

The Schizophrenic Politics of the First Amendment

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Does the First Amendment care who won the U.S. presidential election on Nov. 8, 2016?

Erwin G. Krasnow, the co-chair of the Communications Group of Washington, D.C. law firm **Garvey Schubert Barer**, believes that proposals to regulate speech — especially speech delivered over broadcast television and radio — can and do emanate from either side of the political aisle.

“Liberals gnash their First Amendment teeth when the Commission issues hefty fines on stations for indecent programs, but suppose the FCC had threatened to sanction broadcasters for violence in programming that showcases superheroes or for loutish consumption in beer and wine commercials?” Krasnow asks.

Would the First Amendment then become secondary?

“This blurring of philosophical distinctions is fairly common in questions of free speech on radio and television,” Krasnow says. “After all, the very people who cry censorship when a line of risqué dialogue is deleted are often those who mount strenuous campaigns to rid the airwaves of violence — not only physical violence but also ‘cultural violence,’ which purportedly demeans or stereotypes ethnic groups. Most conservatives do not enlist in these drives; they simply rail against ‘filth’ on the home screen.”

He continues, “Liberals pressure the **Federal Trade Commission** to regulate TV commercials aimed at children, especially ads for heavily sweetened cereals, soda pop, and snack foods. Conservatives apparently see the spirit of free enterprise in the ads and create no stir. It is the programs themselves they find unwholesome.”

While Krasnow says some liberals wish to “resurrect” the Fairness Doctrine, a policy created to ensure fair and balanced coverage of controversial issues, he notes that conservative groups that may criticize liberal bias do not advocate government regulation to make the media more evenhanded.

“It compelled broadcasters to present ‘discussion of conflicting views of public importance,’” he says. “CBS Founder William Paley once quipped that the Fairness Doctrine is like the Holy Roman Empire – only it is neither holy nor Roman and it’s not an empire.”

In this column, Krasnow delves into fairness, and the First Amendment, and where broadcasters are under a Trump presidency.

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