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June 22, 2019: What the Supreme Court Should Have Said, But Didn't, in the Maryland Cross Case

Bruce Ledewitz

Duquesne University, ledewitz@duq.edu

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Title: What the Supreme Court Should Have Said, But Didn't, in the Maryland Cross Case

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6/22/2019--This is the [op-ed](#) I wrote last March for the Washington Examiner in the Cross Case decided this week. The cross stayed, as predicted. There was no majority opinion on how to approach religious imagery in the public square. (This is a repeat of the March 21 blog entry since this is the time people are interested in the case.)

The World War I memorial cross in Bladensburg, Md., isn't going anywhere. That was clear from the oral argument in *The American Legion v. American Humanist Association*. The Supreme Court may even be unanimous that the cross can stay on public land.

That is not surprising. The cross is an almost hundred years old WWI memorial without further religious reference. Crosses have symbolized the dead of the Great War since John McCrae's epic 1915 poem, "Flanders Fields."

What matters is how the cross stays — do the justices add to American divisions, or do they begin the process of healing?

Thanks to President Trump, there is now a pro-religion majority on the court. That majority could abolish the requirement of a secular purpose in Establishment Clause cases — the Lemon test — and substitute a no-coercion test. This would be seen as a big win for one side in the culture wars.

The treatment of religion as an either-or proposition goes back a long way. The legal theorist Ronald Dworkin once asked whether America would be a religious country tolerating non-belief or a secular country accommodating believers. This is like asking who's the real American.

These cases pit believers against nonbelievers because the Court has never asked seriously what secular meaning a religious symbol can have. Religious symbols don't just endorse sectarian commitments, after all. They can just as clearly stand for a whole set of other commitments.

The national motto, "In God We Trust," for example, certainly refers to the God of the Bible for the monotheistic believer. But it also means that we live in a trustworthy universe and not in chaos. That is the reason why John Dewey, not himself a religious believer, never gave up using the word "God."

Those Ten Commandments displays that so often end up in court remind the religious believer that God is the foundation of human law. But they also proclaim that law must serve a higher truth. These monuments reinforce Dr. Martin Luther King Jr.'s teaching that the arc of the moral universe bends toward justice. These displays are as much a rebuke to value-free originalism as they are to materialism.

To uphold religious imagery for its common, secular meaning is not to bring back the much-derided "ceremonial deism," which claims that religious symbols no longer have religious meaning. Nor is it equivalent to the sanitized claim that religious imagery symbolizes a "religious

heritage,” as if religion is now just a curiosity for museums.

It is rather that the real division in this country is not between religion and irreligion but between those who see meaning and purpose at the heart of the universe and those who do not. Religious symbols communicate very well on this level to believers and nonbelievers alike.

America is well on its way to becoming a secular society. The question is, what kind of secular society are we going to be? The opioid crisis, the spike in suicides, the general hopelessness and anger in American society, point toward a secularist nihilism. We will just have to get used to the idea that we are alone in an indifferent universe.

But there is another possibility. We can be secularists who still embrace transcendent norms. Government should not be neutral with regard to the question of meaning. It should endorse cosmic purpose. It should proclaim hope. Religious symbols are not the only way to do that, but they do represent one way.

Any judicial decision in favor of religion versus non-religion will only be temporary. It will ensure that some future secular majority will insist on a naked public square. But a decision that fills that public square with common meaning for all of us can endure.

The justices have a choice. They can participate in, and further, our divisions or they can help us find common ground and healing. It depends on how they rule in favor of the cross.