Freedom of the Press: Crash Course Government and Politics #26

Crash Course: U.S. Government and Politics
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Hi, I'm Craig and this is Crash Course Government and Politics, and today we're gonna finish up our discussion of the First Amendment, finally, by talking about everybody's favorite: the press. The First Amendment is pretty clear that Congress can't make any laws abridging the freedom of the press, and since you understand the basics of free speech because you were paying attention, the reasons for this should make a lot of sense.

But as with any discussion of the First Amendment, things aren't as straight forward as we might think, and the freedom of the press, just like the freedom of speech, is not absolute.

[Intro]

The main thing to know about the First Amendment and the press is that it prevents the government from censoring the press. For the most part, this means preventing the press from publishing some information in the first place, although it can also mean punishing a news agency after they published something.

Let's deal with pre-publication freedom of the press first. Let's go to the Thought Bubble. Censorship of the press before a story is published in print, broadcast on television, radio or the internet, is called prior restraint, and the supreme court ruled that it was not allowed in a case called Near v. Minnesota.

In that case, a newspaper called The Saturday Press was gonna publish a story that the city of Minneapolis was under the secret control of a cadre of Jewish gangsters, in particular the mayor and chief of police. City officials obtained an injunction to stop the publication of this story, and they gave The Saturday Press editors the opportunity to go before a judge to prove that the story was true. I'll get to this question of truth in a minute. The judge ordered the injunction and said that if the newspaper violated it, they would be punished for contempt of court.

Instead, the newspaper counter-sued, claiming that Minneapolis and Minnesota were violating their freedom of the press. The supreme court agreed that no government was allowed to censor the press because a free press is essential for the political system to work. They based their decision on a lot of history, including Blackstone - the British legal authority which explained "The liberty of the press is indeed essential to the nature of a free state; but this consists in laying no previous restraints upon publications and not in freedom from censure from criminal matter when published." And they also relied on an important American authority on the constitution: James Madison - heard of him? - who derived a lot of his constitutional expertise from the fact that he wrote the thing.

He said, "This security of the freedom of the press requires that it should be exempt not only from previous restraint by the executive as in Great Britain, but from legislative restraint also."

Citizens need a free press to be able to criticize the government and to expose government wrongdoing because otherwise the government can get away with all sorts of things that we don't want it to, like say spying on us, and reading our email, and reading our spy's email! Of course, even with a free press, the government can do this, and what constitutes a press in the age of the internet is a debatable question. WikiLeaks, anyone?

But the basic proposition that the press must be able to protect us against an over-reaching government still stands. Thanks Thought Bubble.

There's another reason why the Court put the kibosh on prior restraint, and that's because if a newspaper prints something that is untrue about the government, or more practically, about a government official, there's a remedy for this. The person or agency about whom the untrue thing was said or written and published can sue the publisher for libel, and if he proves his case, can get monetary damages. This is supposed to prevent newspapers from flat out lying about public officials, but libel suits can cause another problem, in that they can basically end up being after the fact censorship. If a newspaper is so afraid of a libel suit that it decides not to publish a story, then it effectively censors itself.

Sometimes courts call this a "chilling effect" and it applies to speech that people are afraid to make because of potential lawsuit or other punishment, as well as articles and news stories that go unpublished out of fear of potential punishment. Tell you what, I ain't afraid of punishment for that. I can do what I want! Freedom of speech!

Luckily for us, the Court dealt with the libel issue in another landmark case, New York Times v. Sullivan from 1964. This case involved an advertisement in the Times that included some inaccurate statements about the way Alabama law enforcement was treating Civil Rights protesters including Martin Luther King Jr. The Montgomery Public Safety Commissioner, L. B. Sullivan thought these mis-statements amounted to libel and sued the Times. He lost at the Supreme Court, and they ruled that the standard for libel of a public figure was actual malice, which was my nickname in high school. This means that in order to win a libel case, you must prove that the publisher of the libelous statement knew that the statement was false and acted with reckless disregard, my friend's nickname in high school, for the truth. This is an almost impossible standard to prove, and what it means is that public figures almost never win libel cases.

This goes a long way toward explaining some of outlandish things you read about politicians and celebrities in print, and I'm not even gonna begin to talk about some of what you can find on the Internet, like a bearded dude talking about government and punching eagles. Some argue that we shouldn't feel too bad about celebrities, and we should remember that they are celebrities and are usually doing alright for themselves. Unflattering publicity might simply be considered the price of fame. I'd point out that celebrities are human, too, except for Lil Bub, the only non-human celebrity, and probably don't like being libeled. I guess Jar-Jar Binks is another non-human celebrity, and he gets a lot of bad press, but he truly is terrible, so it's not libel.

So it sounds like the First Amendment protection of a free press is pretty much absolute, but there are always exceptions that make things complicated. One of these exceptions is the question of national security. There are some security issues that are so important that the government is allowed to censor the press before they can print stories about them. The best example of this is that the government can prevent the press from printing detailed descriptions of troop movements during a war, because this would help the enemy and put soldiers' lives at risk. It's kinda like in the spy movies when the bad guys learn all the names and aliases of the secret agents, except it's real. Knowing this, most newspapers wouldn't print this sort of thing, at least while it's happening. But what about after the fact? Well, it gets complicated, but another Supreme Court case gives us some guidance about what to expect.

In New York Times v. US -- why is it always the New York Times? -- the issue was whether or not the Times could publish the Pentagon Papers. These were secret documents, stolen from the government by Daniel Ellsberg, who had worked at the Defense Department.

They showed that much of the government's reasoning behind the Vietnam War was untrue or at least highly questionable, hmm, I'm

gonna go with untrue. The government tried to stop the Times and the Washington Post, too, from publishing these papers, because it would make the government look bad and perhaps turn public opinion against the war. Now, this was 1971, and a good deal of public opinion was kind of already against the war, so much so that Lyndon Johnson had decided not to run for re-election just a few years before in 1968. But the government said that publication of this classified report would cause irreparable harm to America's ability to defend itself, and they tried to stop the publication.

The Court ruled against this prior restraint, further strengthening the First Amendment protection of the free press. It also slapped down the executive branch, which was trying to claim its privilege to keep state secrets. But we already mentioned this when talking about Nixon and his attempts to hold on to the Watergate tapes. Anyway, as you can see, the First Amendment offers a lot of protections to citizens in the press, especially when they're criticizing the government or its policies, or even when they're making fun of celebrities.

This is really, really important, because American democracy relies on its citizens having enough information to make good decisions and hold elected officials accountable. We rely on the press to tell us what the government is doing so that we can decide whether or not we want to let them keep doing it. If the government can keep us from getting important or even not so important information by censoring the press or by preventing us from speaking out against what we see as wrong, it will be able to keep doing this that might be bad, and this is the kind of tyranny that the Framers of the Bill of Rights were most worried about. So the more you're concerned about tyranny, the freer you want speech and the press to be. This is something to think about when you engage in arguments about Edward Snowden and his NSA disclosures, or Julian Assange and WikiLeaks.

Thanks for watching. I'll see you next time. Crash Course Government and Politics is produced in association with PBS Digital Studios. Support for Crash Course US Government comes from Voqal. Voqal supports non-profits that use technology and media to advance social equity. Learn more about their mission and initiatives at Voqal.org.

Crash Course is made with the help of all of these free speakers. Thanks for watching. That guy speaks a little too freely, if you ask me.