

The Research on the Legal Process about Freedom Right of the Press in United States

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Abstract

Throughout the development history of communication, the state power always takes a variety of methods to impede the free spread of information, so as to vindicate their rule and authority. Promulgating laws is the most effective and most used method to ban the right of publish freedom and the right of inform. Face to so rigorous restriction of state power, the public made long term and hard fight for free spread of information. The paper focus on the regulations which concerned about journalism in colonial period and democratic period of American and want to interpret the struggle public made in order to strive for the free spread of information. Under the pressure public made, the government has to change policies and laws and guarantee the freedom right to public. But at the same time, the power factor still strong enough to influence the free spread of information and still is able to control the press if it want. There is a long way to go to the freedom world.

Key words: free spread of information; journalism regulation; power factor

"Freedom of the press belongs to the people",[1] which includes freedom of the publish, freedom of the news gathering, freedom of the spread and freedom of supervision. Freedom of the press belongs to every citizen.

Media must meet the public demand for information in order to survival and development,so the freedom right of the press has vital significance to them. These makes the news media express positive attitude in the fight for the freedom right of the press of the positive. From this point, "the news media make efforts to get the freedom right of the press on behalf of the people's wishes and demands",[2] in the appeal to the freedom right of the press, the citizens and the news media is consistent. The legal incidents mentioned in this article include the efforts made by citizens and the media in the fight for freedom of the press.

The United States is a country with separation of power system, and also a country with a high degree of freedom of the press. Freedom of the press is expressly written into the constitution.According to the spirit of the first amendment, news agencies and individuals have the right to express opinion freely, spread news without being restricted.people's freedom of speech and publication can not be deprived by any form.[3] It can be said that the treaty which protection freedom of the press was written in the constitution have landmark significance.But the legal process about freedom right of press in American have never lack of participation and promotion of citizens and news media.

The North America Colonial Period --- the People's Demurrer and Resistance Break through the News Blackout

British as the suzerain of North America colonies is inevitable affect the social, political and economic of the colonies at that time, press and news field is no exception. Before the war of independence, the British implement the strict control to the journalism and use a variety of means to suppress the news institutions, such as the censorship and libel abuse. there is no freedom right of press in North America colonies. With the development of society and the formation and awakening of the national consciousness, the people of the colony can not stand the oppress of the British government, and the demand on freedom of the press was more and more intensity. the most representative of the case was "The Zenger Trial" . At that time, the colony only have one newspaper---New York Gazette, it was founded by William Bradford in November 8, 1725 and the newspaper supported the British colonial government on all issues. So the colonial people lack the news platform for public discourse, the public expression of social affairs can not be carried out.

By 1733, a moderate revolution took place in New York, and some wealthy bourgeoisie hoped that Zenger would be able to run a newspaper as a tool to express their opinions and news releases. In November 5, 1733, the New York Weekly which Zenger set up officially published. At the beginning of the publication, there was confliction with the colonial government. New York Weekly not only reported the news, but also often published messages attacks on the governor and the British colonial government. The publish of the New York Weekly broke the restriction of British colonial government in the field of Journalism and communication in a certain extent. Although the New York Weekly is founded under the support of some wealthy bourgeois, but under the high oppress of the British colonial rulers, the requirements of American colonies emerging bourgeoisie and people's was consistent. This paper maintain the free flow of information principle in a certain extent, welcomed by readers. However, the New York Weekly led to the dissatisfaction of the colonial government, so the British colonial governor arrested and sue Zenger by a charge of "stir up the trouble". At that time, the famous lawyer Andrew Hamilton defend for Zenger. Under the debate, he illustrates the two famous principle of defamation: (1) the authenticity of the report is an important basis for judging slander, "only a lie is false, malicious and provocative", [4] and a true statement itself is does not constitute defamation. (2) Follow the principles of justice, to judge the libel and slander, the jury should play a more important role.

Under Hamilton's plea, the judge finally decided that the Zenger was not guilty. The significance of the case is that it inspired the consciousness of the freedom of the colony people, and made the public see the possible to get freedom right of press, and laid the foundation for the awakening of national consciousness.

Since then, the British authorities promulgated the Stamp Act. The Act defined the newspaper, certificates, bills, notes, bonds, proclamations and all presswork need to pay half pence to twenty shillings for tax, which was actually in the economic blow to the colonies newspaper industry, violated the freedom rights of the press of colonial people. In this case, some newspaper closed; some newspapers hidden to the registration or header avoiding stamp duty to express their dissatisfaction; some newspapers published notice that could not buy a stamp. In a series of actions of anti Stamp Act, the Stamp Act successfully abolished. [5]

THE WAR OF INDEPENDENCE PERIOD -- CONSTITUTIONAL PROTECTION THE FREEDOM OF PRESS

In 1776, the War of Independence was outbreak. the war was under the leadership of the bourgeoisie in the North American colonies in order to get rid of the control of the British, to

fight for national independence. During the war, the thirteen states of the United States unanimously adopted The Declaration of Independence, declared that "all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness."

In 1787, after the victory of the war, the Federal Constitutional Convention held in Philadelphia, enact the constitution of the United States and established the Republic. But Constitution did not talk about safeguard citizen freedom right of speech and other related terms at the beginning which led to fierce debate between Federalists and anti Federalists in this aspect. After effort of the anti Federalists and public opinion pressure, Bill of Right had been established. It stipulated "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." [6] This had become the cornerstone of the freedom of speech and the press, reflecting the restriction of government power and the maintenance of civil spirit freedom, so that the freedom of the press and information flow from the legal point of view can be fundamentally guaranteed. [7]

THE INITIAL STAGE OF THE NEW STATE - THE ESTABLISHMENT AND ABOLITION OF THE SEDITION ACT

The early period after the founding of the United State, the party newspaper is one of the major characteristics of the press, the Anti- Federalists and the Federalists express their political opinions by their own newspapers, even at the expense of mutual slander and abuse. This period is called the political party newspapers. "Journalism has actually become the tool of bourgeoisie contend for power and coordination the idea". [8] In order to safeguard the interests of the party, the ruling party would not hesitate to enact the law to attack political opponents, even if the freedom of press would be restricted by the law. In 1798, President John Adams asking Congress to pass a "Sedition Act" by the excuse of defended the country's regime which was mainly to limit the indocile editors. The Sedition Act attempts to constrain the Anti-Federalists express their idea and break the principle of freedom of press. The law announced that all the Fabricated, slander and malicious words which attack to government, Parliament, President or incite the people to against the government will be fined and imprisoned. In this way, the right of supervising the government is imprisoned in the form of legislation, and this kind of power is one of the foundation stone of the freedom of the press.

In addition, Congress had also enact the "Nationality Law" and other laws. The establishment of a series of legal provisions in the name of the protection of the national social order, but in reality is to fight against the political opposition and limit the freedom of information communication. Just like Fred Seibert said that the Federalists use the law to achieve the purpose of political, freedom right of speech and the free flow of information become the victim of the political struggle and contradiction with the democratic principles in the minds of the American public. [9]

In the face of the situation, it is bound to arouse the public's strong opposition and dissatisfaction. The representative example is the "Leon incident", Leon wrote a letter to the editor of the attacks on President Adams's remarks, was convicted and sentenced to a fine. In the subsequent event development process, Leon got the support of the public and the press, they take the petition and publish a notice in the newspaper to express strong dissatisfaction to the government authority. Leon was released in February 1799 finally and returned to the capital city of philadelphia in victory.

The struggle of the Federalists and the Anti-Federalists was permeated with the understanding of the national policy and the freedom of the press. Once the party took power, the ruling party would consider the interests of the self-party and make the freedom of the press was in accordance with the practical requirements of the ruling party.

Through the above analysis, the real meaning of the spirit of freedom of press had been restricted from the level of legislation is self-evident. Under pressure from the public and news media, these laws were abolished by then president T Jefferson in March 3, 1801.

NATIONAL WAR -- NEWS BLACKOUT BEYOND NATIONAL SECURITY

After the War of Independence, the country appeared several times war in the history. War is a special period of a country, a lot of policy will be a major change, the news is no exception. The ruling authorities are often develop a series of legal provisions to restrict the freedom of the press and information flow in order to protect the social interests and national security. Actually, it is understandable and should be carried out to control the news spread during the war for the security of the country. However, sometimes the restrictions beyond the needs of national security, which aroused strong dissatisfaction and opposition of the public and the news media. There will be a conflict of restrictions and anti-restrictions.

From the Civil War in 1861、the World War I、the World War II to the Iraq War , the government enact the relevant laws to limit the content of the news agency and the news media in order to ensure that the news dissemination will not have a negative impact on the society and the country. In 1914, World War I broke out , a week after the United States declared, the President Wilson set up a public advisory committee, which is nominally coordinating the wartime propaganda work, and is responsible for the communication between the government and the news agency. But it is censorship institution, they have power to provide information or conceal information to meet the propaganda needs of the government in wartime. The censorship mechanism is easy to be abused, The extent of cover up the information in public advisory committee had exceeded the requirements of national security .[10]

the World War II broke out in 1939, the United States join in the war in December 1941. January 15 1942, the U. S. government establish the "American newspaper wartime behavior criterion". The standards require that all the press items shall not publish the news which relevant forces、aircraft、ships、wartime production. More than ten thousand employees of Press Inspection Bureau made mandatory inspection to the mail, Telegraph and radio communications between the United States and other overseas countries. At the same time, the military's censorship of the press has come back and was very strict. This power had been considered too powerful and it is easy to abuse. The censorship of the press had exceeded the needs of the national security in wartime.

The "Kennedy Incident" displayed the strong contradiction between the freedom of the press and news censorship. Edward Kennedy in charge of AP news in the western front. he revealed the surrender date of Germany without any approved. Kennedy was sued, Kennedy defend himself in court and said that "my behavior is necessary to resist a unnecessary political censorship" . [11]The significance of the "Kennedy Incident" is that the press media say no with courage when they face the news censorship system beyond the need of the national war. The event challenged the authority of the government and the military and led to the government take a relatively cautious attitude to enact the censorship system in wartime.

THE PROCESS OF MODERN DEMOCRACY -- THE GOVERNMENT INFORMATION UNDER THE SUNSHINE

The cornerstone of freedom of the press is the right to supervise the government and its officials, the principle has been initially established from "The Zenger Trial". the right to know the government information and the right to publish the information was the two important condition which respect the freedom flow of information .

At the end of the 40s of the 20th century, the Radio Television News Directors Association, the Professional Journalists Association, American Newspaper Editor Association and American Editorial Director Association launched a movement of public records and freedom of information. Through the efforts of all parties, in 1970, 45 states enacted laws and regulations on public government affairs. In 1955, the House of Representatives established Government Information Commission which led by John E Moss. The Commission get the right to amend the "internal regulation" in 1789 and broken through the restrictions on the right to know. At the same time, the Commission has also made some progress in limiting administrative privileges.

Under the influence and pressure of the Commission and the public, the government of the United States had issued a series of laws aimed at disclosure government information according to the change of the society. On July 4, 1966, President Lyndon Johnson signed the "Freedom of Information Act", the law provides that: if federal officials to withhold public affairs information which does not belong to the law explicitly exempted special field, citizens had the right to sue him a year later. In 1974, the "Freedom of Information Act amendment" enacted, the amendment requiring the federal government to publish detailed rules about the procedures of access to information, copy costs, the response time, the manner of collect information, judicial review, the punitive measure to officials who refuse to provide information arbitrarily and so on. In 1995, all 50 states enacted the law of public government record and official meetings .[12]

These laws are called the legal system of the right to know in the process of modern democracy. With the promulgation of these laws and regulations, the public's right to know in the United States in the gradual expansion. [13]The disclosure of government information has provided a great amount of information to the news agency, which has satisfied the public and the news agency's right to know. From the point of view of law, it is the guarantee of freedom of the press and the free flow of information, which has promoted the development of modern democratic society.

CONCLUSION

In this paper, the typical cases of the public to strive for the freedom of the press in five representative period in United States are selected and explained. The struggle between public demand and government power, democratic consciousness has been deeply rooted in the hearts of the people and the public society and to promote the improvement of the degree of freedom of the United states.

But at the same time, the power to restrain the freedom of press still powerful. In the period of national war, power of the government and the military can still affect the freedom of the press, the government and military can confine freedom of the press beyond the needs of national security. Sometimes, news even become part of the U.S. military machine .[14]

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