In the United States, the concept of freedom of speech and freedom of the press is so fundamental, it is often taken for granted. From Watergate to Whitewater, Americans expect their news media to freely report on the controversial issues surrounding their government and political leaders.

While certain limits on press freedom have sometimes been deemed necessary in times of national crisis, most Americans never question the basic premise that a free press is crucial to a free society. This wasn't always the case, however.

In early colonial times, freedom of the press as a legal right did not exist and a newspaper publisher could be fined or even thrown in jail for writing a critical story about a government official — even if the story was proven to be true.

One of the first and most significant events that helped change this state of affairs occurred in 1735 in colonial New York. The incident — which set the stage for future events that shaped the right to free speech in the US — involved an ordinary German immigrant, many of New York's elite and some nasty politics.

The Death of a Governor and the Birth of a Newspaper

The newspapers of pre-revolution America were a dull affair, consisting mostly of advertisements and reprints of European news reports. The main impediment to a more vibrant press was governmental censorship. In those days, almost any printed criticism of the government was considered a crime, and few publishers were brave enough to risk imprisonment by printing something that might irk a government official.

By the early 18th century, with the political tensions between the colonies and England rising, stirrings from the public were heard to end the government's control of the press. In 1731, a chain of events started that would push some New Yorkers, frustrated with timid news reporting, into action and set off one of the defining moments in American journalism history.

It all started with the death of the colonial governor of New York. To take his place, William Cosby was appointed, the former governor of the Island of Minorca. Cosby chose to remain in England for another 13 months, while in New York a government official named Rip Van Dam governed in his place. When Cosby finally arrived in New York in 1732, he demanded half the pay Van Dam earned while acting as governor. Van Dam refused and Cosby promptly sued. During the subsequent court proceedings, one of the judges hearing the case, Chief Justice Lewis Morris, ruled against Cosby. In retaliation, the governor removed Morris from office.

These acts, along with other instances of questionable governing, infuriated Cosby's critics, who wished to make public what they saw as the governor's tyrannical actions.

However, the only newspaper in town at the time was the New York Gazette, a loyal organ of the Cosby administration. To counter the pro-government bias of the Gazette, Cosby's critics, led by Van...
Dam, Judge Morris and the well-known lawyer James Alexander, decided to start their own journal. They called their newspaper *The New-York Weekly Journal* and hired a German immigrant named John Peter Zenger to print it.

Although Zenger didn’t write any of the articles that would soon land him in jail — the *Journal’s* anti-government articles were written by the paper’s intellectual backers — as its publisher he was legally responsible for everything the paper printed.

The first issue of the *Journal*, which appeared on 5 November 1733, accused Cosby of harassing voters and immediately turned the placid, predictable newspaper world of New York into a venue for a furious political brawl.

Another issue covered the governor’s oppressive behavior — “We see men’s deeds destroyed, judges arbitrarily displaced, new courts erected without consent of the legislature by which... trial by jury is taken away when a governor pleases.”

Since public criticism of a government official was extremely rare, readers followed the frequent attacks with delight. Cosby, however, was enraged. The governor’s first act of retribution was questionable in both its efficacy and its public relations impact — he had several of the *Journal’s* more damning issues publicly burned.

Things grew more serious when on 17 November 1734, Zenger was arrested and jailed on charges of seditious libel.

**The Trial of John Peter Zenger**

With Zenger in jail and his wife taking up the work of publishing the *Journal*, Alexander and the rest of his allies set about planning Zenger’s defense. It wasn’t going to be easy.

The charge of seditious libel was based on English legal precedents prohibiting statements that could incite the public against the government. Under this legal tradition, the prosecution would only have to prove that Zenger’s newspaper had published the articles in question. There could be no consideration by the jury of whether the statements were true or libelous. This put Alexander, who acted as Zenger’s lawyer, in the most untenable position of defending someone who had published the evidence of his guilt in his own newspaper.

Zenger’s fate grew even darker after Alexander was disbarred early in the pre-trial proceedings for arguing with the judge. This forced Zenger’s defenders to quickly find another lawyer brave, or reckless, enough to take the case. They decided to aim high and prevailed upon the most famous attorney of the day, Philadelphia lawyer Andrew Hamilton. Although he was 60 and described himself as “old and weak”, Hamilton agreed to risk his reputation and health on a controversial case that seemed doomed from the start. The trial took place at City Hall and would open and close in one day, 4 August 1735.

With Hamilton arguing for the defense, few in the courtroom doubted there would be drama, but no one could have predicted the lawyer’s first words, which amounted to an admission that his client had indeed committed the alleged offense. “I do confess that he both printed and published the papers set forth in the [indictment].”

Over the course of the trial, Hamilton continued, “I do not hope in so doing he has committed a crime.”

This Go delighted the prosecutor, who knew that the jury was only required to decide on whether Zenger had published the criticisms, regardless of their truthfulness. It seemed to most people in the courtroom that since Zenger’s own lawyer had just admitted this point the jury had no option but to convict.

Hamilton, however, was not finished. Citing precedents dating back to Magna Carta and in words that brought cheers from the spectators, Hamilton derided the law and insisted that truth was indeed “Th[e] first and most important of [all] natural rights” which the papers set forth in the *New-York Weekly Journal*.

Top, a page from Zenger’s *New York Weekly Journal* newspaper, following the trial and Zenger’s landmark *Not Guilty* verdict. In the article, Zenger thanks a lengthy list of participants including his solicitors and jury members. Left, a painting depicting the case’s various lawyers, judges and jury members.
The trial of John Peter Zenger was a momentous one but a complex one as well. As for the unfortunate Governor Cosby, things did not improve after his bitter disappointment over the verdict. He fell ill that winter and died the following March, with the stain of the Zenger affair still very much on his reputation.

**Psychological Impact**

The historical legacy of the Zenger trial is a momentous one but a complex one as well. While most citizens rejoiced over the verdict, many others worried about the detrimental effects that could follow when popular sentiment trumps the law, as it did in the Zenger verdict.

The legal effects of the trial were also murky. On the most basic level, the trial was only an isolated victory for Zenger and his supporters, with no actual legal precedents being set. In fact, it's very likely that the Zengerites would have again felt the wrath of the governor's office had Cosby not died so soon after the trial, he not being one to take such a defeat quietly.

The importance of the Zenger case lies instead with its great psychological impact on the early American consciousness.

In a broad sense, the Zenger case proved that the colonists could successfully rebel against British laws they considered unfair and unnatural. In this respect, Zenger's acquittal would foreshadow events such as the Boston Tea Party of 1773 and the Revolutionary War itself.

More fundamentally though, it showed how powerful the yearning for a free press and free speech was to the colonists. Hamilton's plea was one of the earliest and most eloquent expressions of the right to criticize the government without fear of retribution. Hamilton's words and the popular support for the verdict would later be a tremendous influence and inspiration to the founders of the new nation.

It is fitting then, that New York's City Hall, the site of John Peter Zenger's trial, would later become Federal Hall, site of the signing of the Bill of Rights in 1789, which prohibited the abridgement of "freedom of speech, or of the press."

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Further Reading: