Written by **Joe Wolverton, II, J.D.** on May 21, 2011

Do Naval Academy Mealtime Prayers Violate the Constitution?

Specifically, the author (an adjunct instructor at the Academy) asserts that the Naval Academy administration is violating the Establishment Clause of the First Amendment through the practice of saying Grace before meals. As the author describes the tradition: "They [Naval midshipmen] are marched into the mess hall, called to attention to listen to announcements, and then to prayer by a chaplain before sitting to eat. They are not permitted to leave, and thus they are forced to listen."

To support his accusation, the author cites a 4th Circuit Court of Appeals decision. He provides the following history of the case:

> That is the opinion of our courts and the compelling reason to end it. In 2003, the U.S. Court of Appeals for the 4th District ruled in Mellen v. Bunting that the Virginia Military Institute's suppertime prayer was unconstitutional: "Put simply, VMI's supper prayer exacts an unconstitutional toll on the consciences of religious objectors. While the First Amendment does not in any way prohibit VMI's cadets from praying, before, during or after the supper, the Establishment Clause prohibits VMI from sponsoring such a religious activity."
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> Moreover, in April 2004, the Supreme Court declined to hear a challenge to the Court of Appeals' ruling, thus affirming the lower court's decision.

After rehearsing this bit of jurisprudential precedent to his end, the author gloats over the fact that the other service academies fell into line and discontinued the practice of preprandial prayer. Then, he provides for the reader the logical (to him) conclusion of the argument he has presented: “The Constitution is the supreme law of the land. Let's get the Naval Academy to act to fully support and defend it — not defy it.”

Insofar as the premise that the Constitution is the supreme law of the land, there is no debate. The Constitution itself proclaims such in Article VI: “This Constitution … shall be the supreme law of the land.” With that, constitutionalists have no quarrel, as it is that supremacy that we long to have recognized and respected by legislators and Presidents.This principle, as applied to the issue of the Naval Academy’s mealtime prayer, however, does not support the opinion piece’s author. To the contrary, the history of Anglo-Saxon law, the words of our own Founding Fathers, and the plain language of the Constitution itself all testify that the Establishment Clause was never enacted to proscribe such piety.

First, the three branches of the federal government have enumerated powers — that is to say, they may not act outside of the defined theaters of action ceded to them in the Constitution. One of these branches, the legislative, is composed of a Congress and to that Congress is granted by the Constitution

"all legislative powers." Therefore, no other branch may make laws.

Furthermore, Congress itself may only enact laws that address subjects found within the sphere of specifically enumerated powers listed listed in the Constitution. As there is no grant of power to Congress to legislate with regard to "religion," it may not pass laws in that area.

Second, the Constitution in the First Amendment reads in relevant part: "Congress shall make no law respecting an establishment of religion…." The threshold question of this analysis is the understanding of what is meant by the "establishment of religion." We may begin with a cursory review of the history of the practice of establishing religion in England.

Throughout the tumultuous history of the monarchs of England, the official and exclusive recognition of religion has swung (usually violently) between the Roman Catholic faith and the Protestant (Anglican) religion. Whichever of the two denominations held sway in England, the "establishment" thereof consisted chiefly in the mandatory payment of (and forceful collection of) tithes. These "donations" were used to support the church and the clergy.

The critical aspect, then, of the establishment of a religion was the employment of the sword of state in the collection of tithes to support that state-sponsored religion. The people were compelled at the point of a sword (quite literally) to provide the funds necessary to perpetuate the control of the approved clergy through the payment of their living expenses.

In America, the establishment of religion continued in most of the colonies. Non-conformists could be imprisoned or fined (or worse) for failing to pay the mandated tithe. The history of the founding of America, however, made the establishment of a religion by the civil authorities more difficult than in England. This was to be expected given that many of the earliest settlers of America fled England to escape the persecution heaped upon them by the crown and its representatives for refusing to support a faith they considered errant and perverted from the straight and narrow.

By the time of the outbreak of the War for Independence, prominent Americans were advocating the end to established religion and the support of religion built on voluntary donations, as made by congregants according to their conscience, without influence or compulsion whatsoever on the part of the civil authority.

Writing in 1772, Benjamin Franklin of Philadelphia wrote in a letter to a London newspaper:

> Now to determine on the justice of this charge against the present dissenters, particularly those in America, let us consider the following facts. They went from England to establish a new country for themselves, at their own expence, where they might enjoy the free exercise of religion in their own way.

Alexander Hamilton expressed a similar view of history in remarks written three years later:

> While tithes were the free, though customary, gift of the people, as was the case before the passing of the act in question, the Roman Church was only in a state of toleration; but when the law came to take cognizance of them, and, by determining their permanent existence, destroyed the free agency of the people, it then resumed the nature of an establishment, which it had been divested of at the time of the capitulation.

Finally, James Madison, the very man endowed by history with the honorific title of "Father of the Constitution," in 1832 wrote in a letter to a reverend:

> In the Colonial State of the Country, there were four examples, R.I., N.J., Penna., and Delaware, &

> the greater part of N.Y. where there was no religious Establishments; the support of Religion being left to the voluntary associations & contributions of individuals….

The testimony of these three witnesses corroborate one another and provide compelling evidence that early on in its history, the establishment of religion was contrary to the will of the American people. In fact, it was the toleration, not the forced establishment, of religion that was to be the accepted practice in America.

Finally, in light of the steady dissolution of established religions throughout America, it is useful now to read the specific language of the First Amendment so as to understand the metes and bounds of its proscriptions.

A careful reading of the plain language of the 10 amendments that comprise the Bill of Rights reveals that there is one organization that is prohibited from making laws establishing a religion — Congress. Read the First Amendment again: "Congress shall make no law." When this restriction is read in concert with the last of the 10 amendments in the Bill of Rights, it is clear that the states and the people retain the right to establish religions, if that is their desire.

Despite subsequent efforts of the Supreme Court to redefine the borders of the First Amendment (and all other articles and amendments of the Constitution), there is no evidence that the Establishment Clause was included in the Constitution to prevent students from asking the Lord's blessing over their food or from giving Him thanks therefor.

In fact, the part of the First Amendment that prevents Congress from abridging the "free exercise" of religion is more applicable to the situation at the Naval Academy, though certainly not in the manner described by the author of the letter indicting the Naval Academy leadership for its alleged violation of the Constitution.

Photo: AP Images