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The Price of Freedom of Speech

The first Amendment of the Constitution ensures that the people of the United States have the freedom speech, petition, religion, press, and assembly. However, this law has some caveats. The amendment doesn't give us the right to say what we want, when we want, contrary to widespread misinterpretations. It does, conversely, states that the US government cannot suppress speech, or the newer addendum of expression. This concept is mostly true, barring child pornography, defamation and inciting crimes. These are just a few examples of speech that has been determined to be illegal under the U.S. Constitution. The argument called into question is whether or not these exceptions to the constitution should be permissible. It is in the best interest of the citizens of the United States to have and unrestricted access to the freedom of speech, in which it protected by the full extent of the law.

Freedom of speech has been challenged many of times throughout the country's longevity. One profound example of this is the case of Schenck vs. United States. In 1919, Schenck wrote pamphlets that spoke out against the drafting in World War I. Schenck distributed these flyers to thousands of drafted soldiers and proclaimed that involuntary service was contrary to the 13th Amendment that outlawed slavery (McBride). This prompted draftees to petition a repeal of the draft. This in turn caused an uproar and subsequently, Schenck was charged with violating the recently created

Espionage Act. It states that conspiring to cause insubordination was unlawful (McBride). The ruled that because Shenck was intentionally trying to undermine the authority of the US government, he was indeed in violation of the Espionage Act and hence found guilty. Associate Justice of the Supreme Court Oliver Wendall Holmes stated that the Espionage did not violate the First Amendment because he came to the conclusion that the character of every act depends upon the circumstances in which it is done. Wendall gave the example that if the pamphlet had been handed out in a time of peace, such a speech would have been considered harmless. However, how is one to express a solution when no problem had even been discovered, such as in Charles Shenck's case.

Freedom of speech is a promise to the America people that the US government cannot suppress speech on the basis of content or else be subjected to the strictest constitutional scrutiny. Oliver Wendall Holmes's developed the concept that the question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent (McBride). This notion was originally brought to attention in the 1907 ruling of *Patterson vs. Colorado*. It was argued the legitimacy of the bad tendency test as an accurate way to prove a person's malicious motives towards the public welfare in public speech (*The Present Status of Freedom of Speech* 525). The bad tendency test created a substantial amount of rulings such as *Abrams v. United States* in 1919 and *Whitney v. California* in 1927. The bad tendency test was later overturned in *Brandenburg v. Ohio* (1969) and was replaced by

the "imminent lawless action" test, which better represented the idea of clear and imminent danger (Stone 412-13).

The biggest dilemma with the 1st amendment, is over the how the law should be applied to people who use this freedom for what the government conceives as insurgence against the US, while at the same time, remains a right of the people. One such instance could be considered an incident involving Edward Snowden. In 2013, Snowden leaked classified files that revealed new information regarding the Foreign Intelligence Surveillance Court. As he had previously worked with multiple government agencies such as the NSA and CIA, he had access to classified government information (Kerr 1513). He gave this secure information to a news reporter and it was later released into the public eye. The US Department of Justice emitted charges for Snowden's arrest, but he had already fled the country. Snowden was charged with two counts of violating the Espionage Act of 1917 and stealing government property (1513). If it is broken down to a simple concept, the documents belonged to the US government, and since the government is set in place to service the citizens of the United States of America, then therefore those documents belonged to the American people, and as such they had a right to know about them. Even if that philosophy is discredited, it still remains that as the document wouldn't have created a clear and immediate harm to the US people, then they were of no danger creating a disturbance, such as in the case of *Shenck vs. United States*. Another point to consider is the morals of the situation. The Espionage Act specifically states that a person with intent to harm the nation is in violation. Yet, evidence shows that Snowden released the classified files

to better inform the American people as to the government and certain foreign countries surveillance ability, which is contrary to harming the US.

Common misnomers to the notion of free speech include the thought that one isn't allowed to yell fire in a crowd full of people, but that prohibiting this is a violation of freedom of speech. This technically isn't true. If a person is detained by law for doing this, the government isn't prohibiting the person for the content of their speech, but by the intent of their actions (McBride). It isn't what was said, but was the result of the words. If such an event were to occur, a commotion would ensue, and people might get hurt. Therefore, the crime would be considered somewhat of a public disturbance. The law ensures that unless there was a "clear and concise danger" shouting fire in a crowd full of people is a violation.

Our rights as US citizens may come with stipulations, but a governing body can only do so much to restrict our freedoms. Whether given by god or self-proclaimed, freedom of speech is still upheld and maintained. It has come at a cost however, and the price tag was a steep one. Soldiers fought and died for our country and yet some like Charles Schenk and Edward Snowden still defend us but not on the battlefield. Freedom of speech is one thing, but knowing when not to might be an even better solution. For even though you have the right to say something, doesn't mean you should. While freedom of speech is a broad domain to classify by means of judiciary legalities, it is important to understand our rights as people of the United States of America, to use wisely and responsibly.

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