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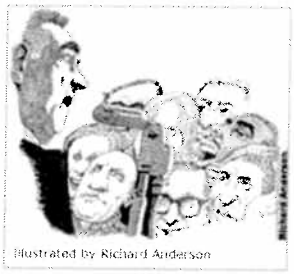
Freedom of Speech


Illustrated by Richard Anderson

(The following article is taken from the U.S. Department of State publication, *Rights of the People: Individual Freedom and the Bill of Rights*.)

Congress shall make no law . . . abridging the freedom of speech....
– First Amendment to the U.S. Constitution

If there is one right prized above all others in a democratic society, it is freedom of speech. The ability to speak one's mind, to challenge the political orthodoxies of the times, to criticize the policies of the government without fear of recrimination by the state is the essential distinction between life in a free country and in a dictatorship. In the pantheon of the rights of the people, Supreme Court Justice Benjamin Cardozo, who served from 1932 to 1938, wrote of free speech that it is "the matrix . . . the indispensable condition of nearly every other freedom."

If Americans assume that free speech is the core value of democracy, they nonetheless disagree over the extent to which the First Amendment protects different kinds of expression. Does it, for example, protect hate speech directed at particular ethnic or religious groups? Does it protect "fighting words" that can arouse people to immediate violence? Is obscene material covered by the First Amendment's umbrella? Is commercial speech – advertisements or public relations material put out by companies – deserving of constitutional protection? Over the last several decades, these questions have been part of the ongoing debate both within the government and in public discussion, and in many areas no consensus has yet emerged. That, however, is neither surprising nor disturbing. Freedom is an evolving concept, and, as we confront new ideas, the great debate continues. The emergence of the Internet is but the latest in a series of challenges to understanding what the First Amendment protection of speech means in contemporary society.

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Freedom of speech was not always the all-encompassing right it is today. When Sir William Blackstone wrote his famous *Commentaries on the Laws of England* in the mid-18th century, he defined freedom of speech as the *lack of prior restraint*. By that he meant that the government could not stop someone from saying or publishing what he believed, but once a person had uttered those remarks, he could be punished if the type of speech was forbidden. The English, like the ancient Greeks, had established legal restrictions on three types of speech – sedition (criticism of the government), defamation (criticism of individuals), and blasphemy (criticism of religion) – each of which they called "libels." Of these three, the one that is most important in terms of political liberty is seditious libel, because ruling elites in Blackstone's era believed that any criticism of government or of its officials, *even if true*, subverted public order by undermining confidence in the government. While the government, according to Blackstone, could not stop someone from criticizing the government, it could punish him once he had done so.

During the 17th and 18th centuries, the British Crown prosecuted hundreds of cases of seditious libel, often imposing draconian penalties. When William Twyn declared that the people had the right to rebel against a government, he was arrested and convicted of sedition and of "imagining the death of the King." The court sentenced him to be hanged, emasculated, disemboweled, quartered, and then beheaded. Given the possibility of such punishment after publication, the lack of prior restraint meant little.

The English settlers who came to North America brought English law with them, but

early on a discrepancy arose between theory and practice, between the law as written and the law as applied. Colonial assemblies passed a number of statutes regulating speech, but neither the royal governors nor the local courts seemed to have enforced them with any degree of rigor. Moreover, following the famous case of John Peter Zenger (discussed in the chapter on "Freedom of the Press"), the colonists established truth as a defense to the charge of seditious libel. One could still be charged if one criticized the government or its officials, but now a defendant could present evidence of the truth of the statements, and it would be up to a jury to determine their validity.

From the time the states ratified the First Amendment (Congress shall make no law... abridging the freedom of speech, or of the press..." in 1791, until World War I, Congress passed but one law restricting speech, the Sedition Act of 1798. This was an ill-conceived statute that grew out of the quasi-war with France and which expired three years later. Yet although this act has been widely and properly condemned, one should note that it contained truth as a defense. During the American Civil War of 1861-1865, there were also a few minor regulations aimed at sedition, but not until the Espionage Act of 1917 and the Sedition Act of 1918 did the real debate over the meaning of the First Amendment Speech Clause begin. That debate has been public and has involved the American people, Congress, and the President, but above all it has been played out in the courts.

The first cases to reach the Supreme Court grew out of these wartime measures aimed against disruption of the military as well as criticism of the government, and the Court initially approved them. The justices seemed to say that while freedom of speech is the rule, it is not absolute, and at certain periods – especially in wartime – speech may be restricted for the public good.

Justice Oliver Wendell Holmes, Jr., in Schenck v. United States (1919)

We admit that in many places and in ordinary times the defendants in saying all that was said in the circular [pamphlet] would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done. The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. 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. It is a question of proximity and degree. When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight, and that no Court could regard them as protected by any constitutional right.

Holmes's test of a "clear and present danger" seemed to make a great deal of sense. Yes, speech ought to be free, but it is not an absolute freedom; common sense (the obvious need to punish someone who shouts the word "fire" in a crowded theater) as well as the exigencies of war make it necessary at times to curtail speech. The clear-and-present-danger test would be used in one way or another by the courts for nearly 50 years, and it seemed a handy and straightforward test to determine when the boundaries of speech had been overstepped. But there were problems with the test from the start, and the tradition of free speech in the United States was so strong that critics challenged the government's campaign against antiwar critics as well as the Court's approval of it.

One of the great voices in the history of free speech belonged to a mild-mannered Harvard law professor, Zechariah Chafee, Jr., the scion of a rich and socially prominent family who throughout his life defended the right of all people to say what they believed without fear of governmental retaliation. He suggested what to many people then and now is a radical idea – that free speech must be kept free even in wartime, even when passions are high, because that is when the people need to hear both sides of the argument, not just what the government wishes to tell them.

Zechariah Chafee, Jr., Freedom of Speech (1920)

Nor can we brush aside free speech by saying it is war-time and the Constitution gives Congress express power to raise armies. The First Amendment was drafted by men who had just been through a war. If it is to mean anything, it must restrict powers which are expressly granted to Congress, since Congress has no other powers, and it must apply to those activities of government which are most apt to interfere with free discussion, namely, the postal service and the conduct of war.

The true meaning of freedom of speech seems to be this. One of the most important purposes of society and government is the discovery and spread of truth on subjects of general concern. This is possible only through absolutely unlimited discussion, for . . . once force is thrown into the argument, it becomes a matter of chance whether it is thrown on the false side or the true, and truth loses all its natural advantage in the contest. Nevertheless, there are other purposes of government, such as order, the training of the young, protection against external aggression. Unlimited discussion sometimes interferes with these purposes, which must then be balanced against freedom of speech, but freedom of speech ought to weigh very heavily in the scale. The First Amendment gives binding force to this principle of political wisdom.

In war-time, therefore, speech should be free, unless it is clearly liable to cause direct and dangerous interference with the conduct of the war.

Chafee had made this argument earlier in articles, and, following Holmes's decision in Schenck, met with the jurist and convinced him that he had been wrong. When another sedition case came before the Court later that year, a majority used the clear-and-present-danger test to find the defendants guilty of seditious libel. But surprisingly, the author of that test, joined by his colleague, Justice Louis D. Brandeis, entered a strong dissent.

Justice Oliver Wendell Holmes, Jr., dissenting in Abrams v. United States (1919)

Persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises or your power and want a certain result with all your heart you naturally express your wishes in law and sweep away all opposition. To allow opposition by speech seems to indicate that you think the speech impotent, as when a man says that he has squared the circle, or that you do not care wholeheartedly for the result, or that you doubt either your power or your premises. But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas – that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year if not every day we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country. I wholly disagree with the argument of the Government that the First Amendment left the common law as to seditious libel in force. History seems to me against the notion. I had conceived that the United States through many years had shown its repentance for the Sedition Act of 1798, by repaying fines that it imposed. Only the emergency that makes it immediately dangerous to leave the correction of evil counsels to time warrants making any exception to the sweeping command, "Congress shall make no law . . . abridging the freedom of speech." Of course I am speaking only of expressions of opinion and exhortations, which were all that were uttered here, but I regret that I cannot put into more impressive words my belief that in their conviction upon this indictment the defendants were deprived of their rights under the Constitution of the United States.

Holmes's dissent in the *Abrams* case is often seen as the beginning of the Supreme Court's concern with speech as a key right in democratic society, and it put forward the notion of democracy as resting upon a free marketplace of ideas. Some ideas may be unpopular, some might be unsettling, and some might be false. But in a democracy, one has to give all of these ideas an equal chance to be heard, in the faith that the false, the ignoble, the useless will be crowded out by the right ideas, the ones that will facilitate progress in a democratic manner. Holmes's marketplace analogy is still admired by many people, because of its support for intellectual liberty.

The "marketplace of ideas" theory also relates to one of the foundations of democracy, the right of the people to decide. Two centuries ago, Thomas Jefferson based his belief in democracy upon the good judgment of the people to choose for themselves what would be the right thing to do. The people, and not their rulers, should decide the major issues of the day through free discussion followed by free

elections. If one group is prevented from expressing their ideas because these notions are offensive, then the public as a whole will be deprived of the whole gamut of facts and theories that it needs to consider in order to reach the best result.

Neither Holmes nor anyone else has suggested that there are *no* limits on speech; rather, as we shall soon see, much of the debate in the last several decades has been over how to draw the line between protected and non-protected speech. At the heart of the debate has been the question, "Why should we extend the umbrella of constitutional protection over this type of speech?" The one area in which there has been general consensus is that whatever else the First Amendment Speech Clause covers, it protects political speech. It does so because, as Jefferson and Madison so well understood, without free political speech there can be no democratic society. The rationale for this view, and what remains as perhaps the greatest exposition of free speech in American history, is the opinion Louis D. Brandeis entered in a case involving a state seditious libel law.

A majority of the Court, using the clear-and-present-danger test, upheld California's seditious libel law as constitutional because, it held, the state has the power to punish those who abuse their right to speech "by utterances inimical to the public welfare, tending to incite crime, disturb the public peace, or endanger the foundations of organized government and threaten its overthrow." Brandeis, along with Holmes, disagreed, and in his opinion Brandeis drew the lines that connected the First Amendment to political democracy, and in fact made it, as Cardozo later wrote, "the indispensable condition" of other freedoms.

Justice Louis D. Brandeis, in Whitney v. California (1927)

To reach sound conclusions on these matters, we must bear in mind why a State is, ordinarily, denied the power to prohibit dissemination of social, economic and political doctrine which a vast majority of its citizens believes to be false and fraught with evil consequence.

Those who won our independence believed that the final end of the State was to make men free to develop their faculties; and that in its government the deliberative forces should prevail over the arbitrary. They valued liberty both as an end and as a means. They believed liberty to be the secret of happiness and courage to be the secret of liberty. They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government. They recognized the risks to which all human institutions are subject. But they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the fitting remedy for evil counsels is good ones. Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law – the argument of force in its worst form. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed.

Fear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burned 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. . . .

Those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty. To courageous, self-reliant men, with confidence in the power of free and fearless reasoning applied through the processes of popular government, no danger flowing from speech can be

deemed clear and present, unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion. If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence. Only an emergency can justify repression. Such must be the rule if authority is to be reconciled with freedom. Such, in my opinion, is the command of the Constitution. It is therefore always open to Americans to challenge a law abridging free speech and assembly by showing that there was no emergency justifying it.

To Brandeis, the most important role in a democracy is that of "citizen," and in order to carry out the responsibilities of that role a person has to participate in public debate about significant issues. One cannot do that if he or she is afraid to speak out and say unpopular things; nor can one weigh all of the options unless other people, with differing views, are free to express their beliefs. Free speech, therefore, is at the heart of the democratic process.

This truth seems so self-evident that one might wonder why it is not universally accepted even in the United States; the reasons are not hard to find. It takes civic courage to stand up for unpopular ideas, and as both Holmes and Brandeis pointed out, the majority rarely wants to hear ideas that challenge accepted views. To prevent the majority from silencing those who oppose it is the reason the Framers wrote the First Amendment. The principle of free thought, as Holmes famously wrote, is "not free thought for those who agree with us but freedom for the thought we hate."

This is not an easy concept, and in times of stress such as war it is often difficult to allow those who would assault the very foundations of democracy to use democratic tools in their attack. Certainly the lessons Holmes and Brandeis tried to teach seemed to be lost during the early years of the Cold War. In the late 1940s the government prosecuted leaders of the American Communist Party for advocating the forceful overthrow of the government and conspiring to spread this doctrine. A majority of the U.S. Supreme Court, which since the 1920s had seemed to take an ever more speech-protective view of the First Amendment, now apparently reversed itself. Though admitting that American communists posed little clear and present danger, the Court ruled their words represented a "bad tendency" that could prove subversive of the social order.

Just as Holmes and Brandeis had come to the defense of unpopular socialists a generation earlier, so now Hugo Black and William O. Douglas took their places as defenders of free expression and protectors of minority rights.

Justice William O. Douglas, dissenting in Dennis v. United States (1951)

There comes a time when even speech loses its constitutional immunity. Speech innocuous one year may at another time fan such destructive flames that it must be halted in the interests of the safety of the Republic. That is the meaning of the clear and present danger test. When conditions are so critical that there will be no time to avoid the evil that the speech threatens, it is time to call a halt. Otherwise, free speech which is the strength of the Nation will be the cause of its destruction. Yet free speech is the rule, not the exception. The restraint to be constitutional must be based on more than fear, on more than passionate opposition against the speech, on more than a revolted dislike for its contents. There must be some immediate injury to society that is likely if speech is allowed. . . .

In America [Communists] are miserable merchants of unwanted ideas; their wares remain unsold. If we are to proceed on the basis of judicial notice, it is impossible for me to say that the Communists in this country are so potent or so strategically deployed that they must be suppressed for their speech. This is my view if we are to act on the basis of judicial notice. But the mere statement of the opposing views indicates how important it is that we know the facts before we act. Neither prejudice nor hate nor senseless fear should be the basis of this solemn act. Free speech should not be sacrificed on anything less than plain and objective proof of danger that the evil advocated is imminent.

As the hysteria of the Cold War passed, Americans came to see the wisdom in the arguments that Holmes and Brandeis, and later Black and Douglas, put forth. The cure for "bad" speech is not repression, but "good" speech, the repelling of one set of ideas by another. Truly, many things believed right and proper in today's world were once considered heretical, such as the abolition of slavery or the right of women to vote. Although a majority will always find itself uncomfortable with radical

ideas attacking its cherished beliefs, as a matter of constitutional law, the policy of the American democracy is that speech, no matter how unpopular, must be protected. In 1969, the Court finally put an end to the whole idea of seditious libel, and that people could be prosecuted for advocating ideas the majority condemned as subversive.

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During the height of the protest against American involvement in Vietnam, many civil libertarians wondered if the fact that the United States was at war would once again let loose forces of repression, as had happened in World War I and during the Cold War. To the surprise of many who feared the worst, the country took the protests in stride. This is not to say that all Americans liked what the protesters were saying, or that they did not wish that some of them could be silenced or even jailed. Rather, they accepted the notion that in a democracy people had the right to protest – loudly, in some cases in a vulgar manner, but that in the great debate taking place over whether the United States should be in southeast Asia, all voices had to be heard.

Thirteen-year-old Mary Beth Tinker and other students wore black armbands to high school in Des Moines, Iowa, as a symbol of their opposition to the war in Vietnam, and school authorities suspended them, on grounds that the action disrupted the learning process. In fact no disruption had taken place; rather, school officials worried about the town's response if it appeared that they were permitting antiwar protests in the school.

In one of the most important cases that grew out of the war, the Supreme Court held that when it came to political speech, high school students did not lose their constitutional rights when they entered the school door. Rather, if schools are indeed the training ground for citizenship, then it is necessary that students have the opportunity to learn that they also have the right to express unpopular political views and not be punished by the school authorities.

Mary Beth Tinker

There was a teen group that had its own activities . . . and we decided to wear these black armbands to school. By then [1965] the movement against the Vietnam War was beginning to grow. It wasn't nearly what it became later, but there were quite a few people involved nationally. I remember it all being very exciting; everyone was joining together with this great idea. I was a young kid, but I could still be part of it and still be important. It wasn't just for the adults, and the kids were respected: When we had something to say, people would listen.

So then we just planned this little thing of wearing these armbands to school. It was moving forward and we didn't think it was going to be that big a deal. We had no idea that it was going to be such a big thing because we were already doing these other little demonstrations and nothing much came of them. . . .

The day before we were going to wear the armbands it came up somehow in my algebra class. The teacher got really mad and he said, If anybody in this class wears an armband to school they'll get kicked out of my class. The next thing we knew, the school board made this policy against wearing armbands. . . . Any student who wore an armband would be suspended from school.

The next day I went to school and I wore the armband all morning. The kids were kind of talking, but it was all friendly, nothing hostile. Then I got to my algebra class, right after lunch, and sat down. The teacher came in, and everyone was kind of whispering; they didn't know what was going to happen. Then this guy came to the door of the class and he said, Mary Tinker, you're wanted out here in the hall. Then they called me down to the principal's office.... The principal was pretty hostile. Then they suspended me.

Years later, opponents of a different administration's foreign policy burned an American flag in protest, and were immediately arrested. They pursued their legal defense in this case all the way to the Supreme Court, which held that their action, reprehensible as it was to most Americans, nonetheless represented "symbolic political speech" and as such was protected by the First Amendment. Perhaps the most interesting opinion in that case is one by a conservative member of the Court, Anthony Kennedy, who explained why he believed the Court had to allow the flag-burner to go free, even though he along with millions of Americans found the act distasteful.

Justice Anthony Kennedy, concurring in Texas v. Johnson (1989)

The hard fact is that sometimes we must make decisions we do not like. We make them because they are right, right in the sense that the law and the Constitution, as we see them, compel the result. And so great is our commitment to the process that, except in the rare case, we do not pause to express distaste for the result, perhaps for fear of undermining a valued principle that dictates the decision. This is one of those rare cases. . . .

Though symbols often are what we ourselves make of them, the flag is constant in expressing beliefs Americans share, beliefs in law and peace and that freedom which sustains the human spirit. The case here today forces recognition of the costs to which those beliefs commit us. It is poignant but fundamental that the flag protects those who hold it in contempt.

Although there was a hue and cry over the decision, it died down over time, as voices of common sense began to be heard. And none was more poignant in its defense of free speech than that of James H. Warner, a former prisoner of war in Vietnam.

James H. Warner, letter to Washington Post, 11 July 1989

As I stepped out of the aircraft [after being released from captivity in Vietnam], I looked up and saw the flag. I caught my breath, then, as tears filled my eyes, I saluted it. I never loved my country more than at that moment. . . . I cannot compromise on freedom. It hurts to see the flag burned, but I part company with those who want to punish the flag burners. . . .

I remember one interrogation [by the North Vietnamese] where I was shown a photograph of some Americans protesting the war by burning a flag. "There," the officer said. "People in your country protest against your cause. That proves that you are wrong."

"No," I said. "That proves I am right. In my country we are not afraid of freedom, even if it means that people disagree with us." The officer was on his feet in an instant, his face purple with rage. He smashed his fist on the table and screamed at me to shut up. While he was ranting I was astonished to see pain, compounded by fear, in his eyes. I have never forgotten that look, nor have I forgotten the satisfaction I felt at using his tool, the picture of the burning flag against him. . . .

We don't need to amend the Constitution in order to punish those who burn our flag. They burn the flag because they hate America and they are afraid of freedom. What better way to hurt them than with the subversive idea of freedom? Spread freedom. . . . Don't be afraid of freedom, it is the best weapon we have.

The lesson Justice Brandeis taught more than 70 years ago has borne fruit-the response to bad speech is more speech, so that people may learn and debate and choose.

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If the people in general accept the notion of untrammeled political speech, what about other forms of expression? Is the First Amendment prohibition absolute, as Justice Hugo Black (on the Court between1937 and 1971) argued, so that government cannot censor or punish any form of speech? Or are certain types of

speech outside the umbrella coverage of the Speech Clause? May the writer or artist or business person, the bigot or protester or Internet correspondent say anything, no matter how offensive or unsettling, claiming protection of the Constitution? There are no easy answers to these questions. There is no public consensus, nor are there definitive rulings by the Supreme Court in all areas of speech. As public sentiments change, as the United States becomes a more diverse and open society, and as the new electronic technology permeates every aspect of American life, the meaning of the First Amendment appears to be, as it has so often been in the past, once again in flux, especially in relation to non-political speech.

In the early 1940s the Supreme Court announced in rather definitive terms that the First Amendment did not cover obscene or libelous speech, fighting words, or commercial speech. Yet in the last few decades it has addressed all of these issues, and while not extending full protection, has certainly brought many aspects under the protection of the Speech Clause. The decisions have not been without criticism, and it is safe to say that just as the Court has wrestled with these areas, so there has been confusion and disagreement in the sphere of public comment as well. This, again, is as it should be. The Supreme Court cannot hand down dicta and simply expect the people to obey. Rather, the Court often reflects changing social and political customs; while trying to discover what the original intent of the Framers may have been, the justices must also attempt to apply the *spirit* of that intent to the *facts* of modern life. Sometimes this is relatively easy to do, but even when the Court hands down a difficult and controversial opinion, such as in the flag burning case, there must be some reservoir of public understanding as to why this decision is necessary and how it fits into the broader tapestry of contemporary life.

The difficult question for the Court and for the people is where one draws the line between protected and non-protected speech. In some areas, such as obscenity, the effort to draw a legal distinction has not garnered public support, because obscenity itself is not an objective and easily defined subject. As the Court noted, one man's obscenity is another's lyric; what offends one person may not offend another. But is this the type of material the First Amendment was intended to protect? Is artistic expression, especially when it goes against current aesthetic or moral norms, the type of expression the Frames intended the First Amendment to protect?

Similarly, there has been debate in the United States for more than two decades about the allegedly corrosive effect that money has on the electoral process. There have been several efforts to control how money for election campaigns is raised and spent, and to impose limits on the amount that any one contributor could give. But the Supreme Court held years ago that money is in some ways speech, and when money is used to further the expression of political ideas, it cannot be controlled. Here one finds another area in which it is not clear just how far one can take the notion of free speech without running head-on into other and equally cherished concepts of democracy, such as fair elections.

Perhaps the most daunting task facing the American people as well as the judicial system is to determine how the First Amendment will apply to the new electronic technology. Is the Worldwide Web just another example of Justice Holmes's marketplace of ideas? Does the likelihood that some day every household in the world will have access to material already on the Web, and that each individual will have the opportunity to go online and say to the whole world what he or she wants make the First Amendment irrelevant?

These and other questions continue to be debated in the United States – in the courts, in congressional hearings, in presidential commissions, in universities, in public forums, and in individual households. Among the rights of the people none is so treasured as that of free speech, and none is so susceptible to changing views. Most Americans recognize, however, that as Justice Brandeis pointed out, their responsibilities as citizens require them to have the opportunity not only to propose unpopular views but also to hear others espouse their beliefs, so that in the end the democratic process can work. And while people are not always comfortable with the idea, they admit the truth that Justice Holmes declared when he said that the First Amendment is there not to protect the speech with which we agree, but the speech that we hate.

For further reading:

Lee C. Bollinger & Geoffrey R. Stone, Eternally Vigilant*: Free Speech in the Modern Era (Chicago: University of Chicago Press, 2002).*