

Trump Sends Property Rights Up in Flames

Written by Laurence Vance.

Alongside of Catholicism and Protestantism, the primary religion in the United States is not Islam or Judaism but the American civic religion. The Pledge of Allegiance is the creed of this religion and the American flag is its chief symbol.

In the American civic religion, the worst sin that an American can commit is to refuse to pledge allegiance to the flag or to desecrate it. Federal law contains numerous provisions regarding the use, handling, display, and disposal of the flag.

After some college students recently burned American flags on their campuses, President-elect Donald Trump tweeted, “Nobody should be allowed to burn the American flag — if they do, there must be consequences — perhaps loss of citizenship or year in jail!”

Outrageous statements like that from Trump are commonplace and can ordinarily be ignored. But this one is different. The main problem with Trump’s flag-burning statement is that many Americans — especially many flag-waving conservatives — no doubt agree with him that nobody should be allowed to burn the American flag.

There are a number of problems with Trump’s statement regarding flag-burning, and one in particular that is not being addressed.

First of all, the government cannot strip from a natural-born American citizen his citizenship just because he commits a crime. In the case of *Trop v. Dulles* (1958), the U.S. Supreme Court ruled that citizenship is not a license that expires upon misbehavior. Citizenship can only be voluntarily renounced. I note also that mass murderers and those who try to assassinate presidents are not stripped of their citizenship. It is nonsensical that they could retain their citizenship while flag-burners are stripped of theirs. But that is not the only thing that is nonsensical. What would happen to an American who is stripped of his citizenship? Would he be deported for being an illegal alien? Where would he be sent? What if no country would take him? Could he stay in the United States if he was issued a green card or a visa?

Second, in some cases, the government considers it perfectly proper to burn an American flag. According to U.S.C., Title 36, Chapter 10, §176(k), “The flag, when it is in such condition that it is no longer a fitting emblem for display, should be destroyed in a dignified way, preferably by burning.”

Third, flag-burning (unless it violates someone’s rights while it is being done) — like gambling, prostitution, ticket-scalping, and not wearing a seatbelt or helmet — is a crime in

search of a victim. Every real crime needs a tangible victim with measurable damages. The only thing harmed by burning a flag other than a piece of cloth is someone's sensibilities.

Fourth, the Supreme Court already decided the flag-burning issue more than twenty-five years ago. Criminal penalties for acts of flag desecration were once contained in state and federal law. They were struck down in the case of *Texas v. Johnson* (1989). In 1984, Gregory Johnson burned an American flag in front of the Dallas City Hall in protest of Reagan administration policies. He was tried and convicted under a Texas law against flag desecration, sentenced to one year in jail, and fined \$2,000. The Texas Court of Criminal Appeals reversed the conviction and the state of Texas appealed to the Supreme Court, which ruled in Johnson's favor. The Court ruled that flag-burning was symbolic speech protected under the First Amendment. Congress responded by passing the Flag Protection Act of 1989, which stated that "whoever knowingly mutilates, defaces, physically defiles, burns, maintains on the floor or ground, or tramples upon any flag of the United States shall be fined under this title or imprisoned for not more than one year, or both." The Flag Protection Act was then struck down by the Supreme Court in the case of *United States v. Eichman* (1990). Shawn Eichman and others burned an American flag on the steps of the U.S. Capitol after the Flag Protection Act took effect. Although charges against Eichman and the others were dismissed by a federal district judge, U.S. attorneys appealed to the Supreme Court, which ruled in Eichman's favor. The Flag Protection Act was declared unconstitutional because "its asserted interest is related to the suppression of free expression and concerned with the content of such expression."

Since that time, Congress has come close to passing a proposed amendment to the Constitution to circumvent the Supreme Court and criminalize flag-burning. A resolution for such an amendment was actually passed several times in the House, but always failed in the Senate. It should be noted that this is a bipartisan issue — on both sides. In 2003, Republican House member Ron Paul opposed a flag-burning amendment on the House floor. In 2005, Democrat Hillary Clinton, who was then a senator from New York, co-sponsored a bill, as an alternative to a constitutional amendment, to ban flag-burning in some situations.

Fifth, and most important, laws to prohibit flag-burning violate property rights. In spite of the rulings of the Supreme Court, flag-burning has nothing to do speech, expression, the First Amendment, or even flags, and everything to do with property.

In a free society, anyone can burn anything he owns on his own property. But, for the sake of argument, and because of Trump's controversial remarks about flag-burning, we can use the example of a flag.

In a free society —

- It is lawful for anyone to burn his own flag on his own property.
- It is lawful for anyone to burn his own flag on someone else's property with permission.
- It is lawful for anyone to burn someone else's flag with permission on his own property.
- It is lawful for anyone to burn someone else's flag with permission on someone else's property with permission.
- It is not lawful for anyone to steal a flag from a government entity, business, or individual.
- It is not lawful for anyone to trespass on someone else's property in order to steal, transport, or burn a flag.
- It is not lawful for anyone to commit arson.
- It is not lawful for anyone to burn a flag he owns on public property if in so doing he violates zoning, permitting, pollution, or burning laws.

Whether anyone thinks that burning a flag is desecration, abominable, or unpatriotic is irrelevant. Whatever message that the flag-burner wants to send is irrelevant. Whoever is offended by the sight of a flag's being burned is irrelevant.

Laws against flag-burning are ultimately an attack on property rights. And as former congressman Ron Paul reminds us,

Freedom of speech and freedom of expression depend on property. We do not have freedom of expression of our religion in other people's churches; it is honored and respected because we respect the ownership of the property. The property conveys the right of free expression, as a newspaper would or a radio station. Once Congress limits property rights, for any cause, no matter how noble, it limits freedom.

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