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Free Speech and Civil Rights Are Inextricably Intertwined

by

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Facebook CEO Mark Zuckerberg's Oct. 17 speech at Georgetown University, which he titled "Standing for Voice and Free Expression," was commended by many as a stand-up job for the First Amendment. And in many ways it was, although we've all learned by now that when it comes to Zuckerberg, actions speak louder than words.

Zuckerberg's defense of "giving voice" to people encompassed various categories of expression found on Facebook. But the most controversial aspect of his address was his spirited defense of Facebook's current position that it will not censor the ads of politicians. Of course, many who oppose President Trump have been clamoring for Facebook to do exactly that – to take down Trump's political ads based on the claim that they are misleading or untruthful in some way.

In defending Facebook's position, Zuckerberg said, "As a principle, in a democracy, I believe people should decide what is credible, not tech companies." He went on to add, "Of course, there are exceptions, and even for politicians we don't allow content that incites violence or risk imminent harm – and of course we don't allow voter suppression."

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All fair enough. But not for many civil rights leaders who have taken Zuckerberg to the metaphorical woodshed for refusing to commit to a more activist censorial role. In doing so, they are neglecting or failing to fully appreciate an important piece of civil rights history.

To this point, in a *Washington Post* opinion piece, Sherrilyn Ifill, president and director-counsel for the NAACP Legal Defense Fund, castigated Zuckerberg for exempting politicians from its general policies "against false speech and misinformation," calling his stance a "profound misreading of the civil rights movement in America." Urging Zuckerberg to take stronger action to remove Facebook posts that she would characterize as "voter suppression," Ifill declared, "The civil rights movement was not fought to vindicate free speech rights under the First Amendment."

Without in any way condoning real voter suppression efforts, there is a real irony in Ifill's remark that should not go without notice. To do so would be to accept the implication that the cause of protecting civil rights and the First Amendment may often conflict. And if they do, free speech should give way.

Of course, free speech guaranteed by the First Amendment is itself a paramount civil right. And the irony is this: While Ifill declares the civil rights movement was not fought to vindicate free speech rights under the First Amendment, it is indisputable that the First Amendment played a crucial role in vindicating African Americans' long struggle for civil rights, especially in the early days of the movement.

Surely Ifill is familiar, for example, with the Supreme Court's landmark decisions in *NAACP v. Patterson* (1958) and *NAACP v. Button* (1963). In both cases, the Supreme Court ruled that the First Amendment rights of freedom of association and speech were abridged by Alabama's and Virginia's nefarious attempts to curtail the NAACP's organizational activities, including by compelling public disclosure of the group's lists of members and financial contributors. Without resort to First Amendment's shield in *Patterson*, *Button*, and similar cases, it is quite likely the civil rights movement would have been set back severely, perhaps by decades.

The lesson here ought to be clear and uncontroversial. There is no need to denigrate the First Amendment's protection of free speech in order to advance the cause of civil rights. Indeed, to do so is a grave mistake because at the end of the day the freedom of speech secured by the First Amendment frequently is instrumental in vindicating other civil rights.

To be sure, as Zuckerberg acknowledged in his Georgetown speech, drawing lines between expression that should be allowed to remain online and that which should be removed often involves difficult judgments. With foreknowledge of the absolutist boundaries of permissible online expression, the censors in China, Russia, Iran, North Korea, and other totalitarian countries have a far easier job.

But here in America, we've staked the ultimate health of our democracy, at least thus far, on free expression – what Justice Oliver Wendell Holmes, in his famous dissent exactly 100 years ago in *Abrams v. the United States*, called "the free trade in ideas." Zuckerberg's defense of the First Amendment in justifying Facebook's decision not to censor political ads was squarely in the Holmesian tradition.

Let's hope that, in the face of inevitable ongoing pressure, Facebook's actions will continue to match Zuckerberg's aspirations.

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