**Πότε μπορεί να διωχθεί πολιτικός λόγος που υποστηρίζει τη χρήση βίας ή παράβασης του νόμου;**

**Abrams v. United States, 250 U.S. 616 (1919)**

Μειοψηφία δικαστή Holmes:

Congress certainly cannot forbid all effort to change the mind of the country. …

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,** and that truth is the only ground upon which their wishes safely can be carried out. That, at any rate, is the theory of our Constitution. It is an experiment, as all life is an experiment. … While that **experiment is part of our system**, I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, **unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country**. … Only the emergency that makes it immediately dangerous to leave the correction of evil counsels to time warrants making any exception to the sweeping command, "Congress shall make no law . . . abridging the freedom of speech." Of course, I am speaking only of expressions of opinion and exhortations, which were all that were uttered here, ….

**Gitlow v. New York, 268 U.S. 652 (1925)**

Μειοψηφία δικαστή Holmes:

If what I think the correct test is applied, it is manifest that there was no present danger of an attempt to overthrow the government by force on the part of the admittedly small minority who shared the defendant’s views. **It is said that this manifesto was more than a theory, that it was an incitement. Every idea is an incitement. It offers itself for belief, and, if believed, it is acted on unless some other belief outweighs it or some failure of energy stifles the movement at its birth.** The only difference between the expression of an opinion and an incitement in the narrower sense is the speaker’s enthusiasm for the result. **Eloquence may set fire to reason.** But whatever may be thought of the redundant discourse before us, it **had no chance of starting a present conflagration**. **If, in the long run, the beliefs expressed in proletarian dictatorship are destined to be accepted by the dominant forces of the community, the only meaning of free speech is that they should be given their chance and have their way.**

O Holmes απαντά στην πλειοψηφία που λέει:

**utterances advocating the overthrow of organized government by force, violence** and unlawful means … by their very nature, **involve danger** to the public peace and to the security of the State. They threaten breaches of the peace, and ultimate revolution. And the immediate danger is none the less real and substantial because the effect of a given utterance cannot be accurately foreseen. The State cannot reasonably be required to measure the danger from every such utterance in the nice balance of a jeweler's scale. A single revolutionary spark may kindle a fire that, **smouldering for a time**, **may burst into a sweeping and destructive conflagration.**

**Whitney v. California, 274 U.S. 357 (1927)**

Μειοψηφία δικαστή Brandeis:

This Court has not yet fixed the standard by which to determine when a danger shall be deemed clear; how remote the danger may be and yet be deemed present, and what degree of evil shall be deemed sufficiently substantial to justify resort to abridgement of free speech and assembly as the means of protection. To reach sound conclusions on these matters, we must bear in mind why a State is, ordinarily, denied the power to prohibit dissemination of social, economic and political doctrine which a vast majority of its citizens believes to be false and fraught with evil consequence.

Those who won our independence believed that **the final end of the State was to make men free to develop their faculties**, and that, **in its government, the deliberative forces should prevail over the arbitrary**. **They valued liberty both as an end, and as a means**. They believed liberty to be the secret of happiness, and courage to be the secret of liberty. They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that, without free speech and assembly, discussion would be futile; that, with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that **the greatest menace to freedom is an inert people**; that public discussion is a political duty, and that this should be a fundamental principle of the American government. **They recognized the risks to which all human institutions are subject.** But they knew that **order cannot be secured** merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; **that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies**, and that the fitting remedy for evil counsels is good ones. Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law -- the argument of force in its worst form. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed.

Fear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burnt women. It is the function of speech to free men from the bondage of irrational fears. To justify suppression of free speech, there must be reasonable ground to fear that serious evil will result if free speech is practiced. There must be reasonable ground to believe that the danger apprehended is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one. Every denunciation of existing law tends in some measure to increase the probability that there will be violation of it. Condonation of a breach enhances the probability. Expressions of approval add to the probability. Propagation of the criminal state of mind by teaching syndicalism increases it. Advocacy of law-breaking heightens it still further. But even advocacy of violation, however reprehensible morally, is not a justification for denying free speech where the advocacy falls short of incitement and there is nothing to indicate that the advocacy would be immediately acted on. The wide difference between advocacy and incitement, between preparation and attempt, between assembling and conspiracy, must be borne in mind. In order to support a finding of clear and present danger, it must be shown either that immediate serious violence was to be expected or was advocated, or that the past conduct furnished reason to believe that such advocacy was then contemplated.

Those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty. To courageous, self-reliant men, with confidence in the power of free and fearless reasoning applied through the processes of popular government, **no danger flowing from speech can be deemed clear and present unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion. If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence**. **Only an emergency can justify repression.** Such must be the rule if authority is to be reconciled with freedom. Such, in my opinion, is the command of the Constitution. It is therefore always open to Americans to challenge a law abridging free speech and assembly by showing that there was no emergency justifying it.

Moreover, even imminent danger cannot justify resort to prohibition of these functions essential to effective democracy unless the evil apprehended is relatively serious. …There must be the probability of serious injury to the State. Among free men, the deterrents ordinarily to be applied to prevent crime are education and punishment for violations of the law, not abridgment of the rights of free speech and assembly.

 ..I am unable to assent to the suggestion in the opinion of the Court that assembling with a political party, formed to advocate the desirability of a proletarian revolution by mass action at some date necessarily far in the future, is not a right within the protection of the Fourteenth Amendment.

Οι ανωτέρω αποφάσεις ανατράπηκαν στην ***Brandenburg v. Ohio*,** 395 U.S. 444 (1969), η οποία υιοθέτησε ένα ακόμη πιο φιλελεύθερο κριτήριο, θεωρώντας ότι δεν αρκεί ούτε το κριτήριο του άμεσου, παρόντος και σοβαρού κινδύνου, αλλά απαιτείται πάντοτε (δηλ. όχι διαζευκτικά, όπως στον Brandeis) σκοπός και κατεύθυνση υποκίνησης σε άμεση άσκηση βίας ή παραβίασης του νόμου: «*Whitney* has been thoroughly discredited by later decisions.  These later decisions have fashioned the principle that the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.