In his 1941 State of the Union Address, President Franklin D. Roosevelt identified “four essential human freedoms” for the American people: freedom of speech and expression, freedom of religion, freedom from want, and freedom from fear.

Roosevelt’s “Four Freedoms” caught hold. With the Great Depression lingering on, political unrest brewing in Europe, and Japan’s bombing of Pearl Harbor less than a year away, it is understandable why “freedom from want” and “freedom from fear” captured the American imagination in the decades following Roosevelt’s speech.

However, American politics and jurisprudence had long championed a different set of four freedoms, those explicitly enumerated in the Constitution: freedom of speech, religion, assembly, and the press. Roosevelt himself appealed to those four freedoms on numerous occasions before switching to the new formulation in his State of the Union Address.

In his new book, Liberty’s Refuge: The Forgotten Freedom of Assembly, John Inazu, associate professor of law, explores what was lost when the people’s “right peaceably to assemble” all but disappeared from political discourse and was replaced with a new freedom, “freedom of association.”

While the right of assembly is found in the text of the Constitution, the constitutional right of association was “invented,” Inazu writes, in the 1958 Supreme Court case NAACP v. Alabama.

Alabama wanted the NAACP out of the state because the organization had been staging protests, boycotts, and other activities. The NAACP complied with the state’s requests to turn over numerous documents, but drew the line at turning over its membership list. A state court found the NAACP in contempt and fined the group $100,000.

In overturning the state’s fine, the Supreme Court ruled that Alabama would violate the right of association by disclosing the names of the NAACP’s members, who then might face violence and other reprisals.

Historically, the NAACP v. Alabama ruling came at a critical time, as the nation confronted both communist and civil rights groups that sought to claim broader constitutional protections. As the courts navigated through these contentious times, they adapted, adopted, and interpreted the “right of association” in ways that have actually weakened the constitutional protections for groups, especially groups that are outside the mainstream.

In Liberty’s Refuge, Inazu writes, “The shift in the constitutional framework from assembly to association (1) diminished protections for dissenting and destabilizing groups; (2) marginalized political practices of these groups by narrowing the scope of
what counts as ‘political’; and (3) obscured the relationship between the practices and expression of these groups. The forgetting of assembly and the embrace of association thus marked the loss of meaningful protections for the dissenting, political, and expressive group.”

Inazu’s argument is important today as groups at extreme ends of the political spectrum—from the Occupy movement on the left to the Tea Party on the right to various groups in between—vie for the right not only to exist but to spread their message and participate in the political process.

Though Inazu’s book was written before the Occupy movement began, a review of Liberty’s Refuge in The New Republic magazine explores how the “freedom of association” has been used to deny to groups the freedom it was originally intended to protect. In allowing the owners of Zuccotti Park to enforce, for the first time, rules about camping in the park and other activities, a justice of the Supreme Court of the State of New York found that those rules were not “unreasonable” and did not infringe on the group’s ability to share and express its views—its right of association.

The remedy, Inazu concludes, is “to look past association and recover assembly.” Only by doing so can we avoid “losing touch with our past recognition of the freedom of assembly and the groups that have embodied it.” Otherwise, we “risk embracing too easily an attenuated right of association that cedes to the state the authority over what kinds of groups are acceptable in the democratic experiment.”

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