The guarantees for freedom of expression in the United States are found in the speech-press clause of the First Amendment. The language is quite specific in stating that "Congress shall make no law . . . abridging freedom of speech, or of the press." In 1925, the Supreme Court interpreted this provision to apply to the states through the "due process" clause of the Fourteenth Amendment.[12]

U.S. court interpretations have largely held in favor of promoting individual rights, both of citizens and of the press, against directly promoting interests of community or the broader societal good. At one extreme, the argument is made that the First Amendment was intended as a proscription against government in matters of free expression, including freedom of the press, and nowhere does it say the press must be responsible. Others argue that the broader societal interests are advanced by protecting these rights essential to the workings of a free democratic society. At the other extreme are those who argue that the speech-press clause requires an *ad hod balancing of interests*. Supreme Court Justice Brennan proposed a "two-tiered" approach to the First Amendment allowing for the application of a more absolutist "speech model" in some instances and a "structural model" in others when a balance of freedoms is more appropriate.[13]

In Canada, on the other hand, provisions of the more positive affirmation in Section 2(b) of the Charter of Rights and Freedoms are qualified in a manner that supports the broader community or societal interests through Section 1, which guarantees these freedoms but "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." According to Martin and Adam in their *Sourcebook of Canadian Median Law*, this substantially expanded the scope of judicial review in Canada by conferring on the courts "the additional and extraordinary power to examine whether contested legislation conforms to the values and declarations in the Charter."[14] Before that, the courts dealt mainly with questions of jurisdiction between the provinces and the federal government. Community interests in Canada are further accommodated in Section 33(1) of the Charter by allowing Federal Parliament or provincial legislatures to pass laws in compliance with Section 1 *notwithstanding* the protections of Section 2(b).

Despite these fundamental differences in the form and approach to press freedom and other basic rights in the two countries, an important emerging similarity is the expanding role the courts must play in defining and applying these protections. While this has long been the case in the United States, it is increasingly the case in Canada since enactment of the new Constitution in 1982 with its entrenched Charter of Rights and Freedoms. As Martin and Adam explain:

> "Canada's Constitution acquired some of the characteristics of the U.S. Constitution when the scope of judicial review was expanded so drastically. The Supreme Court of Canada began to exercise powers long held by the Supreme Court of the United States, this despite the fact that Canada purports to be a parliamentary democracy rather than a republic. Parliamentary democracies are marked by an acceptance of a basic constitutional rule that Parliament is supreme. The Canadian version of the principle, until 1982, was that Parliament was supreme in its domain and the provincial legislatures were supreme in theirs. From another

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

[13] William J. Brennan, Jr., "The Symbiosis Between the Press and the Court," *The National Law Journal*, 2, no. 2, (October 29, 1979).

[14] Robert Martin and G. Stuart Adam, *A Sourcebook of Canadian Media Law. Second Edition* (Ottawa: Carleton University Press, 1994) at 71.