**Censorship**

System whereby a government-appointed body or official claims the right to protect the public interest by influencing the release of any item of mass communication. Censorship usually falls into four broad categories - politics, religion, pornography or violence. Material may be censored before dissemination or may be prevented or seized by the authorities. Censorship raises questions about the freedom of speech, and advanced communications technology (such as the Internet) have made policing more problematic.

**Summary Article: Censorship**

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FREEDOM OF BELIEF and conscience are essential to democracy; censorship threatens the free exchange of ideas that allows democracy to flourish. English philosopher John Stuart Mill summarized the liberal view of censorship in his essay, “On Liberty” (1869): “If all mankind, minus one were of one opinion, and only one were of the contrary opinion, mankind would be no more justified in silencing the one than he, if he had the power, would be justified in silencing mankind.” Like Mill, most liberals are afraid that the one person who is silenced might be the one who discovers a universal truth or solves a scientific problem or writes a book, a song, or a poem that will stand the test of time.

The purpose of censorship is always to stop someone from saying, printing, or depicting something that is seen as dangerous or which threatens societal norms. Censors seek to place limits on words, images, ideas, symbols, signs, books, music, and art. The danger in censorship is that the censor sets herself up as the judge of what is permissible and what is not. When government acts as censor by prohibiting criticism of its actions or by blocking the flow of information, it lays the foundation for tyranny. In response to national and state efforts to infringe on civil liberties, the U.S. Supreme Court has become known, sometimes ironically, as the guardians of liberty. The court has cautioned in cases such as *FCC v. Pacifica Foundation* (438 U.S. 726 438 U.S. 726, 1978) that finding speech offensive is no reason for suppressing it.

The First Amendment to the U.S. Constitution states, “Congress shall make no law abridging the freedom of speech or of the press.” Yet, by 1789, Congress had passed the first Sedition Act, which prohibited all criticism of the government. During the Civil War, Abraham Lincoln rode roughshod over the First Amendment. During World War I, Congress passed the Second Sedition and Espionage Acts, which restricted criticism of the government or of the war effort and established criminal penalties for any speech or writing that was considered “disloyal.”

Efforts to censor speech during World War II centered around the Smith Act of 1940, which established severe penalties for anyone who advocated the overthrow of the government by force or violence. Following World War II, the Cold War and McCarthyism led to the passage of the McCarran or Communist Control Act of 1954 over President Harry Truman’s veto, censoring freedom of association by making membership in the Communist Party illegal. During the 1960s, there was an unusual amount of tolerance for free speech that encompassed civil rights, women’s rights, the anti-war effort, and student protests. As might be expected, a conservative backlash followed in the 1980s with the
The religious right launched an all-out effort to censor books, art, web sites, movies, signs, and television programming.

The abortion issue provides an excellent example of what happens when conservatives attempt to limit speech/action with which they disagree. The Reagan and George H.W. Bush administrations became so successful in censoring even the use of the word abortion that Congress passed a law banning the use of the word in clinics that received Title X funds. In 1991, in Rust v. Sullivan (500 U.S. 173), the conservative court upheld this limitation on the speech of medical and family planning personnel. President Bill Clinton overturned the case with an executive order, and Congress turned his actions into federal law.

Even though liberals dislike censorship on principle, some limits may be acceptable. In Schenck v. United States (249 U.S. 47, 1919), Justice Oliver Wendell Holmes identified what has become the classic acceptable infringement on free speech: "the most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic." Many liberals also favor censorship of pornography on the grounds that it is harmful and likely to incite violent actions against women and children and hate speech because it infringes on human dignity.

**SUPREME COURT TESTS**

From the beginning, the Supreme Court has been called upon to determine what speech should be censored and which is protected by the First Amendment. Normally, verbal expression known as "pure speech" is accorded the most protection. When pure speech involves action of some sort, it becomes known as "speech plus." Some liberal absolutists, such as Justices Hugo Black and William Douglas, believed that when the First Amendment said Congress should make no law abridging freedom of speech it meant that "no law was no law." For most justices, however, determining the line between protected speech and unprotected action has not always been easy. Early in the 20th century, during one of the most radical periods in U.S. history, the Supreme Court began to rely on tests to judge what was protected and what could be constitutionally censored.

In Schenck v. United States, Justice Holmes developed the Clear and Present Danger Test, which judged "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." Substantive evils were generally defined as trying to overthrow the government, inciting to riot, and destruction of life and property. On the basis of the Clear and Present Danger Test, convictions of most radicals were upheld. Rejecting the Holmes test, the court opted for the Bad Tendency Test, which allowed government to restrict speech that threatened public health, safety, and morals.

By the early 1940s, the court had drifted toward the Preferred Preference Doctrine, first articulated in Jones v. City of Opelika (319 U.S. 105) and eight companion cases, declaring that "freedom of press, freedom of speech, freedom of religion are in a preferred position." In Thomas v. Collins (323 U.S. 516, 1945), the court acknowledged that First Amendment freedoms are "indispensable" to democracy. By the 1950s, the justices were inclined to use the Balancing Doctrine, which weighed First Amendment freedoms against other constitutional protections. In 1951, in Dennis v. United States (341 U.S. 494), the court opted for the Hand Test developed by Judge Leonard Hand, which attempted to determine "whether the gravity of the 'evil,' discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger."
The liberal reform mood of the 1960s escalated social tensions to the point that the Supreme Court needed new guidelines for determining acceptable censorship of speech. In *Brandenburg v. Ohio* (395 U.S. 444), in 1969, the court announced the Imminent Danger Test. On this guideline, states were allowed to enact laws that censored speech only “where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.”

**SYMBOLIC SPEECH**

Throughout the history of the United States, individuals and governments have attempted to censor the ways that individuals express their beliefs through the use of symbols. Few issues have invoked more wrath than those concerning the American flag. In *West Virginia v. Barnette* (319 U.S. 624, 1943), the court overturned a mandatory flag salute. In 1974, in *Spence v. Washington* (418 U.S. 405), the court upheld the right of a war protestor to hang a flag upside down outside his dorm window. Fifteen years later, the court overturned the conviction of Gregory Johnson for burning an American flag on the steps of the Republican headquarters building to protest the policies of the Reagan administration.

In *Texas v. Johnson* (491 U.S. 397), Justice William J. Brennan spoke for a narrow majority when he wrote “We do not consecrate the flag by punishing its desecration, for in doing so we dilute the freedom that this cherished emblem represents.” In response to the decision, Congress passed the Flag Protection Act of 1989, which was overturned the following year in *United States v. Eichman* (496 U.S. 310). In early 2004, the court heard arguments in which an atheist parent challenged the practice of requiring his child to recite the pledge to the flag that includes “under God.”

During the Vietnam War era, the issue of symbolic speech took on new meaning. While the court leaned toward a tolerant interpretation of freedom of speech during this period, the justices were unwilling to accept what they saw as flouting the interests of the U.S. government. For instance, in *United States v. O’Brien* (391 U.S. 367), the court held that burning draft cards was not protected by the First Amendment. In the landmark case *Tinker v. Des Moines* (393 U.S. 503), the court protected the rights of high-school and junior highschool students to wear black armbands to protest against the war.

**CONSERVATIVE CENSORSHIP**

The efforts of religious conservatives to censor anything in which they do not believe have a long history in the United States. In 1925, for example in what became known as the Scopes or “Monkey” Trial, conservative opposition to teaching evolution in the schools received national attention when high-school science teacher John Scopes was arrested in Tennessee for teaching evolution. The Supreme Court addressed the creation/evolution argument in 1968 in *Epperson v. Arkansas* (393 U.S. 97) in which the court reiterated its position that “there is and can be no doubt that the First Amendment does not permit the State to require that teaching and learning must be tailored to the principles or prohibitions of any religious sect or dogma.”

Censors have frequently targeted media of all kinds. In *Jenkins v. Georgia* (418 U.S. 153, 1974), the court held that state law should be used to determine whether material was “patently offensive.” Three years later in *Smith v. United States* (431 U.S. 291), the justices held that national standards should apply when censorship of books and movies was in question. In 1978 in *FCC v. Pacifica Foundation*, the court stated that “of all forms of communication, broadcasting has the most limited First Amendment protection,” because it enters homes where children may be exposed to it.

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Liberals and conservatives have long debated whether music should be censored; and if so, on what grounds. The popularity of rock and roll in the 1950s and 1960s launched a then-unprecedented censorship effort. Many people thought that the genre was obscene, anti-establishment, anti-family, and communist generated. During the 1970s, censors targeted anti-war songs and those, such as Peter Paul and Mary’s “Puff the Magic Dragon” and the Beatles’ “Yellow Submarine,” which were thought to promote the marijuana drug culture.

In the 1980s and 1990s, songs were censored for a range of reasons. For instance, Garth Brooks’s “The Thunder Rolls” and Martina McBride’s “Independence Day,” which highlighted domestic violence, were censored by those who insisted they promoted violence. Even the bland Backstreet Boys, who appealed mostly to teenage girls, were declared “indecent” and “inappropriate.” Censorship often has the reverse effect as in the case of 2 Live Crew’s “As Nasty as They Wanna Be,” which climbed in the charts in 1990 after being declared obscene. After the events of September 11, 2001, one radio chain banned anything that might be construed as “insensitive.” Censored songs included Metallica’s “Seek and Destroy,” AC/DC’s “Shot Down in Flames,” and Carole King’s “I Feel the Earth Move.”

The conservative mood of the Reagan era also led to a concentrated attack on the arts. Conservatives were so irate over the fact that the National Endowment for the Arts had funded the “erotic” works of photographer Robert Mapplethorpe that they attempted to cut all funds for art that offended their sensibilities. The attack included the funding for public television, fueled by rumors that nonhuman characters on popular children's television shows were gay. In the same vein, Vice President Dan Quayle attacked the decision of fictional television journalist Murphy Brown to have a child even though she was not married because it challenged typical “family values.”

Censors have frequently targeted books. Banned books have included the Bible, *The American Heritage Dictionary*, *The Autobiography of Benjamin Franklin*, *Catcher in the Rye*, *Huckleberry Finn*, *I Know Why the Caged Bird Sings*, *Bury My Heart at Wounded Knee*, and *To Kill a Mockingbird*. During the Reagan era, conservative fervor gave the religious right new ammunition to go after books that threatened their beliefs.

In the late 20th century, conservatives targeted a series of children's books by English author J. K. Rowling. The Harry Potter series about an orphaned wizard who attends Hogwarts, a school of magic, has been called “anti-Christian” and “disturbing.” Liberals laud the fact that so many children and adults are reading the books that Rowling has become the first author in history to become a billionaire from her writing. Even the Vatican defended the Harry Potter books, and the Gatehouse Research Project suggested that all kids should read the books because they promoted family, friends, and community. An Australian researcher presented a paper in 2004 in which she argued that the books have given teenagers an alternative to suicide by teaching them positive ways of dealing with depression.

**PRESS CENSORSHIP**

Since the first newspaper appeared in the American colonies, certain individuals wanted to censor anything with which they disagreed. Government officials have frequently attempted to stop newspapers from publishing what might be damaging to national security or political careers. However, the Supreme Court has consistently rejected prior restraint by opting to respond to written matter after it is published. In 1931, in *Near v. Minnesota* (283 U.S. 697), for example, the court stated unequivocally that the Constitution protected the press from prior restraint. In 1971, the Richard M. Nixon administration attempted to block the *New York Times* and the *Washington Post* from

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publishing the Pentagon Papers, which detailed U.S. policy in Vietnam. In *New York Times v. United States* (403 U.S. 713), the court refused, insisting that prior restraint is acceptable only in cases where the government can prove an overwhelming responsibility for doing so.

At times, the press is censored in order to protect the right of individuals to a fair trial. In *Estes v. Texas* (381 U.S. 532, 1965), the court reversed the conviction of Billy Sol Estes, finding that broadcasting the trial violated Estes’s Fourteenth Amendment rights. Likewise, in *Sheppard v. Maxwell* (384 U.S. 333, 1966), the court overturned the conviction of Dr. Sam Sheppard, who was accused of murdering his pregnant wife, because of the adverse pretrial publicity that created a circuslike atmosphere and denied Sheppard’s right to a fair trial. Nevertheless, in *Nebraska Press Association v. Stuart* (427 U.S. 539, 1976), the court found gag orders unconstitutional.

Censors have frequently targeted teachers and students. In 1968, in *Pickering v. Board of Education* (391 U.S. 563), the court upheld a teacher’s right to publish a letter critical of the way that her employers spent school funds. In *Papish v. University of Missouri Curators* (410 U.S. 667, 1968), the court held that college newspapers should be free from censorship. Nevertheless, in *Hazelwood School District v. Kuhlmeir* (484 U.S. 260, 1988), the court held that teachers and students in public schools have no First Amendment freedoms while at school.

**ASSEMBLY**

The First Amendment protects the free speech right of assembly. During the 1950s and 1960s, the right to peaceful assembly was severely tested during the civil rights movement. While protestors led by Dr. Martin Luther King, Jr., took a pledge of nonviolence, violence often erupted as white supremacists sought to prevent protestors from assembling. Alabama and Mississippi arrested thousands of protestors for exercising their constitutional rights. In 1958, in *N.A.A.C.P. v. Alabama* (357 U.S. 449), the court held that Alabama could not force the National Association for the Advancement of Colored People (NAACP) to release its membership rolls. Even though most liberals support the right to peaceful assembly, a conflict may arise when the protestors are Nazis or Ku Klux Klansmen.

**UNPROTECTED SPEECH**

The Supreme Court has consistently held that slander, libel, obscenity, “fighting words,” and threats to public safety are open to censorship. Slander and libel laws protect individuals from having others say or write things that are untrue about them. In 1964, in *New York Times v. Sullivan* (376 U.S. 254), the court held that public figures cannot recover damages unless they can prove that erroneous information was presented with “actual malice” and “with knowledge that it was false or with reckless disregard of whether it was false or not.” In *Hustler Magazine v. Falwell* (485 U.S. 46, 1988), the court used Sullivan to decide that Jerry Falwell could not collect damages for a lampoon that appeared in the magazine because “the State’s interest in protecting public figures from emotional distress is not sufficient to deny First Amendment protection to speech that is patently offensive and is intended to inflict emotional injury when that speech could not reasonably have been interpreted as stating actual facts about the public figure involved.” For several decades, the Supreme Court struggled with how to define obscenity. Before the late 1950s, the justices relied on the Hicklin Test, which was developed by an English judge in 1868 in *Queen v. Hicklin* (L.R. 3 Q.B. 360), identifying obscenity by whether the work was judged to have any redeeming social value. Then, in *Roth v. United States* (354 U.S. 476) in 1957, the court attempted to define obscenity in relation to “contemporary community standards” that
judged whether “the dominant theme of the material taken as a whole appealed to the prurient interests.” During this period, the justices gathered with their law clerks on what became known as “Dirty Movie Day” to view each movie that had been declared “obscene” on a case-by-case basis. In 1971, in *Cohen v. California* (403 U.S. 15), Justice John Harlan expressed the crux of the obscenity dilemma by acknowledging that “while the particular four-letter word being litigated here is perhaps more distasteful than most others of its genre, it is nevertheless often true that one man’s vulgarity is another’s lyric.”

An illustration of Huckleberry Finn from an early edition of Mark Twain’s novel, a work that would still be censored 100 years later.

In *Miller v. California* (413 U.S. 15), the Supreme Court established a three-tier test for obscenity that would serve as a guideline for future cases:

- Whether the “average” person, applying contemporary community standards, would find that the work taken as a whole appeals to the prurient interest;
- Whether the work depicts or describes in a patently offensive way sexual conduct as specifically defined by applicable state law;
- Whether the work taken as a whole lacks serious literary, artistic, political, or scientific value.

“Fighting words” were declared unprotected forms of speech in *Chaplinsky v. New Hampshire* (315 U.S. 568) in 1942. Words classified as “fighting words” have included: adulterer, alcoholic, bigamist, cheat, deadbeat, fascist, gay, hypocrite, Nazi, spy, and villain; as well as racial, religious, and ethnic epithets. Many local communities have enacted hate crime laws to prevent crimes that target specific
groups for violence. Such a law passed by St. Paul, Minnesota, was challenged in 1992 in *RAV v. City of St. Paul* (505 U.S. 377), when a local youth claimed that his right to burn a cross inside the fenced yard of a black family living in a predominantly white neighborhood was protected by the First Amendment. The court struck down the law on the grounds that it was overly broad.

The court has determined in hundreds of cases that there is no Constitutional right to incite to riot, disturb the peace, or attempt to overthrow the government (sedition). In *Schenck v. United States*, the court used the Clear and Present Danger Test to determine that Schenck had no constitutional right to send anti-war letters to men eligible for the draft. In his dissent to *Abrams v. United States* (250 U.S. 616) in 1919, Justice Oliver Wendell Holmes argued that the only acceptable limits on speech action arose from the threat of immediate danger.

In 1925, in *Gitlow v. New York* (268 U.S. 652), the court decided that freedom of speech and press applied to the states as well as to the national government. In a significant concurring opinion in *Whitney v. California* (274 U.S. 357, 1927), Justice Louis Brandeis summed up a new position on seditious speech: “Fear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burnt women. It is the function of speech to free men from the bondage of irrational fears. To justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced. There must be reasonable ground to believe that the danger apprehended is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one.”

There is always the danger that when government is allowed to censor in the name of national security it will invade the civil liberties of the innocent as well as the guilty. In October 2001, in the wake of the September 11, 2001, terrorist attacks, Congress passed the USA Patriot Act (P.L. 107-56). The law gave the executive branch unprecedented powers, including electronic and physical surveillance, warrantless searches, privacy violations, and suspension of the right to due process, equal protection, a speedy trial, habeas corpus, and legal counsel.

Critics of the act argue that it violated the First, Fourth, Fifth, Sixth, Eighth, Ninth, and Fourteenth Amendments. In early 2004, the Supreme Court agreed to hear a series of cases arising from the actions of the George W. Bush administration, including the incarceration of 600 detainees at Guantánamo Bay, Cuba, who had been held without due process.

**SEE ALSO**

*Volume 1 Left: First Amendment; Civil Liberties; Supreme Court; Freedom of Information.*

*Volume 2 Right: Reagan, Ronald.*

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