

there was a law to be observed in war as well as in peace, he wrote his treatise, which has done more to introduce justice into the conscience of nations than the work of any other man.

May the re-publication of the treatise turn the thoughts and the minds of men to the principles which he advocated, and may the old work in its new form render a new service to the old cause of justice, to justice as between men.

If, unfortunately, the waters of the ocean should sweep over Holland and blot it out forever, it would be immortalized by the work of the man whom the government of that day imprisoned for life when he still honored their country with his presence, and whose dead body was stoned by the people in the streets when it was brought back to Delft for burial. Of a truth "the prophet is not without honor, save in his own country and in his own house."

JAMES BROWN SCOTT.

RESPECT FOR THE AMERICAN FLAG

Among the rights stated by publicists to which nations are entitled is the right to respect, including the right to have their national emblems respected and the respect enforced by penalties if need be. The United States possesses this right as a nation, although adequate steps have not been taken in times past to secure the flag of the United States and the national emblems from desecration. An Act of Congress, approved February 8, 1917, was passed "to prevent and punish the desecration, mutilation, or improper use, within the District of Columbia, of the flag of the United States of America," and the passage of this Act at this time makes brief comment upon the general subject both timely and interesting. This is, however, not the only law on the statute books. In 1905 and in 1907 the question was considered from a different standpoint, and, in allowing trade marks to be registered in the patent office, the flag, national and State emblems were excluded.¹ Two years later this Act was amended by the Act of February 2, 1907, and the clause regarding flags and national emblems was retained without change.²

In the American form of government, the United States, speaking of the States as a whole, possesses the powers which have been spe-

¹ U.S. Statutes at Large, 58 Cong., Vol. 33, Pt. 1, Public Laws, p. 725.

² U.S. Statutes at Large, 59 Cong., Vol. 34, Pt. 1, Public Laws, p. 1251.

cifically or impliedly delegated, and the powers not specifically or impliedly delegated to the United States and not renounced by the States are by the Tenth Amendment to the Constitution "reserved to the States respectively, or to the people." The question might arise as to whether a State of the American Union could pass an Act to prevent and punish the desecration of the flag of the United States, or whether the United States in Congress assembled should alone be able to exercise this as a power impliedly, though not specifically, delegated, or whether both the United States and the States composing the more perfect union could pass laws on the subject and enforce their observance by appropriate penalties. As many States have passed statutes dealing with this subject,³ it was to be expected that the question would one day arise, and that the Supreme Court should be called upon to decide it. This happened in the case of *Halter v. Nebraska* (205 U.S., 34), decided in 1906, and the court declared the State Act constitutional, or declared it not to be unconstitutional. As the opinion of the court is not merely instructive and interesting in itself, but peculiarly timely, when the

³ Laws for the protection of the national flag have been adopted by the states as follows:

Alaska. Sess. Laws, 1913, p. 3	Nebraska. Rev. Stats. 1913, Sec. 8852
Arizona. Sess. Laws, 1913, p. 3; Penal Code, 1913, Sec. 7023	New Mexico. Revised Laws, 1915, Sec. 1812
California. Sess. Laws, 1899, p. 46	Nevada. Rev. Stats. 1912, Sec. 5603
Colorado. Rev. Stats. 1909, Sec. 2599	New Hampshire. Sess. Laws, 1899, p. 302; amended, Sess. Laws, Ch. 87, 1915
Connecticut. Gen. Stat. 1902, Sec. 1386	New Jersey. Sess. Laws, 1904, p. 34
Delaware. Sess. Laws, 1903, p. 892	New York Penal Laws, 1909, Ch. 88, Sec. 1425
Hawaii. Rev. Stat. 1915, Sec. 4223	North Dakota. Penal Code, 1905, Sec. 9427
Idaho. Penal Code, 1908, Sec. 7215	Oregon. General Laws, 1901, p. 286
Illinois. Sess. Laws, 1907, p. 351	Pennsylvania. Sess. Laws, 1907, p. 225
Indiana. Sess. Laws, 1901, p. 351	Porto Rico. Rev. Stat. 1911, Sec. 958
Iowa. Sess. Laws, 1913, p. 315	Rhode Island. General Laws, 1909, Ch. 349, Sec. 3941
Kansas. Sess. Laws, 1905, p. 300	Utah. Penal Code, 1907, Sec. 4487
Louisiana. Sess. Laws, 1912, p. 41	Vermont. Public Stat. 1906, Sec. 5969
Maine. Rev. Stat. 1903, Stat. 118, Sec. 5	Washington. Criminal Code, 1909, Sec. 423
Maryland. Sess. Laws, 1902, p. 720	Wisconsin. Statutes, 1913, Sec. 4575
Michigan. Pub. Act, 1901, p. 139	Wyoming. Rev. Stat., 1910, Sec. 5984.
Massachusetts. Rev. Stats. 1903, Sec. 206	
Minnesota. Gen. Stat. 1913, Sec. 9012	
Missouri. Rev. Stat. 1909, Sec. 4884	
Montana. Penal Code, 1907, Sec. 8875	

United States is just entering upon a war, the material portion of Mr. Justice Harlan's opinion is quoted:

From the earliest periods in the history of the human race, banners, standards and ensigns have been adopted as symbols of the power and history of the peoples who bore them. It is not then remarkable that the American people, acting through the legislative branch of the Government, early in their history, prescribed a flag as symbolical of the existence and sovereignty of the Nation. Indeed, it would have been extraordinary if the Government had started this country upon its marvelous career without giving it a flag to be recognized as the emblem of the American Republic. For that flag every true American has not simply an appreciation but a deep affection. No American, nor any foreign born person who enjoys the privileges of American citizenship, ever looks upon it without taking pride in the fact that he lives under this free Government. Hence, it has often occurred that insults to a flag have been the cause of war, and indignities put upon it, in the presence of those who revere it, have often been resented and sometimes punished on the spot.

It may be said that as the flag is an emblem of National sovereignty, it was for Congress alone, by appropriate legislation to prohibit its use for illegitimate purposes. We cannot yield to this view. If Congress has not chosen to legislate on this subject, and if an enactment by it would supersede state laws of like character, it does not follow that in the absence of National legislation the State is without power to act. There are matters which, by legislation, may be brought within the exclusive control of the General Government, but over which, in the absence of National legislation, the State may exert some control in the interest of its own people. For instance, it is well established that in the absence of legislation by Congress a State may, by different methods, improve and protect the navigation of a waterway of the United States wholly within the boundary of such State. So, a State may exert its power to strengthen the bonds of the Union and therefore, to that end, may encourage patriotism and love of country among its people. When, by its legislation, the State encourages a feeling of patriotism towards the Nation, it necessarily encourages a like feeling towards the State. One who loves the Union will love the State in which he resides and love both of the common country and of the State will diminish in proportion as respect for the flag is weakened. Therefore a State will be wanting in care for the well-being of its people if it ignores the fact that they regard the flag as a symbol of their country's power and prestige, and will be impatient if any open disrespect is shown towards it. By the statute in question the State has in substance declared that no one subject to its jurisdiction shall use the flag for purposes of trade and traffic, a purpose wholly foreign to that for which it was provided by the Nation. Such an use tends to degrade and cheapen the flag in the estimation of the people, as well as to defeat the object of maintaining it as an emblem of National power and National honor. And we cannot hold that any privilege of American citizenship or that any right of personal liberty is violated by a state enactment forbidding the flag to be used as an advertisement on a bottle of beer. It is familiar law that even the privileges of citizenship and the rights inhering in personal liberty are subject, in their enjoyment, to such reasonable restraints as may be required for the general good. Nor can we hold that any one has a right of property which is violated by such an enactment as the one in question. If it be

said that there is a right of property in the tangible thing upon which a representation of the flag has been placed, the answer is that such representation — which, in itself, cannot belong, as property, to an individual — has been placed on such a thing in violation of law and subject to the power of Government to prohibit its use for purposes of advertisement.

Looking then at the provision relating to the placing of representations of the flag upon articles of merchandise for purposes of advertising, we are of opinion that those who enacted the statute knew, what is known of all, that to every true American the flag is the symbol of the Nation's power, the emblem of freedom in its truest, best sense. It is not extravagant to say that to all lovers of the country it signifies government resting on the consent of the governed; liberty regulated by law; the protection of the weak against the strong; security against the exercise of arbitrary power; and absolute safety for free institutions against foreign aggression. As the statute in question evidently had its origin in a purpose to cultivate a feeling of patriotism among the people of Nebraska, we are unwilling to adjudge that in legislation for that purpose the State erred in duty or has infringed the constitutional right of anyone. On the contrary, it may reasonably be affirmed that a duty rests upon each State in every legal way to encourage its people to love the Union with which the State is indissolubly connected. . . .

JAMES BROWN SCOTT.

THE DANISH WEST INDIES

On March 31, 1917, the transfer of the Danish West Indies from Denmark to the United States took place by the payment of the purchase price to Denmark by the United States, the transfer of physical possession of the Islands from Danish to American officials and the replacing of the Danish flag by that of the United States.

An outline of the treaty of cession and of the previous efforts of the United States to acquire the islands appeared in this *JOURNAL* for October, 1916, page 853. The official text of the treaty is now printed in the Supplement to this number of the *JOURNAL*, page 53.

In advising and consenting to the ratification of the treaty, the Senate of the United States, in order to bring the convention clearly within the Constitutional powers of the United States with respect to church establishments and freedom of religion, stipulated that the convention shall not be taken or construed as "imposing any trust upon the United States with respect to any funds belonging to the Danish National Church in the Danish West Indian Islands, or in which the said church may have an interest, nor as imposing upon the United States any duty or responsibility with respect to the management of any property belonging to said church, beyond protecting said church