First Amendment Essay, Research Paper

In the First Amendment, it is stated that: 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 to

peaceably to assemble, and to petition the Government for a redress of

grievances. These aforementioned statements ratified by our forefathers are

commonly referred to as the freedom of expression. The freedom of expression is

not only limited to speech; it refers to all forms of exchanging ideas:

religion, press, assembly, petition, etc. In Alan M. Dershowitz’s essay,

"Shouting Fire!", he boldly claims that Justice Holmes’ analogy of

"shouting ‘Fire!’ in a crowded theater" to circulating pamphlets to

the public during wartime that contain political ideas against the draft is both

"self-deceptive or self-serving" (Dershowitz, 328). However, shouting

"Fire!" in a crowded theater does not only refer to the freedom of

speech, but to freedom of expression implied by the First Amendment. By shouting

"Fire!", an individual is implying alarm, and the indication of alarm

will ultmately cause chaos. There is no way that a shout of "Fire!" in

a crowded theater, a form of "decontextualized information" (Postman,

8), is the same as the circulation of waritme pamphlets. The idea of

"speech" is not specifically defined in the First Amendment. Due to

the absence of the authors’ intention in using the word, "speech," we

are then forced to speculate on the meaning of this nebulous word. In Webster’s

New World Dictionary, one will find the following: speech (spech) n. [\* OE

sprecan, speak] 1 the act of speaking 2 the power to speak 3 that which is

spoken; utterance, remark, etc. 4 a talk given to an audience 5 the language of

certain people Let us interpret "speech" according to the definition

given by Webster’s New World Dictionary, then "speech" should only

constitute audible sound and not also the ideas that may result from the act of

speaking. According to this theory, we are then allowed to freely say anything

that please us, including the act of shouting "Fire!" in a crowded

theater. However, we can clearly see that this is not the intention of the First

Amendment from historical evidence. It does not seem that the Supreme Court and

the public view only the act of "speaking" to be protected by the

First Amendment, for it is the act of expressing ideas that concerns them. Even

Justice Holmes announced that "[t]he most stringent protection of free

speech would not protect a man in falsely shouting fire in a theater, and

causing a panic. It does not even protect a man from injunction against uttering

words that may have all the effect of force" (Dershowitz, 325). Which then

leads us to believe that it is the expression of ideas that leads "directly

to serious harm" (Dershowitz, 328) to the public that acts as a violation

of the First Amendment. However, each individual’s interpretation of what may

lead directly to serious harm may be different. Some individuals’

interpretations of what cause serious harm are more liberal, while others are

more conservative: I may find the circulation of pamphlets containing radical

political views to be quite detrimental to wartime effort, while others may find

that to be virtually harmless. In recognizing that the government does indeed

have the right to censor "expressions [that] may lead directly to serious

harm" (Dershowitz, 328), Dershowitz implies that there is a hidden status

quo, or norm, that individuals within an interpretive community use as a

guideline to determine what constitutes extreme disorder. It is then left up to

the Supreme Court to act as the absolute authority to set these guidelines for

the members of the interpretive community. In order for chaos to occur, there

must be people to interpret and interact with ideas that are proposed. If one

were to shout "Fire!" in an empty theater, then there would be no

chaos resulting from that action; no one would be there to interpret the shout

of "Fire!" as a potential alarm. As Justice Holmes pointed out in

Schenck v. United States, "the character of every act depends upon the

circumstances in which it is done" (Dershowitz, 325). However, it was most

unfortunate for Schenck to be imprisoned for distributing his political

pamphlets, for it was not the intention of these pamphlets to cause chaos:

"nothing in the pamphlet suggested that the draftees should use unlawful or

violent means to oppose conscription" (Dershowitz, 324). Although the

Schenck pamphlets did not directly cause chaos, it was its potential to cause

chaos that led to Schenck’s sentence, for "the Court found, that the intent

of the pamphlets’ ‘impassioned language’ was to ‘influence’ draftees to resist

the draft" (Dershowitz, 324). Instead of punishing actions that lead

"directly to serious harm," we see a scenario that is removed from

this direct impact. Actions that cause unnecessary panic should be punished:

"calling in a false bomb threat; dialing 911 and falsely describing an

emergency; making a loud, gun-like sound in the presence of the President;

setting off a voice-activated sprinkler system by falsely shouting ‘Fire!’"

(Dershowitz, 328). However, we do not see the same correlation to shouting

"Fire!" in a crowded theater in Schenck’s case. It was most

inappropriate for Justice Holmes to have analogized the distribution of

Schenck’s pamphlets to shouting "Fire!" in a crowded theater, for the

act of distributing these pamphlets does not directly lead to chaos. In his

book, Amusing oOurselves to Death, Neil Postman explains why the distribution of

information in printed form requires more mental exertion than other mediums,

for: In reading, one?s responses are isolated, one?s intellect thrown back

on its own resources…To engage the written word means to follow a line of

thought, which requires considerable powers of classifying, inference-making and

reasoning. It means to uncover lies, confusions, and overgeneralizations, to

detect abuses of logic and common sense. It also means to weight ideas, to

compare and contrast assertions, to connect one generalization to another.

(Postman, 50-51) The recipients of the Schenck pamphlets were invited to

interpret the ideas that are embedded within the text, then take action upon

these ideas if they felt inclined to do so. Unlike shouting "Fire!" in

a crowded theater, the results that stem from the interpretation of the

pamphlets will be more diverse than that of hearing a shout of "Fire!"

in a crowded theater. In hearing a shout of "Fire!" in a crowded

theater, we are conditioned to run for our lives due to the potential danger it

may involve. Rarely do we hesitate and analyze the validity in the shout of

"Fire!" in a crowded theater due to the risk involved in our decision

making. The analogy of distributing the Schenck pamphlets to shouting

"Fire!" in a crowded theater is ludicrous for it is not "an

automatic stimulus to panic" (Dershowitz, 327). A shout of

"Fire!" in a crowded theater is merely a verbal alarm, and not speech,

for there is a very small amount of (if any) information being conveyed in the

making of this "clang sound": The man who shouts Fire! in a crowded

theater is neither sending a political message nor inviting his listeners to

think about what he has said and decide what to do in a rational, calculated

manner. On the contrary, the message is designed to force action without

contemplation. The message Fire! is directed not to the mind and the conscience

of the listener but, rather, to his adrenaline and his feet. It is a stimulus to

immediate action, not thoughtful reflection. (Dershowitz, 325) Our survival

instincts would cause us to run out of the crowded theater if someone were to

shout "Fire!"; this priority of self-preservation causes chaos. The

ideas embedded within the First Amendment are left open for interpretation by

its audience due to the ever changing nature of society. It is then the

different interpretations of the First Amendment that causes disagreement among

individuals in justifying their case. In the case of Schenck v. United States,

however, Justice Holmes’ analogy of shouting "Fire!" in a crowded

theater to the distribution of the political pamphlets was a poor interpretation

of the ideas behind the First Amendment. Although "not a single recipient

of the Schenck pamphlet is known to have changed his mind after reading it"

(Dershowitz, 326), Schenck was convicted because "the pamphlet created a

clear and present danger of hindering the war effort" (Dershowitz, 325). In

no way does the scenario of the Schenck pamphlet echo that of shouting

"Fire!" in a crowded theater, for it does not directly lead to

unnecessary chaos and panic. Inherent in the reading of the pamphlets involves

"a sophisticated ability to think conceptually, deductively and

sequentially; a high valuation of reason and order; an abhorrence of

contradiction; a large capacity for detachment and objectivity; and a tolerance

for delayed response" (Postman, 63). If indeed the Schenck pamphlets should

be analogized to shouting "Fire!" in a crowded theater, then should

the writers of the National Inquirer, Saturday Night Live, David Letterman, etc.

also be convicted for misinformation and falsely portraying public figures?

Fortunately, we are now able to realize the lunacy of Justice Holmes’

"Fire!" analogy and reassess the ideas behind the First Amendment.

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Dershowitx, Alan. "Shouting Fire!." The Best American Essays,

College Ed. Robert Atwan, ed. Boston: Houghton Mifflin Company, 1998. 323-329.

Postman, Neil. Amusing Ourselves to Death. New York: Penguin Books, 1986.