

## The Confederate Flag Desecration

When the House of Representatives passed the “flag desecration” constitutional amendment last week, did the Southern conservatives voting “yes” understand that they were taking a giant first step towards criminalizing display of the Confederate flag?

Everyone knows, of course, that the Confederate flag was “the banner of secession and treason,” as the Union saw it. But most people don't know that the Confederate flag design itself was a taunting rip-off and “physical desecration” of the Stars-and-Stripes. It takes the physical elements of the Union flag and rearranges them in a deliberate parody: five-pointed white stars, against a blue background, against a red field suggesting blood or fire. In the first year of the Civil War, the *Richmond Dispatch* explained it well:

As the old flag itself was not the author of our wrongs, we tore off a piece of the dear old rag and set it up as a standard. We took it for granted a flag was a divisible thing, and proceeded to set off our proportion. So we took, at a rough calculation, our share of the stars and our fraction of the stripes, and put them together and called them the Confederate flag.

[http://douglassarchives.org/rich\\_a85.htm](http://douglassarchives.org/rich_a85.htm). *Richmond Dispatch*, "The Confederate Flag," 7 December 1861. When Confederate flag-makers used a soft pink background for the first Confederate battle-flags, General P.G.T. Beauregard demanded a more murderous theme: “dye it red sir, dye it with your blood!” <http://www.researchonline.net/gacw/confla12.htm>

In fact, the modern-day cult of the US flag (with the rituals of “correct” flag display) started as a campaign to punish the South after the Civil War. The Grand Army of the Republic, a Union veterans’ organization, led the campaign to enshrine the U.S. Flag in the 1880s and 90s in reaction against reconciliation with the South. It was part and parcel of the GAR’s refusal to return captured Confederate flags (“the emblems of treason”). The Grand Army of the Republic’s demands to criminalize desecration of the US flag were tied to the demand that the display of the Confederate flag also be made illegal. Dearing, *Veterans in Politics* (LSU Press 1952) at 410-412; McConnell, *Glorious Contentment: The Grand Army of the Republic* (UNC Press 1992) at 192, 229-230.

If the absurd thought-control amendment to criminalize “flag desecration” is passed, it can and should be used to ban all display of the seditious Confederate parody of the Flag. No symbolic defacement of the U.S. Flag has been more strongly associated with violent rebellion against the United States.

Now, nervous supporters of both the flag amendment and the Confederate flag may object that flag “desecration” only means flag *burning*, as if the passive act of displaying the disrespectfully rearranged elements of the flag will still enjoy First Amendment protection.

This is, of course, completely wrong. Desecration is a metaphysical concept. “The Flag” is not just a particular physical flag, but a symbolic design that is protected, in the words of the (currently unconstitutional) federal flag statute, as to “any part thereof, made of any substance, of any size, in a form that is commonly displayed.” After the Flag Desecration Amendment, courts will not acquit people who display half-burnt or blood-spattered or spray-painted flags, just because the “physical” defiling happened beforehand. The display itself is a physical act. What’s more, the display would make the displayer an accessory after the fact, entitled to no more First Amendment protection than someone who buys child pornography.

Since “desecration” is a metaphysical concept that means to strip something of its sacredness or to profane a holy object, the new flag police will have to make moral judgments about whether our flag has been dishonored in a particular case. If our Constitution is going to be changed to permit this kind of thought control, let’s make one thing perfectly clear. The Confederate flag is historically the worst and clearest defacement of the U.S. Flag. Its bloody symbolic parody of the elements of the U.S. Flag was associated with the worst internal attack on the Union for which it stands. So get ready, Senator Lott: after the Flag Amendment passes, we’re coming for your desecrated flag, too.