



America's waning commitment to the promise of the First Amendment

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The creation of the First Amendment by our nation's founders demonstrated a profound commitment to human dignity, reason and the search for truth. First Amendment protections for speech, press and religion affirmed the principle that free expression is part of basic humanity.

The concept was controversial at the nation's founding, with even patriots such as Patrick Henry opposing a First Amendment. Constitutional father James Madison was late to support the idea. John Adams, as president, signed the Sedition Acts into law and imprisoned a number of journalists. Still the principle of free expression has survived, in spite of many legal and cultural challenges.

This philosophical notion remains controversial today, even in the United States, where too many citizens have abandoned the nation's commitment to free expression. The founders viewed the First Amendment as an other-centered concept, creating a functional interdependence in which citizens could enjoy their own rights to self-expression while allowing others to enjoy the same rights. Today, too many Americans take a self-centered approach, claiming their own individual rights, but not acknowledging that the First Amendment protects the free speech of the other guy, too.

First Amendment confusion reigns today in America. A study by Brookings Institution scholar John Villasenor found that a fifth of college students believe using physical force is okay to shut up a speaker who makes an offensive remark. Those college students also believe they get to decide what constitutes "offensive" speech.

Such a mindset explains why people are becoming afraid to even engage in public dialogue.

A Cato Institute study last fall reported that almost three fourths of respondents believe political correctness is squashing "important discussions our society needs to have." That same study showed 58 percent of citizens think "the political climate prevents me from saying what I believe."

A startling 37 percent of Americans can't name a single right guaranteed under the First Amendment. That statistic comes from a national survey by the Annenberg Public Policy Center. Fewer than half of citizens could name free speech as a right and less than one in five could name freedom of religion or press as guaranteed rights. The rights to petition and assembly were

basically off the map. It is difficult to endorse free expression principles if you don't know what they are.

The nation's confusion about how free expression functions may not be all that surprising considering how many political and cultural leaders misunderstand or diminish the concept. President Trump has lambasted the press regularly and Hillary Clinton has ripped the media for its role in the last election. The Obama administration consistently dragged its feet on Freedom of Information requests and surveilled journalists on occasion. This all suggests a lack of understanding for the role of a watchdog, or even adversarial, press.

Sens. Dick Durbin (D-Ill.) and Dianne Feinstein (D-Calif.) of the Senate Judiciary Committee displayed their hostility to religious freedom last fall when they grilled appeals court nominee Amy Barrett about her Catholic religious practices. The senators basically suggested that Barrett's faith could prevent her from being a fair jurist.

College presidents around the country are missing the opportunity to educate students about the importance of free inquiry, instead allowing certain groups to use extralegal pressures to disrupt and stifle speakers. Faculty ranks in many disciplines fail to reflect a range of ideas, creating doctrinaire domains and further diminishing the notion that wide inquiry should be valued.

The federal courts have worked over the years to referee how to maintain a free expression society while disallowing worthless speech and distinguishing free expression from harmful actions.

The current Supreme Court term will provide further guidance on how the First Amendment functions in the lives of Americans. The court has already heard arguments about the religious rights of the cake baker in Colorado. A decision is due this spring. The court will also hear arguments about mandatory union dues that fund political causes that some members don't support, and there is also a case this term regarding the state of California forcing anti-abortion adoption providers to tell clients about available abortion services.

The Roberts court has tended to support the broadest protections for First Amendment liberties. These decisions will deserve a careful reading.

The courts, however, can only do so much to guide a nation into respecting basic free expression rights. Judges can't fix a nation that is confused about or unwilling to endorse First Amendment principles. Community or cultural pressures can chill a society in ways no legal system can overcome. A society that truly wants free and open debate, absent fear and intimidation, must fix itself.