

**The Problem with the Peace Cross:
American Legion v American Humanist Association and the Power of Courts to
 Shape Societal Memory**

Adam McDuffie *

Introduction

In June 2019, in the case of *American Legion v. American Humanist Association* (588 U.S. ____; 139 S.Ct. 2067, 2019; hereafter cited as *American Legion*), the United States Supreme Court ruled that a World War I memorial cross in Bladensburg, Maryland, could remain on public land without violating the “No Establishment” clause of the First Amendment. The decision provoked a range of reactions from the public, as some celebrated the protection of a beloved monument to fallen soldiers while others lamented the government sheltering of explicit religious symbolism on state property.

While the Supreme Court labored to produce a narrow ruling focusing specifically on the so-called Bladensburg “Peace Cross,” the ramifications of this decision likely will extend further than the majority anticipated. The Court sought to ensure that its arguments were specific to the historical context of the cross and the motivations surrounding its construction. The history cited in the majority opinion portrays the cross as a symbol of World War I generally, detached from any religious overtones. Over the course of the war, the decision notes, this symbol of Christianity was separated from its unique religious significance and adopted as a purely secular symbol of sacrifice for a greater cause. The Peace Cross therefore was merely a symbolic reminder of this nonsectarian use of the cross in the war. The problem with the Peace Cross decision, however, is that this history is incorrect. The Court has chosen to privilege a narrow interpretation of history which ignores an array of facts in context.

A brief examination of the usage of Christian rhetoric and imagery during World War I reveals that the Court’s assertion of a secularized cross is ignorant at best. The nationalism of “the Great War” was fully permeated with explicitly religious imagery, including the alignment of soldier sacrifice with the image of the cross at Cavalry. Death in combat was cast not as an end, but as a beginning of an eternal life in the nation’s remembrance of its fallen. The cruciform nature of the Bladensburg Cross was significant precisely because of its Christian character, not in spite of it.

* Adam McDuffie, M.Div., is a doctoral candidate in American religious cultures at Emory University, where he works as a researcher at the Center for the Study of Law and Religion. His work has appeared in the *Sacred Matters* and the *Los Angeles Review of Books*. This article is an expansion of an article first published in the *Canopy Forum*, an online publication of the Center for the Study of Law and Religion at Emory University (“The Problem with the Peace Cross,” *Canopy Forum* [20 November 2019]; available online: <<https://canopyforum.org/2019/11/20/the-problem-with-the-peace-cross-by-adam-mcduffie/>>) and is used here with permission.

The arguments surrounding the Bladensburg Cross provide a stark example of an often-underexplored role performed by the Supreme Court. What is particularly valuable about the majority ruling in *American Legion* is what it reveals about the unique position the Court occupies as an authoritative source for societal memory. Through a brief exploration of the background of the Bladensburg Cross, the details of *American Legion*, the history of religious nationalism connected to the First World War, and an invocation of insights from civil religion and memory studies, it becomes clear that the Court possesses unique authority as an arbiter of American memory and self-understanding.

Background of the Bladensburg Cross

The arguments of the Court mean little when divorced from the concrete details of the monument and the context in which it was erected.

The Bladensburg Cross is a 40-foot-tall concrete Latin cross, bearing the American Legion emblem at its center (fig 1). Begun in 1919 and completed in 1925 with funding from



Figure 1 (Photograph by Ben Jacobson / Kranar Drogin [19 May 2009]; available online: <https://commons.wikimedia.org/wiki/File:World_War_I_Memorial,_Bladensburg,_Maryland_003.JPG> [accessed 9 October 2021]).

both the public and the American Legion, the memorial was an effort to honor the fallen soldiers of Prince George's County, Maryland (Marimow 2017). The bottom of the cross bears an inscription on each side: "Valor," "Endurance," "Devotion," and "Courage" ("Peace Cross" 2018). On the pedestal is a plaque bearing the names of 49 men from the area who lost their lives in the war, along with the inscription, "This memorial cross is dedicated to the heroes of Prince George's County, Maryland, who lost their lives in the Great War for the liberty of the world," and a quote from Woodrow Wilson: "The right is more precious than peace. We shall fight for the things we have always carried nearest our hearts. To such a task we dedicate our lives." The Maryland Historic Commission notes the ongoing significance of the Bladensburg Cross as "an expression of the post-war era's shared perception of the noble character and valor of the veterans and their cause"

("Peace Cross" 2018).

At the time of its dedication, the cross was referred to as the "Cavalry Cross," reflecting the initial aim to build a monument in the form of a "mammoth cross, a likeness of the Cross of Cavalry, as described in the Bible" ("Brief for Respondents" 2019: 2). Congressman Stephen Gambrell's keynote speech invoked the Christian imagery bound up in Cavalry and emphasized the role of the cross to memorialize the soldiers' noble sacrifice, saying "By the token of this cross, symbolic of Calvary ... let us keep fresh the memory of our boys who died for a righteous cause" ("Brief for Respondents" 2019: 4; Liptak 2019). A Roman Catholic priest and a Baptist minister delivered Christian prayers as part of the

ceremony (“Brief for Respondents” 2019: 4). There is no record of representatives of any other religious traditions present at the Peace Cross dedication.

American Legion v. American Humanist Association

The legal challenge which became *American Legion v. American Humanist Association* grew from the American Humanist Association’s belief that the presence of the Peace Cross on public land violates the “No Establishment” clause. The Supreme Court’s ruling that there was no such violation was merely the final act of a larger play in which the case had made its way through the court system.

The Humanist Association’s argument throughout this process had been that the Bladensburg Cross was not merely “incorporating religious symbolism,” but was an explicitly religious symbol (“Brief for Respondents” i). In October 2017, the Fourth Circuit Court of Appeals agreed with this reasoning, ruling 2-1 that the cross’s presence on public land was unconstitutional (874 F. 3d 195, 2017). The court’s opinion, written by Judge Stephanie Thacker, stated that, “Even with the nonreligious elements . . . the sectarian elements easily overwhelm the secular ones,” making it an unconstitutional violation of the First Amendment mandate to prevent the government from favoring a particular religion (Marimow 2017).

Supporters of the monument expressed concern regarding the potential far-reaching impact of the Fourth Circuit’s ruling on crosses on display in other monuments or memorials. Kelly Shackelford, president of a nonprofit organization which assisted in the American Legion’s defense, declared that the ruling “threatens the removal of memorials across the country” and vowed to take the case to the Supreme Court, because “If this is the law, everything else is in danger.” Anticipating this criticism, the Fourth Circuit opinion cited the specific case of Arlington National Cemetery. The court noted that the crosses marking the graves at Arlington are smaller, in contrast to the imposing nature of the Bladensburg Cross, and are also one choice among a diverse range of options for headstones (Marimow 2017). In fact, the National Cemetery Administration offers over seventy options for various religious and non-religious symbols to be placed on headstones above the names of the fallen. (“Available Emblems” n.d.). When viewed at a distance, one does not notice the various religious symbols but rather the uniform shape of traditional headstones. The Fourth Circuit remanded the case to the district court, an appeal of which the Supreme Court agreed to hear in November 2018 (Barnes and Marimow 2018).

After hearing oral arguments, the Court ruled in June 2019 that the cross could remain on public land without violating the “No Establishment” clause (Barnes 2019; see also Witte and Nichols 2016). The majority opinion emphasizes the length of time which passed before the AHA lodged its complaint, implying that the complaint was not sincere; the Bladensburg Cross had been dedicated 90 years earlier, and had spent 50 years on public land prior to the complaint (*American Legion* 2019: 2078). A similar argument was made when the case was tried at the appellate level, but the majority opinion of the Fourth Circuit suggested that “Perhaps the longer a violation persists, the greater the affront to those offended” (Marimow 2017).

Writing for the Court, Justice Samuel A. Alito, Jr., insists that the monument be considered within the historical context in which it was erected. Specifically, he insists that

context was defined by "the picture of row after row of plain white crosses marking the overseas graves of soldiers who had lost their lives in that horrible conflict" (*American Legion* 2019: 2074). Justice Alito's argument rests in large part on the assumption that the decision to create the Bladensburg war memorial in cruciform was rooted in the frequent placement of temporary wooden crosses on battlefield graves during World War I, and the contention that the cross was subsequently secularized and generalized to become a "central symbol" of the war (*American Legion* 2019: 2075). Alito notes the cultural impact of this image of wooden crosses, quoting John McCrae's "In Flanders Fields":

In Flanders fields, the poppies blow
Between the crosses, row on row.

Alito argues that the poem's popularity was an illustration of the common sense of the cross as a symbol beyond any particular Christian theological significance. In his view, people around the world appreciate the cross as a symbol of war sacrifice generally, and thus there can be no entanglement of religion.

Alito proceeds to note that the cross satisfies the *Lemon* test, an assertion of the District Court which the Fourth Circuit of Appeals rejected (*American Legion* 2019: 2079; on *Lemon*, see Witte and Nichols 2016: 162-165). He counters the reasoning of the Fourth Circuit and insists that the cross has a secular purpose in memorializing soldiers generally, no principal effect of advancing or inhibiting religion, and does not excessively entangle the government in religion. The overriding secular purposes cited by Alito for the transfer of the monument to public ownership are the commemoration of the fallen of World War I and the need to "ensure traffic safety," as the cross stands at a busy intersection on a major thoroughfare between Annapolis and Washington, D.C. (*American Legion* 2019: 2079). Alito agrees with Chief Judge Roger Gregory of the Fourth Circuit, who in his dissenting opinion argues that the majority was ignoring the particular history of this cross. Thus, again we see the continued insistence upon turning to history and context for interpreting the place of the Bladensburg Cross.

Neal Katyal, the lawyer representing the Maryland-National Capital Park and Planning Commission, stated during oral arguments that the Bladensburg memorial "is no ordinary cross" and that "not a single word of religious content appears anywhere" on the cross (Waldman 2019). Alito seems to agree with this conclusion in crafting the majority opinion, holding that the cross is fully secular and free of any government entanglement with religion.¹ However, this assertion presumes elements which do not withstand scrutiny when one considers the pervasive role of Christian rhetoric in World War I-era nationalism.

¹ Katyal, Alito, and many other parties to this discussion deploy the terms "religious" and "secular" in a cavalier manner which presumes a certainty about the terms' meanings which simply does not exist. For the sake of this discussion, I will operate within the same framework of religious and secular as that which the Court relies on, but there is extensive literature problematizing both an oversimplified notion of "the secular" and the broader discourse of "religious freedom"; see Asad 2003; Hurd 2015; Mahmood 2016; Su 2016; Sullivan et al. 2015.

Christianity and Nationalism in World War I

In his opinion, Justice Alito takes for granted that the cross is a symbol which can be completely emptied of its religious significance. The Court's decision rests fully on the assumption that the cross was utilized in the context of World War I as a purely secular symbol of the war and nothing more. This reading is one that is ignorant of history; the presence of the cross in memorials to the fallen soldiers of the First World War is no accident.

Justice Alito cites Paul Fussell's *The Great War and Modern Memory* (1975) and its discussion of the far-reaching impact of McCrae's "In Flanders Fields." He suggests that Fussell provides evidence of the ubiquity of cross imagery and, therefore, its nonsectarian nature as a symbol of the war. On close inspection, however, it is clear that Fussell made note of the explicit Christian imagery at play. "In Flanders Fields" became popular because of its invocation of familiar motifs, and Fussell emphasizes particularly the role poppies as a symbol of remembrance, but also notes among the "familiar triggers of emotion" present in the poem the "'crosses' suggestive of cavalries and thus of sacrifice" (1975: 249). Even if the symbol of the cross comes to be representative of military sacrifice more broadly, it only does so because of the roots of the symbol in Christian imagery of the cross at Cavalry.

Justice Alito mentions that there was a "swift and fierce" public uproar when the War Department wanted to replace the temporary wooden crosses with traditional marble slab tombstones (*American Legion* 2019: 2076). The response ranged from organizations such as the American War Mothers lobbying the War Department to continue using the design of the temporary markers, to congressional resolutions recognizing the wooden grave markers as representative of the sacrifices of the war. When the American Battle Monuments Commission assumed control of the project, it acquiesced to the public's demands and retained the imagery of the wooden markers. Justice Alito provides this example as an illustration of the cross's generalization, to the extent that it was viewed as a broadly representative symbol of the war. In his view, the Monuments Commission's decision to preserve continuity in the grave markers confirms "the cross's wide-spread resonance as a symbol of sacrifice in the war" (*American Legion* 2019: 2076). On the contrary, this anecdote merely highlights the extensive reach of Christian imagery and rhetoric.

The First World War was a conflict which generated death and carnage on a scale the world had never seen. Old tactics collided with new technologies of death, with predictable consequences. Soldiers, excited as they were to rush to war amid jingoistic fervor, were not prepared for their encounter with death, and struggled to find comprehension in the midst of what they "saw, heard, and smelled" (Ebel 2010: 78). Twice as many combatants died as had been killed in all major wars around the world between 1790 and 1914 (Mosse 1990: 3). Historian George L. Mosse, in his work *Fallen Soldiers*, argues that this "new dimension of death" necessitated "a much greater effort to mask and transcend death in war than had ever been made before" (1990: 4). Nations seeking to ensure continued support for the military and the nation itself sought ways to "draw the sting from death in war" and emphasize the meaning inherent in fighting and sacrifice for a higher cause (Mosse 1990: 6-7). This

resulted in what Mosse terms the "myth of the War Experience" which lent meaning and sacrality to war.

This "myth of the War Experience," which portrayed war as "sacred . . . an expression of the general will of the people," appropriated Christian notions of death and resurrection to ease fears surrounding the death of soldiers. Death resides at the center of "war as a human drama," and the "myth of the War Experience" attempted to provide a "happy ending" (Mosse 1990: 32). In a variation on the notion of the "good death," those who died in grand service to the nation were not truly dead, they were resurrected, and their memories resided with the community (see Faust 2008; Laderman 1996). Death of a loved one in combat was not a loss, it was reframed in Christian language of sacrifice for the Father(land), and thus "the fallen were truly made sacred in the imitation of Christ" (Mosse 1990: 35). This adaptation of the *imitatio Christi* for nationalistic purposes was intentional, as soldiers came to be viewed as taking part in a noble and holy struggle. The clear parallels led to the interpretation of the American soldier as "the exemplary imitator of Christ" (Ebel 2010: 88), yet another example of the historic quest to recast death for the nation consistently as noble sacrifice (Winter 2017: 114; see also Ebel 2015; Faust 2008; Loraux 1998).

Through national monuments and cemeteries, which Mosse portrays as "analogous to the construction of a church for the nation," the nation continually could access and pay tribute to a particular class of fallen saints (Mosse 1990: 33). Christian rhetoric and imagery, and particularly the rhetoric and imagery of Protestant Christianity, became deeply enmeshed in manifestations of nationalism as a response to death. Mosse argues that it is in response to death that the "function of Protestant Christianity within such nationalism came into sharpest focus," and this is clear in the way the "myth of the War Experience" recasts death as "not death at all but sacrifice and resurrection" (1990: 35, 73). The figure of the cross was relevant to soldiers of the First World War specifically because of its significance as a symbol of Christian sacrifice, as soldiers interpreted death as a "crowning moment," death in combat as martyrdom and a "Christ-likeness" (Ebel 2010: 77).

We see the "myth of the War Experience" at play in the World War I-era postcards. In one, Jesus tells the soldiers to do their duty. He watches over them, the Good Shepherd watching over his flock, as the words of the Lord's Prayer are repeated: "Thy will be done, on earth as it is in heaven" (fig. 2). In this image, a divine sanctioning of the duty of the soldier to go and serve his country under the watchful eye of

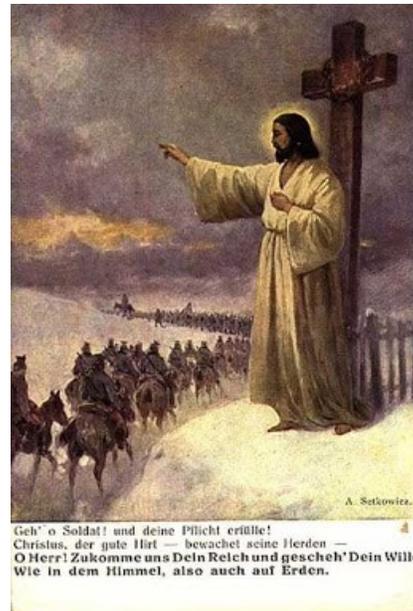


Figure 2*

Christ is made clear, but so is an alignment between the soldier's duty and the soldier's fate as the will of God.

In another, there is an implicit alignment of Christianity and the duty of the soldier. As the soldier lies—wounded, dying, or dead—the image of Christ appears. The direct invocation of the words of John 15:13 provides justification and divine significance to what could otherwise be perceived as a meaningless death. This man has shown the ultimate devotion to his nation, his people, his family. The appearance of Christ points beyond to the eschatological hope of the soldier’s reward for his service. His fate is not a death on a field, but eternal glory, both in the form of his heavenly reward and the eternal glory of the nation’s remembrance (fig. 3).

In yet another, Christ again appears to soldiers, though this time all seem to be in fine health. The message of the postcard is clear: through the toils and trials of war, Christ is always present, again hearkening to the sacralizing effect of the “myth of the War Experience.” In the same way that the words of Julia Ward Howe’s “Battle Hymn of the Republic” reminded a war-weary Union that God and His truth were not only present but defiantly “marching on,” this reminder that Jesus Christ is “with you always” sanctions the war and mass death; Christ is present and very much a part of this undertaking (fig. 4).



Figure 3*



Figure 4*

An image produced in 1919, after the war had already ended, nonetheless is significant, however, because it is contemporaneous to the historical moment in which the Bladensburg Cross was begun. Prominently displayed in this image is the cross, with a soldier in prayer in the foreground. While the language of the poster describes a fundraising campaign, the rhetoric being used is clearly Christian, and makes clear the sustaining role of faith and the notion of the cross in justifying soldier sacrifice and service.

Each of these images prominently displays either explicit cross imagery or biblical references to sacrifice and suggest that the cross was not divorced from the Christian theology of which it was a central part, despite what Justice Alito argues.

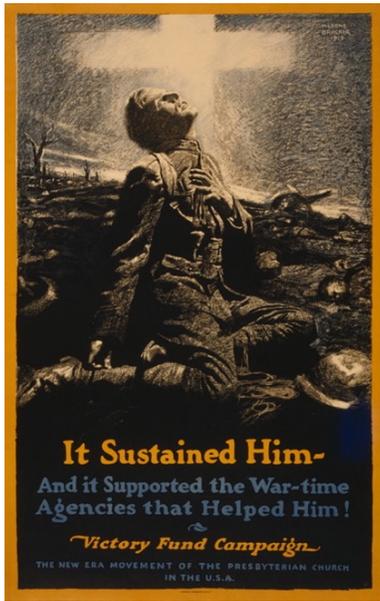


Figure 5 (M. Leone Bracker, 1919; public domain)

The Bladensburg Peace Cross provides additional evidence of the role of explicit Christian rhetoric. As noted above, Christian rhetoric in the form of direct references to Cavalry and the sacrifice of Christ were present from the beginning of the monument's erection ("Brief for Respondents" 2019: 4). The presence of other elements hearkening back to the image of the cross as it was viewed during the war (fig. 5) further demonstrates that the cross was not merely a secular symbol.

In the Court's decision, Justice Alito is correct that the cross became a symbol for the war generally. The image of the cross was ubiquitous during the war and was indelibly linked to the sacrifice of soldiers on all sides of the conflict. However, in the process of being so generalized, the cross was by no means emptied of its religious significance. The cross was not secularized, but rather, the rhetoric and imagery of Christian theology were appropriated and utilized for nationalistic purposes in support of the war effort.

For this reason, it is difficult to accept the Court's decision that the Bladensburg Cross satisfies the *Lemon* test when there would certainly appear to be a violation of two of the test's three prongs, in its effective advancement of religion and the resultant excessive government entanglement with religion.

The Supreme Court as Source of Societal Memory

The consequences of what is essentially a re-interpretation of history are far-reaching, but we can focus on the significance rooted in the unique role of the Court as an arbiter of societal memory.

The Court fulfills its role as a source and interpreter of memory in several ways. On the one hand, this can be so in a pragmatic, legal sense. The legal precedent established by Court decisions indelibly shape American legal memory for decades. Countless cases at varying levels of the court system are decided based on the precedent established in each decision.² Judges at all levels take care in crafting their decisions to establish sufficient precedent to ensure that a consistent constitutional standard is upheld, without creating an overreaching precedent which may infringe upon other rights. Supreme Court Justices must take special care in this regard.

² The seriousness of the potential impact of court precedent was invoked by the defenders of the Peace Cross in response to the ruling of the Fourth Circuit Court of Appeals; see Marimow 2017.

There is another dimension to this role of the Court in relation to social memory, however, and that is rooted in the realm of American civil religion. American civil religion, described by Robert Bellah in 1967 as he adapted a term from Jean-Jacque Rousseau's *The Social Contract* (1762), describes a nonsectarian religious system which exists in America alongside of, but not in place of, traditional religions. American civil religion is "a collection of beliefs, symbols, and rituals" which are specific to the American nation and identity, providing a "genuine vehicle of national religious self-understanding" (Bellah 1967: 8). Most important for our purposes, this function of civil religion as a means of national religious self-understanding serves a particular role in relation to memory. The civil religion is grounded in a unifying national myth which produces the nation's identity. This myth is mediated through ritual observances such as Memorial Day, symbols such as the flag, texts such as the Constitution, and sites such as the National Mall (Bellah 1967: 11; see also Marvin and Ingle 1999).

The particular role of sites within civil religion is of great importance given the interpretation of the Bladensburg Cross in the national memory. When considering monuments as a source of memory in civil religion, it is helpful to draw insight from the work of Francis A. Yates on memory in the Middle Ages. Parallel to the way cathedrals provided imagery relating the Christian story to those who might not have been able to read it, the imagery of the monuments on the National Mall represents an iconography of the American story that is accessible to all (Yates 1966; see also Tweed 2011). However, because these monuments are produced by the government it is impossible to ignore the influence of discourses of power on embodied interactions with the national memory (see Foucault 2010: 74-75).

According to Paul Connerton, American civil religion may be understood as the "cult enacted," a cult that is American, but American in a specific way as this is one particular narrative of history (1989: 43). Civil religion serves as a mechanism for preservation and propagation of the national memory by providing opportunity for continual ritual reengagement with the national narrative. The collective ritual engagement and bodily placement in relation to monuments ensures continual common remembrance (58-59). The collective response is of particular importance in preserving a cohesive national identity (Spillman 2003: 162). Through engagement with ceremonies of collective remembrance, such as Memorial Day, or through physical presence at the Tomb of the Unknown Soldier at Arlington National Cemetery, Americans performatively engage with and enact the memory of the American story (Connerton 1989: 88).

In addition to Connerton's focus on practices and embodiment, text plays a unique role in shaping these practices, as does the Court as interpreter of these texts. The Court, as authoritative interpreter of the Constitution and all American law flowing from it, is in the unique position to shape where and how Americans are able ritually to take part in the civil religious narrative. This capacity is particularly on display in *American Legion*. The determination of the constitutionality of a war memorial by the Court represents fully this capacity to decide for the nation how its citizens will remember World War I. In this case, the Court has determined that a Christian symbol is the proper means for continual ritual reengagement with the narrative of America's role in that conflict.

When the Court delivers a ruling, it has a very real impact. If the Court reads history incorrectly, as we have seen is the case in *American Legion*, it alters the nation's memory of itself. As the assigned interpreter of the Constitution, the sacred text at the heart of American civil religion, the Court can reinforce what is and is not a part of the national narrative. For example, it seems inconsistent to permit the protection and preservation of crosses while other religious sites like Standing Rock fail to receive protections under the "No Establishment" clause and *Religious Land Use and Institutionalized Persons Act* (P.L. 106-274). In that case, ignoring environmental risks and capitalizing on the inability of the Standing Rock Sioux to assert property rights to land stolen in violation of the 1851 Treaty of Fort Laramie, the Court permitted the granting of an easement for the construction of a pipeline running under Lake Oahe upstream of the community's reservation (Meyer 2017). Despite pointing out that the pipeline could contaminate the waters of Lake Oahe (which must remain pure for their vital role in the tribe's religious rituals), the Standing Rock Sioux argument received no sympathy as constituting a sufficient burden necessitating intervention (Bailey 2016). Despite the long history of indigenous religious practice in the United States, this diverse array of practices is not recognized as integral to the national narrative in the same way as Christianity; court precedent bears this out (Campbell 2017). Connerton writes of the importance of an explicit claim of "continuity" through ritual re-enactment of a narrative (1989: 45). In preserving the Bladensburg Cross as a constitutional monument, the Court has determined the memory of the cross as a secular symbol in the First World War to be a fact, an integral element of the continuity of the American national story.

It is in this function that we see the Court's institutionalization of forgetfulness as well as remembrance, foregrounding the memory of the role of the cross during the war as a purely secular symbol while forgetting the religious undergirding of the symbol's use brought on by the messy entanglement of Christian theology and wartime nationalism. Precedent can change or be overturned, as cases arise which may alter the interpretation offered in *American Legion*, but for the time being, the pervasive role of religion in World War I has been removed from the national memory, replaced with a history of a fully secularized cross, emptied of religious significance.

The Court's position as arbiter of societal memory gives the institution excessive power not just to shape legal proceedings, but also to have a tangible influence over the movements of American bodies. In determining memorials which acceptably are a part of the narrative continuity of American civil religion, the Court also is determining where it is acceptable for bodies to gather and perform the rituals of the enacted cult of civil religion. The Court possesses power not merely to interpret laws, but to shape American memory in such a way as to exert power over the placement of bodies (see Foucault 1990: 142-143). The decision in *American Legion* communicates that a site characterized by Christian imagery is a constitutionally acceptable location for the performative elements of societal memory to take place, while certain Native American sacred sites are determined to be insignificant to the extent that the Court sees no substantial burden present in the construction of an oil pipeline or copper mine. In this selective ignorance of historical contexts, we see again the institutionalization of remembrance and forgetfulness, alongside the codification of certain silences which rest between the two (Winter 2010: 4).

Conclusion

The Bladensburg Cross was erected in a context in which the notion of soldier sacrifice as a form of *imitatio Christi* resonated deeply. The cross was not selected because it was a secular symbol, as the Court contends. Rather, the cross was selected because of the pervasive influence of Christian imagery in justifying the mass death that typified combat in World War I. To overlook this history not only jeopardizes “No Establishment” clause precedent, it also risks institutionalizing national amnesia around the role of religion in the war. Whatever one may think of the *Lemon* test as a sufficient means of determining constitutionality under the “No Establishment” clause, the history presented here supports the notion that it is not only inaccurate but irresponsible to claim that the Bladensburg Cross satisfies the three-pronged test.³ As Justice Ginsburg notes in her dissent lamenting the further erosion of government neutrality toward religion, “the asserted commemorative meaning of the cross rests on—and is inseparable from—its Christian meaning.” (*American Legion* 2019: 2108). This “inseparable” linkage between a symbol and its meaning are why the cross’s deployment in this particular situation as a war memorial does not somehow “transform it into a secular symbol” (*American Legion* 2019: 2104).

To make such a claim is irresponsible precisely because of the Court’s unique role as arbiter of societal memory. As an institution within the complex of American civil religion tasked with the interpretation of a central text—the Constitution—the Supreme Court is uniquely positioned to shape the national memory and the way that memory is ceremonially enacted. In controlling how and in what form national monuments can take shape, particularly in seeming to privilege Christian imagery in the process, the Court is indelibly re-presenting history and shaping the nation’s memory into a particular form.

*Editors: Every effort has been made to ascertain the identity of the holder of the copyrights for figures 2-4. Rights holders with concerns should contact *Religio et Lex* directly.

WORKS CITED

- American Legion v. American Humanist Association*, nos. 17-1717 and 18-18 (20 June 2019); available online: <https://www.supremecourt.gov/opinions/18pdf/17-1717_4f14.pdf> (accessed 29 April 2021).
- Asad, Talal (2003). *Formations of the Secular: Christianity, Islam, Modernity*. Stanford, Ca.: Stanford University Press.

³ As Justice Alito notes at length in the majority opinion, the *Lemon* test is not perfect, and has not necessarily simplified religion clause jurisprudence to the extent the Burger Court may have hoped. However, its tests are a helpful starting point for evaluating “No Establishment” clause claims, and not difficult to apply in this case.

- "Available Emblems of Belief." (n.d.). U.S. Department of Veterans Affairs National Cemetery Administration; available online: <<https://www.cem.va.gov/hmm/emblems.asp>> (accessed 4 August 2021).
- Bailey, Sarah Pulliam (2016). "The Dakota Access Pipeline Isn't Just About the Environment. It's About Religion." *Washington Post*, (5 December); available online: <<https://www.washingtonpost.com/news/acts-of-faith/wp/2016/12/05/the-dakota-access-pipeline-isnt-just-about-the-environment-its-about-religion/>> (accessed 29 April 2021).
- Barnes, Robert (2019). "Supreme Court Rules That Maryland 'Peace Cross' Honoring Military Dead May Remain on Public Land," *Washington Post*, (20 June); available online: <https://www.washingtonpost.com/politics/courts_law/supreme-court-says-maryland-peace-cross-honoring-military-dead-does-not-constitute-government-endorsement-of-religion/2019/06/20/a63c4c24-9365-11e9-b570-6416efdc0803_story.html> (accessed 29 April 2021).
- Barnes, Robert, and Ann E. Marimow (2018). "Supreme Court Will Take Case on Constitutional Challenge to Maryland's Peace Cross." *Washington Post* (2 November); available online: <https://www.washingtonpost.com/politics/courts_law/supreme-court-will-take-case-on-constitutional-challenge-to-marylands-peace-cross/2018/11/02/4262e5e2-c259-11e8-b338-a3289f6cb742_story.html> (accessed 29 April 2021).
- Bellah, Robert N (1967). "Civil Religion in America." *Daedalus* 96, 1 (Winter): 1-21.
- Brief for Respondents, On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit (2019). *American Legion v. American Humanist Association, Maryland-National Capital Park and Planning Commission v. American Humanist Association*, nos. 17-1717, 1818 (23 January 2019); available online: <https://www.supremecourt.gov/DocketPDF/17/17-1717/81465/20190123152713265_37350%20pdf%20AHA%20Final%20Brief%201-23-19.pdf> (accessed 29 April 2021).
- Campbell, Peter B. (2017). "'Those Are Our Eiffel Towers, Our Pyramids': Why Standing Rock is About Much More Than Oil." *Guardian* (15 May); available online: <<https://www.theguardian.com/science/2017/may/15/those-are-our-eiffel-towers-our-pyramids-why-standing-rock-is-about-much-more-than-oil>> (accessed 29 April 2021).
- Connerton, Paul (1989). *How Societies Remember*. Cambridge, U.K.: Cambridge University Printing House.
- Ebel, Jonathan H. (2015). *G.I. Messiahs: Soldiering, War, and American Civil Religion*. New Haven, Ct.: Yale University Press.
- Ebel, Jonathan H. (2010). *Faith in the Fight: Religion and the American Soldier in the Great War*. Princeton, N.J.: Princeton University Press.
- Faust, Drew Gilpin (2008). *This Republic of Suffering: Death and the American Civil War*. New York, N.Y.: Vintage Books.

- Foucault, Michel (2010). "Truth and Power." In *The Foucault Reader*, ed. Paul Rabinow, 51-76. New York, N.Y.: Vintage Books.
- Foucault, Michel (1990). *The History of Sexuality, Volume 1: An Introduction*, trans. Robert Hurley. New York, N.Y.: Vintage Books.
- Fussell, Paul (1975). *The Great War and Modern Memory*. Oxford, U.K.: Oxford University Press.
- Hurd, Elizabeth Shakman (2015). *Beyond Religious Freedom: The New Global Politics of Religion*. Princeton, N.J.: Princeton University Press.
- Laderman, Gary (1996). *The Sacred Remains: American Attitudes Toward Death, 1799-1883*. New Haven, Ct.: Yale University Press.
- Liptak, Adam (2019). "40-Foot Cross Divides a Community and Prompts a Supreme Court Battle," *New York Times* (24 February); available online: <<https://www.nytimes.com/2019/02/24/us/politics/bladensburg-cross-supreme-court.html>> ([10 December 2019]).
- Loraux, Nicole (1998). *Mothers in Mourning*, trans. Corinne Pache. Ithaca, N.Y.: Cornell University Press.
- Mahmood, Saba (2016). *Religious Difference in a Secular Age: A Minority Report*. Princeton, N.J.: Princeton University Press.
- Marimow, Ann E. (2017). "Towering Cross-Shaped Monument on Public Land is Unconstitutional, Court Says," *Washington Post* (18 October); available online: <https://www.washingtonpost.com/local/public-safety/towering-cross-shaped-monument-on-public-land-is-unconstitutional-court-rules/2017/10/18/b26e4afe-5b47-11e7-9b7d-14576dc0f39d_story.html> (accessed 29 April 2021).
- Marvin, Carolyn, and David W. Ingle (1999). *Blood Sacrifice and the Nation: Totem Rituals and the American Flag*. New York, N.Y.: Cambridge University Press.
- Meyer, Robinson (2017). "The Last-Ditch Attempt to Stop the Dakota Access Pipeline," *The Atlantic* (10 February); available online: <<https://www.theatlantic.com/science/archive/2017/02/the-dakota-access-pipelines-final-stand/516225/>> (accessed 29 April 2021).
- Mosse, George L. (1990). *Fallen Soldiers: Reshaping the Memory of the World Wars*. New York, N.Y.: Oxford University Press.
- "Peace Cross" (2018). *Maryland's National Register Properties*. Maryland Historical Trust, Department of Planning (n.d.); available online: <<https://mht.maryland.gov/nr/NRDetail.aspx?NRID=1644>> (accessed 29 April 2021).
- Piehler, Kurt G. (1995). *Remembering War the American Way*. Washington, D.C.: Smithsonian Institution Press.
- Spillman, Lyn (2003). "When Do Collective Memories Last?: Founding Moments in the United States and Australia." In *States of Memory: Continuities, Conflicts, and*

- Transformations in National Retrospection*, ed. Jeffrey K. Olick, 161-192. Durham, N.C.: Duke University Press.
- Su, Anna (2016). *Exporting Freedom: Religious Liberty and American Power*. Cambridge, Ma.: Harvard University Press.
- Sullivan, Winnifred Fallers, et al., eds. (2015). *Politics of Religious Freedom*. Chicago, Ill.: University of Chicago Press.
- Tweed, Thomas A. (2011). *America's Church: The National Shrine and Catholic Presence in the Nation's Capital*. New York, N.Y.: Oxford University Press.
- Waldman, Steven (2019). "The Supreme Court's 'Peace Cross' Case Demonstrates the Fine Art of Pretending Religious Symbols Aren't Religious." *Washington Post* (20 June); available online: <<https://www.washingtonpost.com/religion/2019/06/20/supreme-courts-peace-cross-case-demonstrates-fine-art-pretending-religious-symbols-arent-religious/>> (accessed 4 August 2021).
- Winter, Jay (2017). *War Beyond Words: Language of Remembrance from the Great War to the Present*. Cambridge, U.K.: Cambridge University Press.
- Winter, Jay (2010). "Thinking About Silence." In *Shadows of War: A Social History of Silence in the Twentieth Century*, ed. Efrat Ben-Ze'ev, Ruth Ginio, and Jay Winter, 3-31. Cambridge, U.K.: Cambridge University Press.
- Witte, John, and Joel A. Nichols (2016). "Modern Establishment Law: Mapping the Doctrinal Terrain," in *Religion and the American Constitutional Experiment* (New York, N.Y.: Oxford University Press, 2016), 154-171.
- Yates, Francis A. (1966). "The Art of Memory in the Middle Ages." In *The Art of Memory*, 50-81. Chicago, Il.: University of Chicago Press.