



LIBERTY MATTERS

CAN AMERICAN LIBERTY SURVIVE AMERICAN ANIMOSITY?

For this month's edition of Liberty Matters we invited [David French](#) to pen an essay commenting on the state of American liberty. His piece considers the relationship between domestic political polarization and the degradation of American norms and institutions aimed at safeguarding liberty. We hope that French's timely analysis will spark thoughtful conversation and reflection about how domestic animosity might pose an ultimate threat to formal guarantees of American liberty.

CAN AMERICAN LIBERTY SURVIVE AMERICAN ANIMOSITY?

by David French

It is entirely possible that historians of American liberty will record that the high-water mark of formal American freedoms was reached by an angry cheerleader. Early in her freshman year of high school, a young lady who went in court by the initials “B.L.” tried out for the school’s varsity cheerleading squad and for a position on a private softball team.

Things did not go well for B.L. She was relegated to junior varsity cheer and denied her preferred softball position. So she vented. Whilst visiting a convenience store called Cocoa Hut she posted a short message on her Snapchat story that contained a picture of her and a friend with their middle fingers raised (what was known in my day as an appearance of the magnificent “double bird”) and a short caption that succinctly stated her feelings: “F**k school f**k cheer f**k softball f**k everything.”

When I first read these words, I immediately thought that kids these days exercise restraint. My response and my

friends’ responses when we didn’t make the high school basketball team were far more verbose. But we had no Snapchat, so few people were ever privy to our sustained, profane rants.



B.L., however, was able to immediately send her commentary to roughly 250 of her closest friends. One or more of them then shared those images with a cheerleading coach, and—after consulting with the principal—the coach decided to suspend B.L. from cheerleading for a year.

Rather than meekly accept her punishment, B.L. decided to make a federal case out of it. She sued, and her tantrum ultimately reached the Supreme Court of the United States where a supermajority of eight of the nine justices (Clarence Thomas was the lone holdout) held that her speech was constitutionally-protected.

The [entire opinion](#) is worth a read. It was obvious that the judges didn't quite want to say that public schools couldn't regulate any speech off school grounds and outside of school activities, but they did suggest that the presumption of protection for such speech is strong.

B.L.'s case is no outlier. Time and again over the course of the last two decades (and beyond) large majorities of the Supreme Court have not only ruled in favor of free speech, they've strengthened the legal protections for religious free exercise.

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If you think of the court's jurisprudence as a citadel of liberty, the court has been consistently raising and thickening its walls, to such an extent that government censorship almost always fails its legal tests. The First Amendment has never been more robust than it is today.

And yet. Something else is happening. Speak to Americans from across the political spectrum (but especially from the center-left to the far-right), and you'll hear much the same thing: "I'm afraid to speak." A recent CATO Institute study found that "majorities of Democrats (52%), independents (59%) and Republicans (77%) all agree they have political opinions they are afraid to share."

Overall, [62 percent of Americans agree](#) that "the political climate these days prevents me from saying things I believe because others might find them offensive." In other words, there's an immense amount of self-censorship going on. People might be free from punitive government action, but they don't feel free. This sense of dread doesn't come from Uncle Sam, but from their fellow citizens.

At the same time, however, we're in the grips of a seeming paradox. If most people say they self-censor, why is the online world seemingly awash in the most angry and vile forms of speech imaginable? By the millions, Americans don't just post pieces from the

partisan press; they fling furious insults, test the boundaries of social media terms of service, and stress the patience and [nerves of the moderators](#).

In fact, a visitor from another planet could be forgiven for laughing at the idea that American self-censorship is a problem. "If this is restraint," they might think, "I'd hate to see what these people really want to say!" In reality, however, the loud are intimidating the quiet, and the result is the pervasive fear CATO identified above.

I've [long argued](#) that America's free speech culture is slipping away. Activists on campus (and elsewhere) often view dissenting speech as not just "harmful" or "dehumanizing" but actually violent. And so the dynamic is clear. One doesn't have to persuade the government to censor your opponent, when you can muster a crowd to intimidate them, humiliate them, or perhaps even destroy their livelihood.

So far this is the standard "cancel culture" analysis. It's a discussion of how one set of Americans often use their First Amendment rights not to debate their fellow citizens, but to attempt to punish them. While this is a real dynamic, it's important to understand that America doesn't suffer so much from a cancel culture problem as it does from an animosity problem.

And, ultimately, American liberty cannot survive American animosity.

Any discussion of rising partisan animosity has to deal with naysayers—"Americans have always experienced partisan bitterness," they say. Before and after they ratified the Constitution, the Founders fought bitterly. "Did you not hear? A sitting Vice President once shot and killed a former Secretary of the Treasury. They made a musical about it."

All of that is surely true—and America has made it through multiple bouts of bitter division before—but the existence of prior close escapes should not somehow reassure us that unity and liberty always prevail. In fact, as the nation's post-Civil War retreat from Reconstruction illustrates, sometimes the United States will sacrifice liberty for unity.

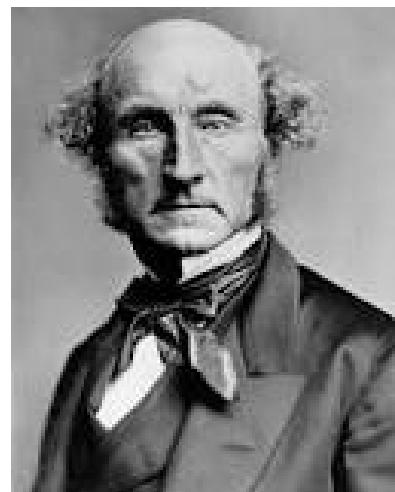
But there's something else in play. America's bitter partisanship isn't just a matter of dueling elites, but increasingly points to mass loathing. Large majorities of Republicans and Democrats strongly dislike each other, and the problem is getting steadily worse. Recently the writer Kevin Drum [gathered a host of statistics](#) on American partisanship, and the numbers are sobering:

From 1994 to 2000, according to the Pew Research Center, only 16 percent of Democrats held a "very unfavorable" view of Republicans, but then these feelings started to climb. Between 2000 and 2014 it rose to 38 percent and by 2021 it was about 52 percent. And the same is true in reverse for Republicans: The share who intensely dislike Democrats went from 17 percent to 43 percent to about 52 percent.

There's more:

In 1958 Gallup asked people if they'd prefer their daughter marry a Democrat or a Republican. Only 28 percent cared one way or the other. But when Lynn Vavreck, a political science professor at UCLA, asked a similar question a few years ago, 55 percent were opposed to the idea of their children marrying outside their party.

There's now even a concept called "[lethal mass partisanship](#)." Roughly 42 percent of each party views their opponents as "downtight evil" and 20 percent of Democrats and 16 percent of Republicans "think on occasion that the country would be better off if large numbers of the opposition died."



John Stuart Mill

Now, here's the logical next question. If you believe your opponents are that bad, then how do you also believe that their liberty has any value at all? Only the most committed of civil libertarians has an immediate response. They've read their [John Stuart Mill](#) and know there is value in knowing even what your most bitter enemies believe. They understand [the argument from humility](#)—that none of us is omniscient, and when we [choke off free speech](#), we choke off our ability to learn.

Moreover, civil libertarians understand how our freedoms are interlocking and interdependent. When an ideological opponent wins a case, he or she either reaffirms precedents that protect us all or creates precedents that extend liberty for all—just ask the progressive religious immigrant rights activists [who used the Hobby Lobby case](#), a legal victory won by Christian conservatives, to help keep them out of prison when they tried to leave food and water for illegal immigrants in the Arizona wilderness.

But when hatred rules, these arguments tend to fail. "Learn from them? They're evil. We must defeat them."

"Our liberty depends on their liberty? Absurd. If we gain power, we won't need liberty, and their liberty can only inhibit our ability to rule."

Even after the riots that swept American cities in 2020 and the assault on the Capitol on January 6th, 2021, too few Americans understand exactly how grave the threat of our animosity has become. They perhaps see animosity

as justified, a necessary and moral response to extremism on the other side. Thus, each side's excesses fuel the other, and voices of calm and reason are hard to find. In fact, the level of animosity itself deeply influences the answer to a key question—who gets canceled, and why?

Talk to most conservatives, and the answer is quick. Progressives cancel conservatives. Just look, for example, at Amazon's decision to yank Ethics and Public Policy Center president Ryan Anderson's book When Harry Became Sally [from its virtual shelves](#). But if you look more closely, you tend to see a large amount of ideological fratricide. There are blue-on-blue cancellations. There are red-on-red shame campaigns. The reason is almost always the same—insufficient commitment to the cause.



Thus you can see a progressive data analytics firm [fire a progressive analyst](#) because he observed on Twitter that violent protests can reduce Democratic vote share. You can see a progressive lawyer claim she was [forced out of a progressive law firm](#) because she was not quite progressive enough. A progressive law professor told me that he was terrified of his progressive students. He's not the only professor to [express such sentiments](#).

Or you can experience what one of my friends experienced. A GOP county chair and zealous Trump supporter, he criticized the violence of January 6th in a Facebook post. He didn't condemn Trump, only the violence. He faced immediate, intense backlash, and within days he was out of his position with the county Republican Party. He was stunned at the speed at which years-long friendships and relationships faced intense strain.

Republicans who more explicitly denied Trump can [tell their own stories](#) of fear, threats, and censures.

Why is this fratricide so ominous? When I was researching [my book](#) about the dangers of American political polarization, I spoke to a number of experts in civil strife abroad. Virtually with one voice they told me that there were alarming parallels between escalating American political strife and the kind of crises we've seen abroad. And one alarming sign was the escalating attacks on what they called the "in-group moderate" or "in-group dissent."

In other words, when there is escalating strife in a political community, there is decreasing tolerance for internal disagreement. Revolutionary or quasi-revolutionary movements require absolute commitment. It's imperative that "we" close ranks against the Great Enemy.

Moreover, there's the matter of proximity. Thanks to the Big Sort (the increased clustering of Americans in like-minded communities), an increasing number of Americans don't have real access--aside from social media--to their political opponents. Thus, their version of "fighting" is against erstwhile allies who don't share all of their commitments to political warfare.

Thus the phenomenon of furious far-left college students training their fire on the progressive professors who don't immediately change their language to reflect rapidly-shifting left-wing ideological norms. [Consider this example](#), reported by Katy Herzog at Bari Weiss's invaluable new website, Common Sense:

During a recent endocrinology course at a top medical school in the University of California system, a professor stopped mid-lecture to apologize for something he'd said at the beginning of class.

"I don't want you to think that I am in any way trying to imply anything, and if you can summon some generosity to forgive me, I would really appreciate it," the physician says in a recording provided by a student in the class (whom I'll call Lauren). "Again, I'm very sorry for that. It was

certainly not my intention to offend anyone. The worst thing that I can do as a human being is be offensive.”

His offense: using the term “pregnant women.”

“I said ‘when a woman is pregnant,’ which implies that only women can get pregnant and I most sincerely apologize to all of you.”

You can begin to see the self-censorship disparity. The more extreme a person becomes, the less inhibited they feel. Their increasing ferocity then intimidates those who are either vulnerable to cancellation in their own spheres or those who (quite understandably!) simply don’t want to confront an avalanche of cruelty and hatred merely because they voiced disagreement with the prevailing, increasingly extremist orthodoxy.

One is reminded of W.B. Yeats poem, “[The Second Coming](#).” Written in 1919, in the aftermath of a terrible war and in the midst of a dreadful pandemic, Yeats describes a bleak time when “things fall apart; the centre cannot hold.” And then, in two lines he almost perfectly describes the dynamic of our times: “the best lack all conviction; while the worst are full of passionate intensity.”

I say “almost” because it’s wrong to say that the best of us lack all conviction. It’s just that America’s best and most thoughtful citizens lack enough conviction to effectively resist the rising tide of illiberalism, at least so far.

And that brings us back to the law itself. We cannot, ultimately, preserve the law of free speech without preserving the culture of free speech. Extremists will not stop with social sanction or economic reprisal in their quest to drive disfavored expression from the public square, and the longer the courts frustrate their desires for ever-expanding control, the more the courts will come under pressure to intervene.

On the right and the left there is already intense pressure being brought to bear to find legally creative ways to intervene in social media moderation. As a general matter, the left wants to force more censorship in social media

(often in the effort to regulate “misinformation.”) The right tends to want to force less censorship (in the effort to prevent cancellation). Both efforts run headlong up against decades of judicial precedent protecting corporate speech. But already there is evidence that the judicial wall may be cracking.



In April Justice Clarence Thomas wrote a [surprising concurrence](#) where he mused aloud about the possibility of using legal doctrines like so-called “common carrier” regulation or “public accommodation” rules to enhance state control over private social media companies. So far he is a minority of one on the court, but activists are firing a barrage of cases at courts (including filings by Donald Trump) urging greater government control.

Aside from undermining First Amendment precedent, it’s difficult to quantify how much more polarizing it would be to place social media moderation under government control. Imagine a presidential race that determines not just, say, tax policy or foreign policy but also the extent of my ability to speak online.

It’s a symptom of our out-of-control animosity that there are those who explore this possibility and think, “Fine. We’ll win. They’ll lose. Elections have consequences.” But both the First Amendment and the free speech

culture it protects emerged as a firewall against winner-take-all political warfare.

The founding generation was not far removed from the Wars of Religion. One of their great tasks was to knit together a nation that consisted of many of the same factions that had fought bloody, near-genocidal wars on the European continent not so long ago. The protections of the First Amendment helped guarantee that even losing factions could retain fundamental freedoms. The instant that guarantee fades, the stakes of political contests grow unacceptably high. If the guarantee of liberty fades enough, our nation will strain under the weight of diminished liberty, just as it has in generations past.

Let's end where we began, with the angry cheerleader. Her 8-1 victory at the Supreme Court is the product of a remarkable constitutional consensus. It's a moment in time where multiple divergent judicial philosophies converged around America's first and most fundamental freedom. Whether that consensus persists, however, will ultimately depend on whether Americans want it to persist—or whether our mutual animosity will grow so great that we will begin to enlist the instruments of government power in our cancel culture campaigns.

The legal walls are holding, for now. The citadel of liberty remains strong. But there is one force that can bring it down—the hatred that dominates so many millions of American hearts. For them, “free speech for me and not for thee” isn’t hypocrisy, it’s a statement of intention, and they’ll continue to cancel until, ultimately, even the courts are on their side.

ABOUT THE AUTHOR

[David French](#) is a Senior editor of The Dispatch. He's also a columnist for The Atlantic. He's the author of *Rise of ISIS: A Threat We Can't Ignore, and Divided We Fall.*

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