

When the Supreme Court Debated the Meaning of Hanukkah (Part 3)

1. Justice William J. Brennan Jr., *County of Allegheny v. ACLU*, 492 U.S. 573 (1989), III

The government-sponsored display of the menorah alongside a Christmas tree also works a distortion of the Jewish religious calendar. As JUSTICE BLACKMUN acknowledges, “the proximity of Christmas may account for the social prominence of Chanukah in this country.” It is the proximity of Christmas that undoubtedly accounts for the city’s decision to participate in the celebration of Chanukah, rather than the far more significant Jewish holidays of Rosh Hashanah and Yom Kippur. Contrary to the impression the city and JUSTICES BLACKMUN and O’CONNOR seem to create, with their emphasis on “the winter holiday season,” December is not the holiday season for Judaism. Thus, the city’s erection alongside the Christmas tree of the symbol of a relatively minor Jewish religious holiday, far from conveying “the city’s secular recognition of different traditions for celebrating the winter-holiday season,” or “a message of pluralism and freedom of belief,” has the effect of promoting a Christianized version of Judaism.

2. Justice Sandra Day O’Connor, III

In setting up its holiday display, which included the lighted tree and the menorah, the city of Pittsburgh stressed the theme of liberty and pluralism by accompanying the exhibit with a sign bearing the following message: “During this holiday season, the city of Pittsburgh salutes liberty. Let these festive lights remind us that we are the keepers of the flame of liberty and our legacy of freedom.” This sign indicates that the city intended to convey its own distinctive message of pluralism and freedom. By accompanying its display of a Christmas tree – a secular symbol of the Christmas holiday season – with a salute to liberty, and by adding a religious symbol from a Jewish holiday also celebrated at roughly the same time of year, I conclude that the city did not endorse Judaism or religion in general, but rather conveyed a message of pluralism and freedom of belief during the holiday season.

3. Justice William J. Brennan Jr., III

The uncritical acceptance of a message of religious pluralism also ignores the extent to which even that message may offend. Many religious faiths are hostile to each other, and indeed refuse even to participate in ecumenical services designed to demonstrate the very pluralism JUSTICES BLACKMUN and O’CONNOR extol. To lump the ritual objects and holidays of religions together without regard to their attitudes toward such inclusiveness, or to decide which religions should be excluded because of the possibility of offense, is not a benign or beneficent celebration of pluralism: it is instead an interference in religious matters precluded by the Establishment Clause.

4. Justice William J. Brennan Jr., III

I do not know how we can decide whether it was the tree that stripped the religious connotations from the menorah or the menorah that laid bare the religious origins of the tree. Both are reasonable interpretations of the scene the city presented, and thus both, I think, should satisfy JUSTICE BLACKMUN's requirement that the display "be judged according to the standard of a reasonable observer." I shudder to think that the only "reasonable observer" is one who shares the particular views on perspective, spacing, and accent expressed in JUSTICE BLACKMUN's opinion, thus making analysis under the Establishment Clause look more like an exam in Art 101 than an inquiry into constitutional law.

5. Rambam, M.T., *Laws of Hanukkah* 4:12

The precept of lighting the Hanukkah lamp is exceedingly precious, and one should carefully observe it in order to acclaim the miracle, ever praising and thanking God for the miracles which he has performed for us. Even if one has nothing to eat except what he gets from charity, he should borrow, or sell his garment, to buy oil and lamps and light them.

6. *Be'er ha-Golah*, Y.D. 378

[21] R. Yeruham writes that we are accustomed to provide the mourners with food from others all of *shiva* because those who are poor [and in mourning] are unable to work [and thus can't afford food]. We do not wish to embarrass them and thus provide meals even for the wealthy.

7. *Leviticus* 18:3

You shall not copy the practices of the land of Egypt where you dwelt, or of the land of Canaan to which I am taking you; nor shall you follow their laws.

8. Rabbi Joseph B. Soloveitchik, "On Interfaith Relationships" *Community, Covenant and Commitment*, p. 260

We are, therefore, opposed to any public debate, dialogue or symposium concerning the doctrinal, dogmatic or ritual aspects of our faith vis-à-vis "similar" aspects of another faith community. We believe in and are committed to our Maker in a specific manner and we will not question, defend, offer apologies, analyse or rationalize our faith in dialogues centered about these "private" topics which express our personal relationship to the God of Israel. ... When, however, we move from the private world of faith to the public world of humanitarian and cultural endeavors, communication along the various faith communities is desirable and even essential. We are ready to enter into dialogue on such topics as War and Peace, Poverty, Freedom, Man's Moral Values, the Threat of Secularism, Technology and Human Values, Civil Rights, etc.

5. מ"ת לרמב"ם הלכות חנוכה פרק ד הלכה יב

מִצּוֹת נֵר חֲנֻכָּה מִצְוָה חֻבִּיבָה הִיא עַד מְאֹד וְצָרִיךְ אָדָם לְהִזְהֵר בָּהּ כְּדִי לְהוֹדִיעַ הַגֵּס וּלְהוֹסִיף בְּשִׁבַח הָאֵל וְהוֹדִיָּה לֹא עַל הַנְּסִים שֶׁעָשָׂה לָנוּ. אֲפֹלוּ אֵין לוֹ מֵה יֵאָכֵל אֶלָּא מִן הַצְּדָקָה שׁוֹאֵל אוֹ מוֹכֵר כְּסוּתוֹ וְלוֹקֵחַ שְׁמֹן וְנֵרוֹת וּמִדְּלִיק:

6. באר הגולה יו"ד סימן שעח

[כא] כתב רבינו ירוחם שנהגו לאכול משל אחרים כל שבעה מפני עניי ישראל שאינם יכולים לעשות מלאכה ולא יתביישו שאף לעשירים עושים כן ע"כ.

7. ספר ויקרא פרק יח פסוק ג

כִּמְעָשָׂה אֶרֶץ־מִצְרַיִם אֲשֶׁר יִשְׁבְּתֶם־בָּהּ לֹא תַעֲשׂוּ וּכְמְעָשָׂה אֶרֶץ־כְּנָעַן אֲשֶׁר אָנֹכִי מְבִיא אֲתֶכֶם שָׁמָּה לֹא תַעֲשׂוּ וּבְחַקְתֶּיהֶם לֹא תִלְכוּ: