

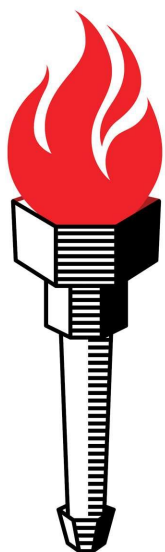
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## Civil Libertarianism and the Commitment to Equal Justice

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Vector Tradition SM

The core principle of civil libertarianism is that all human beings are equally entitled to fundamental freedoms. We all have inherent human rights, and it is government's responsibility to protect those rights.

Moreover, all of our rights are indivisible, so civil libertarians must neutrally resist any rights violation. To cite some current examples, we must secure fundamental due process rights for both those who are gunned down by police officers and the police officers, and for both sexual assault victims and those they accuse. As Martin Luther King Jr. famously phrased it, "injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality."

To be sure, we civil libertarians recognize that no right (beyond the purely internal freedom of thought) is absolute. However, we insist that government not restrict any right *unless* it can show that the restriction is necessary to promote a countervailing goal of great importance, such as public safety. While authorities can easily assert that rights-restricting measures are designed to promote such important goals, it is much harder to show that a measure is necessary. If the state could promote its goal through an alternative measure—one that's less restrictive of individual freedom—it must do so.

These core civil liberties principles are well illustrated by the First Amendment cases that bar government from shutting down speech solely because its message is hated, feared, or distressing. Censorship efforts are often struck down because the potential adverse impact of such speech can be countered in other ways, such as through protests and editorials denouncing the problematic view.

Yes, government may regulate speech when necessary to avert certain specific, immediate, serious harms, for example when the speech constitutes a genuine threat or intentional incitement of imminent violence. Short of such an emergency, though—when speech poses only an indirect, speculative danger of potential harm—then the remedy is more speech, "counterspeech," not enforced silence.

Much evidence demonstrates that "hate speech," which conveys discriminatory ideas, can be countered more effectively through education and persuasion than through suppression. Indeed, censoring such speech can well be counterproductive for many reasons, including by increasing attention and sympathy for the hatemongers.

While it has been fashionable in recent decades to distinguish civil liberties from civil rights and freedom from equality, in fact these are all mutually reinforcing concepts. It is difficult even to draw a meaningful distinction between liberty and equality, let alone to regard them as inalterably oppositional. How could we possibly claim

to have secured individual liberty if some individuals are denied their rights for discriminatory reasons? Conversely, how could we possibly claim to have secured meaningful equality if it does not encompass the exercise of individual freedom?

As the University of California, Los Angeles constitutional law professor Kenneth Karst has noted, egalitarian movements have long recognized the symbiotic relationship between liberty and equality. Accordingly, the 1960s civil rights movement "marched under the banner of 'Freedom,' even though its chief objective was equal access—[including] to the vote [and] to education," he wrote. Likewise, "liberation" has been the watchword for movements for equal rights for both women and LGBT people.

The Declaration of Independence's famous proclamation that we're all created equal aspired to equality in terms of our "unalienable rights." Abraham Lincoln rightly exhorted us to strive ceaselessly to bridge the gap between this civil libertarian ideal and the actual lived reality of everyone in the U.S., stating that the goal "should be... constantly labored for... thereby constantly spreading and deepening its influence... augmenting the happiness and value of life to all people of all colors everywhere."