**Civics 101**

**Episode 79: The U.S. Flag Code**

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**Virginia Prescott:** [00:00:00] Help us better understand the U.S. flag code and the relationship between Americans and their flag. We have Mark Lieberson historian and author of flag an American Biography. Mark great to have you with us. Thank you very much Virginia. So what kind of things are outlined in the U.S. flag code generally speaking.

**Marc Leepson:** [00:00:18] First thing to remember about the flag code is that it's a series of guidelines for the proper use of the American flag. And so it is not even though it's in the federal code and it has been since 1942. There are no flag police you don't get arrested for if you violate any portion of the flag code. So just think of it as a very detailed series of guidelines on the proper use of the American flag.

**Virginia Prescott:** [00:00:42] When was it created and by whom?

**Marc Leepson:** [00:00:45] Various different kinds of patriotic groups and veterans groups and the military all evolved their own flag codes. So in 1923 there was a flag conference in Washington D.C. and something like 50 or 60 more than 60 groups met and they did come up with the flag code although it did not get codified into federal law until 1942.

**Virginia Prescott:** [00:01:10] What were its authors at this conference hoping to achieve. Why did they think we needed a flag code. Well that's a good question.

**Marc Leepson:** [00:01:18] They hoped Well one of the things was there were so many different variations of the flag codes. Like I said each you know the Army Navy Marines all had their own patriotic groups veterans groups even the Ku Klux Klan had its own flag code and they were even part of the 1923 flag conference. The idea was to take the best of those and to come up with one document that everybody could coalesce around.

**Virginia Prescott:** [00:01:49] Let me go back to what you said about these various different groups having different guidelines guidelines on what you know how to fold it how to take care of it dispose of it what you know actually folding is not in the flag.

**Marc Leepson:** [00:02:02] People think that you know at military funerals when they do the labrat flag folding and they give the flag that's not in the code it's just come into existence. Separately I guess you know the military has had it but yeah. Know how to display it when when when it's proper to do fly at half staff for whom and how long that was spelled out like 60 days for the president of the United States 30 days for the vice president. By the way there's also a lot of misinformation about the flag. People will tell you they know that if your flag touches the ground you have to burn it. How many times have you heard that before. I have many. Yeah. Well that's not in the. Try to find it in the code.

**Virginia Prescott:** [00:02:43] How about before these codes were codified. Did the flag have the same kind of patriotic symbolism that it has today.

**Marc Leepson:** [00:02:52] That's a very good question and the answer is that you know for the first two thirds of our history until 1861 it was almost unheard of for individual Americans to fly the flag. It was mostly used by the government mostly by the military and mostly by the Navy as a signaling communications device. That all changed and very few things in history change you know on a dime. But this was almost what happened in 1861 when the U.S. flag came down at Fort Sumter starting the civil war. It went up almost overnight where you never would see an American flag at a house or a church or a school where the American flag was everywhere.

**Virginia Prescott:** [00:03:43] Section 1 and 2 the flag. Pretty straightforward. The look of the flag as you mentioned how stars should be added if there are new states. Section three deals with the use of the flag for advertising purposes. So what specifically does this section prohibit or allow basically any use of the image of the U.S. flag in any type of commercial product. That's stunning. I mean why are people so concerned about that. First it stems.

**Marc Leepson:** [00:04:10] Can I just go back a little bit in history and because a lot of people have misconceptions about the flag code. These are the Flag Protection laws. There are two different things flag protection laws date from the first part of the 20th century and they were designed to. It wasn't political back then let's put it that way it was against the rampant commercial use of the image of the American flag and primarily had to do with the advances in color printing and mass production. Once that happened products started displaying the American flag blatantly to use in advertising. And that was also the time when the first non profit flag protection groups grew up. And I like say that the straw that broke the camel's back and what gave us the first flag protection laws in the States was when the image of the flag started appearing on beer and whiskey bottles. That's sort of a joke but it's it's also true.

**Virginia Prescott:** [00:05:14] It's fascinating because it's the flag is held up as sacred in some cases but it's also considered very patriotic to put the flag on everything from you know swimsuits to beer cans.

**Marc Leepson:** [00:05:25] It's 100 percent a paradox. And you know for some reason flags and big flags have become a part of car dealers. What is what is that. I mean is it are they flying 100 different flags on the used car lot because they are more patriotic than you are. Are they using it to draw attention to their cars which would make it commercial. You know it's it is very kind of squishy thing.

**Virginia Prescott:** [00:05:51] The Flag code does prescribe a fine of 100 dollars for people who use the flag for advertising. Has that ever been enforced?

**Marc Leepson:** [00:05:58] No there's no flag police.

**Virginia Prescott:** [00:06:00] Is it enforceable?

**Marc Leepson:** [00:06:02] You know it is part of the federal code so I think technically it is but anybody can go out there and buy a flag T-shirt or a flag hat or a flag chair. And I guarantee the flag police won't be knocking at your door.

**Virginia Prescott:** [00:06:15] Well how about other bases of the flag code that would be pretty difficult to enforce. The flag should be hoisted briskly and lowered ceremoniously. That's pretty specific.

**Marc Leepson:** [00:06:25] Absolutely. But seriously one of the things about the flag code is that a lot of the the wording is can be interpreted in so many different ways. It really needs to be tightened up. But there doesn't seem to be any will to do it. The flag code has been changed over the years but very rarely people ask me fairly often about the whether it's appropriate to fly a flag at half mast in honor of a friend or family member. And my answer is it is never not appropriate to fly the flag at half mast even though if you read the flag code it can be interpreted as saying that the only people that deserve that flag being flown at half staff is the president the vice president down the line. So that's one of the things that should I think in my opinion be clarified more. One of many.

**Virginia Prescott:** [00:07:18] One of the more fascinating aspects of reading the flag code to me was that students used to salute the flag with their hand you know extended forward which looks like the Nazi salute.

**Marc Leepson:** [00:07:31] Right. That was the that was the original pledge of pledge of allegiance. They were looking for a nationwide school children ceremony to mark the 400 anniversary of Columbus's voyage in 1892 and they what they came up with as a centerpiece for that was the flag salute which was written by a man named Francis Bellamy and Bellamy's salute included the hand raised flat out in front with the palm up and then you put the hand over your heart. And that lasted until 1942 during World War II for obvious reasons right. But you can see photographs of schoolchildren wonderful patriotic young little kids in a classroom all of whom have the outstretch salute. So yeah that was changed.

**Virginia Prescott:** [00:08:29] You've talked about the flag protection laws and the flag code but how has the Supreme Court influenced our understanding of the flag.

**Marc Leepson:** [00:08:39] Well the Supreme Court as far as the flag code really hasn't had much to do with it. However in 1989 they did rule all of the state and the federal flag protection laws. In other words a.k.a. flag burning was unconstitutional because they deemed it to be a First Amendment right of free speech to burn an American flag and protest that that was ruled unconstitutional. Congress went right around and passed another federal fact protection law. And that next day there were more flags burned in protest than any day in U.S. history. And then the Supreme Court affirmed that decision in 1990 and since then the only way you can get arrested for burning a flag is if you commit another crime in the process. Breaking and entering or arson or whatever the Supreme Court also ruled mandatory Pledge of Allegiance laws unconstitutional.

**Virginia Prescott:** [00:09:39] Well how should a flag be disposed of properly.

**Marc Leepson:** [00:09:43] Good question because the flag code doesn't tell you. It just says it should be disposed and I'm paraphrasing but in a respectful manner preferably by burning. So what you have is organizations such as the VFW the Boy Scouts have evolved their own ceremonies. Some of them say you cut out each star individually you cut the stripes out some of them say you do the pledge or whatever. The point being that people believe that that's what's in the flag code. This is how you do it. You have to do this. That this near thing whereas the flag code again is just keeps it very vague and just says in a respectful manner preferably by burning which is kind of ironic because you know the Flag Protection Laws were mainly aimed at burning the flag. Know as a protest whereas the flag code does recommend that you do burn the flag. Only you know used used flags when they're ready to be disposed of.

**Virginia Prescott:** [00:10:41] So could the argument be made that the flag has become more of a symbol of patriotism than it has been in the past or that it's being used for political purposes.

**Marc Leepson:** [00:10:53] Well using the flag for political purposes goes way back to 1840 when the first image of the American flag appeared in any kind of political advertising. So that's nothing new. It has built you know it has built as the years have gone by. I think the best example I can give is the one that you just cited the Pledge of Allegiance was meant for kids to school children. And that's where it was primarily from the time it was started in 1892 until 1988 and in 1988 that was the presidential election between George Bush the first and Michael Dukakis Michael Dukakis vetoed a mandatory pledge of allegiance bill when he was governor of Massachusetts. His Republican attorney general advised him to do so because of a Supreme Court ruling. And George Bush the first seized on that during the campaign and would give these rousing speeches. What does this man have against the American flag. So I think things amped up right there and the next thing you knew the House of Representatives was saluting the flag before every session in the Senate a couple of years later. Look it's always been a symbol of patriotism but I think people have reacted stronger and stronger to it as the years have gone by.