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Who Conquers with This Sign? The Significance of The Secularization of The Bladensburg Cross

Mary Anne Case*

INTRODUCTION

In this Symposium, Roger Williams University School of Law has invited a number of scholars of law and religion, including me, to address, in the context of the United States Constitution's Establishment Clause, the question "Is this a Christian nation?" It seems to me particularly appropriate to approach the question centering the perspective of Roger Williams himself. The metaphor

* Arnold I. Shure Professor of Law, University of Chicago Law School. I am grateful to organizers and participants at the Roger Williams School of Law Symposium particularly Carl Bogus, Jonathan Stark-Sachs, and Sophia Weaver; to participants at a Northeastern Law School Faculty Workshop, particularly Libby Adler, Aziza Ahmed, Rashmi Dyal-Chand, Claudia Haupt, Blaine Saito, Patricia Williams, and Rose Zoltek-Jick; to participants in a University of Chicago Law School workshop, particularly Farah Peterson, Julie Roin, and Saul Levmore; to participants in a University of Chicago Federalist Society Debate, particularly Ken Klukowski; to Paul Grasmehr of the Pritzker Military Museum and Library, Mikey Weinstein of the Military Religious Freedom Foundation, and Derek R. Nestell of the Heraldic Services & Support Division, U.S. Army Institute of Heraldry for expertise on military matters; to Cliff Ando, Ann Bartow, Will Baude, Richard Bernstein, Cécile Coquet-Mokoko, Karen Cornelius, Garrett Epps, Rick Garnett, Nicole Goldstein, Dirk Hartog, Zachary Hertz, Allyson Newton Ho, Paul Horwitz, Jean-François Husson, Andy Koppelman, Pnina Lahav, Doug Laycock, Nicholas Little, Jessica Lowe, Chip Lupu, Bruce Parker, Mark Polizzotti, Caroline Sägerser, Gina Sanders, Karl Shoemaker, Winni Sullivan, Nelson Tebbe, Glenn Wallach, Lael Weinberger, and Jim Whitman, for comments, brainstorming and bibliographic assistance; and to Franchesca Alamo and Amy Tang for outstanding technical help and research assistance.

of a “wall of separation of between church and state,”¹ ubiquitous in discussions of the Establishment Clause, has two principal sources. The most often cited source is, of course, Thomas Jefferson’s 1802 Letter to the Danbury Baptists,² but, a century and a half earlier, Roger Williams, from an importantly different perspective, had stressed the harms that followed when there was “opened a gap in the hedge, or wall of separation, between the garden of the church and the wilderness of the world.”³ As I will explain below, unlike Jefferson, who supported separation principally to protect the state and individual “rights of conscience,”⁴ Williams focused principally, although not exclusively, on the corrupting effect on the church of a failure to keep it “walled in peculiarly unto [God] from the world.”⁵ While Jefferson’s views have made their way into the text of countless judicial opinions interpreting the religion clauses, Williams gets mentioned in only a handful of footnotes in Supreme Court cases.⁶

1. Letter from Thomas Jefferson to the Danbury Baptist Association (Jan. 1, 1802), NAT’L ARCHIVES, <https://founders.archives.gov/documents/Jefferson/01-36-02-0152-0006> [perma.cc/N6LL-L452].

2. *See id.*

3. ROGER WILLIAMS, *THE BLOODY TENENT OF PERSECUTION FOR CAUSE OF CONSCIENCE DISCUSSED: AND MR. COTTON’S LETTER EXAMINED AND ANSWERED* 435 (Edward B. Underhill ed., London, J. Haddon 1848).

4. *See* Letter from Thomas Jefferson to the Danbury Baptist Association, *supra* note 1.

5. WILLIAMS, *supra* note 3, at 435. For an influential discussion of the different implications of Williams’s and Jefferson’s views on the wall of separation, see MARK DEWOLFE HOWE, *THE GARDEN AND THE WILDERNESS: RELIGION AND GOVERNMENT IN AMERICAN CONSTITUTIONAL HISTORY* (1965). *But see* David Little, *Roger Williams and the Puritan Background of the Establishment Clause*, in *NO ESTABLISHMENT OF RELIGION: AMERICA’S ORIGINAL CONTRIBUTION TO RELIGIOUS LIBERTY* 100, 100–24 (T. Jeremy Gunn & John Witte eds., 2012). Little argues that Howe is wrong to focus in his analysis of Williams’s views so exclusively on the adverse effect of a lack of separation on the church because, as Little explains, “the wilderness Williams fears is the condition of an established religion where *both* church *and* state are mutually degraded and corrupted by failing to observe the critical distinction between” them. *Id.* at 112 (citing HOWE, *supra*, at 6). My analysis in this Article, particularly in the concluding section, follows Little’s suggestion.

6. *See, e.g.*, *Mitchell v. Helms*, 530 U.S. 793, 912–13 (2000) (Souter, J., dissenting) (noting that “at least one religious respondent and numerous religious amici curiae” opposed religious aid to sectarian schools “in a tradition claiming descent from Roger Williams”); *Lee v. Weisman*, 505 U.S. 577, 608 n.11 (1992) (Blackmun, J., concurring) (attributing to Williams the “view that

Now, a new majority on the Supreme Court seems increasingly willing to “br[eak] down the wall itself.”⁷ The Court has recently mandated the inclusion of churches and other religious institutions in various government funding schemes,⁸ allowed sectarian prayer by a wider array of governmental bodies,⁹ and preserved religiously themed monuments on public land,¹⁰ in each case doing so with an eye toward helping and not hurting churches and religion. Meanwhile, outside of the courts, in their protests on the national mall, the Michigan State Capitol, and elsewhere, and even in their invasion of the U.S. Capitol itself during the insurrection of January 6, 2021, many fervent Trump supporters have carried the cross and other symbols of militarized Christian nationalism in their sometimes violent efforts to secure for Trump the second term they see as divinely mandated.¹¹ This therefore seems an opportune time to look at the landscape for signs that no longer keeping the church “separate from the world” could indeed be harmful in the ways of which Williams warned. My aim in this Article will not be to chart a new doctrinal path for the Establishment Clause, but rather to offer some historical, theoretical, theological, and cultural perspectives on the existing landscape of law and society. My central vehicle for doing so will be an examination from various angles of the significance of the

the Establishment Clause was primarily a vehicle for protecting churches”); *Engel v. Vitale*, 370 U.S. 421, 434–36 n.20 (1962) (banning the recitation in N.Y. public schools of an official prayer composed by state authorities and devoting a lengthy footnote to Roger Williams’s views on religious freedom, including his conviction that it was “no part of the business or competence of a civil magistrate to interfere in religious matters”); *Minersville Sch. Dist. v. Gogbitis*, 310 U.S. 586, 594 n.3 (1940) (comparing Williams’s and Jefferson’s views in the context of religious objections to compulsory flag salutes in public schools), *overruled by* *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *see also* discussion *infra* footnotes 126–28 and accompanying text.

7. WILLIAMS, *supra* note 3, at 435.

8. *See, e.g.*, *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2025 (2017) (mandating inclusion of church sponsored day care center in competitive governmental funding scheme for playground resurfacing).

9. *See* *Town of Greece v. Galloway*, 572 U.S. 565, 569–70, 582–85 (2014) (expanding the possible fora for legislative prayer to include opening prayers at town board meetings).

10. *See, e.g.*, *Van Orden v. Perry*, 545 U.S. 677, 681 (2005) (upholding continued presence of a Ten Commandments monument on the grounds of the Texas State Capitol).

11. *See infra* footnotes 292–93 and accompanying text.

Bladensburg Cross, a thirty-two-foot tall Latin cross erected by the American Legion and others in the early twentieth century as a memorial to soldiers from Prince George's County, Maryland, who died in World War I.¹²



FIGURE 1: BLADENSBURG CROSS¹³

The Memorial or Peace Cross, maintained with public funds, now stands on public land in the middle of a busy intersection in Bladensburg, Maryland, where the Supreme Court held it could stay,¹⁴ despite a claim by the American Humanist Association and others that government should not be this closely aligned with the “preeminent symbol of Christianity.”¹⁵

12. *Am. Legion v. Am. Humanist Ass’n*, 139 S. Ct. 2067, 2077 (2019).

13. Image on file with Author, courtesy of Neal Katyal.

14. *Am. Legion*, 139 S. Ct. at 2089–90.

15. Brief of Respondents at 35, *Am. Legion*, 139 S. Ct. 2067 (2019) (Nos. 17-1717, 18-18) (quoting *Salazar v. Buono*, 559 U.S. 700, 725–26 (2010) (Alito, J., concurring)).

My examination centers on the premise that the Cross had a “clear secular purpose, history, and content” and “incorporate[ed] religious symbolism to convey a secular meaning,”¹⁶ a premise propounded, astonishingly, by the devoutly Christian lawyers of First Liberty who represented the American Legion and accepted by devoutly Catholic Justice Alito for a majority of the Supreme Court.¹⁷ It seems to me that either the devout Christian proponents of the Bladensburg Cross are, at heart, dominionists, hoping to unite church and state in a Christian theocracy, or they should see it as a Pyrrhic victory if the cross is preserved at the price of their denying its religious meaning.¹⁸ That is not to say, however, that it is factually incorrect to argue, as then-acting Solicitor General Jeffrey Wall did for the Trump Administration in the oral argument of the Bladensburg Cross case, that the cross “has taken on a secular meaning associated with sacrifice . . . or death or commemoration,” a meaning which states have “decide[d] to use.”¹⁹

The use of the cross as a sign of military victory and soldierly sacrifice has its point of origin in the first major breach in the wall that separated the early Christian church from the Roman state, a breach repeatedly deplored by Roger Williams himself. There is, I shall argue, a direct line from the American Legion’s Bladensburg Cross to the Roman legions of the Emperor Constantine, who, before a battle with a rival for imperial power in the year 312, is said to have seen a vision of a cross in the sky with the legend “in

16. Petition for Writ of Certiorari at 13–14, *Am. Legion*, 139 S. Ct. 2067 (2019) (Nos. 17-1717, 18-18).

17. *See id.*; *see also Am. Legion*, 139 S. Ct. at 2089.

18. *Cf.* Transcript of Oral Argument at 40–41, *Van Orden v. Perry*, 545 U.S. 677 (2005) (No. 03-1500). During oral argument, Justice Scalia similarly said he “would consider it something of a Pyrrhic victory if” the defenders of a Ten Commandments monument on public land were to win only by disclaiming “any intent to say that our laws are ultimately dependent upon God.” *Id.* This is yet another of many occasions on which I find myself in descriptive agreement although normatively 180-degrees opposite to Justice Scalia. As I have said in prior work in a variety of contexts, it seems that when Scalia and I connect the doctrinal dots, we often see the same figure, but when for him it is a nightmare figure, for me it is a dream, and vice versa. *See, e.g.,* Mary Anne Case, *After Gender the Destruction of Man? The Vatican’s Nightmare Vision of the Gender Agenda for Law*, 31 PACE L. REV. 802, 809 (2012) (describing this phenomenon in the context of the regulation of sex and gender).

19. Transcript of Oral Argument, *supra* note 18, at 42.

this sign you shall conquer,” and as a result adopted the cross and Chi-Rho Christogram as the battle standard for his legions.²⁰ At the time he did this, Constantine was not yet a Christian, but, having indeed conquered, he, in the course of his reign, first ended persecution of Christians, then offered financial support to Christian churches, intervened in theological and administrative disputes in the Christian Church, and, before his death in the year 337, had converted to Christianity and begun the destruction of temples dedicated to other gods.²¹ As I shall discuss, Roger Williams described these apparently benevolent actions of Constantine as disastrous for Christ’s church, more harmful even than the persecutions of Nero.²²

Given the use of the cross in military history beginning with Constantine, there is much to be said for the proposition that, unlike even the crosses on the graves of individual fallen soldiers in the World War I battlefields of Europe, the monumental Bladensburg Cross stands not so much as a symbol of Christ’s sacrifice and the promise of resurrection giving victory over death to the Christian faithful, but indeed as a memorial to the soldiers’ sacrifice of their own lives in aid of victory in a secular fight for what the inscription at the base of the Bladensburg monument calls “the liberty of the world.”²³ In this particular fight, World War I, most of the combatant nations on both sides were majority Christian,²⁴ some with established national Christian churches, and, as I shall discuss, most used the form of a cross on military decorations bestowed on particularly valiant combatants, even though Christianity itself was nothing like a *casus belli* for either side.²⁵ Like Constantine in 312, and unlike, for example,

20. For a fuller discussion of this and the other acts of Constantine mentioned in this paragraph, see discussion *infra* Part III.

21. See, e.g., EUSEBIUS PAMPHILUS, *THE LIFE OF THE BLESSED EMPEROR CONSTANTINE: BOOK III*, reprinted in 1 *THE GREEK ECCLESIASTICAL HISTORIANS OF THE FIRST SIX CENTURIES OF THE CHRISTIAN ERA* 113, 136–42 (London, Samuel Bagster & Sons, n.d.). See also discussion *infra* Part III.

22. See *infra* footnotes 120–25 and accompanying text.

23. *Am. Legion v. Am. Humanist Ass’n*, 139 S. Ct. 2067, 2077 (2019) (providing some of the monument’s background and quoting its inscription).

24. The major exceptions were Japan and the majority-Muslim Ottoman Empire.

25. See *infra* Part VI.

participants in the Crusades, the World War I combatants may have seen their cause as noble, they may have sought the Christian God's help in fighting for it, but they were fighting their enemies in a secular cause. The treatment of the cross by the American Legion thus harks back to its use by Constantine's Roman legions, who similarly adopted the cross as a battle standard, not against death and sin or the devil, but against secular earthly enemies, associating the cross with earthly power and military valor.

In attempting to shore up the meaning of the cross as a secular symbol of military honor in the World War I era, Justice Alito's opinion in the *Bladensburg Cross* case mentions the U.S. Military's "establishing the Distinguished Service Cross and the Navy Cross in 1918 and 1919, respectively."²⁶ Alito also discusses at some length the use of the cross in national flags such as that of Switzerland and state flags such as that of Maryland, as well as the invocation of divine favor in various state mottoes.²⁷ Though his aim is to dispel any concern about what he sees as the now fully submerged, and, therefore, no longer significant, commingling of symbols of the Christian religion with state power in the present day, I shall provide a closer look at some specific historical examples that call his comforting conclusions into question. Beginning again with Roger Williams, who objected to the use of the cross on British flags used in the New England colonies, I shall go on to point out how much more seriously than Justice Alito the Confederate States took the worry that the cross was an exclusive sectarian symbol, even while adopting an oblique form of it as their battle flag, and how debates begun at the time of the Civil War continue to haunt the religiously-themed development of flags and mottoes in the United States to this day.²⁸

A cornerstone of Alito's argument that, at least with respect to World War I, the cross has become a secular "symbol of sacrifice in the war," is the ubiquity and centrality to those erecting memorials to the World War I dead of John McCrae's poem "In Flanders Fields."²⁹ Written by a young Canadian soldier who himself died

26. *Am. Legion*, 139 S. Ct. at 2085.

27. *Id.* at 2075 (discussing Switzerland's flag); *id.* at 2084 (discussing Maryland's flag and Arizona's state motto).

28. See *infra* Part V.

29. See JOHN McCRAE, IN FLANDERS FIELDS AND OTHER POEMS 3 (G.P. Putnam's Sons 1919) (1915).

in the war, the poem commemorates, from the perspective of the dead soldiers themselves, their struggle and their burial on the field of battle.³⁰ To its famous opening lines, “In Flanders fields the poppies blow/Between the crosses, row on row[,]” and to the image of the battlefield cemetery they evoke,³¹ Alito correctly traces the fact that for much of the United States, “the image of a simple white cross ‘developed into a “central symbol” of the conflict.”³² What Alito fails to mention, and what I will by contrast highlight, is that for most of the rest of the combatant nations in World War I, even those who, like England, had established Christian state churches, it was not the cross, but instead the poppy that became the dominant cultural, if not official symbol, of the war and its honored dead.³³ Though the cross is historically a symbol of the church, the poppy, a wildflower, can be seen, using Roger Williams’s metaphor, as part of the wilderness of the world, and therefore safely on the state side of the wall, which in Williams’s and Jefferson’s view should separate church and state. Why, then, do we not follow the example of our allies and adopt the poppy as our symbol as well? Going beyond simply asking this question in the abstract, I propose and include in this paper a design for transforming the Bladensburg Peace Cross into the Bladensburg Peace Poppy, using the existing cross as the stem and leaves and surmounting it with a poppy flower whose petals are solar panels.³⁴

30. *See id.*

31. *Id.*

32. *Am. Legion*, 139 S. Ct. at 2075.

33. *See infra* footnotes 255–60 and accompanying text.

34. *See infra* Part VII.

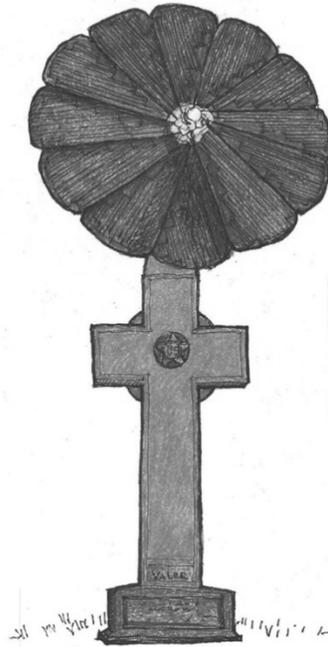


FIGURE 2: BLADENSBURG PEACE POPPY³⁵

Should the town of Bladensburg ever do as the American Humanists proposed in their litigation and transform the Peace Cross into a form that would continue to honor the war dead without involving the state in what many see as a sectarian religious display,³⁶ the Bladensburg Poppy would be an attractive, symbolically rich, concrete alternative. Even as only a thought experiment, my hope is that it honors, not only the war dead, but the heritage of Roger Williams and his calls for disestablishment in the interests of both church and state.

35. Designed and illustrated by Karen Cornelius for this Article.

36. See *Am. Legion*, 139 S. Ct. at 2078. Though the result in the case makes such a change unlikely in the near term, Justice Kavanaugh in his concurrence took pains to explain that “[t]he Court’s ruling *allows* the State to maintain the cross on public land. The Court’s ruling does not *require* the State to maintain the cross on public land.” *Id.* at 2094 (Kavanaugh, J., concurring) (emphasis in original). He then went on to suggest the possibility of exploring alternatives under Maryland state law. *Id.* (for example, enacting “new laws requiring removal of the cross or transfer of the land”).

This optimistic design might be an upbeat way to end the Article, but instead I will end with a few cautionary words about Christian nationalism, centered on analogies between Donald Trump and the Emperor Constantine, analogies eagerly embraced by some Trump supporters, but which should serve to induce horror and motivate opposition in anyone who takes Roger Williams's concerns seriously.³⁷

I. THE SUPREME COURT'S APPROACH TO THE CASE OF THE BLADENSBURG CROSS

Most well-informed observers, from the Justices of the Supreme Court themselves to the lower court judges, litigators, legislators, academics, and commentators who closely follow their work in the area, agree that the Court's Establishment Clause jurisprudence is, and for some time has been, a shambles. Every few years, the Court takes up a case that awakens hope among some of those observers that finally a vehicle may have arrived around which the Court can craft a coherent jurisprudence and fear among other observers that this new coherence will come at the price of some of the foundational commitments of disestablishment. The Bladensburg Cross case was one in a long-failed line of such cases. Defenders of the cross's continued presence on public land wished not only to preserve it, but to have it mark a major milestone for interpretation of the Establishment Clause.³⁸ Perhaps they hoped it might be the occasion for the Supreme Court finally to overrule the *Lemon* test, which calls for alleged Establishment Clause violations to be evaluated by whether they have a secular purpose and a predominantly secular effect and do not excessively entangle government with religion.³⁹ Perhaps it might be the occasion for definitively denying standing to merely affronted observers of state-sponsored religious activity, or holding clearly that an Establishment Clause injury requires coercion or proselytization. Even if the opinion in the case took some steps away from the extremely fact-specific analysis of government-sponsored religious displays, which Justice Kennedy decades ago

37. See *infra* Part VIII.

38. See Petition for Writ of Certiorari, *supra* note 16, at 34–37.

39. See *Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971).

characterized as a “jurisprudence of minutiae,”⁴⁰ this might be progress. Perhaps then the Supreme Court would not be faced with yet another municipal Christmas display,⁴¹ or Ten Commandments monument,⁴² or cross⁴³—each of which type of religious display had already come before the Court several times, not to speak of the myriad such displays with which the lower courts were forced to deal.

In the end, the nine justices produced a total of seven opinions.⁴⁴ Only Chief Justice Roberts and Justice Sotomayor did not write; he because he joined Justice Alito’s opinion in full, she because she joined Justice Ginsburg’s dissent.⁴⁵ Justice Thomas, concurring in the judgment, expressed his usual view that “the Establishment Clause resists incorporation against the States.”⁴⁶ He also joined Justice Gorsuch in an opinion arguing that, because the “offended observer’ theory of standing has no basis in law,” the case should have been dismissed.⁴⁷ Justice Breyer reiterated his longstanding view that “there is no single formula for resolving Establishment Clause challenges” and, joined by Justice Kagan, explained why “[i]n light of all [the] circumstances” they joined Justice Alito in upholding the cross.⁴⁸ In a solo concurrence, Justice Kagan explained why her preference for going “case-by-case, rather than to sign on to any broader statements about history’s role in Establishment Clause analysis” had led her not to join portions of

40. *County of Allegheny v. ACLU*, 492 U.S. 573, 674 (1989) (Kennedy, J., concurring in part, dissenting in part) (condemning the majority’s emphasis, in discussing a case determining whether a Christmas crèche could remain on public land, on “whether the city has included Santas, talking wishing wells, reindeer, or other secular symbols as ‘a center of attention separate from the crèche’” as the “embrace [of] a jurisprudence of minutiae” that “threatens to trivialize constitutional adjudication”).

41. *See, e.g., id.* at 578–79 (majority opinion).

42. *See, e.g., Van Orden v. Perry*, 545 U.S. 677, 681 (2005).

43. *See, e.g., Salazar v. Buono*, 559 U.S. 700, 705–06 (2010) (another case about a war memorial cross, this one in the desert, on land the government proposed to turn over to private parties to avoid Establishment Clause problems).

44. *Am. Legion v. Am. Humanist Ass’n*, 139 S. Ct. 2067, 2073 (2019).

45. *Id.*

46. *Id.* at 2095.

47. *Id.* at 2098–99 (Gorsuch, J., concurring in the judgment).

48. *Id.* at 2090–91 (Breyer, J., concurring in the judgment).

Justice Alito's opinion, about which she nevertheless spoke admiringly.⁴⁹ Justice Kavanaugh also spoke admiringly of Justice Alito's opinion, which he joined in full, but went on in a solo concurrence to argue that "the *Lemon* test is not good law" and that he understood how it "would demean both believers and nonbelievers to say that the cross is not religious," ending by urging opponents of the cross to seek a remedy in state law.⁵⁰

Justice Alito begins his opinion with the proposition that "[a]lthough the cross has long been a preeminent Christian symbol," its use in Bladensburg had a "special significance" given its "historical context."⁵¹ He went on to dedicate the first section of his opinion to the proposition that there "are many contexts in which the symbol [of the cross] has also taken on a secular meaning. Indeed, there are instances in which its message is now almost entirely secular,"⁵² a proposition he illustrated with examples including the Swiss flag, the Red Cross,⁵³ and a variety of corporate logos,⁵⁴ before going on to consider the Bladensburg Cross's own history.⁵⁵ The notion that the Bladensburg Cross's primary, if not sole, significance is secular pervades subsequent portions of Justice

49. *Id.* at 2094 (Kagan, J., concurring in part).

50. *Id.* at 2093–94.

51. *Id.* at 2074 (majority opinion).

52. *Id.*

53. *Id.* at 2075 nn.3–4. Alito's opinion is misguided or misleading when it uses the examples of India and Japan to prove non-Christian acceptance of the Red Cross as secular. *See id.* at 2075 n.4. In fact, many Muslim-majority nations do not use the symbol of the Red Cross but instead the Red Crescent, *The history of the emblems*, INT'L COMM. OF THE RED CROSS (Jan. 14, 2007), <https://www.icrc.org/data/rx/en/resources/documents/misc/emblem-history.htm> [perma.cc/W9CQ-GUEW], and Israel uses the Magen David Adom (Red Star of David), *Consequences for the National Societies*, INT'L FED'N OF RED CROSS AND RED CRESCENT SOC'YS, ICRC and the International Federation, <https://www.ifrc.org/en/who-we-are/the-movement/emblems/consequences/> [perma.cc/YRN3-HBQD] (last visited Apr. 24, 2021). Thus, even if the Red Cross may be sufficiently secular to some secularists, India's choice of the Red Cross fails to demonstrate this, being overdetermined by the date on which it first occurred, during British rule in 1920, and the continuing need to avoid a dangerous choice between Muslim (crescent) and Hindu symbols in today's India. *See About IRCS*, INDIAN RED CROSS SOC'Y, <https://indianredcross.org/ircs/aboutus> [<https://perma.cc/QP45-X996>] (last visited Apr. 24, 2021).

54. *Am. Legion*, 139 S. Ct. at 2074–75.

55. *Id.* at 2075–76.

Alito's opinion.⁵⁶ Summing up the relevant portions of the Alito opinion in his own concurrence, Justice Breyer wrote:

The Court's opinion eloquently explains . . . that . . . [t]he Latin cross is uniquely associated with the fallen soldiers of World War I; the organizers of the Peace Cross acted with the undeniably secular motive of commemorating local soldiers; no evidence suggests that they sought to disparage or exclude any religious group; [and] the secular values inscribed on the Cross and its place among other memorials strengthen its message of patriotism and commemoration⁵⁷

In finding that the Bladensburg Cross had a predominantly secular meaning, the Justices in the Supreme Court majority were doing as they were urged to do by many of the briefs filed in the case,⁵⁸ including those filed for petitioner, the American Legion, by its counsel First Liberty Institute, which describes itself as the "largest legal organization in the nation dedicated *exclusively* to defending religious liberty for all Americans,"⁵⁹ but which is staffed by and often represents Christians.⁶⁰

56. *See id.* at 2074–90.

57. *Id.* at 2091 (Breyer, J., concurring).

58. *But see*, Hollyn Hollman, *Symposium: Decision does not support new Christian-only monuments*, SCOTUSBLOG (June 21, 2019, 1:26 PM), <https://www.scotusblog.com/2019/06/symposium-decision-does-not-support-new-christian-only-monuments/> [perma.cc/7DU4-EJVC] (blog post by the general counsel for the Baptist Joint Committee for Religious Liberty, which had submitted an amicus brief arguing that the "cross is not a secular symbol, and neither the Commission nor the Court can make it so"). The Baptist Joint Committee had been "particularly concerned about arguments that would desecrate the pre-eminent symbol of Christianity in order to justify its display on government land." *Id.* After the decision was issued, Hollman argued in this blog post that, "the court avoided relying on false claims that the cross has an objective and secular meaning as a universal symbol for sacrifice." *Id.* See discussion *infra* Part II for an evaluation of this claim.

59. *About Us*, FIRST LIBERTY, <https://firstliberty.org/about-us/> [perma.cc/6SYA-N25L] (last visited Apr. 24, 2021).

60. *See Cases*, FIRST LIBERTY, <https://firstliberty.org/cases/> [perma.cc/4B6C-5DL5] (last visited Apr. 24, 2021).

II. ARE THE DEVOUT CHRISTIANS WHO ARGUE THAT THE CROSS IS A
SECULAR SYMBOL DENYING CHRIST?

I first had occasion to observe the, to me, still puzzling phenomenon of devout Christians arguing to the Court that the cross should be seen as a secular symbol when the Federalist Society invited me to debate First Liberty Institute's Ken Klukowski on the subject of the Bladensburg Cross. This led me to read their petition for certiorari in the Bladensburg Cross case and discover in the petition arguments about the various ways in which the Bladensburg Cross should be seen as secular, arguments eventually adopted by the Supreme Court.⁶¹ I was stunned by who was making these arguments, which would not have surprised me when coming, as they also did, from other proponents of the cross, such as co-petitioner, the Maryland National Capital Park and Planning Commission, and its counsel Neal Katyal.⁶² It was easily understandable that a government entity would seek to defend the cross by ascribing to it secular meaning. It was also easily understandable that some devout Christians might defend the cross's continuing presence on public land, but I would have expected them to choose different arguments, such as Gorsuch's on lack of standing⁶³ or Kavanaugh's that the cross is "not coercive and is rooted in history and tradition."⁶⁴ So, when Ken Klukowski showed up for our debate in April 2019 eager to discuss constitutional originalism and competing doctrinal tests for the Establishment Clause, I was instead much more interested in questioning what it meant that a group of devout Christian lawyers, who had taken as their mission the defense of religious liberty because of and not in spite of their Christian faith, had gone out of their way to disclaim the religious significance of what the

61. See *Am. Legion*, 139 S. Ct. at 2087, 2089; see also Petition for Writ of Certiorari, *supra* note 16, at 13 (in which the word "secular" appears more than three dozen times, inter alia to describe the "clear secular purpose, history, and content of the Memorial itself").

62. See, e.g., Reply Brief for Petitioner Maryland-National Capital Park and Planning Commission at 1–2, *Am. Legion*, 139 S. Ct. 2067 (2019) (No. 18-18) (arguing that the Cross's "inscriptions, setting, and usage are exclusively secular [a]nd for centuries, similar crosses have been displayed throughout the country to commemorate sacrifice and military valor").

63. See *Am. Legion*, 139 S. Ct. at 2098–101 (Gorsuch, J., concurring).

64. *Id.* at 2092–93 (Kavanaugh, J., concurring).

lower court opinion had correctly called the “preeminent symbol of Christianity.”⁶⁵ While Mr. Klukowski, in the fashion of lawyers, had referred to me as his “friend” throughout his opening remarks, I identified myself instead as “*ha satan*” (the adversary) and announced that, like the devil, I was about to cite Scripture for my purposes.⁶⁶

My particular focus would be Simon Peter’s denial of Christ, told in all four of the canonical Gospels.⁶⁷ In each Gospel, Jesus predicts that once he is arrested, his apostles will all scatter and abandon him.⁶⁸ Peter, however, swears he would never do this, insisting, “Lord I am ready to go with thee, both into prison, and to death.”⁶⁹ Jesus responds, “I tell thee, Peter, the cock shall not crow this day, before that thou shalt thrice deny that thou knowest me.”⁷⁰ When Jesus is arrested, most of the apostles do indeed flee as predicted, but Peter “followed afar off” as Jesus was taken to the high priest’s house to answer charges.⁷¹ Peter followed “even into the palace of the high priest: and he sat with the servants, and warmed himself at the fire.”⁷² A maidservant then accused him of being one of Jesus’s disciples, to which he responded with increasing vehemence, saying that he “kn[e]w not, neither understand . . . what thou saye[th],”⁷³ then again denying, until finally “he began to curse and to swear, saying, I know not this man of whom ye speak.”⁷⁴ At which point, the cock crows and Peter,

65. *Am. Humanist Ass’n v. Md.-Nat’l Capital Park & Planning Comm’n*, 874 F.3d 195, 206–07 (4th Cir. 2017) (quoting *Buono v. Norton*, 371 F.3d 543, 545 (9th Cir. 2004)) (internal quotation marks omitted).

66. See, e.g., WILLIAM SHAKESPEARE, *THE MERCHANT OF VENICE* act 1, sc. 3 (“The devil can cite Scripture for his purpose.”).

67. *Matthew* 26:30–35, 26:69–75 (King James); *Mark* 14:26–31, 14:66–72 (King James); *Luke* 22:31–34, 22:54–62 (King James); *John* 13:36–38, 18:15–17, 18:25–27 (King James).

68. *Matthew* 26:31 (King James); *Mark* 14:27 (King James); *Luke* 22:31–34, 54–62 (King James); *John* 13:36–38, 18:15–27 (King James).

69. *Luke* 22:33 (King James).

70. *Id.* at 22:34.

71. *Id.* at 22:54.

72. *Mark* 14:54 (King James).

73. *Id.* at 14:67–68.

74. *Id.* at 14:71.

realizing that Jesus's prediction of abandonment and betrayal had come true, "went out, and wept bitterly."⁷⁵

I argued that, in filing briefs claiming that the cross's meaning was not sacred but secular, the Christian lawyers of Liberty Counsel were falling into the same trap as the Apostle Peter: they undertook to follow their savior more closely than other disciples, but in the end, they were unequivocally denying a connection to him and thus betraying him.

Interestingly, while many devout Christian amici followed the lead of Liberty Counsel and its client, the American Legion, among those that emphatically did not was the Baptist Joint Committee for Religious Liberty, in a direct line of descent from the Danbury Baptists whose October 1801 address, insisting that "[r]eligion is at all times and places a matter between God and Individuals" and inveighing against "those [] who seek after *power* and *gain*, under the pretense of *government* and *Religion*,"⁷⁶ prompted Jefferson's famous reply. In an amicus brief authored by Douglas Laycock for them and for the Evangelical Lutheran Church in America, the United Church of Christ, and the Assembly of the Presbyterian Church, as well as for the American Jewish Committee and the Central Conference of American Rabbis, the Baptist Joint Committee declared:

For Christians who think seriously about the events and message that the cross represents, instead of focusing only on the short-term "gain" of preserving a prominent government-sponsored symbol of their faith, petitioners' claims are deeply offensive. They subordinate what the cross means to millions of faithful Christians in a welter of transparent secular rationalizations.⁷⁷

75. *Luke* 22:60–62 (King James).

76. Letter to Thomas Jefferson from the Danbury Baptist Association (after Oct. 7, 1801), NAT'L ARCHIVES, [https://www.founders.archives.gov/?q=danbury%20baptists&s=1111311111&sa=&r=1&sr=\[perma.cc/8YLP-PLD3\]](https://www.founders.archives.gov/?q=danbury%20baptists&s=1111311111&sa=&r=1&sr=[perma.cc/8YLP-PLD3]).

77. Brief for Baptist Joint Comm. for Religious Liberty et al. as Amici Curiae Supporting Respondents at 7, *Am. Legion v. Am. Humanist Ass'n*, 139 S.Ct. 2067 (2019) (Nos. 17-1717, 18-18). The views articulated in this brief were endorsed by Justice Ginsburg, who argued in her *American Legion* dissent, citing to the brief and to Justice Stevens's dissent in the Ten Commandments monument case of *Van Orden v. Perry*, that "[a]ttempts to secularize what is unquestionably a sacred [symbol] defy credibility and disserve people of faith." 139 S. Ct. at 2108 (Ginsburg, J., dissenting) (citations omitted).

The amici who joined Laycock's brief in effect fault the petitioners for denying Christ, noting:

Petitioners are so determined to bury the true meaning of the cross that the name of Jesus Christ does not appear in their briefs, except for one case name and two quotations from the court of appeals, quotations . . . promptly repudiate[d]. Over and over, petitioners describe the cross as merely a memorial in "the shape of a cross" as though shape in this case were some incidental characteristic of little importance.⁷⁸

The amici who join the Baptists describe themselves as "organizations who respect the profound theological significance of Christianity's Latin cross" and "therefore reject petitioners' claim that the cross has a predominantly secular meaning."⁷⁹ Consistent with the central role played in this Article by Roger Williams, who in running the colony of Rhode Island made space for all to practice their faith,⁸⁰ but in writing about the need to separate church and state was chiefly concerned to protect the purity of the Christian Church,⁸¹ my focus here is less on the claim of the Jewish amici who joined Laycock's brief that "petitioners wholly fail to

78. Brief for Baptist Joint Comm. for Religious Liberty, *supra* note 77, at 6 (internal citation omitted).

79. *Id.* at 1.

80. Given Rhode Island's climate of tolerance, it is unsurprising that Jews settled there as early as the 1660s and that the oldest still extant synagogue in the United States was founded by the Jews of Newport in 1759. Mark W. Gordon, *Rediscovering Jewish Infrastructure: 2018 Update on United States Eighteenth and Nineteenth-Century Synagogues*, AM. JEWISH HISTORICAL SOC'Y, <https://ajhs.org/rediscovering-jewish-infrastructure> [perma.cc/Q23G-L55A]; *Touro Synagogue History*, TOURO SYNAGOGUE, <https://www.tourosynagogue.org/history-learning/synagogue-history> [perma.cc/Z9AD-UG4]. George Washington wrote to this synagogue on August 18, 1790, saying:

The Citizens of the United States of America have a right to applaud themselves for having given to mankind examples of an enlarged and liberal policy: a policy worthy of imitation. All possess alike liberty of conscience and immunities of citizenship. It is now no more that toleration is spoken of, as if it was by the indulgence of one class of people, that another enjoyed the exercise of their inherent natural rights.

Letter to the Hebrew Convention in Newport, Rhode Island from George Washington (Aug. 18, 1790), NAT'L ARCHIVES, <https://wwwFOUNDERS.archives.gov/?q=moses%20seixas&s=1111311111&sa=&r=2&sr=> [perma.cc/QE22-45UX].

81. See WILLIAMS, *supra* note 3, at 192.

rationalize government sponsorship of an exclusionary and exclusively Christian symbol[.]”⁸² a claim to which the dissenting opinion by Jewish Justice Ginsburg joined by Catholic Justice Sotomayor paid significant heed.⁸³ My emphasis, following Roger Williams, is instead on the claim of “the Christian amici [that] petitioners demean the most sacred symbol of the faith.”⁸⁴ Although I agree that “[a]dherents of both faiths are harmed when government violates its fundamental obligation to remain neutral between religions[.]” I shall argue that the nature of the harms to Christians and Christianity is somewhat different and more complicated than the Laycock brief suggests.⁸⁵

I disagree with the central premise of the Laycock brief that the only “reason the cross honors the Christian war dead is that for Christians, it symbolizes the promise of eternal life.”⁸⁶ Laycock may be correct that “[p]etitioners have no other theory of how the cross came to honor the Christian dead,” but this is only because petitioners, like all others who have briefed or otherwise discussed the Bladensburg Cross case, have paid far too little attention to the role of Constantine in the history of the cross’s coming, not only to represent Christianity, but also to have “a ubiquitous and well established meaning of commemorating military valor” in ways that bode badly for separation of church and state.⁸⁷

III. CONSTANTINE’S CONQUESTS AND THE SIGN OF THE CROSS

When Justice Alito begins his opinion with the observation that “[t]he cross came into widespread use as a symbol of Christianity by the fourth century,” he drops a footnote to Longenecker’s *The*

82. Brief for Baptist Joint Comm. for Religious Liberty et al., *supra* note 77, at 1.

83. *Am. Legion v. Am. Humanist Ass’n*, 139 S. Ct. 2067, 2106 (2019) (Ginsburg, J., dissenting).

84. Brief for Baptist Joint Comm. for Religious Liberty et al., *supra* note 77, at 1.

85. *Id.*

86. *Id.* at 2.

87. *Id.* at 2, 6 (citing Brief for Petitioner Maryland-National Capital Park and Planning Commission at 21, *Am. Legion*, 139 S. Ct. 2067 (No. 18-18); Brief for Petitioner American Legion at 60, *Am. Legion*, 139 S. Ct. 2067 (No. 17-1717)).

Cross Before Constantine: The Early Life of a Christian Symbol,⁸⁸ but he gives no further indication of an awareness why Constantine's reign should be seen as a significant moment in the history of the cross. In fact, as the source Alito cites itself confirms, "[t]he cross came to the forefront of Christian artistic display only in the aftermath of the initiatives of Constantine . . . who progressively imposed Christianity and its symbols on a world he sought to unify and control."⁸⁹ Therefore, as I shall explain, from the moment of its rise to prominence as a Christian symbol, the cross was infused with exactly the problematic combination of meanings attributed to it in Bladensburg—not simply a symbol of spiritual redemption through divine sacrifice, the cross was also inextricably linked to earthly battles, military valor, and state power, in the sort of breach in the wall of "separation of holy from unholy, . . . godly from ungodly"⁹⁰ that so dismayed Roger Williams.⁹¹

The trajectory that led to the American Legion's erection of a Memorial Cross in Bladensburg began on the road to Rome in 312 A.D., as the Emperor Constantine and his own legions were marching toward the Milvian Bridge across the Tiber, where he would confront his rival for imperial power, Maxentius, victory over whom in battle would give Constantine undisputed control of the western half of the Roman Empire.⁹² Constantine attributed his victory to his acceptance of the protection offered him and his soldiers by the Christian God.⁹³ According to Eusebius, Constantine, realizing that divine help in the battle would be useful, considered "on what god he could rely for protection and assistance" and realized that the "multitude of gods" to whom his

88. *Am. Legion*, 139 S. Ct. at 2074 n.1.

89. BRUCE W. LONGENECKER, *THE CROSS BEFORE CONSTANTINE: THE EARLY LIFE OF A CHRISTIAN SYMBOL 2* (2015).

90. See WILLIAMS, *supra* note 3, at 436.

91. See *infra* Part III for a discussion of the history of the cross and Part IV for a discussion on Williams's perspective.

92. See EUSEBIUS PAMPHILUS, *THE LIFE OF THE BLESSED EMPEROR CONSTANTINE – BOOK I*, reprinted in *THE GREEK ECCLESIASTICAL HISTORIANS OF THE FIRST SIX CENTURIES OF THE CHRISTIAN ERA* 24, 33–35 (Samuel Bagster & Sons 1843).

93. See *id.* at 26–27, 35.

predecessor emperors had prayed had often let them down.⁹⁴ Eusebius wrote that Constantine then “saw with his own eyes the trophy of a cross of light in the heavens, above the sun, and bearing the inscription, Conquer by this.”⁹⁵ This phrase, in the original Greek, ἐν τούτῳ νικά, became, in the more famous Latin version, *in hoc signo vinces*, which is most commonly rendered in English as “in this sign, you shall conquer.”⁹⁶ From it I derive the question in the title of this Article.

Although Lactantius makes no mention of a vision, both he and Eusebius then describe a dream in which Constantine gets specific instructions concerning how to implement the sign for use by the army. In Lactantius’s version, it is to be painted on their shields.⁹⁷ In Eusebius’s, it is to be crafted by metalworkers into a standard known as a labarum.⁹⁸



FIGURE 3: COIN WITH HEAD OF CONSTANTINE AND LABARUM⁹⁹

94. *Id.* at 25–26.

95. *Id.* at 27.

96. As an indication of how thoroughly knowledge of Constantine’s use of the cross has fallen out of Establishment Clause consideration of the cross used as a symbol by the state, consider that a Spanish version of the phrase “in this, you shall conquer,” when combined with a Latin cross on a county government’s seal, left the language and history experts in the case not remotely clear on the meaning of “this” in the motto with no one apparently mentioning Constantine and some arguing that “this” referred to “the entire seal.” *See Johnson v. Bd. of Cty. Comm’rs*, 781 F.2d 777, 779 (10th Cir. 1981).

97. *See* LACTANTIUS, OF THE MANNER IN WHICH THE PERSECUTORS DIED (c. 314), in 7 ANTE-NICENE FATHERS: THE WRITINGS OF THE FATHERS DOWN TO A.D. 325, at 301, 318 (Alexander Roberts & James Donaldson eds., William Fletcher trans., Christian Literature Co. American ed. 1886) (1871).

98. *See* EUSEBIUS, *supra* note 92, at 27–29.

99. *Coin*, BRITISH MUSEUM, https://www.britishmuseum.org/collection/object/C_1890-0804-11 [<https://perma.cc/6QYG-5TJH>] (last visited Apr. 24, 2021) (printed with permission).

Both authors describe the form of the sign in some detail, and in neither case is it exactly a Latin cross, although later artistic representations often make it into one.¹⁰⁰ Rather, what the authors describe is a Chi-Rho or Christogram,¹⁰¹ a combination of the first two letters in the Greek word Christ, taking the shape of an X (chi) superimposed on a P (rho).¹⁰² But even at the time of Eusebius,¹⁰³

100. See *supra* notes 92–93; *Vision of the Cross*, MUSEI VATICANI, <http://www.museivaticani.va/content/museivaticani/en/collezioni/musei/stanze-di-raffaello/sala-di-costantino/visione-della-croce.html> [perma.cc/ZB C7-TLVW] (last visited Apr. 24, 2020) (an example of artwork by the artist Raphael depicting the sign as a cross). For a sculptural depiction of Constantine's vision, see a photo of "Vision of Constantine" by Emilio Zocchi available at David Lown, *Private Tours of Florence: Old Church, Modern Facade*, PICTURES FROM ITALY (Jan. 7, 2019), <https://www.picturesfromitaly.com/florence/santa-croce-facade-by-niccolo-matas> [https://perma.cc/2NJ8-V3TW].

101. Among the contemporary uses of the Christogram is its inclusion on the Ten Commandments monument the placement of which, on the grounds of the Texas State Capitol, the Supreme Court upheld in *Van Orden v. Perry*. See 545 U.S. 677, 681 (2005) (noting that below the text of the Commandments “are two Stars of David and the superimposed Greek letters Chi and Rho, which represent Christ”).

102. See LACTANTIUS, *supra* note 97, at 318; EUSEBIUS, *supra* note 92, at 28. As will be discussed further in the Section on the Confederate flag below, *infra* Part V., Section A., the X shape, in later centuries sometimes interpreted as a St. Andrew's Cross, is even more directly a Christian symbol, used from the Middle Ages to this day as an abbreviation for Christ, as Xmas abbreviates rather than erases the Christ in Christmas.

103. As Eusebius wrote:

Now it was made in the following manner. A long spear, overlaid with gold, formed the figure of the cross by means of a piece transversely laid over it. On the top of the whole was fixed a crown, formed by the intertexture of gold and precious stones; and on this, two letters indicating the name of Christ, symbolized the Saviour's title by means of its first characters, the letter P being intersected by X exactly in its centre; and these letters the emperor was in the habit of wearing on his helmet at a later period. From the transverse piece which crossed the spear was suspended a kind of streamer of purple cloth, covered with a profuse embroidery of most brilliant precious stones; and which, being also richly inter laced with gold, presented an indescribable degree of beauty to the beholder. This banner was of a square form, and the upright staff, which in its full extent was of great length, bore a golden half-length portrait of the pious emperor and his children on its upper part, beneath the trophy of the cross, and immediately above the embroidered streamer . . . [t]he emperor constantly made use of this salutary sign as a safeguard against every adverse

and increasingly in later centuries, the shape of the cross and its use as a battle standard and guarantor of military victory are centrally emphasized.



FIGURE 4: *IN HOC SIGNO VINCES*, SANTA CROCE, FLORENCE¹⁰⁴

Constantine was not, neither at the time of the battle of the Milvian Bridge nor for decades thereafter, himself a Christian. He had long been a devotee of a monotheistic military divinity, Sol Invictus, the invincible sun, which may have made him particularly susceptible of seeing a vision of light in the sky.¹⁰⁵ But, within a year of the victory he attributed to the intervention of the Christian God, Constantine, in 313 A.D., is said to have issued the Edict of Milan, an edict of toleration that ended the persecutions of Christians in the Roman Empire.¹⁰⁶ As Lactantius described it,

and hostile power, and commanded that others similar to it should be carried at the head of all his armies.

EUSEBIUS, *supra* note 92, at 28–29.

104. Photo by Annika Frosch with thanks as well to Elena Brodeala for facilitating.

105. See, e.g., H. A. Drake, *The Impact of Constantine on Christianity*, in *THE CAMBRIDGE COMPANION TO THE AGE OF CONSTANTINE* 111, 116 (Noel Lenski ed., 2006).

106. For a translation of the text of this edict, see, for example, Lactantius, *The “Edict of Milan” (313 A.D.). Galerius and Constantine: Edicts of Toleration 311/313*, FORDHAM UNIVERSITY, <https://sourcebooks.fordham.edu/source/edict-milan.asp> [perma.cc/NKE9-R7GP] (last updated Jan. 20, 2021).

Constantine saw the Edict as something of a quid pro quo, declaring that it “will be the duty of the Christians, in consequence of this our toleration, to pray to their God for our welfare, and for that of the public, and for their own; that the commonweal may continue safe.”¹⁰⁷ Constantine later began issuing coins imprinted with his image and the Chi-Rho,¹⁰⁸ potentially complicating for Christians the interpretation of the biblical passages in which, asked about the legitimacy of paying taxes to the Roman Empire, Jesus responded by asking whose image and inscription were on the coins to be used for the tax, and when told “Caesar’s,” declared, “[r]ender unto Caesar the things that are Caesar’s, and unto God the things that are God’s.”¹⁰⁹

In other ways as well, Constantine rapidly began to break down the wall between what was God’s and what was Caesar’s, between the Christian church and the Roman state. “There was no separation between church and state in antiquity; indeed, except among Christians, there was no idea of a ‘church’ that was anything other than ‘state,’” scholars have argued.¹¹⁰ But, having come to rely on the Christian God for help in winning his political and military battles, Constantine developed a strong interest in settling doctrinal and jurisdictional disputes within the Christian church.¹¹¹ Most famously, in 325, he summoned all Christian bishops to their first ecumenical council, the Council of Nicaea, over which he personally presided in an effort to end dissension and forestall schism.¹¹² His provision of horses and other transport assistance to the traveling bishops was the least of his financial support to the church.¹¹³ He used his personal patronage and the imperial fisc to build a number of Christian church buildings, much more imposing than Christians could have imagined in times of persecution, including several major basilicas in Rome and the churches of the Nativity in Bethlehem and the Holy Sepulcher in

107. See LACTANTIUS, *supra* note 97, at 315.

108. See *supra* Figure 3.

109. *Matthews 22:21* (King James).

110. Drake, *supra* note 105, at 112.

111. See EUSEBIUS, *supra* note 92, at 113–15.

112. *Id.* at 119.

113. See *id.*

Jerusalem.¹¹⁴ The latter church was built on the site where it is said that Constantine's mother, Helena, found the remains of the wooden cross on which Christ was crucified,¹¹⁵ fragments of which were sent to Constantinople and thence to other cities, beginning a veneration of relics of the "True Cross," which continues around the world to this day.¹¹⁶ To build the Church of the Holy Sepulcher, Constantine ordered the destruction of a temple to Aphrodite already on the spot, which can be seen to mark the beginning of what would later become the suppression of other religions in Rome specifically for the benefit of Christianity.¹¹⁷ In Constantine's lifetime, therefore, the Christian church became accustomed to state support, state favor, and state interference in its affairs. And, by the end of the fourth century, "the symbol of the simple cross was adapted to play a significant role in the accumulation of political power [T]he cross became incorporated into a militaristic, triumphalist Christianity."¹¹⁸

IV. WHAT WOULD ROGER WILLIAMS SAY?

A. *Roger Williams's Condemnation of Constantine's Effects on Christianity and on the State*

All of these fourth-century developments were anathema to Roger Williams. They were the exact opposite of the relation of strict separation he counseled for church and state, and had, in his view, the effect he warned of: a breach having been opened in the wall of separation, "God hath . . . broke down the wall itself, removed the candlestick, [and] made his garden a wilderness, as at this day."¹¹⁹

Williams's criticism of Constantine extended, not only to the Emperor's meddling in Church affairs, but also to what may have

114. For a full list, see generally Gregory T. Armstrong, *Constantine's Churches: Symbols and Structure*, 33 J. SOC'Y ARCHITECTURAL HISTORIANS 5 (1974).

115. See LONGENECKER, *supra* note 89, at 3.

116. See, e.g., *Relics of Jesus*, SEETHEHOLYLAND.NET, <https://www.seetheholyland.net/category/extras/> [perma.cc/3TE5-WBET] (last visited Apr. 24, 2021).

117. See EUSEBIUS, *supra* note 92, at 136–39.

118. See LONGENECKER, *supra* note 89, at 3, 5.

119. See WILLIAMS, *supra* note 3, at 435.

seemed generous aid and favor. According to Williams' spokesperson Truth, "the *Christian Religion* gloriously flourished . . . when *Roman Emperors* took not power to themselves to reform *abuses* in the *Christian Church*" and "lost most under such Emperors as claimed Christ's power to reform the *Christian Church*," "lost more, even in *Constantine's* time, than under bloody *Nero*."¹²⁰ Indeed, "when *God* advanced *Constantine* and other *Christian Emperors* to sit on the *Throne*, the *Church* soon became a *Wilderness*."¹²¹ After flourishing for hundreds of years with "no other power, no other *Sword* nor *Shield* but *Spiritual*," being granted "*Liberty* and *ease* under *Constantine*" was "a sorer Trial than befell them in 300 years of persecution," because under the "*temporal protection, munificence, and bounty of Constantine*, together with his *temporal Sword*, drawn out against her *Spiritual enemies*, the *Church of Christ* soon forfeited of the too much *honey* of worldly ease, *authority, profit, pleasure, etc.*"¹²² Thus, "*Constantine's* favor was a bitter *sweetening*, his *superstitious zeal* laying the *Foundations* for after *Usurpations* and *Abominations*."¹²³ Not only the *Christian Church* but *Rome* itself was harmed by the ways in which *Constantine* opened cracks in the wall separating them, "[f]or not before, but after *Constantine's* advancing of *Christians* to wealth and honor . . . *Rome* was almost ruined and destroyed [] by the . . . incursions of . . . other furious Nations: So contrary to the truth of *Jesus* is this fleshly doctrine of worldly wealth and prosperity."¹²⁴

120. ROGER WILLIAMS, *THE BLOODY TENENT YET MORE BLOODY* 16 (1652) (emphasis in original) (spelling modernized). Because the *Bloudy Tenent Yet More Bloudy* is styled as a response to John Cotton in the form of a dialogue between Truth and Peace, it is sometimes difficult to determine with clarity which sentiments expressed in it are those of Roger Williams himself and which are merely rhetorically put in the mouth of a character or to be ascribed instead to Cotton. See generally *id.* The various condemnations of *Constantine* and his negative effects on Christianity quoted here do, however, seem consistent with what Williams clearly has said in his own voice elsewhere. I have, where applicable modernized spelling and capitalization to avoid distraction.

121. *Id.* at 194 (emphasis in original) (spelling modernized).

122. *Id.* at 227 (emphasis in original) (spelling modernized).

123. *Id.* at 245 (emphasis in original) (spelling modernized).

124. *Id.* (emphasis in original) (spelling modernized).

Williams did approve of Constantine's initial edict of toleration, because "no man's *Conscience* should be forced," but he deplors that it did not last:

When *Constantine* broke the bounds of this his own and *God's Edict*, and draws the sword of *Civil power* in the suppressing of other *Consciences* for the establishing of the *Christian*, then began the great *Mystery* of the *Church's* sleep, the *Garden of Christ's Churches* turned into the *Wilderness of National Religion*, and the *World* (under *Constantine's Dominion*) to the most *unchristian Christendom*.¹²⁵

Williams's condemnation of Constantine's policies, made its way into the most substantial discussion of his views on the separation of church and state as appears in a Supreme Court opinion, a lengthy footnote in *Engel v. Vitale*, the case that banished New York State's specially composed official Regent's Prayer from the state's public school classrooms.¹²⁶ Noting that Williams had been called "the truest Christian amongst many who sincerely desired to be Christian," and that he "believed that separation was necessary in order to protect the church from the danger of destruction which he thought inevitably flowed from control by even the best-intentioned civil authorities,"¹²⁷ the footnote includes lengthy passages from Williams's work, including the following:

The unknowing zeale of *Constantine* and other Emperours, did more hurt to *Christ Jesus* his Crowne and Kingdome, then the raging fury of the most bloody *Neroes*. In the *persecutions* of the later, *Christians* were sweet and fragrant, like spice pounded and beaten in morters: But those *good* Emperours, persecuting some erroneous persons . . . and maintaining their *Religion* by the eclipsed Sword, I say by this meanes *Christianity* was *eccipsed*, and the Professors of it fell asleep¹²⁸

125. *Id.* at 263–64 (emphasis in original) (spelling modernized).

126. See *Engel v. Vitale*, 370 U.S. 421, 434–35 n.20 (1962).

127. *Id.* (citations omitted).

128. *Id.* (citing ROGER WILLIAMS, *THE BLOODY TENENT OF PERSECUTION, FOR CAUSE OF CONSCIENCE* (1644), reprinted in 3 NARRAGANSETT CLUB PUBLICATIONS 184 (1867)).

B. *Roger Williams's Opposition to the Use of the Cross as a Symbol by the State*

In addition to his general opposition to a commingling of Church and state and to dominionist policies such as Constantine's, Roger Williams specifically objected to the use of the cross as a political and military symbol.¹²⁹ During his lifetime in England, Puritan iconoclasts threatened the destruction even of monumental memorial crosses at crossroads very much like the Bladensburg Cross.¹³⁰ Consider a pamphlet published in 1641 entitled *A Dialogue between the Crosse in Cheap, and Charing Crosse, comforting each other as fearing their fall in these uncertain times*.¹³¹ These two monumental crosses, erected centuries earlier to commemorate stages in the funeral procession of Edward I's wife Eleanor, are imagined by author Ryben Pameach as fearing their imminent demolition. "Concerning our Crosses," one says to the other, "if our fanatic brethren had lived in the time of Constantine, they would have attempted to pluck that cross from the sky which appeared unto him when he got that great victory against his enemies."¹³² When these monumental crosses were at last destroyed during the Puritan revolution, there are reports that the New England colonists "saw how good a thing it was."¹³³ Thus,

129. *Id.* at 269, 437–38. While a closer examination is beyond the scope of this Article, it is also worth noting that Roger Williams would likely be equally as opposed to state appropriation of the symbol of the Ten Commandments as he demonstrably was to state appropriation of the cross. He differed from his fellow colonists in believing that the first table of the Ten Commandments, pertaining to obligations owed to God, should not be enforceable by or otherwise the subject of civil law. This very issue came up in the many Supreme Court cases dealing with the erection by the state of Ten Commandments monuments, because the categorical preclusion under the Establishment Clause of enforcing the so-called first table undercuts the claim that the Ten Commandments are the source of American law, a claim often used to justify state support for Ten Commandments displays.

130. Francis J. Bremer, *Endecott and the Red Cross: Puritan Iconoclasm in the New World*, 24 *J. AM. STUD.* 5, 11 (1990).

131. See RYHEN PAMEACH, *A DIALOGUE BETWEEN THE CROSSE IN CHEAP, AND CHARING CROSSE: COMFORTING EACH OTHER AS FEARING THEIR FALL IN THESE UNCERTAIN TIMES* (1641).

132. *See id.*

133. Bremer, *supra* note 130, at 19–20 (quoting THOMAS SHEPARD, *GOD'S PLOT: THE PARADOXES OF PURITAN PIETY; BEING THE AUTOBIOGRAPHY AND JOURNAL OF THOMAS SHEPARD* 220 (Michael McGilfert ed., 1972)).

Justice Alito in *American Legion*, by attributing exclusively to “[m]ilitantly secular regimes” the “tearing down [of] monuments with religious symbolism,” an act he characterizes “as aggressively hostile to religion . . . disturbing, and divisive,” is revealing the limitations in his own “knowledge of history” and ignoring directly relevant American colonial history.¹³⁴

In Roger Williams’s New England, there were no monumental crosses, indeed no crosses of any kind,¹³⁵ until attempts to introduce one in a statist, military context, was met with opposition.¹³⁶ The most dramatic incident occurred in Salem in 1634, at a time when Roger Williams was the pastor of the Salem church, and reportedly at his instigation.¹³⁷ A letter had recently arrived from England, announcing the appointment of a commission to supervise the American colonies, chaired by the Puritans’ nemesis Archbishop Laud and including a number of other Anglican archbishops.¹³⁸ In reaction, the leader of the Salem militia took a sword and cut out the red St. George’s cross from the royal banner under which they had been marching.¹³⁹ As Nathaniel Hawthorne later memorialized the incident in a short story in which Roger Williams played a key role, Captain John Endecott responded to an outcry that this excision of the cross was both treason and sacrilege, “Neither Pope nor Tyrant hath part in . . . the ensign of New England . . . now.”¹⁴⁰

Endecott and the ensign bearer, Richard Davenport, were called to account by the General Court, who, according to John

134. See *Am. Legion v. Am. Humanist Ass’n*, 139 S. Ct. 2067, 2085 (2019); see also *id.* at 2085 n.24 (quoting Frank Tallett, *Dechristianizing France: the Year II and the Revolutionary Experience*, in *RELIGION, SOCIETY AND POLITICS IN FRANCE SINCE 1789*, at 1, 1–2 (Frank Tallett & Nicholas Atkin eds., 1991) (describing “dechristianizing” in Revolutionary France)).

135. Bremer, *supra* note 130, at 21.

136. *Id.*

137. See WILLIAM HUBBARD, *A GENERAL HISTORY OF NEW ENGLAND, FROM THE DISCOVERY TO MDCLXXX 164* (2d ed. 1848) (account by a contemporary observer attributing the destruction of the cross in the flag to an assistant “too much inspired by the notions of Mr. Roger Williams”); see also Bremer, *supra* note 130, at 16–17.

138. Bremer, *supra* note 130, at 6.

139. *Id.* at 7.

140. Nathaniel Hawthorne, *Endicott and the Red Cross*, in *TWICE-TOLD TALES* 320, 325 (J.M. Dent, 3d ed. 1920) (1837).

Winthrop, feared “it would be taken as an act of rebellion, or of like high nature, in defacing the king’s colors,”¹⁴¹ but who were also wary of imposing punishment “being doubtful of the lawful use of the cross in the ensign.”¹⁴² The ensuing debate was reported to feature references both to Constantine’s use of the cross in his battle standard and to his ban on crucifixion. The central question was reported to be not “whether ye Cross may be used in our Colours, as a charm to protect us from our Enemys, or to defend us from Disasters, or to procure Victory” (something the Puritans saw as Catholic superstition “abominable to all real Protestants”), but rather, “whether ye Cross as representing ye Cross of Christ, erected as . . . a Badge of Christianity, & a Sign of Distinction between Christians & Infidels may by any Prince or State, be now in their Banners reserved and Employd,” something the assembled colonists also did not approve.¹⁴³ In the end it was acknowledged that the motives for the defacement were “done upon this opinion, that the red cross was given to the king of England by the pope, as an ensign of victory, and as a superstitious thing, and a relique of antichrist.”¹⁴⁴ Endecott, who was found to have “done well . . . yet nevertheless . . . not done prudently”¹⁴⁵ was given the comparatively light punishment of being deprived for a year of the ability to hold office.¹⁴⁶ Significantly, however, the cross was not restored to the flag; instead it was proposed to substitute red and white roses, at least temporarily.¹⁴⁷

141. Bremer, *supra* note 130, at 7 (quoting JOHN WINTHROP, 1 WINTHROP’S JOURNAL: “HISTORY OF NEW ENGLAND” 1630–1649 1, 137 (James Kendall Hosmer ed., 1908)).

142. *Id.* at 8.

143. American Catholic Historical Society, *The Cross in The Flag of England Cut Out by John Endicott of Salem And by Sir Harry Vane At Boston As “A Superstitious Thing And A Relique Of Antichrist”—The Military Commissioners Order The “Cross Out Of All Colors”—“A Famous And Ridiculous Action And Dispute That Happened In New England About Ye Year 1633–4 And Renewed In 1681–6 And 1706,”* 5 AM. CATH. HIST. RESEARCHERS 321, 326–28 (n.s. 1909) (quoting Harley Manuscript No. 4888, folio 86, British Library).

144. Bremer, *supra* note 130, at 7 (quoting WINTHROP, *supra* note 141, at 137).

145. American Catholic Historical Society, *supra* note 143, at 325.

146. *Id.*

147. Bremer, *supra* note 130, at 9. The controversy was ultimately resolved by adopting for the flag the King’s own coat of arms, featuring the lions of

This choice of a flower over the cross, made in no small part to separate the garden of the church from the wilderness of the world in which such flowers bloom, a choice also made by the other Allies in commemorating World War I by electing the poppy as a memorial symbol, we will see again in the changes made to the flag of Mississippi in 2020, discussed below. But to arrive at how the flower replaced the cross in Mississippi, we must begin with an examination of the use of the cross in the flags of the Confederacy.

V. THE CROSS AND GOD IN FLAGS AND MOTTOS THROUGH U.S. HISTORY

A. *The Confederate Cross Becomes a Saltire*

Among the points of contention in the briefing and oral argument of the Bladensburg Cross case was whether the cross could be seen as including or excluding Jewish veterans and war dead. Justice Alito’s opinion noted that there was no evidence any area Jewish veterans had either been deliberately excluded from or involuntarily included among those commemorated by name in Bladensburg, and “that one of the local American Legion leaders responsible for the Cross’s construction was a Jewish veteran.”¹⁴⁸ Justice Kavanaugh’s concurrence acknowledged the “sense of distress and alienation” felt by “the Jewish war veterans who in an amicus brief say that the cross on public land sends a message of exclusion.”¹⁴⁹

It fell to dissenting Justice Ginsburg, herself Jewish, to explain at some length that “[s]oldiers of all faiths ‘are united by their love of country, but they are not united by the cross’¹⁵⁰ and that “[t]he cross was never perceived as an appropriate . . . memorial for Jewish soldiers.”¹⁵¹ At oral argument and again in her dissenting opinion, Justice Ginsburg stressed that both on the World War I battlefields, whose memorial crosses inspired the Bladensburg

England and Scotland, the harp of Wales, and the lilies of France, quartered. *Id.* at 9–10.

148. *Am. Legion v. Am. Humanist Ass’n*, 139 S. Ct. 2067, 2089 (2019).

149. *Id.* at 2093 (Kavanaugh, J., concurring).

150. *Id.* at 2104 (Ginsburg, J., dissenting) (quoting Brief for Jewish War Veterans of the United States of American, Inc., as Amicus Curiae Supporting Respondents at 3, *Am. Legion*, 139 S. Ct. 2067 (2019) (No. 17-1717)).

151. *Id.* at 2109.

Cross, and in U.S. military cemeteries at home and abroad, Jewish soldiers had always had the option of being buried under a star of David rather than a cross.¹⁵²

Less than two years after issuing her dissent, Justice Ginsburg was herself laid to rest under just such a marble star of David in Arlington National Cemetery, in a grave adjoining that of her husband, Army veteran Marty Ginsburg, who had predeceased her.¹⁵³

Somewhat surprisingly, the Confederate States of America in the nineteenth century seem to have taken more seriously than a majority of the Supreme Court in the twenty-first century the proposition that choosing a Latin cross as a political symbol excluded patriotic Jews and should therefore be avoided.¹⁵⁴ One of the first acts of the Provisional Congress of the Confederacy was to appoint, in February 1861, a Committee on the Flag and Seal.¹⁵⁵ The Committee Chair, William Porcher Miles of South Carolina, solicited suggestions for a flag design, and, after rejecting those too closely resembling the Stars and Stripes, initially favored adapting a flag used at the South Carolina secession convention in December 1860.¹⁵⁶ That flag featured a blue St. George's cross emblazoned with fifteen white stars representing the slaveholding states on a red field with South Carolina symbols of a crescent and a palmetto tree.¹⁵⁷

152. *Id.* at 2110.

153. Jessica Gresko, *Justice Ginsburg buried at Arlington in private ceremony*, ASSOC. PRESS (Sept. 29, 2020 5:34 PM), <https://abcnews.go.com/Politics/wireStory/justice-ginsburg-buried-arlington-private-ceremony-73321088> [perma.cc/LK3K-KQRS] (noting that “their headstone is black, with a Star of David at the top”).

154. In this connection it may be worth noting that one of Jefferson Davis's closest associates, Judah P. Benjamin, often called the Vice President of the Confederacy, but who in fact held a number of other high offices in the government of the Confederate states, was Jewish. *See, e.g.*, Daniel Polish, *The Curtain Parts—a Bit—on an Enigmatic Southerner: JUDAH P. BENJAMIN The Jewish Confederate*, L.A. TIMES (Jan. 24, 1988), <https://www.latimes.com/archives/la-xpm-1988-01-24-bk-38280-story.html> [perma.cc/X3XL-YXCW].

155. JOHN M. COSKI, *THE CONFEDERATE BATTLE FLAG: AMERICA'S MOST EMBATTLED EMBLEM* 5, 8 (2005).

156. *Id.* at 5.

157. *Id.*



FIGURE 5: STATE SOVEREIGNTY FLAG OF SOUTH CAROLINA¹⁵⁸

But Miles altered his initial proposal in response to criticism from “Charles Moise, a self-described ‘southerner of Jewish persuasion,’” who wrote to ask that “‘the symbol of a particular religion’ not be made the symbol of the nation.”¹⁵⁹

In response, Miles removed the crescent and the palmetto and substituted a diagonal cross for the Latin St. George’s cross.¹⁶⁰

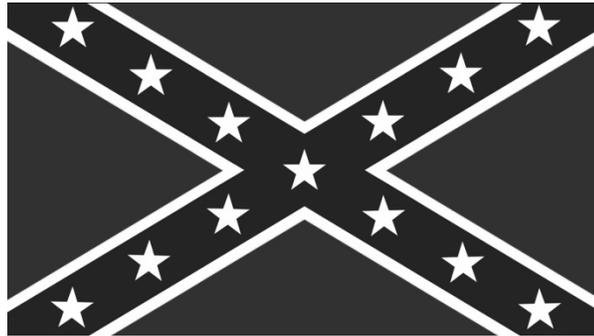


FIGURE 6: CONFEDERATE FLAG¹⁶¹

158. *South Carolina Sovereignty-Succession Flag*, WIKIMEDIA COMMONS, https://commons.wikimedia.org/wiki/File:South_Carolina_Sovereignty-Secession_Flag.svg [perma.cc/B5U6-FYCW] (last visited Apr. 24, 2021).

159. COSKI, *supra* note 155, at 5 (quoting ROBERT E. BONNER, *COLORS AND BLOOD: FLAG PASSIONS OF THE CONFEDERATE SOUTH* 101–02 (2002)).

160. *Id.* (quoting Letter from William Porcher Miles to Pierre Gustave Toutant-Beauregard (Aug. 27, 1861) (on file with Eleanor S. Brockenbrough Library, The Museum of the Confederacy, Richmond, Virginia)).

161. *Confederate Rebel Flag*, WIKIMEDIA COMMONS, https://commons.wikimedia.org/wiki/File:Confederate_Rebel_Flag.svg [https://perma.cc/M4EK-CHMC] (last visited Apr. 24, 2021).

Miles explained that “the diagonal cross was preferable because ‘it avoided the *religious* objection about the cross (from the Jews & many Protestant sects), because it did not stand out so *conspicuously* as if the cross had been placed upright thus.”¹⁶² Miles argued that the diagonal cross was “more *Heraldric* [sic] than *Ecclesiastical*, it being the ‘saltire’ of Heraldry, and significant of *strength* and *progress* (from the Latin *salto*, to leap).”¹⁶³ Although some mocked the design as “looking like a pair of suspenders,” more Southerners, then and now, still saw it as a cross, specifically a St. Andrew’s cross, because the X-shape was associated with the martyrdom of the patron saint of Scotland, whence the ancestors of many Southern whites had emigrated.¹⁶⁴ The X-shape was, of course, also that of the initial Greek letter in the Christogram adopted by Constantine for his battle standard,¹⁶⁵ and therefore could be seen directly to represent Christ.

Thus, in ways perhaps still significant to the use of elements of the Confederate flag in the United States today, placing the cross on the Confederate flag on the diagonal did not transform it from a sectarian “religious exercise to a secular exercise” but rather “from an obviously religious exercise to an obscured religious exercise.”¹⁶⁶

B. *Confederates Bring the Cross to the Flag of Maryland*

The Civil War additionally brought a cross to the flag of Maryland, home of the Bladensburg Cross. Although Maryland officially remained part of the Union during the Civil War, many Marylanders, in particular those from the area around

162. COSKI, *supra* note 155, at 5 (quoting Letter from William Porcher Miles to Pierre Gustave Toutant-Beauregard, *supra* note 160) (emphasis in original).

163. *Id.* (quoting Letter from William Porcher Miles to Pierre Gustave Toutant-Beauregard, *supra* note 160) (emphasis in original).

164. *Id.* at 5–6 (citing BONNER, *supra* note 159, at 52, 97–98; CHARLESTON MERCURY, May 6, 1863).

165. NOEL LENSKI, *CONSTANTINE AND THE CITIES* 53 (2016).

166. I am here quoting Justice Souter in the oral argument of *McCreary County v. ACLU of Kentucky*. Transcript of Oral Argument at 21, *McCreary County v. ACLU*, 545 U.S. 844 (2005) (No. 03-1693) (questioning whether the addition of a number of additional documents to what had originally been simply a display of the Ten Commandments on the walls of county courthouses had cured the Establishment Clause problems with the initial display). Justice Souter later wrote an opinion for the Court striking down the display of documents at issue in the case because the evolution of the display had not changed its predominantly religious purpose. See *McCreary County*, 545 U.S. at 881.

Bladensburg, fought for the Confederacy.¹⁶⁷ In colonial times and again in the mid-nineteenth century, flags in the state featured diagonal bars in gold and black,¹⁶⁸ the colors of George Calvert, first Lord Baltimore, who founded the colony.¹⁶⁹ But the Marylanders who fought for the Confederacy selected as their flag the so-called Crossland flag,¹⁷⁰ taken from the coat of arms of Calvert's mother, Alicia Crossland, and featuring, in red and white, what in heraldry is known as an inverted cross bottony, that is a cross having each arm terminating in a trefoil.¹⁷¹ After the Civil War, this Crossland flag was incorporated into the Maryland flag by quartering it with the earlier Calvert flag as a symbol of the renewed unity of North and South.¹⁷²

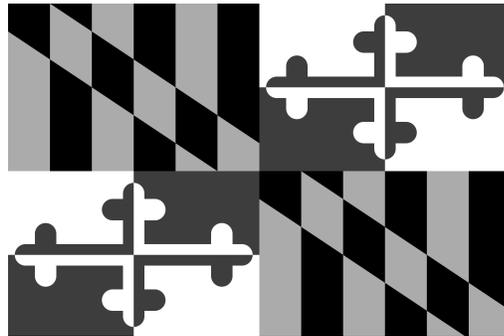


FIGURE 7: MARYLAND STATE FLAG¹⁷³

Also in the post-Civil War period, Maryland added to its great seal a verse in Latin from Psalm 5:12, *Scuto Bonae Voluntatis Tuae*

167. CHRISTOPHER PHILLIPS, *THE CIVIL WAR IN THE BORDER SOUTH* 18 (2013).

168. See the first and fourth quadrants of the Maryland State Flag, *infra* Figure 7.

169. See, e.g., *History of the Maryland Flag*, MD. SEC'Y OF STATE, <https://sos.maryland.gov/pages/services/flag-history.aspx> [perma.cc/6779-EP3P] (last visited Apr. 24, 2021).

170. See the second and third quadrants of the Maryland State Flag, *infra* Figure 7.

171. See, e.g., *id.*

172. *Id.*

173. *Flag of Maryland*, WIKIMEDIA COMMONS, https://commons.wikimedia.org/wiki/File:Flag_of_Maryland.svg [perma.cc/4R2K-QEJF] (last visited Apr. 24, 2021).

Coronasti Nos, usually translated as “With Favor Wilt Thou Compass Us as with a Shield.”¹⁷⁴ Although Justice Alito’s *American Legion v. American Humanist Association* opinion incorrectly describes this as the motto of the state of Maryland,¹⁷⁵ this somewhat militaristic addition to Maryland’s seal does invoke and presume divine favor for a particular state, much as Constantine did.

That the inhabitants of the area around Bladensburg identified both with the Confederacy and with the cross may help shine an interesting additional light on the monument in Bladensburg. The light it shines, as the American Humanists in their briefing dared to suggest, may come from a burning cross.¹⁷⁶ It was the Latin cross, beginning in the World War I era, that the Ku Klux Klan (KKK) chose as a symbol of domination over blacks, Jews, and others who deviated from its white Christian nationalist ideal.¹⁷⁷ Inspired by D.W. Griffith’s racist film *Birth of a Nation*,¹⁷⁸ the KKK burned its first cross incident to its revival at Stone Mountain, Georgia, in 1915, a month after a mob burned a cross there to celebrate the lynching of Leo Frank.¹⁷⁹ The same President Wilson who enthusiastically screened *Birth of a Nation* at the White House

174. *Maryland at a Glance: State Symbols; Maryland State Seal—Great Seal of Maryland*, MD. STATE ARCHIVES, <https://msa.maryland.gov/msa/mdmanual/01glance/html/symbols/seal.html> [perma.cc/VJ8T-7N3T] (last visited Apr. 24, 2021) [hereinafter *Maryland at a Glance*].

175. See *Am. Legion v. Am. Humanist Ass’n*, 139 S. Ct. 2067, 2084 n.22 (2019) (also misspelling the word “*voluntatis*”). The actual Maryland motto remains Lord Calvert’s “*Fatti maschii parole femine*,” generally translated as “strong deeds, gentle words” but more literally as “manly deeds, womanly words.” See, e.g., *Maryland at a Glance*, *supra* note 174.

176. Brief for Respondents at 6–7, *Am. Legion*, 139 S. Ct. 2067 (No. 17-1717), 2019 WL 338889.

177. See *id.*

178. *BIRTH OF A NATION* (David W. Griffith Corp. 1918) (an epic film set in the Civil War and its aftermath, inter alia depicting the KKK as heroic rescuers of white womanhood from the depredations of black men). For a review of the film and its reception at the White House, see, for example, Roger Ebert, *Birth of a Nation*, ROGER EBERT (Mar. 20, 2003), <https://www.rogerebert.com/reviews/great-movie-the-birth-of-a-nation-1915/> [https://perma.cc/XBL7-24P2].

179. See *Virginia v. Black*, 538 U.S. 343, 347–48, 354, 360 (2003) (describing the history of cross burning in a case holding that the activity could be criminalized when undertaken “with the intent of intimidating any person or group of persons” and “on the property of another, a high-way or other public place”).

contributed the following inscription to the foot of the Bladensburg Cross, taken from his request for a declaration of war: “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.”¹⁸⁰ For many in Bladensburg at the time (as well as for Wilson himself),¹⁸¹ the ideals of the KKK may perhaps have been among those worth fighting for. As the American Humanists tried to inform the Supreme Court in their briefing, “Klansmen were members of the American Legion during this era” and the “year the Cross was dedicated, the Klan marched from ‘the peace cross at Bladensburg to the fiery cross at Lanham.’”¹⁸² But Justice Alito dismissed the efforts of the American Humanists to link the Bladensburg Cross to the KKK as “disparaging intimations [with] no evidentiary support.”¹⁸³ Alito stressed instead that black soldiers were commemorated by the cross, that Catholic clergy participated in its dedication, and that one of the American Legion leaders involved in its construction was a Jewish veteran.¹⁸⁴ But even long after the period of the Peace Cross’s dedication, well in to the 1970s, Prince George’s County, where the cross is situated, continued to give rise to cross burnings by the KKK.¹⁸⁵ One of those found guilty of a 1977 cross burning on an African-American

180. See *Am. Legion*, 139 S. Ct. at 2077 (quoting 3 Joint Appendix at 915, *Am. Legion*, 139 S. Ct. 2067 (No. 17-1717, 18-18), 2018 WL 6715177).

181. Wilson’s racism continues to make headlines. See, e.g., Bruce Bartlett, *Woodrow Wilson Was Even More Racist Than You Thought*, NEW REPUBLIC (July 6, 2020), <https://newrepublic.com/article/158356/woodrow-wilson-racism-princeton-university> [perma.cc/V4TP-393G] (summarizing some of the evidence in connection with Princeton University’s recent decision to remove Wilson’s name from its public policy school because “Wilson’s racist thinking and policies make him an inappropriate namesake”).

182. Brief for Respondents, *supra* note 176, at 4, 7 (quoting 2 Joint Appendix at 102, 506, *Am. Legion*, 139 S. Ct. 2067 (No. 17-1717), 2018 WL 6715176).

183. *Am. Legion*, 139 S. Ct. at 2089.

184. *Id.* at 2089–90.

185. See, e.g., Vernon C. Thompson, *Md. Student Charged in 6 P.G. Cross Burnings*, WASH. POST (Mar. 3, 1977), <https://www.washingtonpost.com/archive/local/1977/03/03/md-student-charged-in-6-pg-cross-burnings/68f00ce2-5f21-4634-b2a7-5d04df150c61/> [perma.cc/4Y7W-TERM] (reporting that “a 23-year-old University of Maryland student identified as ‘exalted cyclops’ of a Ku Klux Klan lodge, was charged . . . with six cross-burnings in Prince George’s County” and that more than a dozen other cross burnings had taken place in the county within the prior two years).

family's lawn was then a member of the KKK, but by the time of the 2017 Charlottesville march, he had become a Catholic priest who asked forgiveness for his prior hateful actions.¹⁸⁶

C. *Mississippi Removes the Cross But Adds the Name of God to its Flag*

The summer of 2020 finally saw, throughout the United States, the dethroning of many a figure and symbol whose strong connection to a heritage of racism had long raised concerns. Woodrow Wilson, for example, had his name finally removed from the public policy school at Princeton, which had thus honored him for the better part of a century.¹⁸⁷ And Mississippi, the last of the Southern states fully to incorporate the Confederate flag in its state flag,¹⁸⁸ voted in June 2020 to substitute a new flag by referendum in November 2020.¹⁸⁹

186. See, e.g., William Aitcheson, *Moving from hate to love with God's grace*, ARLINGTON CATH. HERALD (Aug. 21, 2017), https://www.catholicherald.com/News/Local_News/Moving_from_hate_to_love_with_God_s_grace/ [perma.cc/F6WY-8BFA]; Michelle Basch, *Cross-burning victims want priest to cut out other Klan members*, WTOP NEWS (Aug. 23, 2017, 6:37 PM), <https://wtop.com/arlington/2017/08/cross-burning-victims-want-priest-klan-members/> [perma.cc/F4MS-A9JV] (describing reaction of victims of cross burning and specifying that the diocese was still working with the priest to provide \$23,000 in court-ordered restitution).

187. See Bartlett, *supra* note 181.

188. Emily Wagster Pettus, *Mississippi governor signs law for flag without rebel emblem*, ABC NEWS (Jan. 12, 2021, 10:47 AM), <https://abcnews.go.com/US/wireStory/mississippi-governor-signing-law-flag-rebel-sign-75181763> [perma.cc/5DUG-MG9J]. While only Mississippi had retained the Confederate flag itself into 2020, elements of the Confederate flag remain discernable in a number of Southern state flags. See A.J. Willingham, *Mississippi changing its flag isn't the end of Confederate symbols in state flags*, CNN (July 1, 2020), <https://www.cnn.com/2020/07/01/us/mississippi-state-flag-confederacy-flag-trnd/index.html> [perma.cc/ZW77-96M5]. Most relevant to this Article, the Florida flag, for example, retains the red St. Andrew's cross or saltire, which it claims to have derived from the Cross of Burgundy, which flew over Florida when it was a Spanish possession in the sixteenth century. *Id.* Some historians, such as John Coski, dispute this claim, noting that the cross on the Florida flag was added in 1900 by a Confederate governor coincident to the adoption of Jim Crow laws. See, e.g., COSKI, *supra* note 155, at 79–80; Glenn Garvin, *Historians differ on whether Florida flag echoes Confederate banner*, MIAMI HERALD (June 24, 2015, 8:54 PM), <https://www.miamiherald.com/news/state/florida/article25444405.html> [https://perma.cc/BTH9-NZGW].

189. Pettus, *supra* note 188.

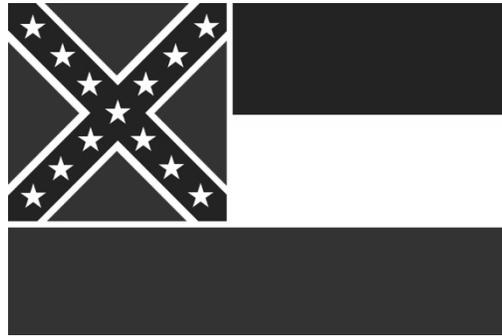


FIGURE 8: MISSISSIPPI STATE FLAG PRIOR TO 2020 REVISION¹⁹⁰

While repudiating the Confederate symbolism in its flag, Mississippi, if anything, strengthened and made explicit the religious symbolism by requiring of the new flag only two things: that it “shall not include the design of the Confederate battle flag, but shall include the words ‘In God We Trust.’”¹⁹¹ Recall that the cross on the old flag was deliberately obfuscated to avoid alienating or excluding non-Christians. Now the cross was to be eliminated entirely and, with it, invocation of a specifically Christian God, but a singular deity would even more explicitly be invoked. This has somewhat the flavor of Constantine’s use of the initials Chi-Rho, which some in his time saw as similar to the ankh, symbol of the Egyptian sun god Ra but which came to represent Christ, the Son of God.¹⁹² One way or another, the banner that the state chooses to raise overhead represents the divine, links it to the state, and invokes divine protection and favor for the state.

Some contemporary critics might fault Mississippi for substituting for the exclusion and subordination of one group (African Americans, through the continued use of the Confederate battle flag) the exclusion and subordination of others (atheists,

190. *State Flag of Mississippi from 1894 to 2020*, ENCYC. BRITANNICA, <https://www.britannica.com/topic/flag-of-Mississippi/images-videos#/media/1/1355616/247681> [perma.cc/B8GC-P3HR] (last visited Apr. 24, 2021).

191. An Act to Establish the Commission to Redesign the Mississippi State Flag, H.R. 1796, 2020 Leg., Reg. Sess. (Miss. 2020), <http://billstatus.ls.state.ms.us/documents/2020/pdf/HB/1700-1799/HB1796SG.pdf> [perma.cc/Y2YW-KVFW].

192. See LENSKI, *supra* note 165, at 9, 11 (citing JONATHAN BARDILL, CONSTANTINE, DIVINE EMPEROR OF THE CHRISTIAN GOLDEN AGE 160–83 (2012)).

agnostics, non-theists, and polytheists, through the adoption of a flag whose explicit text they cannot affirm). This effect on atheists and others should be seen to fail the Establishment Clause's endorsement test, as articulated by Justice O'Connor, in that it "sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community."¹⁹³ For purposes of this Article, however, it is equally important to note that the incorporation of such a motto on the flag, no less than the incorporation of the cross that preceded it, would be embraced by the likes of Constantine, but seen as problematic by the likes of Roger Williams. It calls to mind the historical tendency of rulers with dubious claims to Christian righteousness to ride into battle wearing chain mail every link of which was stamped "God is with us, no one can overcome us,"¹⁹⁴ apparently forgetting that the New Testament verse at the origin of this inscription, from Paul's Letter to the Romans, began with the all-important word "If."¹⁹⁵ It risks eliding an important distinction between claiming that we are fighting for God (as, for example, civil rights campaigners and anti-abortion activists often have done) and claiming that God is fighting for us (a claim more closely associated with religious nationalism).

The new flag that Mississippi voters selected in their November 2020 referendum has the words "In God We Trust" forming the final link completing a circle of stars that surrounds the central image of a white magnolia, the state flower.¹⁹⁶

193. *Lynch v. Donnelly*, 465 U.S. 668, 671, 688 (1984) (O'Connor, J., concurring) (articulating the test in the context of the question of the constitutionality of a nativity crèche erected at government expense but on land owned by a non-profit organization and surrounded by more secular symbols of the season such as Santa's sleigh, candy-striped poles, and a Christmas tree).

194. See, for example, a photograph of sixteenth-century Baydàna, or coat of chain mail, provided in *METRO. MUSEUM OF ART, TREASURES FROM THE KREMLIN 184* (Polly Cone ed., 1979) (the "Baydana or coat of chain mail," which was "formerly in the possession of Boris Gudonov," is "[m]ade of large, flat iron rings The rings carry the inscription 'God is with us, no one can overcome us'").

195. See *Romans* 8:31 ("What shall we then say to these things? If God be for us, who can be against us?").

196. *MISS. CODE ANN.* § 3-3-16 (2021).



FIGURE 9: MISSISSIPPI STATE FLAG AFTER 2020 REVISION¹⁹⁷

In choosing a flower to replace the cross, the citizens of Mississippi are in line with the colonial citizens of Massachusetts who favored the rose and with the European allies who chose the poppy rather than the Latin cross to commemorate their World War I dead.

D. *In God We Trust?*

There should remain, however, reason for concern, not only from the perspective of atheists and others who are excluded, but also from the perspective of devout believers in God like Roger Williams, that the state has appropriated to itself the motto “In God We Trust.” Like Constantine’s invocation of a monotheistic god, the use of the now-official motto “In God We Trust” by the United States has its roots in the desire to obtain divine favor in a war whose *casus belli* was not exclusively or directly religious. The motto was first incorporated in U.S. coinage during the Civil War, precisely out of a Constantinian conviction that formally announcing the state’s allegiance to God would conduce to success.¹⁹⁸ It was a November 13, 1861, letter from Reverend M. R. Watkinson, a self-described “minister of the Gospel,” to Treasury Secretary Salmon

197. *State Flag of Mississippi*, ENCYC. BRITANNICA, <https://www.britannica.com/topic/flag-of-Mississippi/images-videos#/media/1/1355616/61504> [perma.cc/K495-8YHB] (last visited Apr. 24, 2021).

198. See, e.g., Andrew Glass, ‘*In God We Trust*’ becomes nation’s motto, *July 30, 1956*, POLITICO (Jul. 30, 2018) <https://www.politico.com/story/2018/07/30/in-god-we-trust-becomes-nations-motto-july-30-1956-741016> [perma.cc/K7FN-MDJ6].

P. Chase that began the process.¹⁹⁹ Reverend Watkinson appealed to Chase, whom he described as “probably a Christian,” to replace the “goddess of liberty” on the coinage with “the recognition of the Almighty God in some form” to “relieve us from the ignominy of heathenism” and “place us openly under the Divine protection we have personally claimed.”²⁰⁰ Reverend Watkinson expressed his concern that otherwise “the antiquaries of succeeding centuries [might] rightly reason from our past that we were a heathen nation” and his conviction that “our national shame in disowning God [i]s not the least of our present national disasters.”²⁰¹ Barely a week later, on November 20, 1861, Chase instructed the Director of the Mint at Philadelphia to prepare a motto, writing:

Dear Sir: No nation can be strong except in the strength of God, or safe except in His defense. The trust of our people in God should be declared on our national coins.

You will cause a device to be prepared without unnecessary delay with a motto expressing in the fewest and tersest words possible this national recognition.²⁰²

One can almost hear the echo of Constantine directing his legions to prepare the labarum and shields with Christian insignia before battle. But, as with Constantine’s own coinage, so too the money of the United States did not consistently bear a reference to God for the better part of the next century. One of the few officials to have early on raised an objection stemming from concern, not for excluded non-believers cast out in the wilderness, rather for the garden of the faith, was President Theodore Roosevelt, who

199. *History of ‘In God We Trust’*, U.S. DEP’T OF TREASURY, <https://www.treasury.gov/about/education/Pages/in-god-we-trust.aspx> [perma.cc/E2QM-83Z7] (last visited Apr. 24, 2021).

200. *Id.* This date, of course, is after the commencement of the Civil War. The Civil War was, on the one hand, like Constantine’s battle at the Milvian Bridge, a contest for earthly political control, but, on the other, a war in which both sides did indeed often claim to be fighting to vindicate the commands of the Judeo-Christian God concerning, for example, slavery. See, e.g., Julia Ward Howe, *The Battle Hymn of the Republic*, THE ATLANTIC (Feb. 1862), <https://www.theatlantic.com/magazine/archive/1862/02/the-battle-hymn-of-the-republic/308052/> [perma.cc/9ZCR-687S] (“As [Christ] died to make men holy, let us die to make men free.”).

201. *History of ‘In God We Trust’*, *supra* note 199.

202. *Id.*

responded in 1907 to complaints that he had left the motto off coins minted during his Presidency in part as follows:

My own feeling in the matter is due to my very firm conviction that to put such a motto on coins, or to use it in any kindred manner, not only does no good, but does positive harm, and is in effect irreverence, which comes dangerously close to sacrilege. A beautiful and solemn sentence such as the one in question should be treated and uttered only with that fine reverence which necessarily implies a certain exaltation of spirit.

Any use that tends to cheapen it and, above all, any use which tends to secure its being treated in a spirit of levity, is from every standpoint profoundly to be regretted. . . .

. . . In all my life I have never heard any human being speak reverently of this motto on the coins or show any signs of its having appealed to any high emotion in him, but I have literally, hundreds of times, heard it used as an occasion of and incitement to the sneering ridicule which it is, above all things, undesirable that so beautiful and exalted a phrase should excite.

. . . .

. . . If Congress alters the law and directs me to replace on the coins the sentence in question the direction will be immediately put into effect, but I very earnestly trust that the religious sentiment of the country, the spirit of reverence in the country, will prevent any such action being taken.²⁰³

203. *Roosevelt Dropped 'In God We Trust': President Says Such a Motto on Coin is Irreverence, Close to Sacrilege*, N.Y. TIMES (Nov. 14, 1907), <https://www.nytimes.com/1907/11/14/archives/roosevelt-dropped-in-god-we-trust-president-says-such-a-motto-on.html> [perma.cc/BH93-SUA6]. It should be noted that Roosevelt expressed himself perfectly comfortable with the use of the motto on, for example, the facades of public buildings, “in short, wherever it will tend to arouse and inspire a lofty emotion in those who look thereon.” *Id.*

In 1908, Congress did indeed mandate that “In God We Trust” appear as previously on coins; in 1957, the Congressional mandate extended to all paper money.²⁰⁴

“In God We Trust” became the official motto of the United States in 1956 at the height of the Cold War, two years after Congress by law added the words “under God” to the pledge of allegiance.²⁰⁵ Behind each of these governmental decisions was a clear wish to distinguish the United States from its principal cold war opponent, the officially godless Soviet Union. But, in a way Constantine would understand, and Roger Williams deplore, these actions also posited an identity between the interests of the State and those of the God whose protection it claimed. As President Eisenhower—himself a former military general—explained in a Flag Day speech in 1954, he wanted to include “under God” in the Pledge of Allegiance because “in this way we shall constantly strengthen those spiritual weapons which forever will be our country’s most powerful resource in peace and war.”²⁰⁶

To this day, devout Christians who warn of conflating the interests of God and the State risk having their patriotism called into question. Thus, for example, Raphael Warnock, successor to Martin Luther King, Jr., as senior pastor of Atlanta’s Ebenezer Baptist Church, and recently elected U.S. Senator from Georgia, saw his G.O.P. opponent for the Senate seat, Kelly Loeffler, castigate him in campaign ads for “disparaging the men and women who serve our country & risk their lives to defend freedom.”²⁰⁷ The basis for Loeffler’s charge was a sermon Warnock had delivered on the theme of Matthew 6:24, which warns the Christian faithful that

204. See, e.g., Glass, *supra* note 198.

205. *Id.* Given the divisiveness this motto has engendered, and its explicit tendency to divide believers from others among the citizenry, it is particularly ironic that the unofficial motto it replaced was *E Pluribus Unum* (“Out of many, one.”). *Id.*

206. *Quotes: Statement by the President Upon Signing Bill to Include the Words “Under God” in the Pledge to the Flag, 6/154/54*, DWIGHT D. EISENHOWER PRESIDENTIAL LIBR., <https://www.eisenhowerlibrary.gov/eisenhowers/quotes#Religion> [perma.cc/77WK-8Q22], (last updated Apr. 22, 2020); see also, e.g., Glass, *supra* note 198.

207. Kelly Loeffler (@KLoeffler), TWITTER (Nov. 18, 2020), <https://twitter.com/kloeffler/status/1329155163945267200?lang=en> [https://perma.cc/M8A3-JD4S].

they cannot serve two masters.²⁰⁸ What Warnock actually preached was: “America, nobody can serve God and the military. You can’t serve God and money. You cannot serve God and mammon at the same time. America, choose ye this day whom ye will serve.”²⁰⁹ Roger Williams, like Warnock, sought political office while trying to remain true to the demands of his faith. But Williams, too, would have expressed concern that neither soldiers, nor government officials, nor those who make and spend money, should confuse their duties to the state with their duties to God.

Also at the present time, another set of devout Christians, those affiliated with the legislative agenda known as Project Blitz, including, among others, the Congressional Prayer Caucus and the Wallbuilders, are assiduously trying to have state legislation passed to, for example, mandate the display of the motto “In God We Trust” in schools and other public buildings, teach biblical literacy and the role of religion in legal history, proclaim Christian Heritage Week, and in other ways break down the wall of separation between church and state.²¹⁰ Project Blitz’s lengthy playbook makes clear that they have organized their agenda in terms of what legislation they believe will be easiest to pass.²¹¹ First on the list are displays of the national motto, because it has already survived numerous litigation challenges.

It is true that the use and display of the motto “In God We Trust” has already survived court challenges on constitutional grounds, beginning in the 1970s and continuing to this day, including a number by Michael Newdow, whose pro-se challenge to

208. *Matthew* 6:24 (King James) (“No man can serve two masters: for either he will hate the one, and love the other; or else he will hold to the one, and despise the other. Ye cannot serve God and mammon.”).

209. See, e.g., Ben Brasch, *Campaign check: Loeffler says Warnock disparages military*, THE ATLANTA J.-CONST. (Dec. 7, 2020), <https://www.ajc.com/politics/senate-watch/campaign-check-loeffler-says-warnock-disparages-military/YPI3JA7R7NBOPDYKVC4MBH3VQ/> [perma.cc/TCG5-WRUH].

210. For an overview of Project Blitz and its objectives, see, for example, Frederick Clarkson, “Project Blitz” Seeks to Do for Christian Nationalism What ALEC Does for Big Business, RELIGION DISPATCHES (Apr. 27, 2018), <https://religiondispatches.org/project-blitz-seeks-to-do-for-christian-nationalism-what-alec-does-for-big-business/> [https://perma.cc/XQJ5-9BCY].

211. See CONGRESSIONAL PRAYER CAUCUS FOUNDATION ET AL., *Report and Analysis on Religious Freedom Measures Impacting Prayer and Faith in America (2018–19 Version)*, (2008), <https://www.au.org/sites/default/files/2019-01/Project%20Blitz%20Playbook%202018-19.pdf> [perma.cc/K2CW-VGYR].

the inclusion of the words “under God” in the pledge of allegiance reached the Supreme Court only to be dismissed on prudential standing grounds.²¹² But, in line with Teddy Roosevelt and Roger Williams, I fail to see how a devout Christian can derive comfort, and not instead experience horror, from the success of this litigation, given that the premise on which “In God We Trust” continues to be authorized by the courts for use by the government is very explicitly that, as Judge Diane Wood of the Seventh Circuit explained, “the motto has *no* theological import. . . . [T]he original religious significance of ‘In God We Trust’ has dissipated and the motto is now secular.”²¹³

The term of art generally applied to displays and invocations such as that of “In God We Trust” is “ceremonial deism.”²¹⁴ This very term should send a shudder of horror through devout Christians, especially those with a memory of the Emperor Constantine’s effect on the Christian church. As Roger Williams repeatedly reminds us, until the time of Constantine, Christian worship, precisely because it was more likely to be persecuted by, rather than required, or even authorized by government, consisted of free and sincere acts of worship and professions of faith by believers. By contrast, official sacrifices to the official gods of Rome were in effect ceremonial deism, and thereby doubly useless. Roger Williams did not see it as an advance for Christianity to become the official state religion in fourth-century Rome, nor should today’s Christians have reason to rejoice when elements of their faith are put to merely ceremonial use by the state for its own purposes.

212. *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1 (2004) (holding that because Newdow did not have legal custody of his minor daughter, he lacked standing to challenge the recitation of the pledge with the words “under God” in her public-school classroom), *abrogated by* *Lexmark Intern v. Static Control Components*, 572 U.S. 118, 127 (2014).

213. *Mayle v. U.S.*, 891 F.3d 680, 684 (7th Cir. 2018) (citations omitted) (emphasis in original); *see, e.g., Aronow v. United States*, 432 F.2d 242, 243 (9th Cir. 1970) (“It is quite obvious that . . . ‘In God We Trust’ has nothing whatsoever to do with the establishment of religion. Its use is of a patriotic or ceremonial character and bears no true resemblance to a governmental sponsorship of a religious exercise.”).

214. *See, e.g., Newdow*, 542 U.S. at 37 (O’Connor, J., concurring in the judgment) (including both the motto and the words “Under God” in the pledge in this category, and adding that the “constitutional value of ceremonial deism turns on a shared understanding of its legitimate nonreligious purposes”).

Of all those who wrote opinions in the Bladensburg Cross case, the judge who came closest to articulating this concern in a way Roger Williams might recognize and endorse is Fourth Circuit Judge James A. Wynn, Jr., concurring in his Circuit's denial of rehearing en banc. Quoting, not from Roger Williams himself, but from a number of Supreme Court and lower court opinions making similar points, Judge Wynn argued at some length that:

To give the judiciary the power to prescribe and proscribe the meaning of an unadorned, traditionally religious symbol like the Latin cross would serve only to “degrade religion.”

....

. . . . As the Supreme Court has recognized, the “first and most immediate purpose [of the Establishment Clause] rested on the belief that a union of government and religion tends to destroy government *and to degrade religion.*”

The Religion Clauses’ animating concern with governmental intrusion on and degradation of religious belief stems from the colonists’ experience and unease with the consequences of state control over religious institutions and beliefs. . . . [S]ettlers sought to escape what they saw as “the corruptive influence of secular statism on religious purity.”

....

. . . . [S]anctioning a governmental body’s attempt to imbue a traditionally religious symbol, like the Latin cross, with secular meaning poses the risk that “religion may be compromised as political figures reshape the religion’s beliefs [or symbols] for their own purposes.”²¹⁵

215. *Am. Humanist Ass’n v. Md.-Nat’l Capital Park & Planning Comm’n*, 891 F.3d 117, 119–21 (4th Cir. 2018) (Wynn, C.J., concurring) (emphasis in original) (citations omitted). Chief Judge Wynn includes a lengthy quotation from Alexis de Tocqueville’s warning against religious nationalism, which resembles Williams’s warning in setting forth how much a religion has to lose “in forming an alliance with a political power.” *Id.* at 122 (quoting ALEXIS DE TOCQUEVILLE, 1 DEMOCRACY IN AMERICA ch. XVII, pt. III (Henry Reeve ed., Project Gutenberg 2006)).

VI. THE CROSS AS MILITARY SYMBOL

With all this in mind, let us return to the Bladensburg Cross itself. As Justice Alito's opinion in *American Legion*, sets out, all of the many inscriptions on the cross are of secular military import.²¹⁶ They include, not only the above quoted language from President Wilson's request for a declaration of war²¹⁷ and the names of the "heroes of Prince George's County, Maryland who lost their lives" and are honored by the cross, but, more prominently, the American Legion's emblem and the words "Valor," "Endurance," "Courage," and "Devotion."²¹⁸ These are not words of salvific import,²¹⁹ nor do they point toward hope of resurrection.²²⁰ The "devotion" suggested is, in context, clearly to country, not to Christ Jesus, and the "valor," "endurance," and "courage" are the sort exhibited, not in a psychomachia, but in the trenches and on the battlefields of Europe. It appears that "a theological framework [is] being morphed into a nationalist framework" as "[t]he sacrifice of Jesus and the sacrifice of military veterans [a]re conflated."²²¹

All this leads me to see the Bladensburg Cross as different in kind even than the individual crosses marking the graves of individual soldiers on the battlefield,²²² which proponents of the

216. *Am. Legion v. Am. Humanist Ass'n*, 139 S. Ct. 2067 (2019).

217. *See supra* note 180 and accompanying text.

218. *Am. Legion*, 139 S. Ct. at 2077.

219. They are not, for example, faith, hope, and charity, the three abiding Christian virtues identified by the Apostle Paul in 1 Corinthians 13:13.

220. *But see Am. Legion*, 139 S. Ct. at 2108, (Ginsburg, J., dissenting) ("The asserted commemorative meaning of the cross rests on—and is inseparable from—its Christian meaning: 'the crucifixion of Jesus Christ and the redeeming benefits of his passion and death,' specifically, 'the salvation of man.'") (citation omitted).

221. *See* ANGELA DENKER, *RED STATE CHRISTIANS: UNDERSTANDING THE VOTERS WHO ELECTED DONALD TRUMP* 26 (2019). Denker is not describing the Bladensburg Cross itself, but a related situation in which "military sacrifice" is seen as "akin to Jesus's sacrifice." *Id.* at 26–27. Denker is criticizing, from a theological perspective, the introduction of the Pledge of Allegiance to the American flag, the National Anthem, military imagery, and songs in praise of the sacrifice of veterans into a church service at the Prestonwood Baptist megachurch in Plano, Texas. *See id.* at 14–27.

222. The Bladensburg Cross is in this respect similar to the single large Latin cross at issue in an earlier Supreme Court case, in which Justice Kennedy found the cross to be "not merely a reaffirmation of Christian beliefs" but a "symbol often used to honor and respect those whose heroic acts, noble

Bladensburg Cross claim inspired it. The Bladensburg Cross does not establish Christianity by excluding all the dead and their survivors who are not personally Christian so much as it does so by melding the symbol of Christianity with those of the state in the interests of the state, as Constantine did. Thus, in my view, following Roger Williams, to accept the claims made by the American Legion and others about the “cross’s widespread resonance as a symbol of sacrifice in the war,” as the Supreme Court majority does, does not eliminate the Establishment Clause problem, rather, by shifting it to somewhat different grounds than those principally argued in the case, intensifies the problem because of the ways in which the Cross allows the state to make use of Christianity for its purposes, as Constantine did.²²³

Battles perceived as being for the soul of the nation, whether in the Civil War or the Cold War, moved the United States government to officially affirm trust in God, without further specification. But the World War I era seems generally to have been a point in which the United States turned to, not merely explicitly religious, but more specifically sectarian symbols. An expert’s report submitted in the Bladensburg Cross case explained that, for example, before World War I, all military chaplains had used the shepherd’s crook as their symbol.²²⁴ In 1917, the Army mandated that chaplains instead all wear a Latin cross, to which Jewish chaplains and organizations objected; however, because Christian chaplains then objected to abandoning the cross, they were allowed to keep it “while Jewish chaplains wore an insignia featuring the Torah.”²²⁵

During World War I, the sign of the cross was bestowed by the U.S. Military not only on chaplains, but on particularly distinguished warriors.²²⁶ Before that war, military decorations

contributions, and patient striving help secure an honored place in history for this Nation and its people.” *Salazar v. Buono*, 559 U.S. 700, 721 (2010) (holding that the transfer of the land on which this cross stood from public to private ownership did not violate the Establishment Clause).

223. *Am. Legion*, 139 S. Ct. at 2076.

224. 1 Joint Appendix at 106, *Am. Legion*, 139 S. Ct. 2067 (No. 17-1717), 2018 WL 6706093.

225. *Id.* at 107 (citing LISA M. BUDREAU, *BODIES OF WAR: WORLD WAR I AND THE POLITICS OF COMMEMORATION IN AMERICA, 1919–1933* 120 (2010)).

226. See *Distinguished Service Cross*, U.S. WORLD WAR ONE CENTENNIAL COMM’N, <https://www.worldwar1centennial.org/index.php/american-indians->

awarded by the United States had taken a variety of shapes.²²⁷ The Revolutionary War's heart-shaped Badge of Military Merit is at the root of today's Purple Heart.²²⁸ During the Civil War, a star-shaped Medal of Honor was first awarded.²²⁹ Only in 1918 did the U.S. Military begin to award the Distinguished Service Cross.²³⁰



FIGURE 10: DISTINGUISHED SERVICE CROSS²³¹

in-ww1-awards/american-indians-in-ww1-service-cross.html#:~:text=The%20Distinguished%20Service%20Cross%20is,Cross%2C%20including%20several%20American%20Indians [perma.cc/Q6N4-V4UH] (last visited Apr. 24, 2021).

227. See *Pre-World War I Army Medals*, NAT'L ARCHIVES, <https://www.archives.gov/research/military/army/pre-ww1-medals> [perma.cc/4QHT-SHT2] (last visited Apr. 24, 2021).

228. Fred L. Borch, *The Purple Heart: The Story of America's Oldest Military Decoration and Some Soldier Recipients*, 21 ON POINT 36, 37 (2016).

229. Eugene V. McAndrews, *George Gillespie and The Medal of Honor*, 61 THE MIL. ENG'R 334, 335 (1969).

230. *Am. Legion v. Am. Humanist Ass'n*, 139 S. Ct. 2067, 2085 (2019) ("In the wake of the war, the United States adopted the cross as part of its military honors, establishing the Distinguished Service Cross and the Navy Cross in 1918 and 1919.")

231. *Distinguished Service Cross (United States)*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Distinguished_Service_Cross_\(United_States\)#/media/File:Army_distinguished_service_cross_medal.jpg](https://en.wikipedia.org/wiki/Distinguished_Service_Cross_(United_States)#/media/File:Army_distinguished_service_cross_medal.jpg) [perma.cc/V8BP-FEPS] (last visited Apr. 24, 2021).

A cross shaped decoration similar to that Distinguished Service Cross is now issued by all branches of the U.S. armed forces, as the decoration second in rank only to the Medal of Honor.²³² Other nations that fought in World War I also issued cross-shaped decoration to distinguished warriors.²³³ The most infamous of these has become the Iron Cross, because it was won by Corporal Adolf Hitler and then issued by him as Fuehrer to those who fought for the German Third Reich.²³⁴



FIGURE 11: IRON CROSS²³⁵

In no small part because of its connection with Hitler, the black iron cross pattée of the Iron Cross, together with its name, has been enthusiastically adapted for use, not only by neo-Nazis and white supremacists, but by biker gangs and skateboarders.²³⁶ Before the Nazi era, however, the German government had also awarded the

232. *Highest Ranking U.S. Military Medals*, MILITARYBENEFITS.INFO, <https://militarybenefits.info/ranking-military-medals/> [perma.cc/2CCP-S8ZM] (last visited Apr. 24, 2021).

233. *Croix de Guerre*, ENCYC. BRITANNICA, <https://www.britannica.com/topic/Croix-de-Guerre> [perma.cc/PM6A-ERZN] (last visited Apr. 24, 2021).

234. T.L. JARMAN, *RISE AND FALL OF NAZI GERMANY* 107 (1956).

235. Author's personal photo taken of her grandfather's own Iron Cross. Image on file with Author.

236. See, e.g., *Hate on Display Hate Symbols Database*, ANTI-DEFAMATION LEAGUE, https://www.adl.org/hate-symbols?cat_id%5B146%5D=146 [perma.cc/ENE9-MKLB] (last visited Apr. 24, 2021).

Iron Cross to many perfectly respectable people,²³⁷ among them a University of Chicago Law professor, the distinguished legal realist Karl Llewellyn, who, although an American, had enlisted in the German army and been wounded in battle before the United States entered the war.²³⁸

In addition to Germany and the United States, all other major combatant nations in World War I except Ottoman Turkey and Japan chose a cross shape for military decorations.²³⁹ For the United Kingdom, which had established Christian churches such as the Church of England, of whom the monarch is the head, this was hardly surprising; indeed, the award, the Victoria Cross, took its name from one such head of both church and state.²⁴⁰ But the officially laic (or secular) French republic awarded a Croix de Guerre, as did pillarized²⁴¹ Belgium.²⁴² The Austrians awarded a Militärverdienstkreuz (Military Merit Cross).²⁴³ Each of these decorations seems to trace its form not so much to Constantine as to the crusader emblems, although the American Distinguished Service Cross more closely resembles something a Roman legionnaire would recognize, featuring as it does an eagle

237. One of whom, as it happens, was my maternal grandfather, who earned two Iron Crosses fighting for his native Germany in Belgium, and who definitively emigrated to the United States when Hitler came to power in 1933.

238. See WILLIAM TWINNING, *KARL LLEWELLYN AND THE REALIST MOVEMENT* 91 (2d ed. 2012).

239. Matthew R. Schwonek, *Improvising and Air Service: The Rise of Military Aviation in Poland, 1918–1920*, 21 *WAR IN HIST.* 518, 524 (2014).

240. See *Victoria Cross*, ENCYC. BRITANNICA, <https://www.britannica.com/topic/Victoria-Cross-British-military-decoration> [<https://perma.cc/HGH5-LD58>] (last visited Apr. 24, 2021).

241. Pillarization is the official organization of a society by religious affiliation. In Belgium, notably, among the strongest pillars is that of the Freethinkers, with whom the American Humanists, plaintiff-respondents in the Bladensburg Cross case, could comfortably affiliate. See, e.g., Renee C. Fox, *Is Religion Important in Belgium?*, 23 *EUR. J. SOC.* 3, 28 (1982) (quoting Karel Dobbelaere, Jaak Billiet & R. Creyf, *Secularization and Pillarization: a social problem approach*, 2 *THE ANN. REV. OF THE SOC. SCIENCES OF RELIGION* 2, 101 (1978)).

242. See *French Croix de Guerre, Belgian Croix de Guerre*, U.S. WORLD WAR ONE CENTENNIAL COMM'N, <https://www.worldwar1centennial.org/index.php/american-indians-in-ww1-awards/american-indians-in-ww1-croix-de-guerre.html> [perma.cc/NSQ5-AAZT] (last visited Apr. 24, 2021).

243. See 1 *WORLD WAR I: THE DEFINITIVE ENCYCLOPEDIA AND DOCUMENT COLLECTION* 1715–16 (Spencer C. Tucker ed., 2014).

prominently in the foreground, spreading his wings over the cross, and a scroll below the eagle bearing the inscription “For Valor.”²⁴⁴ Perhaps because of these prominent additions, there does not seem to have been any objection to this use of the cross by the U.S. military to have come to the notice of even the Military Religious Freedom Foundation, which is otherwise quite vigilant against religious symbolism and proselytization in the Armed Forces.²⁴⁵

When, however, the use of the cross by the U.S. military was directly linked to the heritage of the Crusades, a set of explicitly religious wars claimed to be fought on behalf of western Christendom against a Muslim enemy, the Military Religious Freedom Foundation was not alone in objecting. As critics observed, for units of the contemporary American military to call themselves Crusaders and to use crusader crosses in their official imagery raised problems far beyond any potential Establishment Clause challenges: at a time when the U.S. military was fighting with Muslim allies against enemies such as the radical Muslims of ISIS, crusader imagery alienated the allies and gave talking points to groups such as ISIS, eager to cast their fight as a holy war of Islam against Christian infidels.²⁴⁶ As a result of such objections, several recent efforts by units of the U.S. military to reinstate Crusader nomenclature and imagery were rescinded.²⁴⁷

244. *Distinguished Service Cross Medal*, NAT'L MUSEUM OF AM. HIST., https://americanhistory.si.edu/collections/search/object/nmah_447533 [perma.cc/4EBV-39LQ] (last visited Apr. 24, 2021). See also *supra* Figure 10.

245. *Our Mission*, MIL. RELIGIOUS FREEDOM FOUND., <https://www.militaryreligiousfreedom.org/about/our-mission/> [perma.cc/9MJ3-Q69B] (last visited Apr. 24, 2021).

246. See, e.g., Bryant Jordan, *Crusader Image a “Propaganda Bonanza” for Jihadists: Watchdog Group*, MILITARY.COM (Nov. 16, 2015), <https://www.military.com/daily-news/2015/11/16/crusader-image-a-propaganda-bonanza-jihadists-watchdog-group.html> [perma.cc/4ZC3-739Q].

247. See e.g., Patrick Donohue, *Marine air station squadron again abandons “Crusaders” moniker*, ISLAND PACKET (June 2, 2012, 8:45 PM), <https://www.islandpacket.com/news/local/community/beaufort-news/article33466455.html> [https://perma.cc/38YS-P4R9] (describing the background for a commanding officer's order that Marine Fighter Attack Squadron 122 discontinue use of the Crusaders moniker and a logo that featured a red cross on a white shield); Bryant Jordan, *Crusader Knight Sign Taken Down at Hawaii Army Base*, MILITARY.COM (Nov. 17, 2015), <https://www.military.com/daily-news/2015/11/17/crusader-knight-sign-taken-down-at-hawaii-army-base.html> [perma.cc/P7P4-HPEM].

VII. WHY NOT THE BLADENSBURG POPPY?

Just as the cross was not used in U.S. military decorations before World War I, so the cross was also not the form of choice for military monuments. Even for the World War I period, as the American Humanist's expert demonstrated and Justice Ginsburg noted in her dissent, the cross remained an "aberration," while the most popular war memorials featured a mass produced statue of a soldier known as the Spirit of the American Doughboy.²⁴⁸ One popular form of monument in the pre-World War I era United States was that of an obelisk, which led the American Humanists to suggest to the lower court as an alternative remedy to the Bladensburg Cross's demolition or removal from public land the "removal of the arms from the Cross to form a non-religious slab or obelisk."²⁴⁹ If the Cross were indeed transformed into a slab, it would more closely resemble the official British memorial to the World War I dead, the Cenotaph, a marble slab first designed as the permanent replacement for a temporary structure in Whitehall that had captured the British public imagination,²⁵⁰ in somewhat the same way as marble crosses were fashioned to replace the temporary wooden crosses in the battlefield cemeteries of Europe.²⁵¹

I want to suggest yet another, more dramatic and creative way of possibly altering the monument in Bladensburg so as to make even clearer its purpose to honor the American soldiers who died in World War I, while transforming it away from a sectarian religious symbol. When Justice Alito correctly attributed the image U.S. citizens held of the European battlefield graveyards of World War I to the opening lines of the poem in Flanders Field, he stressed the sectarian image of the cross over the non-sectarian image of the

248. *Am. Legion v. Am. Humanist Ass'n*, 139 S. Ct. 2067, 2111 (2019) (Ginsburg, J., dissenting) (quoting BUDREAU, *supra* note 225, at 139).

249. *Id.* at 2078 (majority opinion) (quoting *Am. Humanist v. Md.-Nat'l Capital Park*, 874 F. 3d 195, 202 n.7 (4th Cir. 2017)).

250. *What is the Cenotaph?*, IMPERIAL WAR MUSEUMS, <https://www.iwm.org.uk/history/what-is-the-cenotaph> [perma.cc/K4VV-SYPR] (last visited Apr. 24, 2021).

251. *Am. Legion*, 139 S. Ct. at 2110 (Ginsburg, J., dissenting) (citing BUDREAU, *supra* note 225, at 120; Colonel Frederick W. Van Duyne, *Erection of Permanent Headstones in the American Military cemeteries in Europe*, THE QUARTERMASTER REV. 25–30 (1930)).

poppy. The first and perhaps most memorable line of the poem is, however, “In Flanders Field the poppies blow.”²⁵² The second line, “between the crosses row on row” is often colloquially altered to read “between the headstones row on row,”²⁵³ so as to be both less sectarian and more historically accurate, since, as Justice Ginsburg and others noted, wooden stars of David preceded the marble stars of David on the graves of fallen Jewish soldiers.²⁵⁴

As the Fourth Circuit in the Bladensburg Cross case correctly noted, not the cross, but rather “[t]he poppy has actually been known as a universal symbol for commemorating World War I.”²⁵⁵ This red flower, “which grew wild in the fields of Flanders,”²⁵⁶ has been used as a symbol of remembrance of those who died in World War I since shortly after that war ended, particularly on the date the Americans commemorate as Veterans Day, November 11, when the Armistice ending World War I was signed in 1918. That same year, an American woman, Moina Michael, inspired by the poem *In Flanders’ Field*, first campaigned to make the poppy a symbol of remembrance for the war dead.²⁵⁷ The symbol was rapidly adopted throughout the Allied nations, including by the American Legion itself, officially, in 1920.²⁵⁸ Today the memorial poppy is most

252. MCCRAE, *supra* note 29, at 3.

253. *See id.* Indeed, this nonsectarian version was the one I learned in my devoutly sectarian Roman Catholic high school, and I was actually shocked to learn in reading about this case that the original referred to “crosses” and that the Bladensburg Cross’s defenders were making this one of their talking points.

254. *Am. Legion*, 139 S. Ct. at 2111 (Ginsburg, J., dissenting) (citing BUDREAU, *supra* note 225, at 120).

255. *Am. Humanist Ass’n*, 874 F.3d at 207 n.10 (citations omitted).

256. *Id.* (quoting THE CAMBRIDGE ENCYCLOPEDIA 877 (6th ed. 2006)).

257. Sara Freeland, *The Poppy Lady: Moina Michael started a movement for veterans*, U. OF GA. TODAY (Nov. 5, 2017), <https://news.uga.edu/poppy-lady-moina-michael/> [perma.cc/3TEP-RAJH].

258. The American Legion may have been directly inspired by another campaigner for the poppy, the French humanitarian Anna E. Guérin who was instrumental in the poppy’s adoption in the United Kingdom and was invited to address American Legion delegates at their 1920 Cleveland Convention about her Inter-Allied Poppy Day. Mark Joseph Jochim, *100th Anniversary of Remembrance Day*, A STAMP A DAY (Nov. 11, 2019), <https://stampaday.wordpress.com/2019/11/11/100th-anniversary-of-remembrance-day/> [perma.cc/B57T-FWC3]. *See also Legion Family flower of remembrance*, THE AMERICAN LEGION (July 2, 2013), <https://www.legion.org/troops/216371/legion-family-flower-remembrance> [perma.cc/9ME3-LDWC]; Jennifer Iles, *In Remembrance:*

prominent and ubiquitous in Britain. It can be seen on stamps, in wreaths, and, most frequently, in the form of a brooch of cloth or metal pinned every November to lapels, including that of Queen Elizabeth II.²⁵⁹ Unlike the United States, Britain has no constitutional reason to avoid the cross as a memorial symbol—it not only has established national churches, it even, as discussed above, has distinctive national crosses, the St. George’s cross for England, the St. Andrew’s cross for Scotland. Yet the Queen, head of both Church and state, herself wears a poppy.²⁶⁰

Why, then, should we not consider transforming the Bladensburg Cross into the Bladensburg Poppy? Its blood red color would symbolize the soldiers’ sacrifice more clearly and inclusively than a cross ever could. It would still retain the same historic resonance, to Flanders Field and the imagery of the famous poem. And the poppy, as a wildflower, would have an added resonance when Roger Williams’s famous metaphor is brought into play. Were the state to opt for the poppy in lieu of the cross, it would close a dangerous gap in the wall between the church and the world, allowing each to flourish safely protected from the other. It would allow the holy cross to remain holy, not contaminated by or co-opted for secular militaristic or nationalistic purposes. And it would acknowledge that the wilderness of the world can itself produce inspirational things of beauty, fit for their purpose, and also uncontaminated. Like the crosses on the gravestones of Christian soldiers and the poppies between their rows, church and state could flourish side by side.

To make this suggestion somewhat more concrete, I have persuaded architect Karen Cornelius to consider how the

The Flanders Poppy, 13 *MORTALITY* 201, 205 (2008) (discussing Madame Guérin’s successful campaign in Britain).

259. Chelsey Sanchez, *Why Does the Royal Family Wear Poppies During Remembrance Day?*, *HARPER’S BAZAAR* (Nov. 9, 2020, 7:00 AM), <https://www.harpersbazaar.com/celebrity/latest/a29727134/royal-family-poppies-remembrance-day/> [perma.cc/MQ56-5FUL].

260. This is not to say the poppy has been entirely uncontroversial as a symbol: early on, a British general dismissed it as “pagan” and it has been criticized since as too closely associated with militarism and nationalism. See generally Iles, *supra* note 258. For an image of the Queen wearing a poppy, see Sebastian Kettle, *Why do we wear red poppies on Remembrance Sunday and how to wear your red poppy*, *EXPRESS* (Nov. 10, 2017), <https://www.express.co.uk/news/uk/874718/Remembrance-Sunday-why-wear-red-popy-how-to-wear-red-poppies> [https://perma.cc/K89W-EDNT].

Bladensburg Cross might be transformed into the Bladensburg Poppy.²⁶¹ Unlike the proposals for a slab or obelisk, her design does not involve amputating any part of the existing monument. Rather the arms of the cross become the leaves of a stylized poppy flower, with the vertical core of the monument serving as the stem. For the poppy flower itself, the design proposes using a rotating array of solar panels shaped like the petals of a single large flower; a sculptural solar flower with advanced photovoltaic solar panels such as this is already offered for sale and manufacture to specifications under the name Smartflower.²⁶²

For better and for worse, some might see this suggestion as akin to William Porcher Miles's rotating the cross on his proposed confederate flag into a saltire. But, though his flag design may have been mocked by some early on, as noted above, it has unquestionably become iconic. While it is doubtful that, having won in the Supreme Court, the authorities in Maryland will any time soon take up Justice Kavanaugh's suggestion that they remain free to take legal action "requiring removal of the cross or transfer of the land,"²⁶³ should they ever decide instead to change the shape of the monument, the Bladensburg Poppy could be a practical, as well as symbolically rich alternative.

VIII. IS DONALD TRUMP THE NEW CONSTANTINE?

Having begun this Article with Roger Williams's image of the garden and the wilderness, I would be delighted to end it with the upbeat, albeit quirky, image of the Bladensburg Poppy, a solar flower in the sunshine. But events in the United States since I began work on this Article, particularly the insurrection of January 6, 2021, and so much of what led up to it, lead me instead to end with a much darker take on the prospects of separating Christianity from nationalism and on the risks of failing to do so. I will end instead where I have claimed an analysis of the Bladensburg Cross should properly begin, with the Emperor Constantine, whom Roger Williams saw as such a devastating force for both the Christian

261. *See supra* Figure 2.

262. For descriptions and illustrations of the product, see SMARTFLOWER, <https://smartflower.com/> [<https://perma.cc/3S5B-3CR7>] (last visited Apr. 24, 2021).

263. *Am. Legion v. Am. Humanist Ass'n*, 139 S. Ct. 2067, 2094 (2019) (Kavanaugh, J., concurring).

church and the Roman state. The question to which I will now turn, then, is one explicitly raised in so many words by Christian-nationalist fans of America's forty-fifth president: Is Donald Trump the new Constantine? A full examination of Christian nationalism and its dominionist variations, even in connection with the specific issues raised by the Bladensburg Cross, is well beyond the scope of this Article. But sociological researchers have shown:

[G]reater adherence to Christian nationalist ideology was a robust predictor of voting for Trump, even after controlling for economic dissatisfaction, sexism, anti-black prejudice, anti-Muslim refugee attitudes, and anti-immigrant sentiment, as well as measures of religion, sociodemographics, and political identity more generally. . . . Christian nationalism operates as a unique and independent ideology that can influence political actions by calling forth a defense of mythological narratives about America's distinctively Christian heritage and future.²⁶⁴

Christians who have had to explain their support for a leader whose actions and statements seem antithetical to those of Jesus have turned to a number of historical figures to whom they are eager to analogize Trump, including the womanizing King David²⁶⁵ and, most frequently, the Persian King Cyrus,²⁶⁶ who, although not an adherent of the God of the Bible, was seen by the Jews as their deliverer because he ended the Babylonian captivity and ordered the rebuilding of their temple in Jerusalem.²⁶⁷ Even the fact that

264. Andrew L. Whitehead, Samuel L. Perry & Joseph O. Baker, *Make America Christian Again: Christian Nationalism and Voting for Donald Trump in the 2016 Presidential Election*, 79 *SOC. OF RELIGION* 147, 147 (2018).

265. Adam Gabbatt, *'Unparalleled privilege': why white evangelicals see Trump as their savior*, *THE GUARDIAN*, (Jan. 11, 2020, 3:30 PM), <https://www.theguardian.com/us-news/2020/jan/11/donald-trump-evangelical-christians-cyrus-king> [<https://perma.cc/FP4G-B3FU>] (quoting evangelical Energy Secretary Rick Perry as saying in defense of Trump during the impeachment process, "God's used imperfect people all through history. King David wasn't perfect. Saul wasn't perfect. Solomon wasn't perfect.").

266. Katherine Stewart, *Why Trump Reigns as King Cyrus*, *N.Y. TIMES* (Dec. 31, 2018), <https://www.nytimes.com/2018/12/31/opinion/trump-evangelicals-cyrus-king.html> [perma.cc/J3KP-KE34].

267. David M. Halbfinger & Isabel Kershner, *Pompeo Visits West Bank Settlement and Offers Parting Gifts to Israeli Right*, *N.Y. TIMES* (Dec. 3, 2020), <https://www.nytimes.com/2020/11/19/world/middleeast/pompeo-bds-golan-heights-west-bank.html> [perma.cc/6DYP-9A55].

Trump is the forty-fifth U.S. President and that Cyrus appears in the forty-fifth chapter of the book of Isaiah has taken on great significance for some evangelicals.²⁶⁸

A much smaller number than invoke Cyrus have considered whether Trump may be the new Constantine. Some have done this somewhat tongue-in-cheek, creating memes of Trump as the God Emperor²⁶⁹ and selling plaster busts and t-shirts with images of Trump in Roman battle armor.²⁷⁰ The Trump supporters who more seriously compare him to Constantine are not particularly prominent or distinguished, but it is nevertheless worth considering the force of the analogies they draw. Take for example, the essay *Is Trump the New Constantine?* first published in March 2016 by Blaise Joseph, then a commerce student at the University of New South Wales.²⁷¹ Under a photo of a bust of Constantine set in front of an American flag and above the inscription “In hoc signo vinces,” Joseph begins as follows:

Christians are unable to speak freely. Religious freedom is under attack. Society is materialistic and immoral. Western civilization is facing huge threats, from within and without. And apparently the one powerful emerging leader is no saint.

268. Stewart, *supra* note 266.

269. Hari Kunzru, *For the Lulz*, N.Y. REV. (Mar. 26, 2020), <https://www.nybooks.com/articles/2020/03/26/trolls-4chan-gamergate-lulz> [perma.cc/FCE6-TEA2] (describing many posts on election night 2016 that “were variants of ‘God Emperor take my power’”); *see also* Allum Bokhari & Milo Yiannopoulos, *An Establishment Conservative’s Guide to the Alt-Right*, BREITBART (Mar. 29, 2016), <https://www.breitbart.com/tech/2016/03/29/an-establishment-conservatives-guide-to-the-alt-right> [perma.cc/AP3F-DKR9] (suggesting that “Trump supporters who spend hours creating memes celebrating the ‘God Emperor’” were not “necessarily instinctive conservatives” rather, given “their irreverence, lack of respect of social norms, and willingness to stomp on other people’s feelings” perhaps “instinctive libertarians”).

270. *See, e.g.*, A3DLIFE, *President Donald Trump Bust 3d Printed*, ETSY, https://www.etsy.com/listing/822031361/president-donald-trump-bust-3d-printed?ga_order=most_relevant&ga_search_type=all&ga_view_type=gallery&ga_search_query=trump+3d+bust&ref=sr_gallery-1-12&organic_search_click=1&frs=1&col=1 [perma.cc/73ZA-RQ7L] (last visited Apr. 24, 2021).

271. Blaise Joseph, *Is Trump the new Constantine?*, MERCATORNET (Nov. 11, 2016), <https://mercatornet.com/is-trump-the-new-constantine/10939> [perma.cc/NA3B-8XNA].

You're thinking America 2016? No. Rome 312.

The leader is Constantine

Constantine would go on to not only save the Roman Empire, but also liberate Christianity.²⁷²

Joseph correctly describes Constantine as having “many defects” including, in addition to being ruthlessly ambitious, putting one of his multiple wives to death.²⁷³ But he describes Constantine in 312 as having not simply a vision of how to triumph militarily, but something more like a conversion experience, thus aligning his argument more closely with those who see Trump, not merely as a useful pagan, but as a “baby Christian.”²⁷⁴ Joseph then goes on to equate Constantine’s issuing an edict freeing Christians from literal persecution, the sort that had led many of them to be brutally executed under his predecessor, Emperor Diocletian, with what Joseph sees as twenty-first-century Christians’ “lack [of] the freedom to speak bluntly about social issues without being shouted down by the vindictive hordes of secular progressivism for ‘offending’ particular groups of people.”²⁷⁵ According to Joseph,

272. *Id.* See also, e.g., Fr. Richard Heilman, *The Emperor Constantine Was No Saint, Neither Is President Trump, But...*, ROMANCATHOLICMAN (Dec. 24, 2019), <https://www.romancatholicman.com/the-emperor-constantine-was-no-saint-neither-is-president-trump-but/> [<https://perma.cc/96ZM-YMCS>]; Tony Ginocchio, *Rick Heilman, Posting Pastor*, GRIFT OF THE HOLY SPIRIT (Dec. 9, 2019), <https://imaxafterlife.substack.com/p/rick-heilman-posting-pastor> [perma.cc/RL2M-CLQW] (discussing how, under the name Roman Catholic Man, Wisconsin priest Richard Heilman markets gunmetal colored “combat rosaries,” “concealed carry” licenses for rosaries, and red baseball caps that say “Make America Holy Again”).

273. Joseph, *supra* note 271.

274. See, e.g., Sarah Eekhoff Zylstra, *Dobson Explains Why He Called Trump a ‘Baby Christian’*, CHRISTIAN TODAY (Aug. 4, 2016, 3:08 PM), <https://www.christianitytoday.com/news/2016/august/james-dobson-explains-why-donald-trump-baby-christian.html> [perma.cc/KP63-FFP5].

275. Joseph, *supra* note 271. A fuller discussion of the sense of loss and grievance felt by many conservative Christians in the U.S.—including some evangelical Christians, some Catholics, even some Justices on the Supreme Court—is well beyond the scope of this Article. But it is important to consider the extent to which Supreme Court Establishment Clause decisions in the twentieth century are considered a cause and Supreme Court decisions in the new millennium are seen as the response to this sense by some Christians of loss of governmental and cultural dominance. For further discussion see, for example, Mary Anne Case, *The Peculiar Stake U.S. Protestants Have in the Question of State Recognition of Same-Sex Marriages*, in *AFTER SECULAR LAW*

“Donald Trump is the only person who can give us that freedom.”²⁷⁶

Roger Williams, of course, would be more sympathetic to those who compare Trump to Constantine more critically,²⁷⁷ as am I. Many of these critical commentators focus, as do I, on Trump’s use of religious backdrops to illustrate his attempt forcefully to dominate over the Black Lives Matter protestors in the summer of 2020.

Famously, in the late afternoon of June 1, 2020, at the height of protests in Washington, D.C., in response to the May twenty-fifth death of George Floyd in the course of being arrested by Minneapolis police, Trump strode out from the White House across Lafayette Square to St. John’s Episcopal Church, accompanied by a number of high-ranking administration officials and military officers.²⁷⁸ The way had been cleared for him by “security forces under White House command [who] fired rubber bullets and tear gas on protesters to empty streets around the church.”²⁷⁹ Once in front of the church, President Trump posed for a photo op, holding aloft a bible.²⁸⁰

302 (Winnifred Fallers Sullivan, et al. eds., 2011) (analyzing the understandable, although not justifiable, sense of loss and grievance some Protestants felt when their control of state-sponsored institutions, like public schools, was taken away).

276. Joseph, *supra* note 271.

277. For a critical comparison of Trump to Constantine that makes many of the same points I (tracking Roger Williams) do in this Article, see Christian Israel, *Constantine revived: The Trump Card*, LOUD CRY OF THE THIRD ANGEL (Jan. 27, 2021), <https://loudcryofthethirdangel.com/constantine-revived-the-trump-card/> [perma.cc/C8LR-JTTH].

278. See, e.g., Tom Gjelten, *Peaceful Protestors Tear-Gassed To Clear Way For Trump Church Photo-Op*, NPR (June 1, 2020, 11:50 PM), <https://www.npr.org/2020/06/01/867532070/trumps-unannounced-church-visit-angers-church-officials> [perma.cc/FW2R-N5Z5].

279. Colbert I. King, Opinion, *Trump desecrates the character of St. John’s church for foul political purposes*, WASH. POST (June 2, 2020, 10:34 AM), <https://www.washingtonpost.com/opinions/2020/06/02/trump-desecrates-character-st-johns-church-foul-political-purposes/> [perma.cc/V8Q8-UGEZ].

280. *Id.*



FIGURE 12: TRUMP HOLDS UP BIBLE IN FRONT OF ST. JOHN'S EPISCOPAL CHURCH²⁸¹

He didn't open the bible, he held it up as a talisman and battle standard, as Constantine did the cross. And he didn't speak words taken from it, or even words of religious import. Initially, he seems to have said nothing at all. When asked his thoughts, the sum total of his response was:

We have a great country. That's my thought. We have the best country in the world . . . we will make it even greater. And it won't take long. It's not going to take long. You see what's going on, it's coming back, it's coming back strong. It'll be greater than ever before.²⁸²

These are thoughts Constantine could easily have expressed. But only a Christian nationalist would associate them with Christ Jesus, and there would be little basis in the book Trump was holding to do so.

Trump's use of the church as a mere backdrop was categorically condemned by its rector Reverend Robert Fisher, by the Episcopal bishop of Washington, Mariann Budde, and by the denomination's

281. *Trump Visits St. John's Episcopal Church*, FLICKR (June 1, 2020), <https://flickr.com/photos/148748355@N05/49963649028> [perma.cc/G2ZE-8AMN].

282. *See, e.g.*, Karl Gelles, Veronica Bravo & George Petras, *How police pushed aside protesters ahead of Trump's controversial church photo*, USA TODAY (Jun. 5, 2020, 6:23 PM), <https://www.usatoday.com/in-depth/graphics/2020/06/05/george-floyd-protests-trump-church-photo-curfew-park/3127684001/> [perma.cc/EYB4-HVLG].

Presiding Bishop Michael Curry, just as another Trump photo op the following day at the Roman Catholic shrine of Pope St. John Paul II, owned by the Knights of Columbus, was condemned by the Roman Catholic Archbishop of Washington, Wilton Gregory.²⁸³ Leaders of other Christian denominations, including J.D. Greear, President of the Southern Baptist Convention, and Russell Moore, the President of its Religious Liberty and Ethics Convention, also condemned what they saw as Trump's misuse of the bible for political ends.²⁸⁴ But many of Trump's fervent Christian-nationalist supporters were only strengthened in their devotion to him by these two religious photo ops. As CNN's religion editor Daniel Burke astutely analyzed it, though even many conservative Christians might find them sacrilegious, the photo ops nevertheless

perfectly captured Trump's approach to religion. He relies more on images than substance, prefers demonstrations of power over piety, and readily uses religious symbols to fight a winner-take-all culture war. . . . These brouhahas aren't distractions from Trump's larger message to conservative Christians. They *are* the message. He is the strongman willing to fight for them, a modern Constantine the Great.²⁸⁵

In the aftermath of the November election, Trump's Christian-nationalist supporters fully demonstrated their reciprocal willingness to fight for him as well. The circle of corruption of which Roger Williams warned was complete. The disturbing signs were

283. Mariann Edgar Budde, Opinion, *Bishop Budde: Trump's Visit to St. John's Church Outraged Me*, N.Y. TIMES (June 4, 2020), <https://www.nytimes.com/2020/06/04/opinion/trump-st-johns-church-protests.html> [perma.cc/59SH-KESX].

284. Sarah Pulliam Bailey & Michelle Boorstein, *'I find it baffling and reprehensible': Catholic archbishop of Washington slams Trump's visit to John Paul II shrine*, WASH. POST (June 2, 2020, 5:59 PM), <https://www.washingtonpost.com/religion/2020/06/02/trump-catholic-shrine-church-bible-protesters/> [perma.cc/J4EL-5V5M].

285. Daniel Burke, *Trump's religious photo-ops aren't about piety. They're about power.*, CNN (June 3, 2020, 9:35 PM), <https://www.cnn.com/2020/06/03/politics/trump-church-visit-religion-burke/index.html> [perma.cc/J96W-LNRL] (emphasis in original); *see also, e.g.*, Robyn J. Whitaker, *Trump's photo op with church and Bible was offensive, but not new*, THE CONVERSATION (June 4, 2020, 3:59 PM), <https://theconversation.com/trumps-photo-op-with-church-and-bible-was-offensive-but-not-new-140053> [perma.cc/YX4G-WRZK].

there long before January 6, for example, at the December 12, 2020, so-called Jericho March in Washington, D.C. The March took its name from the biblical story of Joshua's successful attack on the city of Jericho, as part of the Hebrew people's claiming of the promised land of Israel.²⁸⁶ By all accounts the March was an ecumenical event, an example of Judeo-Christian rather than simply Christian nationalism, in which orthodox Jews, as well as Jews for Jesus, Roman Catholic priests, and evangelicals took part.²⁸⁷ So did the Proud Boys, several of whom were arrested afterwards for acts of vandalism such as ripping down and burning Black Lives Matter posters from area churches.²⁸⁸ In imitation of Joshua's army, the participants blew shofars so that the obstacles they saw as standing in the way of Trump's second term would tumble down as did the walls of Jericho. But in casting themselves, the Trump supporters, as God's chosen people they were casting the legislative and judicial branches of the U.S. government, which they saw as "corrupt institutions . . . promulgating the hoax that Trump lost the election," as the enemies of God and they declared those who opposed Trump to be demonically possessed.²⁸⁹ The leader of the Jericho March, devout Christian Eric Metaxas "claimed that patriots must fight to the last drop of blood to preserve Trump's presidency."²⁹⁰ As Rod Dreher, himself a devout and conservative Orthodox Christian, wrote in shock and horror, "[t]he only way one can justify that hysterical stance is if one conflates religion with politics, and politics with religion."²⁹¹

286. See *Joshua* 6 (describing the siege and its aftermath).

287. See e.g., Rod Dreher, *What I Saw At The Jericho March*, AM. CONSERVATIVE (Dec. 12, 2020, 9:42 PM), <https://www.theamericanconservative.com/dreher/what-i-saw-at-the-jericho-march/> [perma.cc/QP8P-Q7EW].

288. Jillian Cheney, *Trump-Supporting 'Jericho March' Ends In Protest, Burning Of BLM Banners*, RELIGION UNPLUGGED (Dec. 14, 2020), <https://religionunplugged.com/news/2020/12/13/trump-supporting-jericho-march-ends-in-protest> [perma.cc/3DYX-KFBD].

289. Dreher, *supra* note 287.

290. *Id.*

291. *Id.* Dreher is best known for proposing the Benedict Option, a suggestion that, like Christian monks in the European dark ages after the fall of Rome, Christians today need to form communities in which they could separate themselves from a corrupt world. See Rod Dreher, *Benedict Option FAQ*, AM. CONSERVATIVE (Oct. 6, 2015, 2:00 PM), <https://www.theamericanconservative.com/dreher/benedict-option-faq/> [perma.cc/7NAA-NVYK].

At the Jericho March, at numerous other pro-Trump protests between the election and January 6, and during the January 6 rally and insurrection itself, billed by some as a second Jericho March, the iconography of militant Christian nationalism was everywhere. A tweet from the right-wing Catholic group Church Militant paired the cross raised at a Michigan protest with the American flag raised at Iwo Jima below the hashtag “America First” and above a quote attributed to John Quincy Adams to the effect that “[t]he highest glory of the American Revolution is this; it connected in one indissoluble bond the principles of civil government with the principles of Christianity.”²⁹² Participants held up bibles and waved flags with slogans like “Jesus 2020” or “Jesus is my Savior, Trump is my President,” as they rallied on the mall and then stormed the capitol. Crusader imagery like the phrase “*Deus Vult*” (God Will It) superimposed on a cross alternated, or was combined with, Confederate imagery, with the militarized cross a constant.²⁹³

292. Church Militant (@Church_Militant), TWITTER (Jan. 6, 2021, 3:37 PM), https://twitter.com/Church_Militant/status/1346918768962924547 [<https://perma.cc/7W5P-6VKF>].

293. See Thomas B. Edsall, Opinion, *The Capitol Insurrection Was as Christian Nationalist as It Gets.*, N.Y. TIMES (Jan. 28, 2021), <https://www.ny-times.com/2021/01/28/opinion/christian-nationalists-capitol-attack.html> [<https://perma.cc/3JDJ-RLNR>]; see also Shira Feder, *Storming of the Capitol through the lens of a veteran Jewish DC photographer*, TIMES OF ISRAEL (Jan. 14, 2021, 5:58 AM), <https://www.timesofisrael.com/storming-of-the-capitol-through-the-lens-of-a-veteran-jewish-dc-photographer/> [<https://perma.cc/89LY-KY3J>] (interviewee reporting having seen Confederate flags and a flag reading “Jesus is my Savior. Trump is my President” during the demonstrations at the U.S. Capitol on January 6, 2021); Andrew Boujon, *Among the MAGAs, One Last Time, on the Streets of DC*, WASHINGTONIAN (Jan. 6, 2021), <https://www.washingtonian.com/2021/01/06/among-the-magas-one-last-time-on-the-streets-of-dc/> [perma.cc/E6VH-TUSS] (in which writer reports having seen a flag reading “Deus Vult,” a Crusader motto, during the demonstrations at the U.S. Capitol on January 6, 2021); Stephanie Dube Dwilson, *WATCH: Trump Supporters Raise Cross in Front of Michigan Capitol*, HEAVY, <https://heavy.com/news/cross-raised-in-front-of-capitol-building-michigan/> [perma.cc/Z8VT-D33J] (last updated Jan. 6, 2021, 3:12 PM) (containing footage of protestors raising up a cross before the Michigan Capitol on January 6, 2021). For an image depicting a crowd with Trump banners gathering around a large wooden cross in front of the U.S. Capitol on January 6, see *Wheaton Faculty Have Released a Statement Condemning ‘Abuses of Christian Symbols’ at the Capitol*, RELEVANT (Jan. 12, 2021) <https://www.relevantmagazine.com/current/nation/wheaton-college-capitol-raid/> [perma.cc/2RFB-CFY2].

CONCLUSION

Those concerned even long before the storming of the capitol about the deleterious effects of Christian nationalism on both church and state in the Trump era have focused directly on the commingling of religious symbolism with a glorification of American military valor, of which the Bladensburg Cross can be seen as a comparatively mild example. More extreme examples in the Trump administration date from day one, when Trump himself validated the conflation of God, country, and military might in a paragraph of his inaugural address that began, “[a]t the bedrock of our politics will be a total allegiance to the United States of America,” then continued, “[w]hen America is united, America is totally unstoppable” and ended, “[w]e will be protected by the great men and women of our military and law enforcement. And most importantly, we will be protected by God.”²⁹⁴

Among the critics of this conflation from a theological perspective and out of concern principally for the church, Lutheran Pastor Angela Denker worries that “the near-deification of the American military in many conservative churches is a sign of growing Christian Nationalism,” that “the appearance of military support for Trump and the intertwining of nationalism and a ‘Christian America’ increased conservative Christian support for Trump[,]” and that “support for America as a Christian nation may become the most prominent lesson many American Christians learn in church, rather than a focus on the gospel, on forgiveness, or even on Jesus’s death and resurrection.”²⁹⁵ Similarly, Paul Miller, a devout Christian whose work is chiefly in national security and international relations, not theology, expressed the following concern in the aftermath of the capitol riots:

. . . I’m proud to be an American but there is a time and a place for it. . . . I think the church is not the right place for that. I very much advocate for taking flags out of church buildings. Not because we hate America, but because when we’re in church, we are celebrating our citizenship in a

294. See, e.g., *Full text: 2017 Donald Trump inauguration speech transcript*, POLITICO (Jan. 20, 2017, 12:49 PM), <https://www.politico.com/story/2017/01/full-text-donald-trump-inauguration-speech-transcript-233907> [perma.cc/L9SJ-FKDD].

295. DENKER, *supra* note 221, at 16–17.

different polity in the kingdom of heaven, which is a kingdom that includes all peoples drawn from every people, language, and nation on earth.

. . . Similarly, I would not advocate singing patriotic songs in church. I'm a little cautious about many churches celebrating, for example, Memorial Day weekend and doing a special shout out or thank you to veterans. . . . Some churches go too far and hold big patriotic festivals . . .²⁹⁶

A central theme of this Article is that militarizing the Christian cross in aid of earthly political ends,²⁹⁷ whether that is done by the American Legion or Constantine's legions, has a corrupting effect on both church and state. But the problems of Christian nationalism are not limited to the warlike nor are they limited to displays by government of the kind the Establishment Clause was framed to address. Consider the supposedly conciliatory and unifying ad featuring Bruce Springsteen which Jeep ran during the 2021 Super Bowl.²⁹⁸ It featured "a chapel in Kansas. Standing on the exact center of the lower forty-eight. It never closes. All are more than welcome. To come meet here, in the middle."²⁹⁹ Springsteen's voiceover acknowledges that the "[t]he middle has been a hard place to get to lately. Between red and blue. Between servant and citizen. Between our freedom and our fear."³⁰⁰ He continues:

296. Morgan Lee, *Christian Nationalism Is Worse Than You Think*, CHRISTIANITY TODAY (Jan. 13, 2021), <https://www.christianitytoday.com/ct/2021/january-web-only/christian-nationalism-capitol-riots-trump-podcast.html> [perma.cc/9NWT-ZWAF]

297. As opposed to militarizing it as part of a religious metaphor, which can pose different problems. See Russell Chandler, 'Battle Hymn,' 'Onward Christian Soldiers' Reprived: Methodist Panel Retreats on Songs, L.A. TIMES (July 6, 1986), <https://www.latimes.com/archives/la-xpm-1986-07-06-mn-23021-story.html> [perma.cc/U9L2-NB93]. In any event, marching "as to war with the cross of Jesus going on before" as the Christian soldiers of the famous hymn do is not the same as actually marching to war.

298. Jeep, *Jeep® | The Middle*, YOUTUBE (Feb. 24, 2021), <https://www.youtube.com/watch?v=L2LJpicgA2E> [perma.cc/EY6Y-5PHE]. For the text of the commercial, see Bruce Springsteen (@springsteen), INSTAGRAM (Feb. 7, 2021), <https://www.instagram.com/tv/CLA2V2BBA9h/> [https://perma.cc/K8V2-3ZJH].

299. Jeep, *supra* note 298.

300. *Id.*

[A]s for freedom, it's not the property of just the fortunate few. It belongs to us all. Whoever you are, wherever you're from. It's what connects us. And we need that connection. We need the middle. We just have to remember the very soil we stand on is common ground.³⁰¹

Unfortunately, the footage screened from inside the chapel makes clear that it is not at all common ground for Americans. It reveals a chapel whose imagery is the very embodiment of Christian nationalism, with, at its center, above the pulpit, a cross hanging superimposed on an American flag in the shape of the lower forty-eight states. The sign above the map reads "Pray America."



FIGURE 13: U.S. CENTER CHAPEL IN LEBANON, KANSAS³⁰²

This is not a middle where we can all meet freely.³⁰³ Nor is it a middle in which, if Roger Williams is correct, any of us, even the

301. *Id.*

302. Copyright Bryan Paul Photo. Printed with permission.

303. The least of the problems with such a meeting is that Alaska and Hawaii are not even represented, neither on the flag map itself nor, more importantly, in the geographic calculations that make the chapel the geographic middle of the United States. See Jeep, *supra* note 298.

devout Christian American citizens among us, should want to meet, because it posits too much common ground between church and state. This is a middle without a wall of separation, in which the garden of the Church is untended and full of weeds and the wilderness of the world is overrun with invasive species escaped from cultivation.

The message sent by the image of the cross superimposed on the flag in the shape of a U.S. map in the center of the Center Chapel seems a visual equivalent of the words of the motto adopted by the initial citizens' committee formed in 1918 to raise funds for the construction of the Bladensburg Cross. The committee called "upon the citizens of Maryland, trusting in God, the supreme ruler of the universe" to contribute funds for the Cross "[w]ith our motto, 'one god, one country and one flag.'"³⁰⁴ In both cases, God is inextricably tied to a country and a flag. And the presence of the cross in both cases makes clear that the God is a Christian God. But, from the perspective of Roger Williams, to superimpose the cross on the flag, as the chapel does, is no better than to include the cross in a battle flag as both the England Roger Williams abandoned and the confederate states did. The fact that the chapel is a religious space, not state property, may avoid an Establishment Clause challenge such as that faced by the Bladensburg Cross, but it does not solve the problem identified by Roger Williams, which is a problem of the culture of church and state, not simply a problem of law.

Roger Williams committed himself to separation of church and state as both a leader of his church and a leader of his state. Americans, whether in or out of government, in or out of a faith community, should follow his lead.

304. *Am. Humanist v. Md.-Nat'l Capital Park*, 147 F. Supp. 3d 373, 376 (D. Md. 2015).