

Flag burning as a symbolic speech research paper

[Art & Culture](#), [Symbolism](#)



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Flag Burning as a Symbolic Speech

Nature of the case

When thinking about the symbols of a nation, the flag comes into mind; this is the principle upon which a country is built and of national unity. The flag possesses a special and revered role that is exhibited with pride from different groups and individuals. The lingering question is what would happen in the event that the flag is treated with disrespect, or dishonored. The Supreme Court of the United States addressed flag burning issues and free speech on Texas vs. Johnson. The burning of the American flag is expressive or symbolic speech and it fell within the First Amendment rights. Gregory Johnson razed an American flag during a political protest of the 1984 Republican National Convention in Dallas. Johnson together with other more than 100 demonstrators marched through Dallas in protest against policies of Reagan administration policies and certain corporate policies. They protesters marched through various corporate locations and with one

protester taking a flag from a building and handing it to Johnson who razed it. A couple of witnesses noted that they were unhappy with the burning of the flag and one of them found it suitable to bury the flag remains. Johnson was charged by Texas authorities with flag desecration; he was convicted, sentenced to one-year imprisonment and fined \$2000.

Johnson appealed against the ruling, but the conviction was upheld by the first-level appellate court. Johnson proceeded to the Texas' Court of Criminal Appeals, and the conviction was reversed. The court noted that the desecration statute had violated the First Amendment rights of Johnson. The Texas State sought review in the Supreme Court of US, and it agreed to take the case. The question sought after was whether Texas law was to preserve the flag as a national symbol and prevent peace breaches by criminalization of burning of a flag. The court arrived at the decision that the rights of First Amendment were superior to the statute of Texas.

The First Amendment speech freedom is a bedrock principle of the society and the government. Ultimately, the court established that flag desecration punishment was undercutting the very values resembled by the flag and the conviction of Johnson was running afoul to his rights of first amendment. The actions of Johnson in the flag burning were symbolic speech, which is safeguarded by the First Amendment. In particular, the flag of a nation and conduct with respect to it, communicates inspirations to individuals in brief. Given the scenario, there was no question that flag burning was a symbolic speech. The court made a ruling that the law of Texas could not limit flag treatment and the First Amendment rights of Johnson based on preserving the flag as a national symbol and maintaining peace. The court rejected the

argument of the state that:

- Texas has an interest in preserving the flag as a national symbol
- Desecration of flag can offend a certain audience, resulting to this group reacting and disturbing peace

Government ought to go past just showing a probable breach of the peace before imposing free speech restriction. A speech analyzed in a certain factual setting, should be aimed at triggering retaliation or disruption. The Texas law had gone too far and without reason, limited free speech, and punished burning of flag. The law was not necessary, since Texas was having a different law against peace breach. Additionally, Texas was lacking interest of preserving the flag's symbolic value through criminalization of any conduct against it. Government does not have power of limiting a symbol's meaning to one view.

The Majority

The majority in the Johnson's case established the lack of evidence for flag protection in the constitution that was necessitating the uniqueness claim, for counter indicating flag protection from free speech. The uniqueness claim was directly answered by stating that they had not recognized an exception to the incidences when the flag had been involved, and there lacked indication either in the constitution text or in the cases which interpreted it that a separate juridical category existed for the flag of America specifically. Therefore, the majority declined to establish for the flag an exception to the principle jousts the First Amendment protects. A flag is not just another point of view or idea, which competed for recognition in the ideas marketplace. Most of the Americans regarded it with an almost mystic admiration

irrespective of their philosophical, political, or social beliefs. The American flag does not signify the views of any specific political party or political values.

Additionally, Rehnquist as well made argument that burning of the flag was not an essential part of any idea exposition, but a correspondent of a faltering roar or grunt; it appears fair to say that it is most likely to be indulged in not expressing any specific idea, but in antagonizing others. He proceeds to state that he was of the opinion that the statute in question was a reasonable restriction just in the manner in which the idea of Johnson had been expressed, which left Johnson with other panoply of other symbols and every plausible form of verbal expression for expressing his deep national policy censure.

Concurring

Justice Kennedy concurred by giving an opinion that we have been presented with a clear and simple statute, which ought to be judged against a pure command of the constitution. He further underpinned that the outcome can only be laid at our doors and it was hard to accept that we are made to make decisions, which we may not be happy with. However, we have to make them since they are the right ones; right in the light that the law and the constitution compel the results as they are seen. He stated that we have a great commitment to the process such that except in some cases we fail to pause to express result's distaste, possibly due to fear to undermine a valued principle dictating a certain decision. According to Kennedy, this was one of the cases.

Justice Kennedy stated that although the symbols often are what individuals

make of them, the flag is constant in expressing the ideals shared by Americans, beliefs in peace and law, and the freedom sustaining human spirit. The case in the flag burning according to Justice Kennedy, forced recognizing of the cost committed to individuals by those costs. This appeared distressing but elemental that the flag protected those who held it in contempt.

Dissenting opinions

Giving the dissenting views, Justice Stevens made arguments that the unique status of the flag as a national unity symbol was outweighing the concerns of symbolic speech and therefore, the government could prohibit burning of the flag lawfully. Stevens dissented stating that the court stated that the prohibition against desecration lacked content neutrality, as this type of symbolic speaking was specifically used by persons who are critical of the flag or the ideas presented by the flag. He noted that in making this ruling the court never paused to give consideration to the fact that consequences of its introduction in incongruent-impact analysis in the jurisprudence of the First Amendment. It appears apparent that a prohibition against the desecration of gravesite has content neutrality even after denying some protesters the right of making a symbolic statement through extinguishing of flame in the Arlington Cemetery, the burial venue of John F. Kennedy while allowing others to give salute to the flame through head bowing. He stated that hardly would anyone doubt that a protester extinguishing the flame desecrates the gravesite, even after clarifying that he or she intended to show contempt. In such a scenario, as in the case of burning the flag, the prohibition against desecration has nothing to do with the message content

intended to be conveyed by the symbolic speech. These were the claims given by Stevens in his dissenting opinions.

Subsequent Developments

The decision by the court invalidated laws, which existed in 48 out of the 50 states. Over two decades later, the issue has remained contentious, recent polls have suggested that most of the Americans are still in support of burning of the flag. However, in 1989, the Congress passed a Flag Protection Act, which made flag desecration a federal offense. The flag desecration amendment has been considered several times by Congress. Though the amendment passes the House of Representatives, it has always been defeated in the senate.

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