



Written by [John Eidsmoe](#) on April 22, 2019

Published in the April 22, 2019 issue of [the New American](#) magazine. Vol. 35, No. 08

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## The War on the Cross

As the guns fell silent after World War I in 1918, 49 families in Prince George's County, Maryland, grieved the loss of their sons. But visiting their sons' graves was difficult because they rested in cemeteries overseas.

In 1925 the American Legion and the Gold Star families commemorated their loved ones by dedicating a 40-foot memorial in Bladensburg, Maryland. The memorial was in the shape of a cross, with the American Legion's star emblem in the center and the words "Valor," "Endurance," "Courage," and "Devotion" on the four sides of the base.



AP Images

The servicemen's names are emblazoned on the cross. Most were farmers and laborers in their teens or twenties; one was a college chemistry instructor; and another was a well-known surgeon. The oldest (age 51) was Gunner Henry L. Hulbert, who served over 20 years in the Marine Corps, and had been awarded the Medal of Honor for his service in Samoa. In the summer of 1918, as General John J. Pershing arrived at an American encampment on the Marne River to bestow medals for heroism, he asked why Hulbert appeared before him soaking wet. Hulbert answered that he had been on the other side of the river and, not wanting to be late for the general, swam across.

At least two were African-Americans. John Henry Seaburn enlisted at age 16, died in battle from gunshot wounds, and was initially buried in a French military cemetery. He was later interred at Arlington National Cemetery, in 1921. His niece, Alvergia E. Guyton, donated his letters and military records to the Prince George's African American Museum and Cultural Center. Now in her 80s and living in a nursing home, Guyton is disturbed that the memorial may be dismantled. "I'm shocked they would even think about that. It's been there all my life."

The monument stood undisturbed until 2015, when the American Humanist Association demanded its removal as an unconstitutional establishment of religion.

In 2015, Federal District Judge Deborah K. Chasanow ruled that the Bladensburg cross may remain because it has a secular purpose, does not have the primary effect of advancing or inhibiting religion, and does not constitute excessive government entanglement with religion.

But in October 2017, the Fourth Circuit U.S. Court of Appeals voted 2-1 to reverse Judge Chasanow's ruling and held that the cross does violate the First Amendment. The American Legion and others filed a petition for writ of certiorari with the U.S. Supreme Court, and in November 2018 the High Court agreed to hear the case.

This is encouraging because the court accepts less than one percent of all appeals. But what will the court do with this case? Oral arguments before the court took place on February 27, and a decision is expected before the end of June. As Justice Brett Kavanaugh has replaced swing Justice Anthony Kennedy on the court, the decision it reaches could indicate whether the court is ready to move in a



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new direction on Establishment Clause cases.

Embodied in the First Amendment of the Constitution, the Establishment Clause states that Congress shall make no law “respecting an establishment of religion.” The intent was not to remove religion from the public square, but to prevent Congress from establishing a state-sponsored church along the lines of the Church of England. Over time, however, the Supreme Court began making parts of the Bill of Rights, including the Establishment Clause, applicable to the states through a legal theory called the “Incorporation Doctrine,” which incorporates the Bill of Rights into the 14th Amendment. Also, the court has expanded the definition of “an establishment of religion” way beyond that of a state-sponsored church. By the 1960s, for example, the court had claimed that official prayers in public schools constituted the establishment of religion and therefore were unconstitutional. Step by step, the court has imposed “the separation of church and state,” even though that phrase is nowhere found in the -Constitution.

Since 1971, the court has sometimes analyzed the so-called Establishment Clause using the three-prong test of *Lemon v. Kurtzman*, which asks whether the practice in question (1) has a secular purpose, (2) has a primary purpose that neither advances nor inhibits religion, and (3) does not involve excessive entanglement of government with religion. If the practice fails any of these three tests, it is struck down as an establishment of religion.

But other cases suggest that the *Lemon* test is not appropriate for cases such as the Bladensburg cross.

In *Marsh v. Chambers* (1983), the Supreme Court upheld the Nebraska Legislature’s practice of opening each day with a prayer by a chaplain paid by the state. Noting that legislative chaplains and legislative prayers were a common practice in the American colonies and in the states after independence, that the Continental Congress had prayers, and that Congress itself in 1789 instituted congressional chaplains, the court held that “historical evidence sheds light not only on what the draftsmen intended the Establishment Clause to mean, but also on how they thought that Clause applied to the practice authorized by the First Congress — their actions reveal their intent.” The court concluded:

In light of the unambiguous and unbroken history of more than 200 years, there can be no doubt that the practice of opening legislative sessions with prayer has become part of the fabric of our society.

Like legislative chaplains and legislative prayer, the public display of crosses and other arguably religious symbols is an unbroken tradition that predates the First Amendment, and nothing in the language or history of the First Amendment evinces any intent to alter or abolish that tradition. Let’s examine the history of that tradition.

## **Display of the Cross in American History**

During the Age of Discovery, the planting of a cross was associated with discovery and claims of ownership. As the historian Dr. B.A. Hinsdale explained,

A cross reared on an island or coast would be evidence that it had been visited and appropriated by a Christian navigator.... John Cabot raised on the shore of North America



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crosses surmounted by the flag of England and the banner of St. Mark, and Cartier raised crosses crowned with the *fleur de lis* on the shores of the Gulf and River St. Lawrence. St. Luson stood near a cross at the Sault Ste. Marie when he took possession of the Great Lakes in the name of the redoubtable monarch, Louis XIV of France, as did La Salle when, at the mouth of the Mississippi, he took possession, in the same name, of the vast region that the Mississippi drains.

According to his *Journal*, when Christopher Columbus first landed on what was probably Watling Island on October 12, 1492, he planted a cross and took possession of the new land for the king and queen of Spain. On the rest of his journey and subsequent voyages, he planted a cross on every land he discovered.

When Hernando Cortés landed at Vera Cruz (True Cross) on April 22, 1519, he planted a cross and claimed the territory for Spain. Hernando de Soto did the same upon crossing the Mississippi River in 1541. In 1853, Congress commissioned William Henry Powell to paint *Discovery of the Mississippi by De Soto*. The painting depicts de Soto, his officers and soldiers, and Native Americans, and the raising of a large wooden cross. The painting was placed in the Capitol Rotunda in 1855, where it remains today.

As noted above, French and English explorers also planted crosses. As George Bancroft notes in *History of the United States* (1853), Jacques Cartier, exploring what is now eastern Canada, “gathered of the Indians some indistinct account of the countries now contained in the north of Vermont and New York. Rejoining his ships, the winter, rendered frightful by the ravages of the scurvy, was passed where they were anchored. At the approach of spring, a cross was solemnly erected upon land, and on it a shield was suspended which bore the arms of France and an inscription, declaring Francis to be the rightful king of these newfound regions.”

## The Colonists

The planting of the cross continued among the early colonists. Jamestown settler and early Colonial Virginia Governor George Percy described the first landing at Jamestown in 1607:

The foure and twentieth day [of May] wee set up a Crosse at the head of this River, naming it Kings River, where we proclaimed James King of England to have the most right unto it. When wee had finished and set up our Crosse, we shipt our men and made for James Fort.

In 1935, the National Society Daughters of the American Colonists erected a granite cross on Cape Henry in memory of the wooden cross erected by the colonists. In the early days, the Jamestown colony flew the flag of England, a red St. George’s Cross on a white background; this was replaced by the Union Jack, which combined the English flag’s St. George’s Cross with the Scottish flag’s diagonal white St. Andrew’s Cross on a blue background and the Irish flag’s red saltire (diagonal or St. Andrew’s cross) on a white background, symbolizing the union of Great Britain.



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**Fighting against erasing religion:** Many Americans have died for such rights as the freedom of religion, in opposition to being silenced under atheist rule. And freedom of religion was the reason most of the first settlers came here. *(Photo credit: liveslow/iStock/Getty Images Plus)*

In 1634, when Leonard Calvert, the first proprietary governor of Maryland, sailed into the Potomac River, a cross was planted on an island and the country claimed for Christ and for England. The Calvert family used two banners, one with the black and white design of Calvert's father and the other with red and white crosses from his mother's family. Only the former was officially used in colonial days, but in 1904 the State of Maryland adopted a flag that incorporated both designs. Today Maryland's flag features red and white crosses in its lower left and upper right quadrants.

Many of the colonies flew flags with cross designs. The Colony of New Sweden (1638-1655) flew the Swedish Naval Ensign, a gold cross on a blue field. Others flew the Union Jack or variants thereof, which combined the St. George's Cross, the St. Andrew's Cross, and the St. Patrick Saltire. The Russian Naval Ensign, a blue St. Andrew's Cross on a white field, flew over the Russian Ft. Ross in California 1812-1841. Crosses were less common in Colonial New England because the Puritans associated the cross with graven images, but the New England Ensign in use 1693-1711 had a red cross on a white field in the upper left corner. When Governor Edmund Andros temporarily united Massachusetts Bay, New Hampshire, Connecticut, Rhode Island, New Haven, and New York into the Dominion of New England in 1687, he adopted a flag with a burgundy cross on a white background and a crown in the center.

## The Americans

The tradition of crosses in public places continued into the 1800s and beyond.

The French missionary Father Jacques Marquette and the French Canadian explorer Louis Joliet traveled to the Great Lakes region to convert Native Americans to Christianity and to find a river to the Pacific Ocean, Marquette died near Ludington, Michigan, on May 18, 1675, and in 1955 a cross was erected on the place where he is believed to have died.

In 1830, the Slovenian "snowshoe priest" Father Frederic Baraga came to northern Minnesota to minister to the Ottawa and Ojibwe tribes. Grateful for safe passage across Lake Superior, Father (later Bishop) Baraga erected a small wooden cross at the mouth of the Cross River, later replaced by a



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granite cross and plaque, which still stands near Schroeder, Minnesota.

In an amicus brief to the Supreme Court submitted on behalf of the Foundation for Moral Law, this author cites 32 other crosses erected in public places in the 19th, 20th, and 21st centuries. These may be viewed in public parks and public cemeteries, and in front of public buildings. The brief, complete with full citations, may be found on the foundation's website, [www.morallaw.org](http://www.morallaw.org). And these public crosses are only a sampling of those that may be found across the nation.

And the tradition continues. The Trylon of Freedom Monument outside the E. Barrett Prettyman United States Courthouse in Washington, D.C., depicts, at the top of the southwest side, religious liberty symbolized by a cross and the Ten Commandments.

Under the *Marsh v. Chambers* analysis, as amplified by *Van Orden v. Perry* (2005) and *Greece v. Galloway* (2014), the long, uninterrupted tradition of crosses in public places must be considered in determining the meaning of the Establishment Clause. As Judge Kennedy wrote in *Greece*, "The Establishment Clause must be interpreted 'by reference to historical practices and understandings.'" The public display of crosses was a common practice long before and long after 1789, and nothing in the language or history of the First Amendment indicates any intent to change that practice.

## **The Cross and the Military**

The Fourth Circuit's appendix shows the cross as a small symbol on gravestones in Arlington National Cemetery. However, the court's depiction is misleading. Although most of the graves have simple crosses carved into the headstone, the cemetery also contains much larger crosses, especially among the older graves. As this author can attest from leading tours of Arlington Cemetery, these include the Argonne Cross, erected "in memory of our men in France 1917-1918" (13 feet tall), the "Cross of Sacrifice" behind the Tomb of the Unknowns, the Canadian Cross of Sacrifice (24 feet tall), the Spanish-American War Nurses Monument (Maltese cross), and others. The more limited use of crosses is a later restriction impelled by the need for uniformity with the cemetery's growth.

And crosses are more prominent in U.S. military cemeteries overseas. According to the official website of the American Battle Monuments Commission, which created and maintains the overseas military cemeteries,

Each grave site for the World War I and World War II cemeteries is marked by a headstone of pristine white marble. Headstones of those of the Jewish faith are tapered marble shafts surmounted by a Star of David. Stylized marble Latin crosses mark all others.

Although these cemeteries are located overseas, the land is given in perpetuity for the use of the U.S. government and is operated by the American Battle Monuments Commission. Accordingly, the Establishment Clause is no less applicable to these cemeteries than to those within the United States.

Nor are crosses unique to American military cemeteries. To promote uniformity in British Commonwealth military cemeteries, the Imperial War Graves Commission (now the Commonwealth War Graves Commission) determined that all but the smallest cemetery would have one prominent cross, to be called the Cross of Sacrifice.

On June 12, 1925 Canadian Prime Minister William Lyon Mackenzie King requested that a Cross of



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Sacrifice be erected at Arlington National Cemetery in Virginia to memorialize Americans who died in World War I while serving in the Canadian armed forces. President Calvin Coolidge approved the request, and the Cross of Sacrifice was dedicated at Arlington on Armistice Day, 1927.

## **Military Medals**

Except for the Congressional Medal of Honor, the highest award a member of the U.S. Army can receive is the Distinguished Service Cross — a gold cross with an eagle on the front that is given “for extreme gallantry and risk of life in actual combat with an armed enemy force.” The Distinguished Service Cross is the equivalent of the United States Air Force Cross, the Navy Cross (for Navy and Marine personnel), and the Coast Guard Cross. The cross emblem recognizes the willingness to risk one’s life to save the lives of others or to advance the military mission. This willingness to sacrifice is commonly set forth in the citation that accompanies the medal. The cross, a fitting symbol of such heroism and self-sacrifice, is used by other selfless organizations such as the International Committee of the Red Cross and many local fire departments.

The reason is self-evident: As General Douglas MacArthur said in his Farewell Address at West Point: “The soldier, above all other men, is required to practice the greatest act of religious training — sacrifice.” And Jesus said, “Greater love hath no man than this, that he lay down his life for his friends.” (John 15:13) The military cross appropriately recognizes that the sacrifice of the soldier for others on the battlefield is in some sense a reflection of the sacrifice of Jesus for others on the cross.

The military medals of other countries also display a cross. The British Commonwealth nations award the Victoria Cross and the George Cross. Germany awards the Bundeswehr Cross of Honor for Valor for “an act of gallantry in the face of exceptional danger to life and limb while demonstrating staying power and serenity in order to fulfill the military mission in an ethically sound way.” Military medals in Russia were frequently in the shape of crosses (the St. Catherine Medal, the St. George Medal, the St. Vladimir Medal, and others). Cross-shaped medals were eliminated and suppressed by the communist regime after 1918, but since 1991 the Russian Federation has resumed issuing cross-shaped medals to its military heroes.

France awards its bravest soldiers the Croix de Guerre (Cross of War), Sweden the Grand Cross of the Order of the Sword, Norway the King Haakon VII Freedom Cross (aka Cross of Liberty), and Poland the Order of the Military Cross and the Cross of Merit with Swords (Gold, Silver, and Bronze). Other military forces throughout the Western world award similar cross-shaped medals.

## **Respect for the Dead**

Utterly missing from the Fourth Circuit’s analysis of the Bladensburg cross is consideration of the memory of the deceased veterans and the rights and sensibilities of their families and descendants.

The court should respect the memory of those for whom this monument was dedicated over 90 years ago, as well as the rights and sensibilities of those who planned it, contributed to support it, and dedicated it to their loved ones. Such consideration is utterly absent from the Fourth Circuit’s analysis. But as the Supreme Court recognized in *Salazar v. Buono* (2010, plurality opinion), “A Latin cross is not merely a reaffirmation of Christian beliefs. It is a symbol often used to honor and respect those whose heroic acts, noble contributions, and patient striving help secure an honored place in history for this Nation and its people.”



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Ultimately, the war on monuments is not only a war on history; it is a war on dissent. Monuments — especially those that honor heroes or causes currently out of vogue — stand as a stark reminder to the current orthodoxy that there was once a time when people thought and acted differently.

And that time may come again.

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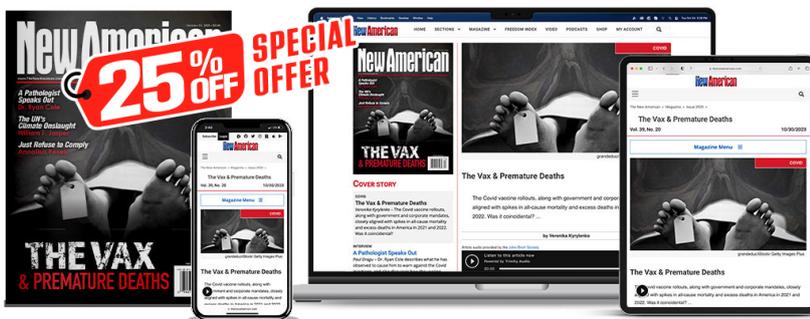
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