Freedom of Speech: Crash Course Government and Politics #25

Crash Course: U.S. Government and Politics
https://youtube.com/watch?v=Zeeq0qaEaLw
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Craig: Hi, I'm Craig, and this is Crash Course Government and Politics, and today, we're talking about free speech.

Other Craig: Finally, today we can let loose and establish the kinds of things we can say to criticize our government, like the crazy idea that money and speech are the same thing.

Other Other Craig: Not so fast, Clone, the Supreme Court has ruled that spending money, at least in the political context, is speech. You do have the right to criticize that decision though. Unless your boss or YouTube says that you can't.

Craig: Alright, we're trying to talk about free speech, shut up. Let's get started and see if we can figure out what the limits of free speech are, assuming that there are some.

Other Other Craig: There aren't.

Craig: That's a lie. But I'm free to say that.

[Intro]

Craig: There are two really important things to remember about the First Amendment protection of free speech. The primary reason we have freedom of speech is to allow for public criticism of the stupid government. Stupid government. That's the sort of thing that can land you in jail in countries that don't have strong free speech protections, or should I say, you would be Putin jail, heh, don't put me in jail. Oh, that's right, I'm in the US, it doesn't matter.

The stories of oversensitive kings and dictators silencing people who question their rule or even make jokes at their expense are too numerous to recount, but for the most part, that kinda thing doesn't happen in the US, which is why no one gets arrested for carrying around a giant picture of Obama as Hitler, or former President Bush as a monkey. Well, that's stuff's okay, as far as the First Amendment is concerned, but that doesn't mean it's respectful or in good taste.

The second thing to remember is that the First Amendment protects you from the government doing things that try to deny your speech, but not anyone else. What this means is that you don't have an absolute right to say whatever you want, wherever you want, to whomever you want and not suffer any consequences. Isn't that right, Stan, you dingus? I'm fired? I was just kidding; it was a joke. If you work for a private company, your boss can certainly fire you for saying mean things about them or revealing company secrets, and you don't have any First Amendment claim against them. Unless, of course, your boss is the government, or a branch of the government, in which case, you might be able to claim a First Amendment right. See, like most things, it's complicated.

Among the speech that is protected, not all of it has the same level of protection under the First Amendment. Now, let's exercise our right to free Thought Bubble.

The speech that gets the strongest protection is political speech. Criticism of, but also praise for particular officials, their parties, or their policies is usually protected. It's given what is called preferred position, which means that any law or regulation or executive act that limits political speech is almost always struck down by courts.

The big case that made pretty much the final decision on political speech was Brandenburg v. Ohio in 1968. In this case, a Ku Klux Klan leader was making a speech that, as you can imagine, was offensive to a lot of people and could have been considered threatening, too. The court ruled that because the speech was political, it was protected by the First Amendment, no matter how outrageous it was. The court said, "The Constitutional guarantees of free speech and free press do not permit a state to forbid or proscribe advocacy of the use of force or law violation except where such advocacy is directed to inciting or producing imminent action and is likely to produce such action."

According to the court, the First Amendment protects speech even if it advocates the use of force or encourages people to violate the law. So you can advocate overthrowing the government or not paying your taxes as much as you want, unless what you say is likely to produce the thing you're advocating. Overthrowing the government, say. And it is likely to happen imminently, meaning very soon after you make the statement.

This case limited an older standard regarding free speech that was put forward in the case US v. Schenck in 1917. In that case, Schenck distributed pamphlets urging people to avoid the draft for World War I. This was a violation of the Espionage Act, which made it a crime to obstruct the draft or the war effort. The law was more complicated than that, but that's the basic gist.

In his decision on this case, Oliver Wendell Holmes wrote that, "When that speech presents a clear and present danger, the state can then abridge that person's speech." Memorably, he explained that the First Amendment does not protect a person who shouts "fire" in a crowded theater. In later cases, Holmes limited this idea, largely because it gives the government a lot of leeway to say what kind of speech creates danger, especially during a war, as was the case with Schenck. Thanks, Thought Bubble.

Political speech isn't the only type of speech that the courts have addressed. Symbolic speech can also be protected by the First Amendment, and if that symbolic speech has political content, it usually is protected. Symbolic speech includes wearing armbands, carrying signs, or even wearing a jacket with an obscene word directed at the military draft. Symbolic speech also includes burning an American flag, which pretty much is always a political message.

Not all symbolic speech is protected, though. For example, if you're a high school student who holds up a banner that reads, "Bong hits 4 Jesus" at a school-sponsored function, don't expect that the First Amendment will prevent the school, a government agent, from suspending you. And yes, that really happened. Also, this is not symbolic speech. That's violence.

Even hate speech is protected. Even if it's really hateful, like burning a cross on a person's lawn, although this might be prosecuted as vandalism or trespassing. Public universities that try to punish hate speech have seen their discipline code struck down. Commercial speech might not be protected, but if it's a political commercial, it will be, and as we've pointed out before, spending money on political campaigns has been determined to be speech that is protected by the First Amendment, although we shall see donations to political campaigns are still treated differently, at least for now.

Pretty much the only kind of speech that's not protected, other than speech that's likely to incite immediate violence, is what's called fightin' words. In the actual case that dealt with fighting words, Chaplinsky v New Hampshire, the defendant uttered what seemed more like insults than a call to engage in fisticuffs. What'd you call me? Still, the court ruled that some words were so insulting that they were more than likely to result in a fight, so fighting words are not protected speech.

One thing to note, though, the fighting words free speech exception is almost never used. So as you can see, the First Amendment pretty much protects you from the government throwing you in jail or otherwise punishing you for what you say in most instances, but

it's important to remember than the First Amendment is not unlimited. Most important, it only protects you from government action, not the action of private people, especially your employers. One final example might make this clear.

In Pickering v. Board of Education, a public school teacher wrote a letter to the editor of his local paper complaining about the way that the school board was spending money on the schools. He didn't write it on school time or using school paper or email, especially since it was 1968 and there was no email. The school board, or his principal, fired him. He brought the case to the Supreme Court, claiming that he was fired for his speech, which was political in nature criticizing local government and not for anything related to his job performance, and he won. But the only reason he was able to get his job back is that his employer was the government, so it was the government that punished him for speaking out.

For most of us, complaining about our employer's policies may get us fired, and unless we are government employees, we can't claim that it violated our First Amendment rights. The First Amendment, like all of the Amendments, is meant to protect us from an overreaching government. There are other types of laws that help us deal with individuals who do things that we think are wrong, but we'll talk about those in another episode. Thanks for watching. See ya next time.

Mmmph! Third eagle punch in the video. Is that too much? It doesn't matter. I'm free to do it.

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Crash Course was made with the help of all of these free speakers. Thanks for watching.