Star-Spangled: The flag as tool of protest and nationalism

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Uniform Flag Act (1915)

- **Section 3 (Mutilation):** No person shall publicly mutilate, deface, defile, defy, trample upon, or by word or act cast contempt upon any such flag, standard, color, ensign or shield.

- Other words states have adopted:
  - Misuse — Shame
  - Damage — Soil
  - Dishonor — Sully
  - Tarnish — Pollute
  - Jeer at — “Satirize, deride, or burlesque’
Street v. New York
394 U.S. 576 (1969)

- After learning that civil rights leader James Meredith had been shot in Mississippi, Sidney Street set a flag on fire on a New York street
  - Convicted of “malicious mischief”
  - “If they did that to Meredith, we don’t need an American flag”
Decision

• Conviction overturned
• Harlan: “We have no doubt that the constitutionally guaranteed ‘freedom to be intellectually ... diverse or even contrary,’ and the ‘right to differ as to things that touch the heart of the existing order,’ encompass the freedom to express publicly one’s opinions about our flag, including those opinions which are defiant or contemptuous”
  
  — However, finding limited only to Street’s conviction for his actual speech – the words he said
Texas v. Johnson
491 U.S. 397 (1989)

- Gregory Lee Johnson burned flag to protest Reagan gov’t
- Convicted under TX statute
  - “§ 42.09. Desecration of Venerated Object
    - “(a) A person commits an offense if he intentionally or knowingly desecrates:
      - “(1) a public monument;
      - “(2) a place of worship or burial; or
      - “(3) a state or national flag.
    - “(b) For purposes of this section, ‘desecrate’ means deface, damage, or otherwise physically mistreat in a way that the actor knows will seriously offend one or more persons likely to observe or discover his action."
Decision

• Conviction overturned
• Brennan: “If there is a bedrock principle underlying the First Amendment, it is that the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable”
  • Overturned state and fed statutes
  • Dissents focused on the historical status and treatment of the flag and its value as a symbol of national unity
**U.S. v. Eichman**

496 U.S. 310 (1990)

- Congress passed Flag Protection Act after *Johnson*
  - “(a)(1) Whoever knowingly mutilates, defaces, physically defiles, burns, maintains on the floor or ground, or tramples upon any flag of the U.S. shall be fined ... or imprisoned for not more than one year, or both
  - “(2) This ... does not prohibit any conduct consisting of the disposal of a flag when it has become worn or soiled
- Shawn Eichman and others burned a flag and were convicted under the new act
Decision

• Conviction and Act overturned
• Brennan: “The Government’s interest in protecting the ‘physical integrity’ of a privately owned flag rests upon a perceived need to preserve the flag’s status as a symbol of our Nation and certain national ideals. But the mere destruction or disfigurement of a particular physical manifestation of the symbol, without more, does not diminish or otherwise affect the symbol itself in any way”
  • Similar dissents as in Johnson
Cases dealing with flag abuse

- Early cases (2), dealing with flags as advertising
- WWI (1), contempt of flag in words
- WWII (5), mix of speech and actions
- Vietnam War era (~75), flag clothing, burning and other desecrations
- Pre-Johnson (~10), as Vietnam
- Post-Eichman (~25), dealing with state flag desecration laws still on books
Categories of actions

• “Pure” speech
  – Speaking of or describing/miming flag abuse

• Clothing
  – Ponchos, vest, backpacks, patches on pockets or backs of jeans

• Artwork
  – Advertising, displays in galleries, decals or buttons

• Physical desecration
  – Tearing, crumpling, burning, bodily fluids
We offer tentative answers based on our preliminary work.

Research questions

- Has the meaning of the flag changed?
- Must we recharacterize “desecration” in light of what is socially acceptable now?
The “meaning” of the flag has changed.

• Performances of the flag affect its meaning by association
• “Fitting” performances of the flag in flag-inflected clothing have changed in 50 years.
• Wearing flag-inflected clothing can now be characterized as patriotic.

(Billig’s unwaved flags and banal nationalism?)
Uses that folks make of flags are “social performances.”

- Our view is grounded in rhetoric and particularly the work of Kenneth Burke (1969 [1945])
  - The dramatistic pentad
  - Act, Scene, Agent, Agency, Purpose
- Social performance theory also hearkens to Burke (e.g., collection by Alexander, Giesen, and Mast (2006))
Words acquire meaning by association.

• Corpus linguistics asserts that a word’s meaning is changed by the contexts in which it most often appears.
• Fill in the blanks . . .

________________________ is bossy.
(personal pronoun)

They are __________________ bachelors.
(adjective)

Islamic __________________ ... 
(noun)
Symbols acquire meaning by association.

• The scenes in which they are performed shape the meanings they carry in future scenes.
  – Prior performances become part of the scene for future performances

• The flag has been characterized as a sacred/taboo symbol of a totem religion (Marvin and Ingle 1999).
  – “Sacred” and “taboo” justified by restrictions on use and handling
Abbie Hoffman appeared at Congress on October 3, 1968 wearing a flag-inflected shirt. (The shirt was not actually made from a cut-up flag.) The shirt is depicted here. He was arrested and charged. He “was convicted in the Court of General Sessions on the charge he ‘knowingly cast contempt upon the flag of the United States by publicly mutilating, defacing and defiling’ it, in violation of 18 U.S.C. § 700, entitled ‘Desecration of the flag of the United States.’” The Court of appeals for the DC circuit overturned the conviction. Marvin and Ingle (1999) report that that same year he appeared on the Merv Griffin show wearing the same or similar shirt. Network executives were so anxious that one of the spoke to the viewing audience before they aired the show, and they blocked out the images of the flag shirt.
In the bicentennial year, 1976, the Sears Roebuck catalog opened with a patriotic message, recalling “the courageous action of those few who held out the promise of new rights and established the principle that government exists by the consent of the governed.” But there was no flag clothing. There was a small number of flag-inflected clothing items. (These three depicted and two others.) in some 1000 pages of clothing items. The Sears catalogs for 1982 and 1992-93 (the last year it was printed) showed a similar dearth of flag-inflected clothing.
. . . but the flag’s “sacred” nature started to change by the 1980s.

This is Arnold Swarzenegger in 1983, on the occasion of his becoming an American citizen.

Marvin and Ingle (1999) note the proliferation of such clothing in the 1990s.
A search on Walmart.com for “t-shirts” revealed these matches in the first few pages. It’s difficult at best to interpret the messages that agents wish to perform with while wearing these clothes. Note, though, that many depict the flag in a context with an animal that could be considered “totemic.”
Today’s flag-inflected clothing scene is “profane” in the extreme. E.g., Amazon
Products from theflagshirt.com. The last is interesting, as every step one takes in these flip flops, one is treading on an image of the flag . . .

Compare that to Eric Shepard last spring and others who followed him, who trod on the flag in protest. More on that in a moment.
Must we recharacterize desecration?

- Many performances of the flag that seem acceptable now would have been desecration in the past.
- Some performances are complicated by their liminal character.
- Addressing the purpose of the communicative agent appears paramount.
- How will a flag-protection statute account for these facts in a context 25 years removed from *Eichman*?

Some performances have a liminal character
  Manheart
  Flying tattered flags
Many performances that would have been desecration in the past . . .

- Clothing represents one example
- Flag displays represent another
Americans now seem willing to tolerate display performances inconsistent with the Flag Code.

Upper image: Flag flying over a business in NJ in 2011. NJ.com (site of the Jersey Journal) asked readers whether folks should be fined for flying such a flag. Around 50% said yes/50% said no. Many comments along the lines of “It’s just a piece of cloth.”

Lower image: Flag given by deployed soldier to his parents, who promised to fly it until he returned home. After nine months, this is how it looked. Story recounted on the Daily Koz in 2009. Comments were nuanced. To paraphrase, “I understand the commitment of the parents, but I don’t think the flag should be flown this way.” Others more political, arguing that the tattered flag represents the tattered state of American democracy or of the “American soul.”
Banal shows of patriotism trump any sacred nature of the flag.

- This example on a Seattle city bus this week
- Others include the back of a fire engine (covered with grime)
- Hanging from a semi truck at 60 mph (and so tattered that only an inch or two beyond the union remained)

BNL took this photo, March 22, 2016.
Consider the complicated example of Eric Shepard and Michelle Manheart.
Any effort to implement the flag-protection amendment would have to address today’s complex scene.

- What counts as a flag?
- What counts as desecration?
- How can we judge the purpose and intent of agents using flags in their performances?

What counts as a flag? As desecration? (See Corn-Revere 2005)