

## Why the Flag Amendment is a Really Great Idea

If you believe the recent published editorials and press accounts, the recent passage of the proposed Flag Protection Amendment by the required two-thirds majority in the United States House of Representatives is a silly orgy of emotion by unscrupulous politicians, a dagger struck at the heart of the First Amendment, or a misguided attempt to clutter up the Constitution. It is none of those things, but is, rather, a healthy sign that popular sovereignty is alive and well in this nation. The controversy over the passage of the Flag Amendment is most certainly not the first attempt in two hundred years to amend the Bill of Rights, it is an important struggle over what kind of a nation we want to be as we enter the next millennium.

The text of the amendment is very short and succinct, it provides simply that "Congress shall have the power to prohibit the physical desecration of the flag of the United States." If the Amendment passes the only thing that will change is that Congress will have the power to protect the flag that was taken away (wrongly I believe) by the Supreme Court in the course of two decisions in 1989 and 1990. It will still take further Congressional legislation before anyone is actually prohibited from doing anything, and so discussions about whether flag bunny slippers, flag boxer shorts, or flags on the back of black leather jackets are endangered are premature.

What we should be debating now is not how such legislation will be crafted, but the broader symbolic issue of the Amendment itself. Should the people have the right to mark off some social conduct as forbidden, in the interests of promoting community solidarity in general and recognizing the sacrifice of the men and women who have died or been wounded to preserve our way of life in particular? Anyone who was privileged enough to listen to the testimony of veterans and widows given before Congress in earlier attempts to pass the Amendment understands that when someone desecrates the flag, such acts are perceived as attacks on patriotic self-sacrifice, and perceived as betraying the very honor that the nation owes those who fight for it.

To be fair to the ACLU and the other opponents of the Flag Amendment, there is a different vision of American liberty which suggests that what this country is all about is the maximum toleration of free expression, and we demonstrate our strength as a nation by allowing a maximum of outrageous acts to be committed. There is some truth to that vision, and the first Amendment obviously reflects a part of it, but the real question is where you draw the line, and which acts are entitled to protection as speech and which acts ought to be regulated as crimes. Political assassination, for example, is obviously crime, even though it is a form of expression. Similarly forbidden is spray painting political slogans on national monuments. The question we ought to be debating is where do you draw the line between on the one side protected speech under the First Amendment and on the other acts harmful to the order that we need to maintain to protect our freedoms.

It should be borne in mind that such great champions of civil liberty and free expression as Hugo Black and Earl Warren, when they served on the Supreme Court, made clear their beliefs that flag desecration was not protected by the First Amendment. Not until eight years ago, had a mere majority of the Supreme Court decided otherwise. It is now time for the American people to be

allowed to express their view on the question, as the Constitution permits. A line needs to be drawn, and this is a case where the people should do it.

Just as the popular will was expressed in Constitutional Amendments prohibiting slavery and demanding the equality before the law of all Americans, so the flag Amendment presents a similar opportunity for Americans to correct a Supreme Court which has made a mistake. This is not a task to be undertaken lightly, and the Amendment process is thus made very difficult to accomplish. Still, it ought to tell us something that for the very first time in our history forty-nine state legislatures have actually petitioned Congress to send this Amendment on to them. A clearer expression of the will of the people on an issue would be hard to imagine, and anyone devoted to popular sovereignty ought to understand the force of the argument which suggests the people of the states should have a chance to decide to ratify this Amendment. Opinion polls indicate that approximately eighty percent of the American people favor the Amendment.

That, then, is what this Amendment controversy is all about -- everyone agrees that it is necessary to preserve our tradition of free speech -- but some of us feel that now is a good time to make a statement in favor of democracy and in favor of the notion that with liberty comes at least some civic responsibility. Now is a fine time to make a statement that self-indulgence is not all there is to the good life, and that a republic needs a foundation in civility and -- dare one say it -- morality. The Flag Amendment is just such a statement and deserves the support it has from the American people.

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