

To Burn or Not to Burn:
Should Flag Burning be Legal?

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Freedom of speech and expression is a right given to all Americans in the First Amendment of the Constitution. It is a difficult concept to embrace when individuals are faced with ideas they oppose. In this kind of situation, the protection guaranteed to American citizens becomes even more important. The First Amendment was designed not only to protect the freedom to express ideas and sentiments with which one agrees but also the ideas and sentiments with which one disagrees. It is for precisely this reason that the government should maintain the right of individuals to express their dissatisfaction with the policies of the government through the act of flag burning and not amend the Constitution to make such an act illegal.

The first reason why the government should not ban flag burning is that it is a form of expression that is covered by the right to free speech. The First Amendment to the US Constitution states: "Congress shall make no law ... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances" (Legal Information Institute, 1992a). This amendment guarantees American citizens the right to express their dissatisfaction with the policies of the government without fear of consequences, including arrest, so long as the demonstration does not violate laws. The act of flag burning is a means to express this kind of dissatisfaction. To make a law prohibiting this means of expressing grievances would not only inhibit free speech but take away a means of petitioning the government to address grievances.

Another reason why flag burning should be allowed is that the counter-argument that flag burning somehow constitutes treason is groundless. Some may argue that flag burning should not be protected speech, that such an offense should be considered treasonous. They feel that the

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American flag is a symbol of this country that should be maintained and protected. It is true that the flag is a symbol of this nation; it is because of its status as a national symbol that the burning of the flag holds so much power in representing dissatisfaction with the nation's policies.

However, should such an act be considered treason? According to the Constitution, treason is defined as consisting "only in levying war against them, or in adhering to their enemies, giving them aid or comfort" (Legal Information Institute, 1992b). Simply by applying this definition of treason to the act of flag burning, unless an amendment were added to the Constitution to redefine treason, flag burning would not qualify as a treasonous act and should therefore remain a legal means of expressing dissatisfaction with the government.

A final reason why flag burning should not be banned is that it is an act that allows marginalized or minority groups a means of expression—and the right for even those in the minority to be heard is a fundamental American principle. Freedom of speech is an important right guaranteed to all Americans. The difficulty in protecting freedom of speech is not in protecting the speech with which one agrees but protecting the speech with which one does not. This is why it is vital that freedom of speech is protected for all speech. The dissident voice can help maintain the balance of power by expressing the sentiments of the minority. Critics claim that expressing sentiments in this way is somehow unpatriotic. This is an unfair statement. It has been argued by some, including those in Congress, that protecting the right of Americans to burn the flag is in fact an act of patriotism (Paul, 2003). Patriotism is defined as the love of or devotion to one's country. What is more patriotic than protecting the rights of all American citizens to express their own point of view on the direction of this nation's policies in any peaceful means necessary? It is clear that protecting all forms of speech is an act of expressing one's patriotism no matter how difficult this may be.

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In conclusion, the right of Americans to express dissent with the government through the act of flag burning should be protected. It is a fundamental right guaranteed by the First Amendment of the Constitution. Any arguments that such an act is somehow treasonous or unpatriotic are not only unfair but untrue. It is for this reason that Congress should not add an amendment to the Constitution to outlaw flag burning.

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References

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