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## Flag Desecration Debate in U.S. "Alive and Well," Scholar Says

### Expert discusses controversy's implications for freedom of speech, expression

By Peter Benda  
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Washington – Democratic societies have struggled with the issue of whether the right to free speech should extend so far as to protect those who would mutilate, deface, burn or otherwise “desecrate” state symbols such as national flags or other iconic representations of the national people. In a March 6 webchat, Robert Justin Goldstein, an expert on the flag desecration controversy in the United States, led an online discussion about efforts to proscribe or regulate desecration of state symbols and the implications for freedom of speech and expression.

At the outset of the webchat, Goldstein said his 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 speech from unraveling.”

“[C]hipping away at our real freedoms poses a far greater danger than does chipping away at physical flags, which are only symbols and not the substance of our freedom,” Goldstein said.

He said that Americans seem to be more sensitive about and protective of, the U.S. flag than is true of citizens of other countries about their national flags. While other countries have had laws protecting their national flags against physical harm, the issue of flag burning or flag desecration “hasn’t attracted nearly the same level of attention or the same number of prosecutions as in the United States,” where hundreds of people were prosecuted for desecrating the flag until the Supreme Court in *Texas v. Johnson* (1989) struck down flag desecration statutes as unconstitutional infringements on free speech.

Goldstein said there have been “only 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,” he added.

According to Goldstein, much of the original impetus behind the enactment of flag desecration laws in the United States was to prevent the commercial exploitation of the U.S. flag for private gain. This was “one of the primary reasons” why American states began to enact such legislation beginning around 1900, Goldstein said. He added that in at least one case, dating from 1909, the U.S. Supreme Court upheld a Nebraska statute that was used to prosecute a company that sold beer bottles with picture of the flag on its label. Over time, however, “commercial usage of the flag became increasingly accepted as ‘patriotic,’ so by that by the time of the Vietnam War such use was no longer prosecuted, although ‘dissident’ use of the flag was,” he said.

During the Vietnam War years, extending roughly from 1965 to 1974, Goldstein said both the vast majority of flag desecrations and the vast majority of flag desecration prosecutions occurred in the United States. Most of the flag desecration prosecutions - which according to Goldstein numbered an estimated 1000 or more, and involved prosecutions for altering or defacing as well as burning the flag - took place at the state level.

Goldstein said he favors banning all anti-desecration statutes. In general, he said, “public opinion polls have shown a majority of Americans would like to outlaw flag desecration, and even favor a constitutional amendment to do so by overriding the 1989 Supreme Court decision” in *Texas v. Johnson*.

In the aftermath of *Texas v. Johnson*, a succession of proposed constitutional amendments that would allow Congress to prohibit flag desecration have been introduced. The Bush administration is on record supporting the most recent such amendment, introduced in June 2005. [Information](#) on the proposed constitutional amendment is available on the Democracy Dialogues Web site.

From a freedom of speech standpoint, Goldstein said, “it is irrelevant whether speech and expression is popular or not. [A]s a Supreme Court justice said in a 1943 decision reversing attempts to expel school children who refused to salute the flag said, basic American freedoms do not depend on popular opinion, but are fundamental protections of a democratic society.”

A [transcript](#) of the Goldstein Webchat is available on USINFO Webchat station.

This Democracy Dialogues webchat, the last of a four-part series of webchats on different aspects of freedom of speech, is part of a larger global discussion about specific topics in democratic governance. This ongoing project, currently focusing on women’s rights, features webchats, speakers, videos, photos and an open on-line discussion board as resources to promote dialogue and exchange on democracy between Americans and foreign audiences. Additional information is available on the [Democracy Dialogues](#) Web site.

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