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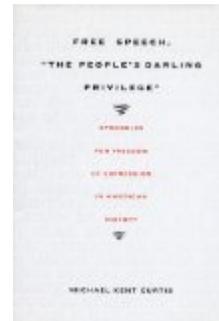
in the Humanities & Social Sciences



Michael Kent Curtis. *Free Speech, "The People's Darling Privilege": Struggles for Freedom of Expression in American History*. Durham: Duke University Press, 2000. x + 520 pp. \$32.95 (cloth), ISBN 978-0-8223-2529-1.

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Popular Sentiment and the Protection of Speech

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Freedom of expression is highly valued in democratic theory, but the liberty is often hotly contested in practice. Those who take up a fight for the right can have many motives. They may want to take a stand for a fundamental principle, to preserve their own opportunity to persuade the public, or to use the battle to batter an adversary who has resorted to suppression.

Michael Kent Curtis, a professor of law at Wake Forest University, is a lawyer who has defended civil liberties many times in courtrooms. His book emphasizes, as Alexander Hamilton and James Madison did, the importance of public opinion in the determination of the actual boundaries of free speech. Curtis believes that students of the law need to know the detailed stories and popular traditions behind the decisions that are reached.

The book's focus is not as wide as its vaporous title: *Free Speech, "The People's Darling Privilege": Struggles for Freedom of Expression in American History*. Most of the seventeen chapters describe the public contests over free speech that erupted during the abolitionist movement and the Civil War. Curtis contends that popular sentiment limited repression in that volatile era and fostered the view that states should not abridge freedom of expression. Protection of free speech, he says, was one of the intentions behind the Fourteenth Amend-

ment. He thus follows the thesis of his earlier book, *No State Shall Abridge* (1990), which maintains that the Fourteenth Amendment was intended to extend the protections of the Bill of Rights to bind state and local governments.

Curtis offers the kind of rich narrative treatment that has been given to free speech cases by scholars such as Irving Brant, Richard Polenberg, and Rodney Smolla. The book describes both well-known incidents, such as the martyrdom of abolitionist editor Elijah Lovejoy in Illinois in 1837, and a number of relatively obscure episodes. A short chapter is devoted to the case of Daniel Worth, an antislavery minister who ran afoul of a North Carolina statute making it a crime to disseminate materials tending to make slaves or free blacks unhappy with their lot. His 1859 conviction was upheld by the state's supreme court in 1860 with no mention of the First Amendment. His counsel was engaged by Benjamin Hedrick who also raised funds for his defense. Fearing mob violence, Hedrick had fled the state earlier after being dismissed from a University of North Carolina faculty position for publicly supporting the Republican presidential scandi-date in 1856.

The book shows how the Civil War and the constitutional changes that followed were to some extent the results of violations of the spirit and guarantees of the First Amendment in the South and in Washington, D.C. Suppression ultimately backfired when used against those in

the abolition movement who felt a duty to democracy and the Deity to expose an evil even if social strife would occur. Restrictions on distribution of their literature and on their petitions to Congress shocked the sensibilities of Americans who took pride in their freedoms. Rights, many thought, may or may not be listed in constitutions, but in any case are inalienable endowments from the Creator.

No book can describe the thousands of violations of civil liberties that occurred before and during the Civil War, but this one collects incidents that illustrate how a nation's thinking was divided over its most fundamental freedoms. Curtis does an admirable job of examining the rationales employed in the antebellum disputes over speech about slavery. Bad-tendency and self-preservation logic is abundant in the attempts to silence opponents of the nation's greatest shame, but the author finds more First Amendment absolutism and religious argument than one might expect in the defenses of freedom of expression. As he, David Rabban, and other authors demonstrate, the years between the Sedition Act of 1798 and the repression of World War I were not so much a time of dormancy for the First Amendment as a period when it was mired in interpretations that diminished its force.

Curtis observes that the need for suppression is often not as compelling in hindsight as it appears during a controversy and that people often fail to support free expression for their opponents. Ironies abound. Opponents

of slavery who decried restrictions on speech before the Civil War, for example, showed little concern about First Amendment freedoms while in power during the conflict.

The author's analysis is rambling and repetitive at times, but the story-telling is usually crisp and carefully contextualized. The chapters are organized chronologically. Those summarizing First Amendment issues before the 1830s and after the 1860s offer sound explanation and additional context, but provide little fresh information or insight. They should help readers with little knowledge of the topic. The central chapters, however, make good use of a variety of sources including newspapers, correspondence, and legislative debate. They show how the First Amendment road staked out by the Founders is subject to the potholes, detours, and dead ends of politics and individual emotion.

As Curtis argues convincingly, principles can and should matter. Rights that are not allowed by the majority or by the mob exist in name only. Respect for democratic processes and a willingness to be tolerant of other viewpoints often make the difference between genuine freedom and a Constitution of empty promises.

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