

Michigan University Scholar Addresses Desecration of State Symbols

USINFO Webchat transcript, March 6

Robert Justin Goldstein, research associate at the Center for Russian & East European Studies at the University of Michigan at Ann Arbor, discusses the desecration of state symbols March 6. The webchat is part of the [Democracy Dialogues](#) series of discussions on freedom of speech.

Following is the transcript of the webchat:

U.S. DEPARTMENT OF STATE
Bureau of International Information Programs
USINFO Webchat Transcript

Democracy Dialogues: Desecration of State Symbols

Guest: Robert Justin Goldstein
Date: March 6, 2006
Time: 9:00 a.m. EST (1400 GMT)

Web Chat Moderator: Good day and welcome to our Democracy Dialogue webchat on desecration of state symbols. We will begin our chat at 9:00 a.m. EST (1400 GMT) with an opening statement from our guest Robert Justin Goldstein.

To refresh the chat text, please click on "CLICK HERE" in the blue band below.

Robert Justin Goldstein: Hello. My name is Robert Justin Goldstein and I happy to participate in this shared conversation. I recently retired after teaching political science in the United States for 30 years at San Diego State University in California and at Oakland University in Michigan, and I'm now a research associate at the Center for Russian & E. European Studies at the University of Michigan at Ann Arbor. My research specialty has been civil liberties, and I've written several books and articles about the so-called "flag desecration" controversy, namely whether or not it should be legal to physically damage the American flag, which is the most easily recognizable symbol of the United States.

Although there has been controversy in the United States over "flag desecration" for over 100 years, that controversy grew especially heated in the wake of a 1989 Supreme Court decision, *Texas v. Johnson*, which by a 5-4 vote, struck down a Texas state law (and, by implication, similar laws in other states as well as a 1968 federal law) which outlawed such actions, on the grounds that flag burning and other forms of "desecrating" flags were protected by the freedom of speech provisions of the American constitution.

Those who advocate criminalizing flag desecration have generally made three basic arguments: 1) that the vast majority of Americans are appalled by flag desecration and wish to outlaw it, and that in a democracy the majority should rule; 2) that flag desecration involves action rather than speech, and thus should not be protected by constitutional protections of free speech; and 3) that the flag is special, especially because it represents the sacrifice of lives made to protect American freedoms, and therefore, if necessary, a special exception to normal rules safeguarding freedom of expression should be made to outlaw flag desecration.

In response to these arguments, those who believe that flag burning or other forms of protest involving the flag are forms of protected expression argue that in a constitutional democracy, the majority cannot take away the rights of unpopular minorities; that the flag is purely a symbol with no other function, and therefore, just as waving it is clearly a form of expression, so is physically damaging it; and that making an exception to protect one symbol will open the way to making other exceptions to freedom of expression, for example outlawing criticism of American foreign policy during time of war.

My own view is that flag desecration is a form of expression and, even if such expression may not be popular or wise, it must be protected to preserve our right to freedom of expression from unraveling: that chipping away at our real freedoms poses far greater danger than does chipping away at physical flags, which are only symbols and not the substance of our freedom. The price of freedom is that sometimes it may not be used wisely, but the price of taking away our freedoms to protect public sensibilities, is, in my view, much higher.

Question [Marek]: What is the actual penalty in the U.S. for destroying the U.S flag?

Answer [Robert Justin Goldstein]: Because the Supreme Court ruled in the 1989 case of Texas v. Johnson that flag desecration laws violate United States constitutional free speech protections, there are no longer any penalties for flag desecration. Before this court ruling, the federal government and most of the states did outlaw flag desecration. Penalties usually ranged up to two years in jail and several thousand dollars in fines.

Q [Naomi]: Hello! The introduction to this chat mentions that in other countries the definition of "state symbols" is rather broad. According to the courts and U.S. law, what are America's state symbols? Are there any symbols in the U.S. that do not fall under the same rulings as the flag?

A: Beyond the flag, probably the national anthem and the bald eagle would be regarded as state symbols. But symbolic representations of them have never been protected by law. Of course, harming actual bald eagles would be subject to normal laws regulating hunting or endangered species.

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Q [Regina]: Do you think that Americans tend to be more sensitive about their flag or other national symbols? What is the experience in other countries?

A: There are many other countries that have had laws protecting their national flags against physical harm. But, although I haven't extensively studied the experience of other countries, so far as I have been able to uncover, this issue hasn't attracted nearly the same level of attention or the same number of prosecutions as in the United States, where, before flag desecration laws were struck down, hundreds of people were prosecuted under them. I have found references only to scattered prosecutions in other countries. Some scholars have suggested that Americans are more focused on the flag because the United States is a "new" and, in a sense, "created" country needing symbols of unity, compared to much longer periods of nationhood in other countries like France and Britain.

Web Chat Moderator: Learn about the Principles of Democracy and free speech at: <http://usinfo.state.gov/products/pubs/principles/speech.htm>.

This series of one-page primers on democratic ideals is available for free download in many languages including Arabic, Chinese, French, Russian, and Spanish.

Q [Naomi]: I've seen U.S. flags that have been altered, for example, with peace signs or different colored stripes, etc. Prior to the 1989 case, would these have been considered desecrations? And prior to the 1989 case, how actively were these state laws upheld?

A: During the Vietnam War era (about 1965 to 1974), when most American flag desecrations occurred, some people were prosecuted for displaying "altered" flags. Most prosecutions occurred on the state level, even though after 1968 there was a federal flag law, so prosecutions depended very much on the attitudes of officials in the states, and sentences, of course, depending on individual judges and juries. Altogether, it's estimated that 1,000 or more cases involving flag prosecution were undertaken during the Vietnam War era, far more than during all other periods combined. Definitely some of these prosecutions involved "altered" flags, including replacing the field of stars with the "peace symbol."

Q [Kuba]: What about the use of the U.S. flag for commercial reasons? It seems the U.S. flag appears in any number of commercial or incorrect ways ... like on a necktie or a pair of pants. Isn't this also desecration? Why can a company make money from using the flag but a protester can't destroy a flag?

A: That's a good question. Actually, when flag desecration laws were first passed by American states beginning around 1900, one of the primary reasons for their enactment was to outlaw commercial use of the flag. In 1906, the U.S. Supreme Court upheld a Nebraska state law that was used to prosecute a company which sold bottles of beer with pictures of the flag on the label. Over time, commercial usage of the flag became increasingly accepted as "patriotic," so by the time of the Vietnam War such use was no longer prosecuted, although "dissident" use of the flag was. This suggests, of course, that flag desecration laws were increasingly used in partisan ways and was probably one of the reasons why the U.S. Supreme Court struck them down in 1989.

Q [Marek]: How about the desecration of another country flag, for example if a protester in the U.S. burns the Danish flag. Is there any punishment or crime committed?

If a non-U.S. citizen burns a U.S. flag is the punishment any different?

A: Some of the state flag desecration laws outlawed desecrated state flags as well as the U.S. flag, and some even outlawed desecrating the Confederate flag, which, of course, symbolically represented a violent uprising against the United States. But none have punished damaging the flags of foreign countries. Non-citizens burning a U.S. flag in the United States were subject to the same punishment as citizens, before, of course, the 1989 Supreme Court ruling struck down flag desecration laws.

Web Chat Moderator: Visit our eJournal USA online publication "Foundations of Democracy" at <http://usinfo.state.gov/journals/itdhr/1205/ijde/ijde1205.htm>.

Q [Josip]: The flag of the confederate states is a big controversy in the U.S. isn't it? If there are laws against working against the interests of the U.S., why isn't the flag of a violent uprising illegal?

I'm surprised that the states would say burning a confederate flag is illegal!

A: The states that outlawed damaging confederate flags were all southern states which were members of the Confederate attempt to secede from the U.S. over the slavery issue. From a freedom of speech standpoint (which is my standpoint), both displaying and damaging confederate flags should be protected. The inclusion of the confederate flag in some state laws shows the potential "slippery slope" posed by such laws. If one exception can be made on freedom of speech issues, than others can easily follow.

Web Chat Moderator: Read a brief history of the flag desecration issue in a report compiled by the Congressional Research Service (CRS). The CRS is a non-partisan research body that provides expert analysis on any number of issues for members of the U.S. Congress: <http://www.fas.org/sgp/crs/misc/95-709.pdf>.

Q [Naomi]: Do you know any current statistics about American opinions on flag desecration?

A: In general, public opinion polls have shown a majority of American would like to outlaw flag desecration, and even favor a constitutional amendment to do so by overriding the 1989 Supreme Court decision. Such an amendment has passed the House of Representatives thus far on six occasions, but it has barely failed to obtain the needed two-thirds majority in the Senate. From a freedom of speech standpoint, it is irrelevant whether speech and expression is popular or not, of course; as a Supreme Court justice said in a 1943 decision reversing attempts to expel school children who had refused to salute the flag, basic American freedoms do not depend on popular opinion, but are fundamental protections of a democratic society

Web Chat Moderator: The First Amendment Center at Vanderbilt University issued a report on the flag burning amendment. To view the report, please go to: <http://www.firstamendmentcenter.org/about.aspx?id=15510>.

Q [Naomi]: How is it decided what is free speech and what is inflammatory/hate speech? Is hate/inflammatory speech illegal, and if so are there any specific boundaries, or is it on a case-by-case basis?

A: In general, the guiding principle in making such decisions is whether or not the speech posed an "imminent" or immediate threat to public safety or some other serious danger; thus an "inflammatory" speech made during a riot might be treated differently than the same speech made to a gathering of people seated in an auditorium. In practice, such decisions are made on a case by case basis, and, at least under Supreme Court guidelines (which may not always be followed in practice), there is a heavy bias against convictions based on speech, and even calls for the violent overthrow of the government, unless connected with actual attempts to do so, are generally protected.

Robert Justin Goldstein

Thanks to all who have participated or followed along in this dialogue. I've enjoyed it and hope you have too.

Web Chat Moderator: Thanks to everyone who participated in today's webchat! Please join us for our next USINFO Webchat "American Women: Their Contributions to U.S. Society" which will take place this Wednesday, March 8 at 9:00 a.m. EST (1400 GMT). Read more about it at: http://usinfo.state.gov/usinfo/USINFO/Products/Webchats/ware_08_mar_2006.html.

A transcript of this webchat will be posted to this website within the hour. Transcripts of previous chats are available at our homepage http://usinfo.state.gov/usinfo/Products/Webchats/Webchat_Archive.html.

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