

Introduction

Democratic Declarations

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.¹

Freedom of speech is a fundamental constitutional right granted to all US citizens, and it is, to many, the most important of all democratic freedoms. A democracy—named for the Greek terms “demos,” meaning “people,” and “kratos,” meaning “rule”—is a society in which citizens control the political evolution of their society. Freedom of speech and freedom of belief are necessary in any democracy. How can citizens express their political will if they are not afforded the right to free expression of ideas?

The American people embraced freedom of speech, and democracy more broadly, in part because American culture was an offshoot of monarchic England, an authoritarian society in which laws were frequently used to curtail the political influence of the populace. To ensure that America would not become a tyrannical system, freedom of belief, religion, speech, and the press were among the very first civil liberties enshrined in the US Constitution, the highest law of the United States.

However, though freedom of speech can be considered a core value of democracy, this freedom, like all constitutional freedoms, is not absolute. From the day that the First Amendment was written by James Madison, Americans have been debating both the meaning and the functional limits of this fundamental freedom.

What Is Freedom of Speech?

What does it mean to have free speech? Does it mean that a person is entitled to say whatever they wish to say at any time, to any person, in any situation? Or does freedom of speech, as defined in the Constitution, refer specifically to speech aimed at influencing politics? Or speech dealing with political issues?

The answer to these questions is, perhaps predictably, that the fundamental freedoms of American society mean different things to different people. Citizens evoke the right to free speech in a variety of situations. The First Amendment has been construed as protecting an artist's right to create art that might offend, shock, or upset other citizens. Corporations have invoked the First Amendment as justification for donating corporate funds to support political candidates. Freedom of speech is a contentious issue, as any society in which free speech is embraced must determine where to draw the line between free speech and public welfare. They must decide what kind of speech, if any, should be considered too dangerous.

The philosophy of democracy can be traced back to the Mesopotamian civilizations, but the first time that democratic principles were committed to law in the familiar sense was in the Greek city-state of Athens. Grecian society consisted of a number of small city-states that frequently competed for resources and international influence. Athens was home to some of the most famous philosophers in history, and it became a crucible of creativity, producing world-altering ideas and other forms of artistic expression.

Greek philosophers and political scientists including Solon, Cleisthenes, and Pericles contributed to the development of a unique political system in which the collective citizenry (actually only property-owning males) voted on laws and to elect leaders. This brief flowering of democratic philosophy lasted only a couple of centuries before Greece was engulfed by more powerful, authoritarian states. The influence of this period, however, cannot be calculated. Nearly every democratic society in existence is philosophically and politically connected to this society.²

Athenian democracy embraced freedom of speech and expression, and the ancient Greek philosophers were among the first to recognize that the freedom to organize and to express one's views was a central pillar for democratic governance. American thought on the freedom of speech is descended from Athenian ideas, but the Athenians embraced a more diverse concept of this fundamental freedom.

In Athenian society, freedom of speech came in two very different and often conflicting forms. First was "isegoria," which described a person's right to political engagement, including joining political groups, expressing one's opinion in appropriate situations, and even serving in the local or state government. The Athenians also recognized what they

Historical Timeline

600-322 BCE:

The Greek city-state of Athens develops the first modern democracy and establishes laws protecting the right to free speech.

268-232 BCE:

The Mauryanan state establishes the world's first laws protecting freedom of religion.

868 CE:

The world's first book, *The Diamond Sutra*, is published in China.

1215:

The Magna Carta of England contains the first Bill of Rights and grants limited free speech rights.

1492:

Columbus arrives in the United States.

1580:

First attempted colony in North America disappears.

1600:

The Atlantic Slave Trade begins, setting off the African diaspora.

1605:

World's first daily newspaper is published in Germany.

1606:

The Virginia Colony is established.

1628:

The English Petition of Rights includes the right to free speech and later inspires the US Bill of Rights.

1641:

Massachusetts Body of Liberties is adopted.

1735:

The trial of John Zenger tests the freedom of the press.

1776:

America's economic rebellion against England begins.

1787:

The US constitution is written.

1791:

The Bill of Rights is ratified.

The First Amendment becomes the cornerstone of free speech law in the United States.

1798:

The Alien and Sedition Acts mark the first governmental effort to limit free speech.

The Virginia and Kentucky Resolutions protest the Alien and Sedition Acts.

1848:

The Gold Rush begins in the American West.

1865:

The Civil War brings an end to slavery in the United States.

1868:

The British court case of *Regina v. Hicklin* establishes the “Hicklin test” for determining if speech or expression is obscene.

The Fourteenth Amendment to the US Constitution is adopted.

1870:

The Comstock Laws mark the first governmental campaign to ban obscenity.

1895:

Guglielmo Marconi transmits the first signal using radio waves, beginning the era of wireless communication.

1914:

World War I begins in Europe.

1917:

The Espionage Act redefines the act of espionage to curtail free speech.

1918:

The Sedition Act uses the alleged threat of espionage to justify limitations on free speech.

1919:

In *Frohwerk v. United States*, the government prosecutes a journalist for criticizing the war effort.

In *Debs v. US*, a labor organizer is convicted of interfering with military recruitment.

In *Schenck v. U.S*, the Supreme Court adopts the “clear and present danger” test.

COLONIALY SPEAKING

Origin of the American Right to Free Speech (1538–1641)

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Introduction

Freedom of speech is not an American concept, and the now-famous First Amendment was also not the first free speech law in the United States. Before the establishment of the first federal free speech laws, there were provisions protecting the right to free speech, freedom of religion, and the freedom of assembly passed by state legislatures still under European control. One of the most important of these was the Massachusetts Body of Liberties, an extensive series of laws that served as an inspiration for the creation of the US Constitution and the Bill of Rights.

Topics Covered in this Chapter Include:

- Massachusetts Bay Colony
- Massachusetts Body of Liberties
- Censorship in England
- Protestant Reformation
- Pilgrim movement
- Puritan movement
- Jamestown Colony
- Plymouth Colony

This Chapter Discusses the Following Source Document:

“Massachusetts Body of Liberties,” 1641



In a legal, political context, the principle of “free speech” means that a person should be free to express their opinions without interference from the government. In the United States, constitutional law establishes free speech as a right of citizenship, though this only applies to citizens in good standing. Free speech in the United States is part of a tradition that stretches back to ancient Greece and earlier societies in which it was recognized that the free exchange of ideas empowers people to make more informed political decisions. Free speech became one of the central pillars of Athenian democracy, one of the most important precursors for American republicanism.

The Athenian democratic system was based on the idea that citizens took a direct role in approving all governmental actions and laws. The American system is a blend of Grecian democratic principles and British monarchic oligarchy, a political system in which an elite class of wealthy landowners dominates society and creates laws favoring their interest. Free speech laws in the United States have long favored the interests of the elite class. However, American free speech laws were also heavily influenced by the ideals of the ancient Greek democratic pioneers and by political theorists of the Enlightenment Era. Because of this, there has long been a movement, within America, to democratize the basic rights of citizenship to provide citizens with a higher level of influence over the nation’s political identity and evolution. The history of both free speech laws and censorship in the United States therefore reflects the push and pull between the elite class and the citizenry with regard to political control over the developing nation.

Religious Upheaval

The first two British colonies in the United States were both founded by corporations looking to increase profits for wealthy aristocrats back in England. The first was an attempted colony at Roanoke, Virginia, established in 1585. The colony vanished without leaving much behind save some pottery fragments that indicated the colonists left Roanoke for another site and may have been killed by American Indians or, more likely, rival Spanish colonists.¹

The second effort, in 1606, resulted in the formation of the Jamestown Colony, which gradually became an important economic hub for England and maritime trade in spices and other goods. Members of these colonies were subjects of England and the corporations paid for the establishment of these colonies. In the Americas, where there was vast “unclaimed” territory and material wealth, there was also the promise of individual wealth and independence. The material exploitation of America and the exodus to the Americas in search of wealth, fame, and riches began with the first European colonists to arrive on American shores.²



While the vast majority of colonists were seeking wealth and independence, another famous group of colonists came to the United States to gain independence from the monarchy in England. The Pilgrims and Puritans were members of extremely conservative, authoritarian, and patriarchic sects of Christianity. Both sects came out of the English religious reform movement, which sought new ways of interpreting religious scripture. However, these two groups of religious reformers were different, and this is important in understanding how this religious movement influenced the free speech debate in the United States.

By the early 1500s the Catholic Church controlled almost all of Europe. Church leaders maintained absolute authority and established laws that helped to preserve their power. Church leaders maintained their authority by limiting the rights of citizens with regard to speech, expression, and association. In some parts of Europe, practicing religions other than Catholicism was banned; in other situations, individuals might be allowed to practice other religious traditions but were prohibited from holding positions of economic or political power. In many cases, citizens were also limited in their freedom to discuss religion or politics, and there were specific laws in place that made it illegal, in certain circumstances, to question the will of the church or its leaders. Church leaders also used accusations of “heresy” or even claims of Satanism or other kinds of occult practice as an excuse to discourage political resistance to the dominant religiopolitical power structure. Individuals who spoke out against economic or political repression might therefore be accused of religious crimes and imprisoned or even executed.³



Reformation leader Martin Luther in 1528. By Lucas Cranach the Elder, via Wikipedia.



In the 1500s, a series of reformers posed a serious challenge to the control of the papacy. One such reformer was Martin Luther (1483–1546), who started a German catholic reform movement aimed at democratizing the church and giving greater autonomy to local religious leaders. Meanwhile, French Protestant John Calvin objected to the opulent wealth of the Catholic Church and wanted to institute a new reading of Christianity based on simple austerity in the home and in the church (but also based on an oppressive interpretation of religious law). In England, King Henry VIII began the famous “Middle Way” reformation in the 1530s after he was refused the right to annul his marriage to Catherine of Aragon. Henry VIII dissolved the Catholic monasteries and reclaimed their wealth in the name of the crown, then proclaimed that religion should be under the control of the people rather than a powerful political papacy. The Catholic Church fought back and, in some parts of Europe, Protestantism was labeled as “heresy,” with followers sometimes subject to imprisonment, exile, or execution.⁴



Anonymous portrait of John Calvin, c. 1550, via Wikipedia.



Fit to Print

The Protestant Reformation was, more than anything else, a product of European technological evolution, because the movement was fueled by the spread of printed books and pamphlets throughout Europe.

The idea of printing words onto some form of textile actually goes back to the third century CE, with the invention of woodblock printing. By the sixth century CE, the Chinese people had invented a system of ink printing that allowed for the mass production of many kinds of books and other materials. But it would take another 600 years for this technology to be available in Europe.

The spread of mechanized printing in Europe was due to a German goldsmith and craftsman named Johannes Gutenberg, who was inspired by the wine press and the presses used for paper making. In 1444, Gutenberg constructed a machine that allowed the rapid printing of ink onto textiles. This “printing press,” as it came to be called, also employed one of the earliest assembly lines, similar to what would become familiar in Europe with the Industrial Revolution.

The earliest books and pamphlets printed on the Gutenberg press were sold for considerable profit, and there was, in fact, a recorded legal battle between Gutenberg and one of the men who funded the creation of the press, banker Johann Fust, who eventually won his lawsuit and claimed Gutenberg’s press as collateral for the repayment of the loan he had given to the inventor.^a

The first thing that the Gutenberg press was used to print was a copy of the Bible, now known as the “Gutenberg Bible.” Only a few of these earliest mass-printed Bibles survived to the modern day, and the initial print run is believed to have been limited to around 200 copies. But the impact of this innovation changed the entire world.

In the century that followed, the availability of printed material stimulated a major change in Europe. The printing press allowed, for the first time, regular citizens to own their own copies of the Bible (and other books, but mainly the Bible) and also allowed for the Bible to be translated into a whole host of different languages. This began a popular movement to increase populism in religion against the perceived aristocracy of Catholic church leadership at the time. The Protestant Reformation in Europe was fueled by the creation and distribution of printed pamphlets containing religious scripture or interpretations, protests against the Catholic church, and proposals for reformed versions of religious principles. The mass distribution of this material helped to make the Reformation a popular movement, and this transformed the Church of England and established Protestantism as the world’s dominant strain of Christianity. The Reformation also fueled Enlightenment Era philosophy and so stimulated the movement that eventually resulted in the establishment of the United States and the embrace of religious freedom as a fundamental principle of modern democracy.



THE OBSCENITY SCENE

Obscenity and the First Amendment (1957–1964)

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Introduction

Just a few years after the Supreme Court determined that films were afforded First Amendment protections, the courts faced a number of new cases challenging the censorship of content considered “obscene.” In almost all cases, material identified for censorship involves sexual content or nudity rather than violence and, in most cases, violent content is not targeted for censorship because violence is not, in the eyes of the courts, considered obscene. In the 1950s and 60s, important court cases challenged ideas about sexuality and obscenity and saw the courts narrowing the definition of content that was permissible to ban because it was not protected expression.

Topics Covered in this Chapter Include:

- *Roth v. United States*
- *Memoirs v. Massachusetts*
- Lenny Bruce
- Obscenity laws
- Hicklin test

This Chapter Discusses the Following Source Documents:

Roth v. United States, 1957

The People v. Bruce, 1964



O*bscenity* is defined as something that is offensive or indecent. However, there is no objective measure that can be used to determine when something is obscene. Individuals define obscenity in vastly different ways and have widely divergent opinions about whether or not obscenity poses a threat to their society. For most of history, conservative white males have been in charge of determining what is obscene in America, and this has afforded them the power to limit free speech, free expression, equal rights, and education on the basis of protecting Americans from immoral or offensive ideas and influence.

As discussed earlier in this book, obscenity laws and statutes were often used to discourage women from taking agency for their sexuality and reproductive lives and reducing access to scientific information about reproduction and childcare. If discussing women's sexuality is considered taboo, this prevents both women and men from challenging traditional attitudes about gender and sexuality.¹

The justification behind obscenity laws is typically that “suggestible” individuals who are exposed to “indecent” material will be unable to control their sex drives and will, therefore, engage in immoral acts. This same justification was used to prohibit various forms of *erotica*, which can be classified as any material created to provoke arousal. Erotica is as old as human civilization, and every society has produced erotic sculpture, paintings, or other kinds of material featuring images that are intended to stimulate sexual desire.

Obscenity laws that target allegedly obscene material are typically connected to patriarchic and traditionalist religious traditions like Christianity, Islam, and Judaism, which embraced prohibitions on not just erotic material but also on the concept of sexuality for pleasure. In these traditions, sexuality was to be used only for reproduction, and women who demonstrated a desire for sexual contact beyond reproduction were considered immoral. In some cases, they might face extreme violence or even death for demonstrating sexual desire.

In other cases, promoters of censorship argue that sexually explicit material is dangerous because of the influence it can have on young people. Conservative activists have blamed teen pregnancy, child abuse, and a wide variety of sexual crimes on erotic art, though there has never been any strong empirical evidence to suggest that the availability of erotic art is a causal factor in inappropriate sexual behavior. There is some evidence to suggest that some forms of erotic media can be educational and that the normalization of nudity and human bodies can reduce obsessive sexual behavior.²



Finding Value

The early American legal system was full of moralizing laws and censorship, and these laws remained on the books, in many states, long after public attitudes had begun to shift on these issues. Laws established in the 1800s were still in use in many American communities well into the middle of the twentieth century. Conservative traditionalists used these old laws and traditional, fundamentalist prohibitions on expressive sexuality to ban books and artwork considered “obscene.” The Supreme Court, and many lower courts, ruled on numerous occasions that a society had the right to censor some material based on perceived obscenity but, because it is impossible to standardize the concept of obscenity, there were always some who felt that censorship violated the First Amendment protections of free speech and expression.

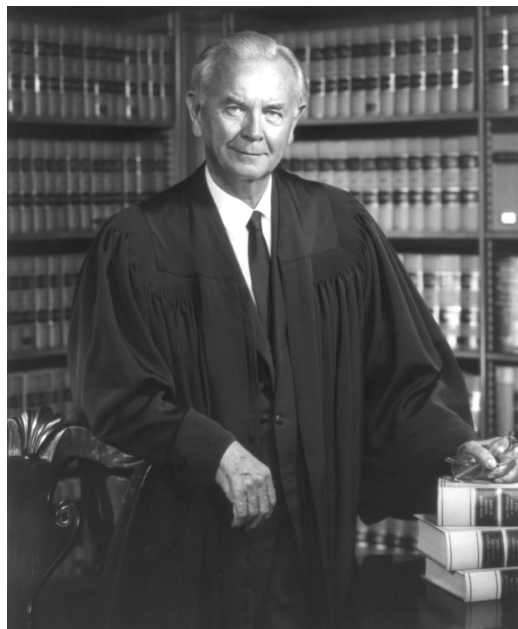
One of the most important cases in terms of defining American legal attitudes toward erotic art came with the case of *Roth v. United States*, decided by the Supreme Court in April of 1957. In the years leading up to the *Roth* case, justices on the Supreme Court and other courts had struggled to formulate a definition of obscenity that seemed to have appropriate legal vigor. The *Roth* case provided the nation’s highest court with an opportunity to establish a top-down legal precedent for cases involving allegations of indecency or obscenity.

Samuel Roth, a New York bookseller was found guilty of violating obscenity laws for mailing obscene materials consisting of several erotic pamphlets and a book. The standards at that time were based on the 1868 case of *Regina v. Hicklin*, which created the so-called “Hicklin test.”³ This standard said that any work of art or expression that contained anything obscene would be considered obscene in its entirety. This broad, nonspecific standard meant that almost anything might be considered obscene, including some of the world’s most famous works of art. Clearly, the standard was insufficient, as it did not address whether or not the work in question had any perceived artistic value. Roth’s attorneys challenged the constitutionality of the Hicklin standard and argued that the materials mailed by Roth, to consenting adult consumers, should be protected under the First Amendment.⁴ The *Roth* case was lumped together with another case, *Alberts v. California*, in which David S. Alberts was also arrested for distributing “lewd” materials as part of a mail-order book and magazine business.⁵





Samuel Roth in his Greenwich Village bookshop in 1920. By Roth Archive, Columbia University, via Wikipedia.



Justice William Brennan. By Robert S. Oakes, Library of Congress Prints and Photographs Division, via Wikipedia.



The opinion of the Court, delivered by Justice William Brennan, is a landmark ruling in the history of free speech law:

ROTH V. UNITED STATES 1957 **Source Document Excerpt**

The constitutionality of a criminal obscenity statute is the question in each of these cases. In *Roth*, the primary constitutional question is whether the federal obscenity statute violates the provision of the First Amendment that 'Congress shall make no law abridging the freedom of speech, or of the press.' In *Alberts*, the primary constitutional question is whether the obscenity provisions of the California Penal Code invade the freedoms of speech and press as they may be incorporated in the liberty protected from state action by the Due Process Clause of the Fourteenth Amendment.

Other constitutional questions are: whether these statutes violate due process, because too vague to support conviction for crime; whether power to punish speech and press offensive to decency and morality is in the States alone, so that the federal obscenity statute violates the Ninth and Tenth Amendments (raised in *Roth*); and whether Congress, by enacting the federal obscenity statute, under the power delegated by Art. I, § 8, cl. 7, to establish post offices and post roads, preempted the regulation of the subject matter (raised in *Alberts*).

Roth conducted a business in New York in the publication and sale of books, photographs and magazines. He used circulars and advertising matter to solicit sales. He was convicted by a jury in the District Court for the Southern District of New York upon 4 counts of a 26-count indictment charging him with mailing obscene circulars and advertising, and an obscene book, in violation of the federal obscenity statute. His conviction was

affirmed by the Court of Appeals for the Second Circuit. We granted certiorari.

Alberts conducted a mail-order business from Los Angeles. He was convicted by the Judge of the Municipal Court of the Beverly Hills Judicial District (having waived a jury trial) under a misdemeanor complaint which charged him with lewdly keeping for sale obscene and indecent books, and with writing, composing and publishing an obscene advertisement of them, in violation of the California Penal Code. The conviction was affirmed by the Appellate Department of the Superior Court of the State of California in and for the County of Los Angeles. We noted probable jurisdiction.

The dispositive question is whether obscenity is utterance within the area of protected speech and press. Although this is the first time the question has been squarely presented to this Court, either under the First Amendment or under the Fourteenth Amendment, expressions found in numerous opinions indicate that this Court has always assumed that obscenity is not protected by the freedoms of speech and press.

The guaranties of freedom of expression in effect in 10 of the 14 States which by 1792 had ratified the Constitution, gave no absolute protection for every utterance. Thirteen of the 14 States provided for the prosecution of libel, and all of those States made either blasphemy or profanity, or both, statutory crimes. As early as 1712, Massachusetts made it criminal to publish 'any filthy, obscene, or



Introduction

Americans are entitled to a political voice. This not only includes the right to vote, which is the most fundamental level of political agency, but also the right to petition the government. Protecting this right is one of the most important purposes of the First Amendment. When the colonies adopted the nation's first free speech provisions, and when James Madison included this right in his draft of the Bill of Rights, one of the main reasons for its inclusion was to provide citizens with a way to exert independent and collective influence over the evolution of their nation's politics. In the 2000s, Americans were asked to consider where to draw the line with regard to collective political influence. The *Citizens United* case and others raised important questions about whether or not corporations had a collective right to petition the government, or, more accurately, whether CEOs and owners of corporations could use corporate funds to support political goals. The courts' rulings in these key cases have been controversial, potentially deepening corporate control over American politics.

Topics Covered in this Chapter Include:

- Hillary Clinton
- Citizens United
- *McCutcheon v. FEC*
- Campaign contribution laws

This Chapter Discusses the Following Source Documents:

Citizens United v. Federal Election Commission, 2010

Morley, Michael T., "Money, Politics and Justice Anthony Kennedy: Revisiting Citizens United," *The Conversation*, July 24, 2018.

Lewis, Charles, "Dark Money: Five Years after Citizens United," *The Conversation*, January 30, 2015



Campaign contributions have long been among the most complicated and controversial issues in American politics. The United States, in the twenty-first century, struggles with this issue more than most other economically dominant nations. The reasons for this are equally complex but one factor is America's unique resistance to the idea of regulation over businesses.

Money Matters Most

The American government was designed to reflect the belief of George Washington, John Adams, and Thomas Jefferson that they needed to dilute popular control of the country because the common people were uneducated to effectively lead. Many letters and essays written by members of the founding fraternity express their fears that the nation's citizens would lead the country into ruin unless they were guided by better educated, more cultured men. The federal and the local governments first instituted a series of laws that restricted voting only to individuals who owned property. In some states, additional voting taxes prevented the poor from voting. The Framers also reasoned that the wealthy were more likely to be intellectually advanced, though this did not necessarily mean educated in the formal sense. They believed that appropriate leaders of the nation were "cultured" individuals who had at least been tutored in the arts. Wealthy people could afford to do this for their children and helped create the elite segment of colonial society from which the nation's first leaders came.

The republican system of the United States also uses several layers of government bureaucracy between the people and their leaders. The citizens provide the initial impetus to turn the wheels of government by voting for their representatives, senators, and president, and these individuals are the symbolic leaders of government who in turn appoint workers. However, there is a disconnect between the popularly elected leaders and the laws that actually emerge from the Senate and the House. Wealth influences American politics in many ways. Individuals and corporations can donate directly to political campaigns or to political projects and programs. Wealthy individuals also hire professional political negotiators and all manner of other agents with expertise in law and finance to influence votes on key issues that impact them. This extra layer of economic influence is the reason the US government often fails to make progress on issues even when the weight of public opinion on the issue is clear across political lines. It is only when the voters' interests align with the interests of the corporations and corporate leaders that laws are passed. This is not to say that public will cannot ever overwhelm the political process and force an issue, but to achieve this, the



weight of public opinion on an issue must be substantial and key politicians involved in the process must be free from corporate connections and obligations.¹

Some analyses of the political process show that the average American enjoys very little personal political influence.² For American voters to actually shape their nation's politics they must concentrate their influence by:

- joining into groups large enough to be seen as influential in terms of voting patterns,
- focusing on one or a small number of highly specific, and
- aligning with at least some influential lobbies and/or corporations.

Selling Politics

Over the years, election reform eliminated many of the systems that had been put in place to directly bolster the influence of the wealthy elite class. Poll taxes and land-ownership requirements for voting were eliminated, making voting more egalitarian. The broadening of the electoral franchise to people of color and women further diluted the influence of wealth at the level of the popular vote, but each of these changes had little impact on eliminating the influence of wealth overall, because corporations used lobbyists to influence politics indirectly.



A Toast to George Washington

One of the first controversies over campaign spending in America involved a wealthy gentleman planter from Virginia who would later go on to become America's first President. George Washington's first foray into politics was his 1755 bid, at 23-years-old, for a seat on the Virginia House of Burgesses, a representative body of citizens from the states. At this point in his history, Washington was already well known in Frederick County, Virginia, because he led the "frontier forces" in the states. In this regard he had been involved in enforcing a number of unpopular British laws and so he was not especially popular with voters. Washington lost his first campaign in 1755 and then lost a second in 1757. Presidential biographers claim that Washington noticed his opponent would arrive at the polling place on the day of the vote with a jug of whiskey or rum and would offer shots to voters, along with a reminder to vote for them.

When Washington ran again in 1758, he was actually away with the Virginia Militia on the day of the election, but he sent his Lieutenant, Charles Smith, to the polling place in his stead. Smith reportedly brought 160 gallons of liquor to the polling place, including 28 gallons of rum, 50 gallons of rum punch, 34 gallons of wine, 46 gallons of beer and mugs for the voters. Washington easily won the election and, at the next election cycle, repeated his victory by throwing a lavish dinner for voters. The booze that Washington used had been made from his own crops, as Washington was an early bootlegger and played a key role in helping to establish the American whiskey industry.

Washington's personal wealth enabled him to supply the copious amounts of liquor that he used to ply voters at his House of Burgesses election (the third one) and records indicate that there was a debate in the House of Burgesses about campaign finance brought about by Washington's use of his own fortunes to sway voters. However, while Washington's wealth gave him an advantage, many elected officials used liquor to sway voters, a practice sometimes referred to as "swilling the planters with bumbo."^a Though it was technically illegal, in many states to bribe voters with food and booze, the practice continued unabated well into the 1800s, when campaign reform laws in many states finally brought bribed elections out of favor.

Work Used

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Candidates in early US elections often plied voters with alcohol. Above, a satirical cartoon of the hotly contested 1764 election. By Henry Dawkins, Library of Congress Prints and Photographs division.

Prior to the presidential campaign of Andrew Jackson, candidates rarely asked for financial contributions from the people directly and, in some states, this practice was scorned, even if not directly illegal. Jackson's 1828 electoral victory was fueled by direct political contributions from citizens, a first at the federal level. However, this created a new problem, with candidates increasingly using manipulative tactics to coerce donations from workers dependent upon them. In 1867, Congress enacted the nation's first campaign finance law, the Naval Appropriations Bill, which prohibited government employees from soliciting money from Naval Yard workers. Around this time, candidates would promise jobs to people who helped get them elected. Sometimes these were wealthy or powerful people who donated to a campaign to earn themselves or their friends/family members jobs in politics, which could lead to election to higher offices. Politicians offered key campaign contributors the opportunity to buy their way into politics through donation. This became a major problem, which was addressed by the 1883 Civil Service Reform Act, also known as the Pendleton



NOTES

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1. “Amendment I,” *LII*.
2. Stasavage, *The Decline and Rise of Democracy*.
3. White, “Voting Rights—Ownership of Property No Longer a Valid Qualification.”
4. Hart, “Abolitionists and Free Speech.”
5. Kuhner, *Capitalism v. Democracy*.
6. Gill, “What Was the Charge Against Socrates?”
7. “Socrates Was Guilty as Charged,” *University of Cambridge*.

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2. “A Short History of Jamestown,” *NPS*.
3. Ryrie, *Protestants: The Faith That Made the Modern World*.
4. Marshall, *The Reformation: A Very Short Introduction*.
5. Bunker, *Making Haste from Babylon*.
6. Hall, *The Puritans: A Transatlantic History*.
7. “1641: Massachusetts Body of Liberties,” *OLL*.
8. Acemoglu and Robinson, *The Narrow Corridor*.

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1. Anbinder, *City of Dreams*.
2. Tauzin, “Points of Interest: William Bradford ‘Father of American Printing.’”
3. Wroth, *The Colonial Printer*.
4. Alexanderson and Klosinski, “About the Cover: Early American Arithmetics.”
5. *Cosby v. Van Dam*, 1733, *Historical Society of the New York Courts*.
6. “Alexander Hamilton’s Defense of John Peter Zenger, 1735,” *CUNY*.
7. “The Trial of John Peter Zenger,” *NPS*.
8. Adams, *Gouverneur Morris*, p. 11.

Chapter 3

1. Stokesbury, *A Short History of the American Revolution*.
2. Bordewich, *The First Congress*.

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GLOSSARY

A

absolute privilege—in defamation law, in certain circumstances an individual (such as legislators, judges, and government officials during the course of work) is immune from liability for making defamatory statements.

actual malice—the legal standard established by the Supreme Court, defined as actual knowledge that a statement is false or reckless disregard for the truth, for when a public figure can recover damages in a libel suit.

Alien and Sedition Acts of 1798—tightened restrictions of foreign-born Americans and limited speech critical of the government and its officials.

B

bad tendency—a test that permits government restrictions on free speech if said speech has a tendency to incite or cause illegal activity.

Brandenburg test—In *Brandenburg v. Ohio* (1969), the Supreme Court held that the government may prohibit speech if it is “directed to inciting or producing imminent lawless action” and is “likely to incite or produce such action.”

C

captive audience—the ability to limit speech that would otherwise be protected if it is imposed on a captive audience, when it would be impractical for the listener to escape that speech.

Central Hudson test—a four-part test to determine whether governmental regulation of commercial speech is constitutional. Part 1 establishes if the speech concerns lawful activity and is not misleading and is thus protected. Parts 2 through 4 state that for the government to impose restrictions the asserted government interest must be substantial; the regulation must directly advance the government interest; and the regulation must be no more extensive than necessary.

censorship—the suppression of words, images, ideas, or artistic expressions that are considered offensive, obscene, or unduly controversial by the government or other parties.

HISTORICAL SNAPSHOTS

1880–1881

- The plush Del Monte Hotel in Monterey, California, opened
- The country claimed 93,000 miles of railroad
- Halftone photographic illustrations appeared in newspapers for the first time
- Midwest farmers burned their corn for fuel as prices were too low to warrant shipping
- President James A. Garfield was assassinated
- The Diamond Match Company was created
- Marquette University was founded in Milwaukee
- Barnum & Bailey's Circus was created through the merger of two companies
- Chicago meatpacker Gustavus F. Swift perfected the refrigeration car
- Josephine Cockrane of Illinois invented the first mechanical dishwasher
- A U.S. Constitutional amendment to grant full suffrage to women was introduced in Congress this and every year until its passage in 1920
- Thanks to high tariffs, the U.S. Treasury had a surplus of \$145 million
- The U.S. had 2,400 magazines and daily newspapers, and 7,500 weekly newspapers
- The typewriter and the telephone were both novelties at the 1876 Centennial in Philadelphia; in 1880, 50,000 telephones existed nationwide and at the turn of the century, that number tripled
- George Eastman's famous slogan "You Push the Button, We Do the Rest" helped make Kodak camera a part of many American homes

1885

- The Canadian Pacific Railroad reached the Pacific Ocean
- Baseball set players' salaries at \$1,000-\$2,000 for the 1885 season
- The first photograph of a meteor was taken
- Dr. William W. Grant of Davenport, Iowa, performed the first appendectomy
- Bachelor Grover Cleveland entered the White House as president
- Mark Twain's Adventures of Huckleberry Finn was published
- The Washington Monument was dedicated
- The U.S. Post Office began offering special delivery for first-class mail
- The Salvation Army was officially organized in the U.S.
- Texas was the last Confederate state readmitted to the Union

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