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Old Media vs. New Media

Characterizations of Free Speech during Times of War

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Old Media vs. New Media: Characterizations of Free Speech during Times of War

If you want your voice to be heard, you must know how to make it heard. It is often not an easy task, and takes somewhat of a special skill set. This project will outline and discuss several situations throughout fairly recent history in which little-known citizens with significant statements to make managed to catch the eye of the type of mass media that relevant in their time period, and in turn, practically become household names. Each of the cases play upon American first amendment rights, and shall be discussed set against a backdrop of two noteworthy time periods in American history: the Vietnam War era (specifically the mid- late 1960s), and the more current Post September 11th age of American involvement in Iraq and Afghanistan. Wartime rhetoric is something that has the ability to define the culture of an entire generation, and the way we come to receive and participate in it has vastly changed since the mid to late 1960s due to the evolution of media. Therefore, I will outline how extreme the changes have been in mass media consumption, and in turn, discuss each time period separately in order to better explain how the tactics the citizens involved in the specific cases employed allowed them to stand out in their individual media cultures.

To begin logically, let's get a run-down on the First Amendment. It is the first segment of the Bill of Rights, drafted by James Madison and accepted by Congress on December 15th, 1791 ("Bill of Rights: Primary Documents of American History"). Put simply, the first ten amendments to the US Constitution limit what rights the government has in relation to American citizens' personal liberties or "Natural Rights." The First Amendment is written as follows:

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.

Although this amendment clearly encompasses the right to freedom of religion amongst other things, this particular project will place its main focus on the aspect of Freedom of Speech.

Our entitlement to exercise our First Amendment rights is something that is challenged by different media outlets on a daily basis. Just how vastly have mass media changed between 1968 and 2011? Since 1968 Americans have witnessed the greater availability of access to cable television, the invention of the internet, the invention of cellular phones, and then of course the development of the “smart” phone: a cellular phone with internet capability. With all of the news and media-transmitting technology surrounding us, we’d be hard-pressed to find one person in America today that is completely unaware of the fact that we currently have troops deployed in the Middle East. And internet news is updated practically to the minute. News outlet Reuters.com proudly proclaims that “there’s a steady stream of news pouring through Reuters 24 hours a day, seven days a week” (“How Does Reuters Gather News?”).

This wide availability and variance of media was not always as such. If you were alive and coherent in 1968 then it was most likely that you knew America was involved in a war in Vietnam, because by the 1960s, According to the *World Book Encyclopedia*, there were approximately 60 million television sets in households throughout the America: one television set in every nine out of 10 households (*World Book Encyclopedia*, Elert). As for news media, the late 1960s was a time where print and analog broadcasting (television and radio) dominated. As of quite recently, analog television was eliminated from American culture altogether. According to dtv.gov, “Congress mandated June 12, 2009 (extended from February 17, 2009) as the last day

for full-power television stations in the U.S. to broadcast in analog” (“The Digital TV Transition”). Today, we broadcast solely digitally.

In the mid to late 1960s, people received much of their news from reading newspapers, listening to the radio, or watching the evening news. The Vietnam War is widely regarded as America’s first “television war.” According to the website for the Museum of Broadcast Communications, news programs about Vietnam brought the “horror of war” night after night into people’s living rooms, and eventually inspired “revulsion and exhaustion” (Hallin). Here, we see one of the largest differences between the media of the 1960s and the media of today: American news has perhaps learned its lesson, and albeit halted the broadcasting of war imagery. In an article published in the online news magazine *Salon*, author Gary Kamiya cites that today’s media is “responsible for sanitizing the Iraq war, at times rendering it almost invisible.” Many American broadcasting companies and publications have strayed away from running graphic war images. Kamiya subsequently cites a study done by the *Los Angeles Times*: in 2005, [the newspaper] surveyed six major newspapers and the nation's two leading newsmagazines, and found that over a six-month period, *no* images of dead American troops appeared in the *New York Times*, *Washington Post*, *Los Angeles Times*, *St. Louis Post-Dispatch*, *Atlanta Journal-Constitution*, *Time* or *Newsweek*. A single image of a covered body of a slain American ran in *the Seattle Times* (Kamiya). [Emphasis added].

Although today’s news media may not present us with horrifying war imagery from the Middle East, we have the ability to type such a phrase into an internet search engine such as Google and watch the results fill our computer screen.

The bottom line here is that in the mid to late 1960s, with the absence of the internet, major broadcasting corporations in conjunction with the US Government were the ones with the power to decide what Americans did and did not get to see in terms of war imagery. They were the ones with the ability to apply censorship. This is a stark contrast to our current internet-driven world where this type of censorship is virtually nonexistent.

Today, how many of us can say that we've *never* used Google or another search engine to answer some of life's tough (or even not so tough) questions? Technology is becoming more and more prevalent in today's society, and as such, news is becoming easier and easier to come upon. According to the Pew Internet and American Life survey, 39% of all adult Americans have gotten online wirelessly using a laptop- making laptops the most commonly used means of gaining internet access. Additionally, 51% of adult Americans have accessed the internet through the use of either a laptop computer or an internet connected mobile device ("Pew Studies Internet Use & Income Levels"). That's a very large number of Americans interacting via the World Wide Web on a daily basis; a large number of Americans reading, participating in, and passing on news. Of course major news networks will still have the ability to censor what shows up on their websites; however, with the increasingly common existence of comment boxes following news articles, "blogs" and other social networking websites such as *Facebook.com* and *Twitter.com*, there is hardly a limit to what you may find in terms of wartime rhetoric if you look hard enough. Today, a person can post whatever they want to on the internet; there are virtually no "guard dogs," and if you are American, most of what you say in these posts will be protected under your First Amendment rights. Advisably however, there can be serious consequences depending upon what you choose to say and where. Examples of which we have seen played out

in the media within the past couple of years, such with the case of Julian Assange and *Wikileaks* which shall be further discussed a bit later.

The First Amendment right to free speech is one that Americans have been exercising since it was first penned whether they were aware of it or not. The Vietnam War era was no exception. Two cases directly applicable to the First Amendment and the era which were widely publicized are known as *Tinker vs. Des Moines* and the *United States vs. O'Brien*. In both of these cases, young people voiced their opposition to the Vietnam War in different ways, and were recognized by the media for their tactics.

Tinker vs. Des Moines is a case involving three teenagers who, in December of 1965, wore black armbands to school in order to peacefully and silently voice their protest the Vietnam War. When asked to remove the armbands by school officials, the three refused, and were in turn suspended from school (*aclu.org*). The teens and their families, aided by the American Civil Liberties Union, sued the school system for breaching their First Amendment rights. Four years later, on February 24th 1969, the Supreme Court sided with the students and their families declaring that they were indeed protected by the First Amendment. This case was highly publicized at the time, and today remains a staple in deciding “how much” students are allowed to say before it is considered “disruptive” while in the confines of a public school.

United States vs. O'Brien is another case well-known to the Vietnam generation. It has, however, a slightly different outcome than the case of *Tinker vs. Des Moines*. In March of 1966, David Paul O'Brien accompanied by three friends burned their “selective service registration certificates” better known as “draft cards” in front of the South Boston Courthouse before a crowd of people. Within that crowd, there just so happened to be several FBI agents witnessing

the scene. The crowd began to frenzy, and go on to attack the boys for the burning of the draft cards. It was at this point that one of the FBI agents brought David O'Brien into the courthouse to seek refuge from the crowd, and proceeded to read him his rights and place him under arrest. O'Brien protested, explaining that he had done what he did because of his personal beliefs about the Vietnam War. O'Brien was indicted and tried for his actions. In court, he maintained that "the 1965 Amendment prohibiting the knowing destruction or mutilation of [draft] certificates was unconstitutional because it was enacted to abridge free speech, (and because it served no legitimate legislative purpose)" (*law.cornell.edu*).

Unfortunately for David O'Brien, the Supreme Court could not help him. He was indeed convicted, but appealed the ruling and when the case got to the Supreme Court; the judge ruled that the First Amendment could not protect him on the grounds that he was required, as an American male of his age, to carry a selective service card, and now no longer had one. Additionally, separate from the issue of free speech was the issue of conduct. The amendment Mr. O'Brien violated addressed conduct in regards to the possession of a draft card.

Tinker vs. Des Moines and the United States vs. O'Brien are two of the most relevant First Amendment cases for their time period; both cases were highly publicized in the media for their time. The significant thing about these cases however, is that although they were First Amendment *free speech* cases, neither of them directly involved oral or verbal communication. Both cases involved striking *visual* representations of wartime rhetoric and yet were truly about "free speech." Thus, these cases fit perfectly into the media culture of the mid to late 1960s- the culture of newspaper and magazine articles with supplementary photographs, and of above all, the newly abundant television technology. The Tinker kids and David O'Brien successfully tailored their protests to the visual media of the time.

Today, citizens sometimes need to push the envelope a little more to catch the media's eye. To move on to more modern times, it is safe to say that the America we have been living in since September 12th, 2001 is not the same America as it was on the morning of September 11th 2001. We have since deployed many of our brothers, sisters, friends and parents to the Middle East to participate in an extremely controversial war, the way we travel has greatly changed, and new stereotypes have certainly been born into our American culture to name a few alterations. There have been a few recent first amendment cases that are unique to this time period, indicating that they may not have occurred if America was not involved in war. The two cases I will cite are Snyder vs. Phelps (Fred Snyder, leader of the Westboro Baptist Church) and a case that is in fact not a legitimate "case" yet, but has had citizens from all over the world quite riveted: Julian Assange and the *Wikileaks* scandal.

Snyder vs. Phelps was a highly publicized First Amendment case regarding members of the Westboro Baptist Church. Headed up by Fred Phelps, the WBC makes their business traveling across the United States picketing funerals of American military members to communicate "God's hate for the United States" due to its tolerance of homosexuality, particularly in the military. Since the United States Military has always supported the "Don't ask, don't tell" ideology (In fact, due to new legislation military members are now allowed to ask, *and* tell) the Westboro Baptist Church communicates that God punished US troops by allowing them to die in the line of fire. In this particular case, the members of WBC traveled to Maryland to picket the funeral of Marine Lance Corporal Matthew Snyder who was killed in action in Iraq. The late Matthew Snyder's father brought charges up against the Phelps and his church for "intentional infliction of emotional distress, intrusion upon seclusion, and civil conspiracy" (*Supreme.Justia.com*). Phelps immediately sought to challenge the charges, citing that the First

Amendment protected WBC's right to picket funerals. It was eventually decided by the US Supreme Court on March 2nd 2011 that Phelps and his church were indeed protected under the First Amendment "because [their] statements were on matters of public concern, were not provably false, and were expressed solely through hyperbolic rhetoric" (*Supreme.Justia.com*). The outcome of this case begs the question: where does the "Free Speech" draw the line? The First Amendment exists to protect citizens' rights without ever considering emotion. Although First Amendment cases may sometimes yield personally disagreeable outcomes, as Americans we must hold our heads up and carry on, because the Bill of Rights and the Constitution are strong parts of the ideology that America is built upon.

The final "case" to discuss will be that of Julian Assange and the recent and ever-publicized *Wikileaks* scandal. This is undoubtedly the most complicated case cited thus far because it is not limited to the United States. Assange's *Wikileaks* website encompasses the use of the internet making it a concern of international proportions.

Wikileaks is a nonprofit "whistle-blowing" website/organization headed up by Australian "internet activist" Julian Assange. The website first gained notoriety for "releasing thousands of sensitive US documents relating to the wars in Afghanistan and Iraq" In mid 2010 ("WikiLeaks.org Is Dead; Long Live WikiLeaks.ch"). Previously *wikileaks.org*, in December 2010, EveryDNS, the American company that provided the Assange's site its domain name yanked it from the web causing *Wikileaks* to "hop" from IP address to IP address. The well-respected online retailer known as *Amazon* also used to provide the website a home on the net, but after receiving much pressure from Senator Joe Lieberman (chairman of the senate committee on Homeland Security) and Secretary of State Hillary Clinton, to name a few, *Amazon.com* denied *Wikileaks* access to its servers as well. Here is where the question of free

speech comes in. Did Amazon violate the principles of the First Amendment by denying *Wikileaks* access to its servers? (Shaer) As journalist Rebecca MacKinnon points out in an article published on *cnn.com*, in the “internet age, public discourse increasingly depends on digital spaces created, owned and operated by private companies [like Amazon].” Additionally, Marcia Hoffman of the Electronic Frontier Foundation comments that “[The] best way to promote free speech is to continue to speak about things that you don’t like. The worst thing you can do is shut someone else down” (“Silencing *Wikileaks*”). So was Amazon indeed in the wrong? The retailer and internet big shot clearly had an extremely difficult decision to make denying *Wikileaks* space on their server, but since they are a company based out of America, and Assange’s organization was aiding in the exposition of quite a bit of America’s dirty laundry, did they have the right to retaliate in such a way?

This scandal has literally been splashed all over internet and television news media in the past year. Oddly enough, Assange is currently awaiting trial in Sweden for a charge seemingly completely unrelated to *Wikileaks* in any way. (Despite all of the controversy regarding the content of the website, have no fear, it can still be accessed at *wikileaks.ch* according to the National Business Review).

So what do the previously mentioned cases from the 1960s and today have in common? It is clear that all of the cases involved citizens who definitely knew how to make their voices heard by the country or even on an international scale. The Tinker kids, O’Brien, Phelps, and Assange completely utilized the genre of media most prominent for their respective time period; they found the medium that they knew would be most communicable whether it was visual imagery, inappropriate and outlandish acts at somber events, or internet scandal, and ran with it. In every case, those involved indeed pushed James Madison’s First Amendment to its absolute

limits, and they learned how to do so while being vastly represented in the media's eye. How do you suppose it is that the Westboro Baptist "Church" in fact is essentially comprised only of Phelps and his immediate family members? The media hype surrounding their case certainly makes it seem that this tiny church in Topeka, Kansas *must* have more members than can be considered two generations of one bloodline. And in *Tinker vs. Des Moines*: how many small-town teenagers in history have known how to push such a limit with free speech that they can get the Supreme Court to side with them over an entire school district? The respective media for each generation has taken these cases and completely dissected them for all the world to see, the difference today is that *you* can put your two cents in as well. With internet mediums such as commenting features on news websites, personal blogs, and social networking sites, posting your opinion for the entire world to see may be as easy as typing it up and hitting "enter." These examples go to show that in the grand scheme of the evolution of media, if you have an opinion, no matter how outlandish it may seem, find the proper medium and voice it. It is important that we take advantage of our modern day ability to interact and share information and beliefs on a global level. Exercise your right to free speech, it feels good. You may even find yourself to be an important part of history someday, and you'll certainly, at the very least, make James Madison proud.

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