

Questions on Holmes, Brandeis, and Harlan Supreme Court opinions

1. Holmes starts para. 58 of his ‘Abrams’ dissent with ‘Persecution for the expression of opinions seems to me perfectly logical,’ but ends up asserting that ‘we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death.’ What is the argument behind the first quoted sentence, and what is Holmes’ rebuttal of it, which concludes with the second quoted sentence?
2. In his ‘Whitney’ concurrence Brandeis holds that ‘Only an emergency can justify repression [of speech].’ What are his reasons? Do you think they are good ones?
3. Harlan writes that Cohen’s conviction can be justified, if at all, only ‘as a valid regulation of the manner in which he exercised that freedom [of speech], not as a permissible prohibition on the substantive message it conveys.’ Why does he think that, in this case, Cohen's manner of expression should not be illegal? (Okay for you to come to class with one of his reasons; he lists four.) If the law had been written differently, would Cohen’s conviction have survived Harlan’s scrutiny? How differently?



This image is in the public domain.

MIT OpenCourseWare
<https://ocw.mit.edu/>

24.150J / 17.043J/ CMS.125J Liberalism, Toleration, and Freedom of Speech
Fall 2023

For information about citing these materials or our Terms of Use, visit: <https://ocw.mit.edu/terms>.