

Constitutional Corner - The Right of Protest

[Wikipedia](#)¹ says “[t]he right to protest is a **perceived** human right arising out of a number of recognized human rights. While no human rights instrument or national constitution grants the absolute right to protest, such a right to protest may be a manifestation of the right to freedom of assembly, the right to freedom of association, and the right to freedom of speech.”

I could stop right there, because that is a nice succinct way of answering the question of whether there is indeed a right of protest, but that just wouldn't be fun, so let's proceed:

Wikipedia's answer is fine as far as it goes, but it fails to address the distinction between **natural versus civil rights** a distinction Americans of the founding period easily explain. We are endowed natural, unalienable rights by our Creator, we are granted civil, alienable rights by our government.

Could a right of protest be a natural right? In its most generic sense, certainly. In a state of nature you can certainly protest anything you want: the taste of food, the weather, anything is fair game. But in a political sense, a right of protest makes no sense at all.

The [Oregon ACLU](#)² appears to harbor no doubt, however, stating on their website: “*You have a constitutionally protected right to engage in peaceful protest in “traditional public forums” such as streets, sidewalks or parks.*” Really? Constitutionally-protected?

As Wikipedia rightly points out, but which the Oregon ACLU apparently doesn't realize, no national constitution, including our own, establishes such a right.

A Right of Protest might have been contemplated in the Ninth Amendment; protests were certainly a well-known feature to colonial Americans. The colonists took to the streets in droves to protest the Sugar Act of 1764, the Stamp Act of 1765, the Townshend Acts of 1767, the Tea Act of 1773 and, finally, the Intolerable Acts of 1775.

Some protests turned violent, particularly in Boston, but certainly not all of them; some protests were purely economic in nature - boycotts of British-made goods. James Madison recounted in a letter to his father how he and fellow college students participated in a subdued protest of New York merchants who chose to not take part in a boycott of British liquor urged by their brethren in beleaguered Boston.

An 1861 anti-war protest in Baltimore, Maryland resulted in both citizen and military deaths when protesters tried to block the movement of southbound Massachusetts troops going from one train station to another. It was actually the first blood spilled in the war.

¹ https://en.wikipedia.org/wiki/Right_to_protest

² <http://aclu-or.org/content/your-right-protest>

From July 13–16, 1863, protests in New York City over the Union Army draft quickly turned violent, leading to 120 deaths and at least 2,000 people injured. After the Battle of Gettysburg, President Abraham Lincoln had to send several regiments of militia and volunteer troops to control the city. Protests of the National Conscription Act took place in other cities and states across the North.

The “Bonus Army” protest of 1932 resulted in 2 dead; 1,086 injured.³

And then how can we forget the many protests of the Vietnam War and some attendant acts of terrorism by the Students for a Democratic Society and the Weather Underground.

Some today have likened our current anti-Trump protests to the Boston Tea Party, as though there was some sort of moral equivalence. Balderdash! The Boston Tea Party was a calm and orderly affair, focused exclusively on the tea (a broken ship’s lock was immediately replaced and, eventually the more than a million dollars of tea was paid for). I can see the disclaimer now: *“No ships were damaged nor crews assaulted in the taking of this tea.”*

Contrast this with the violent protests on January 20th in which businesses, including an immigrant-owned limousine were torched. If there is good news here, it is that the more than 200 protesters who were arrested that day face 10 years imprisonment and up to a 250,000 fine.

Going back to the Wikipedia description, *“such a right to protest may be a manifestation of the right to freedom of assembly, the right to freedom of association, and the right to freedom of speech.”* “May be?” So if we combine these three natural rights somehow a right of protest springs out of them? It reminds me of the right of privacy assembled by the high court in *Griswold v. Connecticut* from “bits and pieces” of inferences of privacy found in the 4th and 5th Amendments, and others.

But as I repeatedly say to groups: I have no problem with creating a right to privacy or any right at all, and securing it in the Constitution; but who rightfully has the authority to create and define those rights: five unelected lawyers, or the 300 million owners of the Constitution – i.e., the American people? Because the process of amending the Constitution to create such a right requires a bit of work on our part, we seem to be more inclined to let lawyers in black robes do our work for us. Need a right to privacy? No problem. Need a right to kill your unborn child? No problem. Need a right for two homosexuals to “marry?” No problem. Give the job to the courts, they can do anything.

³ https://en.wikipedia.org/wiki/Bonus_Army

Our current Court, which seems to show no reticence to creating new rights, is not willing to give citizens the right to protest or even exercise their free speech right on the court's very own steps.⁴ But that's not a obstacle to a determined protester. Protesters upset with the *Citizens United* decision have now taken their obnoxiousness inside the Supreme Court's chamber,⁵ even to the point of interrupting the Chief Justice.

The Supreme Court itself has never claimed there was a right to protest, per se; they have instead viewed protest-related cases as free-speech issues:

In 1969, (*Tinker v. Des Moines*) high school student protesters were told they could wear black armbands as a free speech right.

In the 1989 case of *Texas v. Johnson*, the court decided that burning the U.S. flag in protest of the government's actions was to be considered a free speech issue. Flag burning joined the ever-increasing list of "symbolic speech" that was to be protected.

In 2011, the Westboro Baptist Church won the right to protest military funerals after claiming free speech.⁶

In 2014, in *McCullen v. Coakley*,⁷ the Court unanimously held that Massachusetts' 35-foot buffer zones to keep abortion protesters from interfering with women seeking abortions violated the First Amendment because it limited free speech too broadly.

So, I'm going to go out on a limb here and say that there is no such thing as a political right to protest. You have a right to petition the government for a redress of grievances, you even have a right to assemble for that purpose as well as to freely speak your grievances. But when your use of any of those rights infringes on my right to freely travel in my car, or damages my property, or disturbs my peace, we have a problem, and I'm going to demand that the law be enforced against you.

The criminals who [defaced a putting green on a Trump golf course](#)⁸ last week need to be rounded up, fined and imprisoned.

The holligans who are [preventing businessman Peter Thiel from enjoying his home](#)⁹ and neighborhood should be disbursed and arrested if they return.

⁴ https://www.washingtonpost.com/politics/courts_law/protesters-have-no-free-speech-rights-on-supreme-courts-front-porch/2015/08/28/f79ae262-4d9e-11e5-bfb9-9736d04fc8e4_story.html

⁵ <http://www.cnn.com/2015/01/21/politics/supreme-court-protests-citizens-united/index.html>

⁶ <http://www.washingtonpost.com/wp-dyn/content/article/2011/03/03/AR2011030304124.html>

⁷ <http://www.scotusblog.com/case-files/cases/mccullen-v-coakley/>

⁸ https://www.washingtonpost.com/news/post-nation/wp/2017/03/12/video-shows-environmental-activists-defacing-popular-trump-golf-course/?utm_term=.0972b18e88da

Protesters who [disrupt a Congressman's Town Hall meeting](#)¹⁰ should be arrested for incitement. Let them convince a judge their actions were otherwise.

Any protests which turn into riots and property destruction where it can be proved that [George Soros](#) or [anyone else](#) funded the event should result in the arrest of those financiers for inciting riot.

The [training sessions conducted by the ACLU](#)¹¹ should be monitored for the same purpose and if any instructions can be interpreted as inciteful, the director of the ACLU should be similarly arrested.

Quoting from the federal government's website on the subject of riot, we find:

"Government officials cannot simply prohibit a public assembly in their own discretion, [\[4\]](#) but the government can impose restrictions on the time, place, and manner of peaceful assembly, provided that constitutional safeguards are met. [\[5\]](#) Time, place, and manner restrictions are permissible so long as they "are justified without reference to the content of the regulated speech, ... are narrowly tailored to serve a significant governmental interest, and ... leave open ample alternative channels for communication of the information."

"The First Amendment does not provide the right to conduct an assembly at which there is a clear and present danger of riot, disorder, or interference with traffic on public streets, or other immediate threat to public safety or order. [\[13\]](#) Statutes that prohibit people from assembling and using force or violence to accomplish unlawful purposes are permissible under the First Amendment. [\[14\]](#)"

So there it is: you may peacefully petition the government for a redress of your grievances, you may even do so in a group; and you may speak your mind in any public place (except the Supreme Court's steps). But please don't insist that you have a constitutionally-protected right of protest. Further, if you do not allow other Americans to enjoy their equal rights while exercising yours, don't claim you stand on the moral high ground. Just saying.

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⁹ <http://www.sfgate.com/bayarea/article/Pro-immigrant-demonstrators-rally-outside-Peter-10995442.php>

¹⁰ <http://www.sbsun.com/general-news/20160304/protesters-disrupt-logistics-town-hall-meeting-in-san-bernardino>

¹¹ <https://aclufl.org/2017/02/24/aclu-to-host-the-resistance-training-an-aclu-town-hall-in-miami/>