances related to religious freedom can also be seen as connected to the broader concept of freedom of speech. Religious expression often encompasses the voicing of beliefs and opinions, and restrictions on religious practices can also curtail the ability to freely express oneself.

By examining the grievances through the lens of broader principles of free speech, these connections become apparent. While the grievances may not explicitly mention “freedom of speech,” they reflect concerns related to the curtailment of expressive liberties and the

suppression of dissent — key aspects of freedom of speech and the broader concept of free expression.

This tradition of free expression continued during the Revolutionary War, when pamphlets, such as “Common Sense” and “The American Crisis” by Thomas Paine, or “A Summary View of the Rights of British America” by Thomas Jefferson, played a crucial role in shaping public opinion.

What makes the First Amendment unique?

The First Amendment of the United States Constitution, which guarantees freedom of speech and religion, was a natural outgrowth of the values that had been developing in the colonies for centuries.

It stands as a remarkable testament to the significance placed on free speech within American society.

While many countries around the world recognize the importance of free expression, the First Amendment’s approach sets the United States apart in a unique way. **Unlike most countries, which tend to adopt a more limited approach to free speech, the First Amendment takes a broad and expansive view**, providing strong safeguards to protect individuals’ right to express themselves freely.

One important feature of the First Amendment is the concept of “*prior restraint*.” In many countries, governments have the power to censor or suppress speech before it is published or disseminated. However, the First Amendment places strong limitations on the government’s ability to engage in prior restraint.

Courts in the United States generally disfavor any attempt to restrain speech before it occurs, recognizing the potential for abuse and the chilling effect it can have on free expression. Instead, the American legal system tends to rely on post-publication remedies, such as defamation lawsuits or other forms of legal recourse where infringements against the rights of others have occurred, erring on the side of liberty rather than control.

Additionally, the First Amendment extends its protection beyond just the spoken and written word. It encompasses various forms of expression, including symbolic speech and expressive conduct. This means that individuals have the right to engage in peaceful protests, demonstrations, and other expressive activities to convey their ideas and beliefs. The recognition of symbolic speech ensures that individuals can communicate messages through actions, gestures, and artistic expressions, providing a broader scope for free expression compared to many other countries.

How has free speech helped drive progress?

Free speech has played a pivotal role in driving progress and social change throughout the history of the United States. The ability for individuals to freely express their opinions, challenge existing norms, and advocate for change has been instrumental in shaping the nation’s trajectory.

Activists and advocates have used free speech to shed light on injustices, expose corruption, and promote equal rights. It has allowed individuals to openly discuss and confront difficult issues.

From the Civil Rights Movement to the fight for gender equality and anti-war activism, free speech has served as a catalyst for social movements and reform.

Free speech and the civil rights movement

The civil rights movement of the 1960s brought attention to the issue of free speech. African American activists, such as **Martin Luther King Jr., used their right to free speech to advocate for racial equality and to challenge discriminatory laws and policies.**

The March on Washington for Jobs and Freedom in 1963 was a seminal moment in the civil rights movement. It was organized by a coalition of civil rights organizations, including the Southern Christian Leadership Conference (SCLC) and the National Association for the Advancement of Colored People (NAACP). The march, which drew over 200,000 participants, was a peaceful demonstration for jobs, freedom, and racial equality.

It was at this event that Martin Luther King Jr. delivered his iconic “I Have a Dream” speech, in which he called for an end to racism and segregation. The march was a powerful example of how the First Amendment allowed for the peaceful expression of dissenting views and ideas and how it could be used to effect social change.

A tool for anti-war activism

In the 1960s and 1970s, the Vietnam War sparked a wave of protests across the country, many of which were led by young people. The government’s attempts to suppress dissent led to court cases that further expanded the scope of free speech protections.

Opponents of the war utilized their right to free speech to voice their dissent, question the government’s policies, and advocate for peace. The First Amendment provided a platform for activists to organize protests, engage in civil disobedience, and express their opposition to the war in various ways.

During the Vietnam War, anti-war activists staged massive demonstrations that captured public attention and fueled the movement against the conflict.

One of the most notable protests was the Moratorium to End the War in Vietnam, held on October 15, 1969. It was a nationwide series of demonstrations involving millions of Americans, including students, intellectuals, and ordinary citizens. Through their speeches, signs, and acts of civil disobedience, participants exercised their First Amendment rights to express their opposition to the war and call for its end.

The media also played a significant role in amplifying anti-war sentiments. Journalists exercised their right to free speech by reporting on the realities of the war, exposing its human costs, and questioning the government’s justifications. Investigative journalism, such as the publication of the Pentagon Papers, revealed the truth behind the decision-making processes and further fueled

public skepticism about the war. This free and independent press contributed to shaping public opinion and ultimately influenced the trajectory of the conflict.

The anti-war movement's use of free speech as a means of protest and advocacy had a profound impact on public opinion and policy. Activists' persistent efforts and ability to freely express their dissent contributed to a shift in public sentiment, leading to increased scrutiny of the war's justifications and eventual calls for its end. The power of free speech in mobilizing public support and challenging government actions during the Vietnam War era demonstrates its vital role in anti-war activism and as a driver of social change.

Attacks on free speech in American history

Throughout the history of free speech in America, there have always been forces opposed to the free dissemination of ideas on both the progressive and conservative ends of the political spectrum. Indeed, there have been many instances where opponents of certain ideas, whether on the left or the right, have attempted to undermine free speech that conflicts with their views.

From the Wilson Administration clamping down on anti-war dissent during World War I to conservative attempts at silencing Civil Rights activists and more recent efforts by some progressives to shut down debate in universities, let's take a look at some opposition to free speech in American history.

Wartime censorship in America

During times of war in the United States, the suppression of speech has been a recurring phenomenon. This pattern can be observed throughout American history, where the ideals of free speech and civil liberties, more broadly, have been suspended in the name of security and order.

An important instance of censorship occurred during World War I when Congress enacted the Espionage Act of 1917. This legislation posed a direct threat to the First Amendment by criminalizing any act that could incite rebellion or impede the recruitment of soldiers.

Additionally, the postmaster general was granted the authority to censor certain forms of communication that advocated resistance to U.S. laws.

Eugene Debs, a prominent labor leader and socialist political figure, was arrested and convicted in 1918 under the Sedition Act, which extended the Espionage Act. He was sentenced to ten years in prison for delivering an anti-war speech criticizing the government's handling of World War I and encouraging resistance to the military draft. Debs' imprisonment became a symbol of free speech suppression. President Warren G. Harding ultimately commuted his sentence in December 1921.

Even in more recent times, the Espionage Act of 1917 has been utilized to target whistleblowers who disclosed classified information. For instance, Chelsea Manning, a former U.S. Army intelligence analyst, was charged under the Espionage Act in 2010 for leaking classified documents to WikiLeaks. The leaked materials included diplomatic cables, military logs, and videos. Manning's actions sparked significant debate regarding government transparency and the prosecution of whistleblowers.

Reality Winner, a former NSA contractor, was arrested in 2017 and charged under the Espionage Act for leaking a classified intelligence report to the media. The report detailed Russian interference in the 2016 U.S. presidential election. Winner's case drew attention to the use of the Espionage Act against whistleblowers and raised concerns about the prosecution of leaks related to national security.

These examples illustrate how the Espionage Act has been employed in modern times to target individuals who exposed sensitive information in the public interest.

However, the high point of government overreaction to dissent was arguably during the Cold War, exemplified by the Second Red Scare in the 1950s.

The Red Scare

The 1950s in the United States was a period marked by a fervent anti-communist sentiment known as the Second Red Scare — the first being during the Russian Revolution in the late 1910s and early 1920s.

Led by Senator Joseph McCarthy, the nation was gripped by fear and suspicion of communist infiltration. As a result, civil liberties were trampled upon, and censorship became a prevalent tool to silence dissenting voices. From Hollywood to academia, the Second Red Scare left a lasting impact on the freedom of expression in America.

One of the most glaring examples of censorship during the Second Red Scare was the creation of Hollywood's notorious blacklist. The House Un-American Activities Committee (HUAC) summoned members of the film industry to testify about their political beliefs and associations. Those suspected of communist sympathies or refusing to cooperate were systematically blacklisted, effectively ending their careers. This climate of fear and intimidation forced many filmmakers, actors, and writers to conform to prevailing anti-communist sentiments or remain silent, stifling creative expression and free thought.

Some examples of those affected include:

1. The Hollywood Ten:

In 1947, ten screenwriters and directors, including Dalton Trumbo and Ring Lardner Jr., were cited for contempt of Congress after refusing to answer questions regarding their alleged communist affiliations. They were subsequently blacklisted by the film industry, facing difficulties in finding work and having their creative talents suppressed.

2. Charlie Chaplin:

The iconic actor and filmmaker became a target of anti-communist sentiment and faced accusations of communist sympathies. Despite his immense contributions to cinema, Chaplin encountered increased scrutiny, and the climate of suspicion and censorship impacted his career.

3. Paul Robeson:

Robeson, an acclaimed African-American actor, singer, and civil rights activist, was blacklisted due to his outspoken support for labor rights and his association with progressive causes. He faced severe backlash and was denied opportunities in the entertainment industry, limiting his ability to perform and express his political views.

Beyond the direct actions of the HUAC, the widespread fear of being accused of communist sympathies led to an atmosphere of self-censorship. Artists, writers, and intellectuals refrained from expressing their true beliefs or avoided engaging with politically sensitive topics altogether. The desire to protect one's career and reputation resulted in a stifling effect on the freedom of expression, limiting the diversity of viewpoints and the exploration of important social and political issues.

In addition to Hollywood, the academic sphere also faced significant challenges during the Second Red Scare. Professors and university staff were subjected to loyalty oaths and investigations into their political beliefs. The fear of being labeled a communist sympathizer led to a chilling effect, as scholars felt compelled to conform or risk their livelihoods. This climate of censorship stifled intellectual discourse, hindered academic freedom, and ensured the absence of a genuinely open marketplace of ideas.

Many of the atrocities committed in the name of communism were already well-known at the time. However, by silencing those with different viewpoints, society missed out on the opportunity to critically examine and challenge communist ideas. True progress and understanding can only be achieved through open debate and the robust exchange of ideas, not through censorship and persecution.

Free speech in the Jim Crow era and the fight for civil rights

Throughout the Jim Crow era, laws and practices enforced racial segregation and denied African Americans their fundamental rights. In this oppressive environment, speaking out against racial injustice was met with fierce resistance. Civil rights activists who dared to challenge the status quo faced various forms of repression, including harassment, threats, and violence. Local governments and law enforcement agencies often sought to silence dissent by arresting activists, subjecting them to unfair trials, and imprisoning them for their advocacy.

During the 1960s, the Civil Rights Movement emerged as a powerful force demanding an end to segregation and racial discrimination. However, the activists involved in this movement encountered significant obstacles to their freedom of speech. State and local authorities, as well as white supremacist groups, sought to suppress their voices through intimidation tactics, surveillance, and the use of force. The Ku Klux Klan, for example, targeted civil rights activists and their supporters with acts of violence and terrorism in an attempt to silence them.

For instance, several members of the National Association for the Advancement of Colored People (NAACP) were denied access to the state of Alabama due to their involvement in civil rights activities. One prominent example is the Freedom Riders, a group of activists who aimed to challenge racial segregation on interstate buses and in bus terminals.

The Freedom Riders, including both African American and white activists, traveled to Alabama in May 1961 as part of their journey through the Deep South. Upon their arrival, they were met with violent opposition from white supremacists and encountered resistance from local authorities. The Alabama state government, led by Governor John Malcolm Patterson, made efforts to prevent the Freedom Riders from entering the state and disrupted their activities.

Members of the NAACP, such as James Farmer, John Lewis, and Diane Nash, were among those who faced obstacles and denials when attempting to enter Alabama. They were subjected to violence, arrests, and intimidation as they sought to challenge segregationist policies and advocate for civil rights. Despite these challenges, their courageous actions and determination played a crucial role in raising awareness about racial inequality and paving the way for change in Alabama and across the United States.

In 1963, as part of the Birmingham Campaign, civil rights activists, including the Southern Christian Leadership Conference (SCLC) and Fred Shuttlesworth, organized nonviolent protests in Birmingham, Alabama, to challenge segregation laws. Authorities responded with mass arrests, including the arrest of Martin Luther King Jr., and subjected activists to harsh and unfair treatment during their trials.

In 1964, during the Freedom Summer campaign in Mississippi, three civil rights activists, James Chaney, Andrew Goodman, and Michael Schwerner, were abducted by members of the Ku Klux Klan and local law enforcement. They were subsequently murdered and buried in an unmarked grave. The case brought national attention to the collaboration between white supremacist groups and law enforcement agencies in targeting activists.

Moreover, through agencies like the Federal Bureau of Investigation (FBI), the federal government engaged in surveillance and harassment of civil rights leaders and organizations. One notable example is the extensive FBI surveillance of Dr. Martin Luther King Jr., which aimed to undermine his influence and credibility. This unwarranted intrusion into activists' private lives and activities was a clear violation of their right to freedom of speech and privacy.

In response to these infringements, civil rights activists persisted in fighting for justice, employing various strategies to amplify their voices. They utilized nonviolent protests, organized marches and rallies, and engaged in acts of civil disobedience to challenge oppressive laws and policies. Despite the obstacles they faced, their unwavering commitment to freedom and equality paved the way for significant social and legislative changes.

Free speech in universities

Free speech is particularly crucial within the context of universities, where the pursuit of knowledge, critical thinking, and intellectual growth are paramount. Universities and college campuses should be bastions of free expression, fostering an environment where diverse ideas can flourish, and students can engage in robust debates that challenge their preconceptions and expand their intellectual horizons.

Indeed, throughout much of the history of free speech in America, universities have been at the forefront of intellectual debate. However, in recent years, we have witnessed an

increasing suppression of ideas deemed controversial or offensive on campuses across the United States.

Instead of fostering an environment of robust debate and critical thinking, censorship imposes a chilling effect on intellectual discourse. It breeds an atmosphere of conformity, where individuals are hesitant to express their opinions for fear of retribution or being labeled as politically incorrect. Indeed, in 2020, a national survey by the Cato Institute found that 62 percent of Americans say they have political views they're afraid to share.

Attacks against free speech on campus are often rationalized based on the need to create safe and inclusive spaces for all students. Advocates for censorship argue that certain ideas or forms of expression can be harmful. As such, they contend that limiting or censoring certain viewpoints is necessary to protect individuals from experiencing emotional distress or harm.

However, beyond the obvious infringement against First Amendment rights, such censorship undermines the core principles of free speech and limits opportunities for dialogue and mutual understanding. By sheltering students from uncomfortable or dissenting ideas, universities risk creating an echo chamber where critical thinking and open inquiry are stifled, impeding the development of well-rounded individuals capable of engaging with diverse perspectives.

As institutions of higher learning that benefit from taxpayer support, colleges have a responsibility to provide a space where the free exchange of ideas can flourish. By safeguarding the First Amendment rights of students, faculty, and staff, these campuses promote an environment that fosters critical thinking, encourages robust debate, and prepares students to engage in civil society.

Why does free speech matter so much?

Free speech stands as the lifeblood of a truly free society, a fundamental pillar that we must fiercely defend. It is through the open exchange of ideas, even those we vehemently disagree with, that we can foster progress, challenge oppressive systems, and safeguard our liberties. The marketplace of ideas thrives on the notion that the best way to combat bad ideas is not through censorship but through exposure, debate, and reasoned discourse.

When we attempt to silence or suppress ideas we deem “bad,” we risk driving them underground, where they can fester and grow unchecked. By shining a light on these ideas in an open marketplace, we give ourselves the opportunity to critically analyze and dismantle them. We invite a thorough examination of their flaws, inconsistencies, and fallacies, ultimately reinforcing the strength of the prevailing arguments. Free speech allows us to challenge and refine our beliefs, pushing us to seek truth and ensure our convictions are well-founded.

Moreover, any state-enforced suppression of speech creates a dangerous precedent, granting those in power the authority to determine what is acceptable and what is not. History has shown that those wielding such power can abuse it, stifling dissent and quashing voices that dare to question the status quo. In a free society, we must resist the temptation to wield censorship as a weapon, for it erodes the very foundations of individual autonomy and intellectual growth.

The power of free speech lies in its ability to expose the flaws of bad ideas, to subject them to rigorous scrutiny, and to inspire others to present better alternatives. When we engage in open dialogue, we empower individuals to refine their arguments, challenge prevailing dogmas, and propose innovative solutions to complex problems. In this vibrant marketplace, bad ideas are not suppressed but rather confronted head-on, stripped of their persuasive power through the strength of counterarguments and evidence.

Ultimately, the defense of free speech is not an endorsement of harmful or hateful ideas but a recognition of the power of dialogue and the belief in the collective wisdom of society. We must embrace the challenge of engaging with opposing viewpoints, confident that in the open marketplace of ideas, truth and reason will prevail. Let us champion free speech as a cornerstone of our free society, knowing that it is through the fearless and unfettered expression of diverse perspectives that we can forge a more just, enlightened, and free world.

“Educate your children, educate yourself, in the love for the freedom of others, for only in this way will your own freedom not be a gratuitous gift from fate. You will be aware of its worth and will have the courage to defend it.” — Joaquim Nabuco.