

The Bill of Rights

a speech by Howard Zinn

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A few years back, a man high up in the CIA named Ray Cline was asked if the CIA, by its surveillance of protest organizations in the United States, was violating the free speech provision of the First Amendment. He smiled and said: "It's only an Amendment." And when it was disclosed that the FBI was violating citizens' rights repeatedly, a high official of the FBI was asked if anybody in the FBI questioned the legality of what they were doing. He replied: "No, we never gave it a thought." We clearly cannot expect the Bill of Rights to be defended by government officials. So it will have to be defended by the people.

If you do a bit of research into the origins of the Bill of Rights- and I had to do some because it is a job requirement of the historical profession-you will find that when the new government of the United States adopted the Bill of Rights in 1791, it did not do so with enthusiasm. The Bill of Rights was a political tool to quiet down critics of the Constitution. A Bill of Rights on paper comforts people. You don't have to take it seriously. Like that CIA man, you can smile, and say, they're only Amendments.

Well, in 1791, the first ten Amendments-the Bill of Rights- were added to the Constitution, and the First Amendment says, among other things: "Congress shall make no law...abridging the freedom of speech, or of the press..." Seven years later, in 1798, Congress passed a law abridging the freedom of speech and the press. It was the Sedition Act of 1798, and it provided jail sentences for people who criticized the government. A number of writers and speakers were imprisoned. They appealed to the court. Now we all learned in junior high school about checks and balances and how if Congress passes a law violating the Constitution, we are very lucky to have the Supreme Court to check that and declare the law null and void. (I was always proud to know such a fancy phrase, "null and void.")

Well, the members of the Supreme Court, apparently having skipped junior high school, or perhaps understanding that the phrase "checks and balances" is just intended to satisfy schoolchildren- did not declare the Sedition Act null and void. Not at all. They said it was constitutional. You may ask: by what legal philosophy can Supreme Court justices explain how Congress can pass a law abridging the freedom of speech when the Constitution says Congress shall make no law abridging the freedom of speech? I could tell you how they did that; but it would take a while and cause indigestion. Let us just say that legal training is a wonderful thing, it enables you to explain the unexplainable, defend the indefensible, and rationalize the irrational.

It seems that especially in time of war or near-war (and in 1798 it was such a time), the First Amendment is ignored. You may have noticed that the year 1991 did not start with a celebration of the Bill of Rights, but with a war. And that the government established control over information and the mass media became tongue-tied with patriotic fervor, and the First Amendment was bombed into oblivion. It is a truism of our political culture: if you are at war for freedom and democracy, you can't have freedom and democracy. So, exactly when free speech is most needed, that is, when it is a matter of life and death for the young people about to be sent to the battlefield- exactly at such a moment the government declares it can be suspended.

In 1917, as armies of young men in Europe were slaughtering one another in the first World War, and the United States decided to send its own young men into the butchery, Congress passed the Espionage Act and the Sedition Act, providing heavy sentences for those criticizing the war. The Supreme Court again put our junior high school lesson to shame: checks and balances? Not in wartime. Not when you need them. The great liberal Oliver Wendell Holmes himself wrote the opinions affirming the constitutionality of the Espionage Act, sending a man named Schenck to jail for distributing a leaflet criticizing the war and the draft. Two thousand people were prosecuted for speaking or writing against the war, including Eugene Debs, the great labor leader and Socialist.

There were ludicrous episodes in all that. A filmmaker who made a movie about the American Revolution was sent to prison for ten years because the movie portrayed the British as the enemy in the American Revolution, and now the British were our allies in the war. The name of the movie was *The Spirit of '76* and the title of the court case against the filmmaker was *U.S. v. Spirit of '76*. And that case sums up the relationship of the government to the Bill of Rights: *U.S. v. Spirit of '76*. It was the President of the United States, Harry Truman, who instituted loyalty oaths even before Joseph McCarthy waved his lists of Communists in the State Department. It was the Congress of the United States, Democrats as well as Republicans, that set up the House Un-American Activities Committee, and voted contempt citations against people who refused to bow down to that Committee. It was the Supreme Court that affirmed the convictions of the Hollywood Ten for invoking the First Amendment. It was Republicans and Democrats, it was all three branches of government, all of them swearing to uphold the Constitution of the United States, and all of them violating that oath.

A word about the Supreme Court. We now have nine conservative justices, including one conservative woman and one conservative black man. It's called American pluralism. Many people have been depressed over this. Frankly, I tried to get depressed, but didn't succeed. Sure, it's better to have a liberal Supreme Court. But the Supreme Court at its most liberal has never been a dependable protector of people's rights. One year it will say you have a constitutional right to distribute leaflets in front of a supermarket. Another year it will say you can go to jail for that. One year it will say: high school students have a right to wear black arm bands to protest a war. Another year it will say: high school students don't have the right to put out their own newspapers without censorship by the school authorities. The Supreme Court, when it was liberal, affirmed that Japanese-Americans could be put in concentration camps because we were at war. The Supreme Court, liberal or conservative, sworn to defend the Constitution, has never been a bulwark against unconstitutional wars.

If it were left to the institutions of government, the Bill of Rights would be left for dead. But someone breathed life into the Bill of Rights. Ordinary people did it, by doing extraordinary things. The editors and speakers who, in spite of the Sedition Act of 1798, continued to criticize the government. The black and white abolitionists who defied the Fugitive Slave Law, defied the Supreme Court's Dred Scott decision, who insisted that black people were human beings, not property, and who broke into courtrooms and police stations to rescue them, to prevent their return to slavery.

Women, who were arrested again and again as they spoke out for their right to control their own bodies, or the right to vote. Members of the Industrial Workers of the World, anarchists, radicals, who filled the jails in California and Idaho and Montana until they were finally allowed to speak to working people. Socialists and pacifists and anarchists like Helen Keller and Rose Pastor Stokes, and Kate O'Hare and Emma Goldman, who defied the government and denounced war in 1917 and 1918. The artists and writers and labor organizers and Communists-Dalton Trumbo and Pete Seeger, and W.E.B. Du Bois and Paul Robeson, who challenged the congressional committees of the 1950s, challenged the FBI, at the risk of their freedom and their careers.

In the 1960s, the students of Kent State and Jackson State and hundreds of other campuses, the draft resisters and deserters, the priests and nuns and lay people, all the marchers and demonstrators and trespassers who demanded that the killing in Vietnam stop, the GIs in the Mekong Delta who refused to go out on patrol, the B52 pilots who refused to fly in the Christmas bombing of 1972, the Vietnam veterans who gathered in Washington and threw their Purple Hearts and other medals over a fence in protest against the war.

And after the war, in the '70s and '80s, those courageous few who carried on, the Berrigans and all like them who continued to demonstrate against the war machine, the Seabrook fence climbers, the signers of the Pledge of Resistance against U.S. military action in Central America, the gays and lesbians who marched in the streets for the first time, challenging the country to recognize their humanity, the disabled people who spoke up, after a long silence, demanding their rights. The Indians, supposed to be annihilated and gone from the scene, emerging ghostlike, to occupy a tiny portion of the land that was taken from them, Wounded Knee, South Dakota. Saying: we're not gone, we're here, and we want you to listen to us.

These are the people, men, women, children, of all colors and national origins, who gave life to the Bill of Rights.

The Bill of Rights was expanded after the Civil War, with the passage of the 13th, 14th, and 15th Amendments, to apply to the states, to prevent them from keeping slavery, to require that they give all people, regardless of race or color, the equal protection of the laws. But these amendments were soon ignored, as blacks were kept in semi-slavery in the South, segregated, humiliated, beaten, lynched by mobs, unprotected by either the local police or the national government. For almost a hundred years after the 14th Amendment became law, every President, whether liberal or conservative, Republican or Democrat, violated his oath of office, his pledge to uphold the Constitution, by failing to enforce those Amendments. And the Supreme Court interpreted them so as to make them useless.

And so black people in the South, in the most dangerous towns and cities in the country, decided to give life to the 14th Amendment, at the risk of their own. They boycotted the buses in Montgomery, Alabama, they sat in at segregated lunch counters, they rode the buses as Freedom Riders, they marched through the streets of Albany, Georgia and Birmingham, demonstrated in Alabama, were arrested, set upon by dogs, knocked down by water hoses, beaten bloody by state troopers, and murdered. There were protests in 800 cities in the year 1963. And then the President acted, then Congress acted, then the Supreme Court acted. The 15th Amendment was now being enforced, only a hundred years late.

It is good to have a Bill of Rights, good to have a 14th and 15th Amendment. They are useful as standards. But it is disastrous to depend on them. Words have never been enough. Ask the authors of the Ten Commandments.

For many people there were not even words-not for working people, women, gays and lesbians, disabled people. The Bill of Rights says nothing about the right to work, to a decent wage, to housing, to health care, to the rights of women, to the right of privacy in sexual preference, to the rights of people with disabilities.

But we don't need permission from on high, words approved by the authorities, to tell us that certain truths are self-evident, as the Declaration of Independence put it. That we are all created equal, that we all have rights that cannot be taken from us, the rights to life, liberty, and the pursuit of happiness. And so working people went on strike thousands of times, were beaten and killed on the picket line, until they won an eight-hour day, and a bit of economic security. Women created a national movement that changed the consciousness of millions of people. Gays and lesbians, disabled people, organized, spoke up, declared: we exist, we must be paid attention to. And people began to pay attention.

We should look beyond the Bill of Rights to the UN's Universal Declaration of Human Rights, which says that all people, everywhere in the world, are entitled to work and decent wages, to holidays and vacations, to food and clothing and housing and medical care, to education, to child care and maternal care.

The guarantees of the Bill of Rights have little meaning so long as we have a class society with enormous differences of wealth and income. The rights of free speech and press depend on having the resources to use them. The right to legal counsel is different for rich and poor. The right to be free from unreasonable searches and seizures is different for a family living in a mansion and another living in a housing project, or out on the street. In the real world, the fate of human beings is decided every day not by the courts, but out of court, in the streets, in the workplace, by whoever has the wealth and power. The redistribution of that wealth and power is necessary if the Bill of Rights, if any rights, are to have meaning.

The novelist Aldous Huxley once said: "Liberties are not given; they are taken." We are not given our liberties by the Bill of Rights, certainly not by the government which either violates or ignores those rights. We take our rights, as thinking, acting citizens. ^{SEP}And so we should celebrate today, not the words of the Bill of Rights, certainly not the political leaders who utter those words and violate them every day. We should celebrate, honor, all those people who risked their jobs, their freedom, sometimes their lives, to affirm the rights we all have, rights not limited to some document, but rights our common sense tells us we should all have as human beings. Who should, for example, we celebrate?

I think of Lillian Gobitis, from Lynn, Massachusetts, a seventh grade student who, back in 1935, because of her religious convictions, refused to salute the American flag even when she was suspended from school.

And Mary Beth Tinker, a thirteen-year-old girl in Des Moines, Iowa, who in 1965 went to school wearing a black armband in protest against the killing of people in Vietnam, and defied the school authorities even when they suspended her.

An unnamed black boy, nine years old, arrested in Albany, Georgia, in 1961 for marching in a parade against racial segregation after the police said this was unlawful. He stood in line to be booked by the police chief, who, startled to see this little boy, asked him: "What's your name?" And he replied: "Freedom, freedom."

I think of Gordon Hirabayashi, born in Seattle of Japanese parents, who, at the start of the war between Japan and the United States, refused to obey the curfew directed against all of Japanese ancestry and refused to be evacuated to a detention camp, and insisted on his freedom despite an executive order by the President and a decision of the Supreme Court.

Demetrio Rodriguez of San Antonio, who in 1968 spoke up and said his child, living in a poor county, had a right to a good education equal to that of a child living in a rich county.

All those alternative newspapers and alternative radio stations and struggling organizations that have tried to give meaning to free speech by giving information that the mass media will not give, revealing information that the government wants kept secret.

All those whistleblowers, who risked their jobs, risked prison, defying their employers, whether the government or corporations, to tell the truth about nuclear weapons, or chemical poisoning. Randy Kehler and Betsy Corner, who have refused to pay taxes to support the war machine, and all their neighbors who, when the government decided to seize and auction their house, refused to bid, and so they are still defending their right.

The 550 people who occupied the JFK Federal Building in Boston in protest when President Reagan declared a blockade of Nicaragua. I was in that group- I don't mind getting arrested when I have company- and the official charge against us used the language of the old trespass law: "failure to quit the premises." On the letter I got dropping the case (because there were too many of us to deal with) they shortened that charge to "failure to quit."

I think that sums up what it is that has kept the Bill of Rights alive. Not the President or Congress, or the Supreme Court, or the wealthy media. But all those people who have refused to quit, who have insisted on their rights and the rights of others, the rights of all human beings everywhere, whether Americans or Haitians or Chinese or Russians or Iraqis or Israelis or Palestinians, to equality, to life, liberty, and the pursuit of happiness. That is the spirit of the Bill of Rights, and beyond that, the spirit of the Declaration of Independence, yes, the spirit of '76: refusal to quit.

Reading Questions

Please use correct spelling and grammar and complete sentences to write the answers to these questions on another sheet of paper or annotate within the text where to find the answers.

1. According to Zinn (and many other historians), what was the original purpose of the Bill of Rights?
2. What was the Sedition Act of 1798? What mechanism exists to prevent this from happening? Why didn't it work?
3. What do you think Zinn meant when he said, "if you are at war for freedom and democracy, you can't have freedom and democracy?"
4. Why were the Espionage and Sedition Acts passed in 1917?
5. Describe the incident involving the film, "The Spirit of '76."
6. Identify and describe the actions of at least five of the so-called "ordinary people" identified by Zinn who "breathed life into the Bill of Rights."
7. Describe the meaning of the Huxley quote, "Liberties are not given; they are taken."