



# THE Power to Protect

**Harvard law professor and flag-protection advocate Richard Parker won't bow to academic elitism.**

**BY HIS OWN ADMISSION**, Richard D. Parker grinds a bit against the grain of academia. A professor at Harvard Law School with a specialty in constitutional and criminal law, Parker is a staunch supporter of a constitutional amendment that would return the people's right to protect the U.S. flag from physical desecration.

Parker has taught at Harvard for 35 years and currently serves as chairman of the board of directors for the Citizens Flag Alliance, a Legion-supported organization that fights for the right to protect Old Glory. He wrote "Here, the People Rule: A Constitutional Populist Manifesto." Recently, Parker spoke with *The American Legion Magazine* about his views on the Constitution, and why the people should have the power to protect our flag.

**Q:** Obviously, some of your beliefs or opinions run counter to many of your colleagues. What's that like?

**A:** I'm a populist, which in a way is more troubling than being a conservative. On this faculty, there are around 100 professors or assistant professors, and of that 100, I think you'd have to estimate there would be maybe eight registered Republicans. I'm a registered Independent ... and there's no one else in the 100 who would self-identify as a populist. I've been here almost 35 years, so it's not as if I'm suddenly coming into a situation.

There are many friendships I've built on the faculty. I think if you wanted to ask who is more irritated by my views or their views, I would say they regard my views as sort of quirky. But on political and certain legal dimensions, I'm so outnumbered that I don't think they're troubled.

*Above: Harvard law professor Richard D. Parker with a flag that once belonged to Oliver Wendell Holmes Jr.* Jon Chase

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more tightly to the popular will.

I, on the other hand, sometimes find it hard to take what they simply assume about politics.

For example, in the (2008 presidential election), the ferocity of the denigration of Gov. (Sarah) Palin is quite irritating to me. When you break it down, it's really just bringing out the prejudices against ordinary Americans that I've been trying to oppose for a long time.

**Q:** *How do you define populism?*

**A:** There are basically three kinds of populism. There's economic populism, which is mainly focused on soaking the rich, opposing corporate power and so forth. Then there's cultural populism, which would involve the so-called "culture-war" issues that we're pretty familiar with by now. The idea of cultural populism is that the values and attitudes of ordinary people should be – at a minimum – respected and, beyond that, reflected in law and public policy to some degree. And then there's political populism, which is built on the basic democratic idea of political equality – one person, one vote – and seeks to maximize, to increase opportunities for voters to make a difference in American politics. I'm mainly a political populist. When it comes to law, I'm a legal populist because I believe the law ought to be responsive to, and reflect the values and attitudes of, the people, particularly the voters. That's actually how I got involved in the whole flag issue, through political, legal populism. I've long been opposed to idolatry of the (Supreme Court) or the Constitution. When I started out making that kind of argument in the '80s and early '90s, it was fairly unusual. Now it is, in one form or another, a widely held point of view in law, particularly in constitutional law.

**Q:** *What brought you on board the Citizens Flag Alliance?*

**A:** In '94, I published a book called, "Here, the People Rule," which made an argument for constitutional populism, for subjection of the making

of constitutional law to the will of the people, a majority of the people, rather than a 5-4 majority vote of unelected justices. That was when I was invited to the conference that the Legion put together, and that was where I met some of the people who, ever since, have been guiding CFA.

It's striking that, for 20 years now, polls have suggested a substantial majority of Americans are in favor of amending the Constitution to protect the flag, and for some other purposes as well. Only on certain occasions has that view been salient in determining voting behavior. I would like to think that the day will come when the mass of Americans will again stand up for themselves and say that constitutional law should be made by a majority of people – not a majority of nine justices. I'd like to hope it will be much easier to amend the Constitution.

**Q:** *Some constitutional scholars claim that amending the Constitution cheapens it. How do you think the framers of the Constitution would feel about that?*

**A:** I don't think we should care as much about what the framers would think. To an extent, they were elitists. They probably would be troubled at the prospect of frequent amendment of the Constitution, or the prospect of expanded lawmaking at the ballot box. But why should we care what they think? At the same time, I think they would be troubled by the prejudice of so much of the governing class against ordinary Americans. The framers proclaimed their belief in political equality. The framers began the Constitution with "We, the people," after all.

**Q:** *In a perfect world, how would we go about amending the Constitution?*

**A:** I'm assuming that if the Constitution's going to be amended, it's going to be done through the process that's been used in the past. What needs to change is, the members of the Senate and the

House have to be far more willing than they have been to let the people decide. To send a proposed amendment out to the state legislatures to see if it can win three-quarters of them is what's required. We need to change the attitude of senators and congressmen toward political equality.

We need to change the attitude of the justices themselves. They have to tether the constitutional law they make more tightly to the popular will. We have to change the attitude of the mass of Americans. We need to persuade them to stand up for themselves.

**Q:** *When polls show that a vast majority of the people think it's wrong to desecrate the flag, why is there so much resistance from elected officials in Washington?*

**A:** They think they know better. They typically make slippery-slope arguments: "If we let amendments go out to the states, then we'll be under pressure to do the same thing in more and more cases."

**Q:** *Isn't that the reason for Article V of the Constitution?*

**A:** Senators and congressmen – typically senators, as we've found out – do imagine themselves, I've argued, as sort of a House of Lords, superior to democracy. One senator said when he retired that the proudest moment in his whole career was voting against allowing proposed constitutional amendments to go out to the state legislatures. That was his proudest moment. Now that's an undemocratic idea, I believe.

**Q:** *On a personal level, do you feel that it's wrong to desecrate the U.S. flag?*

**A:** Oh, sure. I grew up at a time in the 1950s when it was truly shocking to most of us to see an American flag touch the ground. I'm not sure whether young people feel that now. My father and his grandfather were veterans. My father was intensely patriotic. I was active for some time in the civil-rights movement, and I remember how important the American flag was ... as a way of relating what we were trying to say to American values, and to affirm that we were a part of America – not in any way opposed to the country. Of course, things began to change, as we all know, in the period of the Vietnam War. The flag was treated as a symbol not of the nation, but of the government and its policy, and that's a terribly mistaken view of the American flag.

**Q:** *In your book, you say that some politicians think ordinary Americans should be respected but not heard. How did we get to that point?*

**A:** I'm not sure I have an answer to that. Let me break it into three parts. These three things would characterize a faculty like Harvard, pretty much any law-school faculty at a so-called national law school, and many upper-middle class intellectuals in many fields all over the United States – but especially on the two coasts.

First is an attitude of self-righteousness that is particularly odd in a law school, where we should be able to always see both sides of every issue. There's been an attitude growing since the beginning of my time here of one-sided self-righteousness.

Secondly, there is this attitude among law-school faculties and, to a large extent, people who come to law schools, and then in many other fields, that they are part of the governing class. That they know better because they are better than ordinary Americans. That they should be guiding the United States, not the voters. And thirdly, and worst of all, is just rank prejudice. Unfortunately, although there are many great things about Harvard Law School, it is a hothouse of prejudice against ordinary people. One test of this prejudice is to take a stopwatch and see how long it takes them to deride someone with whom they disagree, and someone who is not highly educated, as stupid. It might take 30 seconds, on average. And these are people in the governing class who are terribly offended at other kinds of prejudice – on grounds of race or sex or sexual orientation. When it comes to prejudice against the mass of Americans, they don't see that as prejudice. They take it for granted. And they're well-meaning people. That's the sad part.

**Q:** *Do you see this attitude changing?*

**A:** It's been a long process. If you went back to, say, the end of World War II, in the small part of the world I know about, the influence of coming from one of the best families gradually died away – certainly at a place like Harvard it did. Instead, what arose was a focus on educational credentials, and that trend meshed with, to some degree, the needs of the economy and society. But it needn't have resulted in the kind of self-righteous and prejudiced arrogance that it has. Can it be turned around? The only way to turn around any kind of prejudice is by the victims – the targets – standing up for themselves and saying, "Enough is enough." 🌿

– Steve Brooks