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CONSTITUTIONAL PROTECTION OF UNPOPULAR
SPEECH:
THE AMERICAN EXPERIENCE

ABSTRACT

The United States currently provides extremely broad constitutional protection for freedom of expression, significantly broader, in important respects, than that provided in other liberal democratic nations. The paper describes, offers an historical explanation for, and attempts to justify the American position with respect to one aspect of that protection, the limits imposed upon governmental power to restrict the expression of unpopular ideas.

After briefly surveying the historical development of American law protecting controversial expression, an inquiry undertaken mainly to explain why such expression receives very broad protection the paper moves on to examine critically the justifications that have advanced in support of that protection and a description of the range of protections to which these justifications have led. In the final part of the paper, the justifications are considered in the context of issues with respect to which there is considerable current controversy in the United States - specifically, whether the Constitution protects (1) individuals who burn or otherwise mutilate the American flag, (2) pornographic communication, and (3) speech that denigrates individuals or groups on the basis of racial, ethnic, religious, or sexual characteristics.