



Burning the Flag or Torching the Constitution: Only One Destroys Freedom

[“There is more than one way to burn a book. And the world is full of people running about with lit matches.”](#) — Ray Bradbury

Cancel culture — political correctness amped up on steroids, the self-righteousness of a narcissistic age, and a mass-marketed pseudo-morality that is little more than fascism disguised as tolerance — has shifted us into an Age of Intolerance.

Nothing illustrates this more clearly than President Trump’s [latest executive order](#) calling for criminal charges for anyone who burns the American flag — a symbolic act long upheld by the Supreme Court as protected political expression.



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This push is not about patriotism — it is political theater.

For an administration under fire — from the Epstein cover-up to tanking approval ratings and mounting constitutional crises — flag burning serves as symbolic outrage staged as political cover, a culture-war diversion to distract from more serious abuses of power.

Consider the timing: on the very same day Trump announced penalties for flag burning, he also signed [an executive order establishing “specialized” National Guard units to patrol American cities](#) under the guise of addressing crime.

This is the real bait-and-switch: cloak military policing in patriotic theater and hope no one notices the deeper constitutional violations taking root.

In other words, Trump’s flag fight is a decoy.

Yet in today’s climate, where mobs on the left and censors on the right compete to silence speech they dislike, even this form of protest is under fire.

In 1989, [the U.S. Supreme Court ruled 5-4 in *Texas v. Johnson*](#) that burning the flag of the United States in protest is an act of protected free speech under the First Amendment.

Today, that ruling matters more than ever, yet there is an important distinction: the First Amendment protects the right to burn your own flag as political expression but not to vandalize public property in the process.

That distinction matters: *the Constitution protects dissent, not destruction.*

And it’s exactly that distinction — between lawful protest and punished expression — that makes the flag-burning debate so important.

Although the courts have held that symbolic acts of protest deserve the highest protection, the culture wars have turned those protections into battlegrounds. For decades, mobs, politicians, and bureaucrats



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alike have worked to silence unpopular or politically incorrect opinions.

Whether it's a student disciplined for refusing to recite the Pledge, an athlete demonized for kneeling during the National Anthem, or a dissenter deplatformed for expressing views outside the mainstream, the message is the same: toe the line or be punished.

This new Age of Intolerance is not limited to the cultural left.

President Trump has been waging [his own right-wing brand of cancel culture](#): sanitizing museums, scrubbing exhibits of "unpatriotic" narratives, renaming anything that doesn't fit his preferred version of history, and punishing dissenters with executive orders and loyalty oaths.

What the left enforces with trigger warnings and deplatforming, Trump enforces with prosecutions, cultural re-branding and militarization.

They are snowflakes of a different political persuasion, but the result is the same: dissent is silenced, history is rewritten, and only the approved narrative remains.

And here's the danger: when symbolic outrage is used as a political smokescreen for militarization and constitutional erosion, it distracts Americans from the machinery of control being built in real time. The fight over flags and museums is not just about culture — it is the smokescreen for expanding surveillance, militarization, and police-state powers.

That is why the sudden outrage over disrespect for the country's patriotic symbols rings so hollow. In a culture where the flag is already plastered on bikinis, beer koozies, and billboards — with little outcry — it's not reverence that's driving this crackdown. It's control.

Worse, it divides the nation and distracts us from the steady rise of the police state.

So, what do the courts actually say about patriotic symbols and protest?

As the U.S. Supreme Court has made clear, Americans have a right to abstain from patriotic demonstrations (*West Virginia State Board of Ed. v. Barnette*, 1943) and/or actively protest that demonstration, for example, by raising one's fist during the Pledge of Allegiance (*Holloman ex rel. Holloman v. Harland*, 2004). These First Amendment protections also extend to military uniforms (worn to criticize the military) and military funeral protests (*Snyder v. Phelps*, 2011).

Likewise, Americans have a First Amendment right to display, alter or destroy the U.S. flag as acts of symbolic protest speech.

In fact, in *Street v. New York* (1969), the Supreme Court held that the government may not punish a person for uttering words critical of the flag, writing that "the constitutionally guaranteed 'freedom to be intellectually . . . diverse or even contrary,' and the 'right to differ as to things that touch the heart of the existing order,' encompass the freedom to express publicly one's opinions about our flag, including those opinions which are defiant or contemptuous."

The case arose after Sidney Street, hearing about the attempted murder of civil rights leader James Meredith in Mississippi, burned a 48-star American flag on a New York City street corner to protest what he saw as the government's failure to protect Meredith. Upon being questioned about the flag, Street responded, "[Yes; that is my flag; I burned it. If they let that happen to Meredith, we don't need an American flag.](#)"

In *Spence v. Washington* (1974), the Court ruled that the right to display the American flag with any mark or design upon it is a protected act of expression. The case involved a college student who had



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placed a peace symbol on a three by five foot American flag using removable black tape and displayed it upside down from his apartment window.

Finally, in [Texas v. Johnson](#) (1989), the Court held that flag burning was protected speech under the First Amendment. The case arose from a demonstration near the site of the Republican National Convention in Dallas during which protesters marched through the streets, chanted political slogans, staged “die-ins” in front of several corporate offices to dramatize the consequences of nuclear war, and burned the flag as a means of political protest.

In other words, it is precisely the unpopular, controversial, and even offensive expression that the First Amendment exists to protect. As Justice William Brennan wrote in *Texas v. Johnson*, “If there is a bedrock principle underlying the First Amendment, it is that [the government may not prohibit the expression of an idea simply because society finds the idea offensive](#) or disagreeable.”

More three decades later, that principle is constantly betrayed in practice.

In today’s climate, both political tribes are eager to wield censorship as a weapon. One side shouts down speakers; the other side bans books, rewrites curricula, and prosecutes symbolic dissent like flag burning.

The battlegrounds may differ — college campuses versus classrooms, corporate platforms versus government edicts — but the impulse is the same: to punish those who dare to disagree.

It’s all part of the same authoritarian playbook.

Seen in this light, censorship creep in the name of tolerance becomes even more dangerous.

Everything is now fair game for censorship if it can be construed as hateful, hurtful, bigoted or offensive — provided that it runs counter to the established viewpoint.

This is why unpopular political protests such as flag burning matter so much: they are the test case for whether we still believe in freedom “for the thought that we hate.”

If freedom means anything, it means that those exercising their right to protest are showing the greatest respect for the principles on which this nation was founded: the right to free speech and the right to dissent.

Frankly, the First Amendment does more than give us a right to criticize our country: it makes it a civic duty.

Let’s not confuse patriotism (love for or devotion to one’s country) with blind obedience to the government’s dictates. That is the first step towards creating an authoritarian regime.

One can be patriotic and love one’s country while at the same time disagreeing with the government or protesting government misconduct. As journalist Barbara Ehrenreich recognizes, “[Dissent, rebellion, and all-around hell-raising remain the true duty of patriots.](#)”

That spirit is disappearing. Instead, Americans now rush to silence those they dislike.

This selective tolerance — the essence of cancel culture — is exactly what my late friend and First Amendment champion Nat Hentoff used to denounce as “Free speech for me but not for thee.”

Once that mindset takes root, the First Amendment is already half-lost.

That double standard lies at the heart of our present crisis.



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Indeed, I would venture to say that if you're not speaking out or taking a stand against government wrongdoing — if you're marching in lockstep with anything the government and its agents dole out — and if you're prioritizing partisan politics over the principles enshrined in the Constitution, then you're not a true patriot.

Real patriots care enough to take a stand, speak out, protest and challenge the government whenever it steps out of line.

There is nothing patriotic about the lengths to which Americans have allowed the government to go in its efforts to dismantle our constitutional republic and shift the country into a police state.

The irony is this: it's not anti-American to be anti-war or anti-police misconduct or anti-racial discrimination — but it *is* anti-American to be anti-freedom.

What we are witnessing, in the flag-burning debate and far beyond, is a culture war in which political tribes police thought, speech, and even symbolic protest. Those who refuse to conform — whether they burn a flag, take a knee, question authority, or simply refuse to parrot the official line — are demonized, deplatformed, and sometimes even criminalized.

The upshot of all this editing, parsing, banning and silencing is the emergence of a new language, what George Orwell referred to as Newspeak, which places the power to control language in the hands of the totalitarian state. Under such a system, language becomes a weapon to change the way people think by changing the words they use.

And while Orwell imagined it as dystopian fiction, we are living its early chapters now.

The First Amendment is being whittled down not just by government decree but by a culture that rewards conformity and punishes divergence.

In such an environment, burning a flag is not the real danger. The real danger is a society that no longer tolerates free thought at all.

The First Amendment is a steam valve. It allows people to speak their minds, air their grievances and contribute to a larger dialogue that hopefully results in a more just world. When there is no steam valve to release the pressure, frustration builds, anger grows, and people become more volatile and desperate to force a conversation.

The lesson is clear: America requires more than voters inclined to pay lip service to a false sense of patriotism. It requires doers — a well-informed and very active group of doers — if we are to have any chance of holding the government accountable and maintaining our freedoms.

We need to stop acting as if showing “respect” for the country, flag and national anthem is more important than the freedoms they represent.

Listen: I served in the Army. I lived through the Civil Rights era. I came of age during the Sixties, when activists took to the streets to protest war and economic and racial injustice. As a constitutional lawyer, I defend people daily whose civil liberties are being violated, including high school students prohibited from wearing American flag t-shirts to school, [allegedly out of a fear that it might be disruptive](#).

I understand the price that must be paid for freedom.

None of the people I served with or marched with or represented put our lives or our liberties on the line for a piece of star-spangled cloth: we took our stands and made our sacrifices because we believed we were fighting to maintain our freedoms and bring about justice for all Americans.



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Responsible citizenship means being outraged at the loss of others' freedoms, even when our own are not directly threatened.

The Framers of the Constitution knew very well that whenever and wherever democratic governments had failed, it was because the people had abdicated their responsibility as guardians of freedom. They also knew that whenever in history the people denied this responsibility, an authoritarian regime arose which eventually denied the people the right to govern themselves.

Citizens must be willing to stand and fight to protect their freedoms. And if need be, it will entail criticizing the government.

This is true patriotism in action.

Love of country will sometimes entail carrying a picket sign or going to jail or taking a knee or burning a flag, if necessary, to challenge injustice.

As I make clear in my book [Battlefield America: The War on the American People](#) and in its fictional counterpart [The Erik Blair Diaries](#), the real danger isn't someone burning the flag.

The greatest danger we face is the U.S. government torching the Constitution.

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