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Topic 3: Extreme political speech and denial of reality. Infoxication and the virtual world created from digital platforms

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USA

A commitment to free speech is a fundamental concept promoted by the United States and Western European "democracies." However, they may differ significantly when addressing the permissibility of laws regulating certain kinds of speech, especially extreme speech. In the United States, the highest court of the land, the U.S. Supreme Court, has held the right of free speech under the U.S. Constitution's First Amendment to protect even the most toxic, racist, classist ideology, in order to advance the myth that the residents of the United States actually own the right to freedom of expression.

In 1989, U.S. Supreme Court Justice William F. Brennan said, "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."

The concept that the United States is the bastion and protector of freedom of speech is a myth inculcated in schoolchildren from an early age and routinely promulgated in U.S. media. As noted U.S. criminal defense attorney Michael Tigar stated,

The mythology of free speech sustains the mythology of democratic government. A free people live under laws made by a process in which they make free choices based on the free flow of information that is discussed and weighed in an open public forum.

The U.S. Supreme Court has undermined freedom of speech in four significant ways: state repression, concentrated control of the technological means of communication, invocation of the private property norm, and the wholesale characterization of information as a form of property.

State repression

The court's limits of speech were delineated by the U.S. Supreme Court in *Schenck v. United States*, 249 U.S. 47 (1919), with the famous statement by Justice Oliver Wendell Holmes: "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic."

Schenck itself was not about fires or theaters, but whether Charles T. Schenck, general secretary of the U.S. Socialist Party, could be convicted under the U.S. Espionage Act for distributing leaflets that opposed the U.S. draft into military service during World War I. While there was no violence or danger presented in his leaflets, which urged the reader to "assert your rights," the U.S. Supreme Court upheld Schenck's conviction and he went to prison. Likewise, Eugene Debs, five-time U.S. Presidential candidate from the U.S. Socialist Party and founding member of the American Railway Union and the Industrial Workers of the World, was convicted under the same act for his opposition to U.S. participation in World War I. His conviction was upheld by U.S. Supreme Court in *Debs v United States*, 249 U.S. 211 (1919).

Note that the Espionage Act is the same statute under which Australian journalist Julian Assange is now charged under U.S. law for receiving and publishing classified U.S. military and diplomatic documents evidencing U.S. war crimes. These include the U.S. Army manual for Guantánamo Prison Camp, a video of U.S. helicopter fire killing civilians in Iraq, U.S. State Department cables about secret drone strikes in Yemen, and much more.

Brandenburg v. Ohio, 395 U.S. 444 (1969), effectively overturned *Schenck* more than 50 years ago. In *Brandenburg*, the U.S. Supreme Court held that inflammatory speech — in this case speech advocating violence by members of the white supremacist hate group, the Ku Klux Klan — is protected under the First Amendment, unless the speech "is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." To this day, despite *Brandenburg's* overruling of *Schenck*, any time there is controversy on the application of the free speech doctrine, the caveat that "you cannot shout fire in a crowded theatre," (a misstatement of Holmes' actual quote) is frequently invoked to demonstrate the limits on freedom of speech if the words represent a "clear and present danger."

Public demonstrations of political dissent, such as the grassroots movement against the construction of the Dakota Access Pipeline through North Dakota, South Dakota, Iowa, and Illinois, are met with brutal government suppression. Protesters at Standing Rock, who numbered as many as 10,000 and were led by indigenous peoples from as many as 400 tribes, challenged a private company's construction of the 1,750-mile pipeline, which threatened indigenous lands and the water supply to 17 million people. The protesters faced exceptional government force: water cannons drenching the protesters in subzero temperatures, tear gas, pepper spray, tasers, attack dogs and mass arrests reminiscent of the state government's response to civil rights protesters in the 1960s.

The compelling activism at Standing Rock inspired protests at other pipeline projects in New Jersey, Texas, Florida, Minnesota and California. Yet, despite the size and significance of this movement, mainstream media coverage was sporadic and superficial.

The Black Lives Matter marches and demonstrations in 2020 represented the largest movement in the history of the United States. The New York Times reported that 15 to 26 million people participated in public demonstrations after the police murder of unarmed African American, George Floyd. Federal, state and local law enforcement used tear gas and pepper spray, kinetic impact projectiles and mass arrests against the largely peaceful protesters. The federal government followed with heavy-handed criminal prosecutions in order to disrupt and destroy the movement of outrage that had swept across the United States against the entrenched institutional racism. Mainstream media stories focused mainly on the violence and spectacle of the protests, rather than the substance of the issues and were largely silent on the outsized, aggressive, and damaging, response of the police.

Legislators followed the Black Lives Matter movement with a wave of anti-protest legislation. Lawmakers in 31 states have introduced 81 anti-protest bills during 2021, more than twice as many as any other year. These bills are aimed at limiting the right to peaceably assemble. Oklahoma and Iowa have passed bills granting immunity to drivers whose vehicles strike and injure protesters in public streets. Another proposed bill would bar anyone convicted of unlawful assembly from holding state employment, including elected office. A Minnesota bill would prohibit those convicted of unlawfully protesting from receiving student loans, unemployment benefits or housing assistance. And in Florida, the governor signed a new law governing public disorder, which created harsh infractions for unlawful assembly. The governor has called this bill "the strongest

anti-looting, anti-rioting, pro-law-enforcement piece of legislation in the country.” Often characterizations of the protesters as looters and rioters are used to mask the fact that the demonstrators are really being punished for exercising their right to free speech.

Media Control

The media principally determines the public’s perception of the rule of law in the United States. How the system functions, what its interests are, its essential nature — upholding the interests of corporate America — and the distinction between administering the law and securing justice, are major questions to which, for the vast majority of people, only one institution in the U.S. gives the answers — the media. Media activities also raise fundamental issues regarding the unique existence of one of America's most powerful and influential privately-owned, and least accountable, industries — the media — and the role of the First Amendment's free speech and free press guarantee in allowing the corporate media to overwhelm the basic ideas of democracy.

It is appropriate to examine the media in the context of the law and its impact of people's lives. The U.S. public's perception of the role of the U.S. government in the national and international spheres, as presented in the mainstream U.S. media, is as the defender of freedom. We are oblivious to the fact that an increasing share of people around the world sees U.S. power and influence as a major threat to their countries’ independence and freedom.

With the technological advances of the 20th and 21st centuries, media communications now embrace much more than the classic media industry of print, radio, television and cable. Recognizing that the most modern developments in telecommunications will change many of the ways communications are sent and received, it is nevertheless not unreasonable to assume that as long as the relationships to wealth and power remain unchanged, the question of who the media are, their significance in molding people's perceptions and their power in society and in relation to America's system of laws, will bear the same answer. In fact, it appears that technology will only increase the control and power of the wealthiest corporations, six of which currently control 90% of the U.S. media and what the American people read, watch or listen to and, consequently, believe to be true. Thus, there is no such thing as unbiased news, since journalists who work for the six corporations answer to their owners and their owners' agendas. The U.S. Supreme

Court has rejected First Amendment claims by journalists who were fired for reporting the truth, contrary to their employer's direction to report otherwise.

The same can be said about the tech giants like Amazon or those that own social media platforms like Facebook, Google, Amazon, Twitter and Instagram. According to whistleblowers, these companies have closed thousands of deals with Immigration and Customs Enforcement (ICE), the FBI, the Drug Enforcement Administration (DEA), the Federal Bureau of Prisons and the U.S. military for uses of artificial intelligence that track drones or aid in efforts to track immigrants and dissenters and to bolster military activity. Although they are private companies, they serve a quasi-governmental function and are quasi-governmental actors, with powers of censorship; and the ability to block legitimate speech that does not serve current U.S. interests, such as criticisms of the current Israeli government policy toward Palestinians.

Another example is what recently happened one week before the Nicaraguan November 7 elections when Facebook and Instagram blocked access to pages used by Sandinista supporters in their campaign to re-elect President Daniel Ortega. Many of the 1,500 accounts closed appear simply to be because the owners were pro-Sandinista journalists or young commentators. Tiktok, Twitter and Instagram took similar action, and Google said that it has closed 82 youtube channels and three blogs in a related operation. This censorship and interference with the election in another country goes hand in hand with the U.S. government's stated position of its desire for regime change in Nicaragua.

The corollary of freedom of speech in the U.S. is freedom of association. In 1958, the U.S. Supreme Court held in the case of National Association for the Advancement of Colored People v. Alabama that the right of people to associate together to express their beliefs, often for political purposes is protected by the Fourteenth Amendment due process clause of the United States Constitution. The background to the case was that the State of Alabama had banned all NAACP activities within the state of Alabama. The state then subpoenaed the membership lists of the NAACP. Braving hefty fines, the NAACP took the case to the Supreme Court, which found that the state's demanding the membership lists would interfere with the free association of its members. Note that the Court took no position on the banning of the organization entirely from the state.

In today's digital climate, the federal government has shown it is quite capable of getting those membership lists through back doors into any organization's computers. For

example, when Edward Snowden released that he had taken from the U.S. government a top-secret court order showing that the NSA had collected phone records from over 120 million Verizon subscribers, it proved that then-director of national intelligence James Clapper had lied to Congress. The following day, Clapper acknowledged that the NSA collects telephone metadata on millions of Americans' telephone calls.

Consider also that in the 2016 U.S. Presidential Campaign, it came to light that a data analytics firm called Cambridge Analytica had exploited the personal Facebook data of 87 million users. The company helped the campaign identify voters to target with ads, and gave advice on how best to focus its approach, such as where to make campaign stops. It also helped with strategic communication, like what to say in speeches. Through this means, personal data is extracted and manipulated to enhance the power of media and social media over the population.

The myth of freedom of speech in the U.S. continues, while the U.S. government and media vehemently criticizes other nations with whom the U.S. government differs, from taking any measure to quell unlawful assembly, which the U.S. government itself has often instigated or aided through local actors. And online private entities (the digital platform), as an arm of the media, often take leading roles in promulgating massive amounts of misinformation, thus serving as destabilizing influences across the globe, e.g., the imperially inspired color revolutions in countries around the world, including the most recent street protests in Hong Kong.

Another example is the U.S. War in Iraq, where a compliant U.S. press repeated government lies on the existence of weapons of mass destruction and false claims of Saddam Hussein's link to Al Qaeda, leading to eight years of war, which resulted in the deaths of as many as a million people, cost U.S. taxpayers more than \$2 trillion and added Iraq to the list of failed states. The U.S. could not have continued to justify this war to the American people without the active complicity of the media.

Private property rights overriding freedom of expression

As privatization of government functions and the public domain in the U.S. moves forward, the traditional locations for public speech: sidewalks, roads, parks and outside public buildings – the “Main Streets” of the United States — have given way to the private shopping malls, gated communities and other private holdings where the courts

have now found that the public has no right to engage in free speech activities, even where that property (like a shopping mall) is open to the public.

In 1976, the Supreme Court held in *Hudgens v. National Relations Board* (424 U.S. 507) that a labor union representing warehouse employees on strike against a business in a mall had no right to be there because it was private property and, in essence, private property trumps free speech. This year, the U.S. Supreme Court struck down a California labor regulation that granted labor organizers the right to enter agricultural employers' private property to speak to the workers about the union. (*Cedar Point Nursery v. Hassid*, No. 20-107, 594 U.S.). The Court found that giving the unions access to workers on the property violated the Takings Clause of the U.S. Constitution, which states that private property shall not be taken for public use, without just compensation. This is akin to treating the farm workers as feudal serfs, bound to the land and to their lord (boss), free from any outside influence. Naturally, California did not want to pay the growers and so terminated the right to access for the unions.

Conclusion

The U.S. manifests an extreme and growing concentration of political power in the hands of the very few, and the limitations on speech or lack thereof are applied in their favor. Yet, freedom of speech is not the freedom to lie. While a prohibition against lying is not in the Constitution, it is certainly embedded in statutes from perjury to libel and slander. But to enforce those rights takes money and access to the courts. The few own and control, to an unprecedented degree, the press. They built and manage the internet. It should not be surprising that a growing number of residents of the U.S. do not believe a word they read. That leaves them susceptible to emotional appeals that 1) cannot be evaluated materially and 2) deprioritize the process of rational and scientific thought, which is why extreme speech, or demagoguery, is so dangerous. Such forms of speech are on the rise to divide and distract the population in the face of the need to unite to address the global crises threatening the earth.