

7.4 The Free Exchange of Ideas

Freedom of Speech and Freedom of Press guarantees are meant to:

- Protect each person's right of free expression, whether spoken, written, or communicated in any other way.
- Protect all persons' right to a complete discussion of public affairs.

Freedom of Speech and Press do not protect:

- **Libel**, the false and malicious use of written words
- **Slander**, the false and malicious use spoken words
- **Obscenity**
- Words that incite others to commit crimes

7.4 The Marketplace of Ideas

In 1919, Justice Holmes filed a dissent in *Abrams v. United States* in which he created the powerful and enduring "marketplace of ideas" metaphor to encapsulate the concept of freedom of speech. In the marketplace metaphor, ideas compete against one another for acceptance -- with the underlying faith that truth will prevail in such an open encounter.

7.4 The Marketplace of Ideas

Holmes wrote in his *Abrams* dissent: "But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas -- **that the best test of truth is the power of the thought to get itself accepted in the competition of the market** That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment."

7.4 Seditious Speech

Congress has enacted three major laws to suppress speech:

- **The Alien and Sedition Acts**—made scandalous or false criticism of the government illegal. Expired before Thomas Jefferson took office in 1801.
- **The Sedition Act of 1917**—made it a crime to encourage disloyalty or spread anti-government ideas during a time of crisis. Upheld by the Supreme Court in instances of “clear and present danger.”
- **The Smith Act of 1940**—forbade advocating violent overthrow of the government, and belonging knowingly to any group that does. The Supreme Court still upholds the constitutionality of the law, but over time has modified it so that it is difficult to enforce.

7.4 Limits on Expression

Should sedition be a limit on expression?

Obscenity

Commercial Speech

Libel, slander

7.4 Obscenity

Obscenity Test laid out in *Miller v. California*, 1973

- 1) The average person finds that the work appeals to “prurient interests” judging from contemporary standards.
- 2) The work describes offensive sexual conduct that is specifically outlawed as obscene.
- 3) The work lacks serious value of any variety.

7.4 Commercial Speech

- For many years, it was believed that the 1st and 14th Amendment guarantees did not protect advertising.
- In a handful of decisions in the 1970s, the Court held that advertising was protected, but not without exceptions.
- Exceptions include: barring false and misleading advertisement, advertising illegal goods or services, and the promotion of tobacco products on the radio or television