

[I wrote this article around the end of June and submitted it to the Observer. The editors, in their wisdom, chose not to publish it. den]

On the Proposed Amendment to “Protect” the American Flag

On Wednesday, June 22, 2005, the House of Representatives approved a Constitutional amendment that would “protect” the American flag by making it possible for the legislative branch to make burning an American flag a criminal act. It seems that the Senate is very close to approving the amendment now.

I remember – or perhaps misremember – a Star Trek episode in which an alien race of bio-mechanical beings perceived the persons living aboard the Enterprise as biological parasites in what they perceived as a form of bio-mechanical life. They were set on destroying the people on board to preserve the ship.

Perhaps that Star Trek episode is where the House got its model for banning the burning of American flags. Those alien beings (in their misunderstanding of the relationship of the ship to its passengers) wanted to destroy the people who gave the Enterprise meaning. After all, a ship is only really useful if it is performing some function of transport. Similarly, a majority of the members of the House want to protect a symbol by destroying the freedoms it represents.

You can’t protect the American flag by saying that people can’t burn it. You can protect individual flags, perhaps, but the American flag as a symbol is more than just the cloth and thread that make up the individual manifestations of the symbol. Christianity, for instance, cannot be touched when the Klan burns the cross. Many of us may find it offensive to view a burning cross, but the essence of Christianity is not offended or damaged. If someone were to burn a copy of the Constitution, the Constitution would not be damaged; it would survive. It might even be strengthened by the resulting examination of its meaning in the light of fiery protest.

The American flag is a *symbol* of our country. It stands for things. It stands for liberty. It stands for freedom. It represents the struggles of generations of Americans with other Americans to spread that liberty and freedom to all the citizens of this country. The flag is a representation of a multitude of ephemeral values. It’s a symbol. Even burning the flag is a symbolic action. When someone burns the American flag they might be saying they are very angry about American actions or politics, or that they have no respect for America or its citizens – but they are also admitting that the American flag is a powerful symbol by agreeing that burning a flag has great symbolic meaning.

Banning the right to express any viewpoint by burning flags wouldn’t protect the symbol of the American flag, rather it would dangerously wound it. Banning the right to burn flags would be a powerful, damaging restriction of our right of free speech. One of the most important of the freedoms granted by our Constitution – the first enumerated of the Bill of Rights – is freedom of speech. The heart of the speech protected by the Constitution is political speech – the right to protest the acts or omissions of our own government. Burning flags is a peculiarly expressive means of expressing dissent and deserves the greatest protection we can offer. After all, flag

burners founded this country. Maybe the signers of the Declaration of Independence never actually burned the Union Jack, but only the most disingenuous can maintain that the Founders were not master protesters. The Founders gave birth to a nation that does not just allow dissent – but is dependent on the right of its citizens to protest the actions of their government – even if those protests are unpopular. Thomas Jefferson even suggested that rebellion is necessary to ensure continuing freedom: “What country can preserve its liberties if their rulers are not warned from time to time that their people preserve the spirit of resistance.” (Thos. Jefferson to Wm. Smith, Nov. 13, 1787.) If we allow the voices of the majority to silence all others, the freedoms set forth in the Constitution cannot be protected.

If Congress wants to protect the American flag, perhaps it should focus on other matters. If Congress wants to protect the symbol of the American flag, perhaps instead of worrying about whether a protester burns “a” flag, they should quit playing politics with the health of our senior citizens. Perhaps Congress should stop basing their decisions on the results of polls and begin seriously applying the principles of our Constitution to their decisions. Perhaps Congress would do well to stop fretting about who is falling in love with whom and start figuring out how the country can live more within its means. Maybe the flag would be more protected if Congress were to stop the current trend toward the deconstruction of personal rights and freedoms than it would be by a Constitutional ban on the “physical” desecration of individual flags.

The American flag means something very dear to most of us Americans, but its meaning is not defined by prettily arranged bits of blue, white and red cloth. The American flag reminds us of the freedoms we enjoy and the struggle and pain Americans have endured to preserve and enlarge those freedoms. We don’t get choked up when we see the American flag because we think it’s pretty. Tears come to our eyes because of our historical memories of oppressions left behind, of journeys to freedom sustained by a liberal Constitution, and of all the lives that have been lost to protect life, liberty and pursuit of happiness.

Banning the right to burn an American flag would be a terrible retrenchment of one of our most cherished freedoms. That could hardly be seen as “protecting” anything.

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