ESSAY

CRÈCHES, CHRISTMAS TREES AND MENORAHS: WEEDS GROWING IN ROGER WILLIAMS’ GARDEN

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When, during the Christmas season, a local government sponsors the display of a crèche or a Chanukah menorah next to a Christmas tree, is the first amendment’s establishment clause violated? In a series of decisions on the last day of its 1988-1989 term, the United States Supreme Court answered: sometimes.

The court concluded that government display is permissible, so long as the religious symbols are “secularized” to avoid an endorsement of a particular religion or religion generally. While clearly intended to promote the Court’s vision of the separation of church and state as prescribed by the first amendment, the decisions are off the mark. Rather than discouraging governmental involvement in religion, the decisions merely encourage governments to display religious symbols in a manner that dilutes them of their religious significance. While the Court views such state involvement as an attempt to enhance secular holiday celebration, the actual result is a weakening of religion.

Roger Williams, Puritan religious leader and the founder of Rhode Island, understood that governmental involvement with religion weakens religion. To Williams, the church was a garden in the wilderness; but when government enters the realm of religion this garden becomes a wilderness. The Supreme Court has recognized that Williams’ views have been incorporated into the first amendment, yet has ignored these concerns when ruling on governmental display of religious objects. By ruling that such display is permissible so long as the holiday’s secular nature is emphasized, the Court has encouraged the state to plant weeds in Roger Williams’ garden.

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1. The first amendment provides in pertinent part: “Congress shall make no law respecting an establishment of religion. . . .” U.S. Const. amend. I.
I. ROGER WILLIAMS

In *Abington School District v. Schempp*, decided in 1963, the Court made the following observations about the history of the constitution's religion clauses:

It is true that [religious] liberty frequently was not realized by the colonists, but this is readily accountable by their close ties to the Mother Country. However, the views of Madison and Jefferson, preceded by Roger Williams, came to be incorporated not only in the Federal Constitution but likewise in those of most of our States.\(^4\)

The recognition of Jefferson's and Madison's roles in establishing constitutional protection for religious freedom is understandable. Their successful fight for religious freedom and separation of church and state in Virginia became a model for other states and the federal government as well.\(^5\) Moreover, Madison introduced the bill in Congress that led to the adoption of the first amendment and its religious protections.\(^6\) Less obvious, however, is why the Court would recognize the constitutional legacy of Williams, who died more than one hundred years before the constitution's adoption.

At the time of the Constitution's framing, American religious proponents of separation of church and state sought in their country's brief history an indigenous exemplar of their position. Secular advocates for church-state separation had many models from which to choose, including Jefferson and Madison. For the religious minded, however, there was only one such person available: Roger Williams.\(^7\)

In the early colonial period, roughly spanning Williams' lifetime of 1603 to 1682 or 1683, all other leading churchmen and statesmen viewed the interdependence of secular and ecclesiastical authority as

\(^3\) 374 U.S. 203 (1963).
\(^4\) Id. at 214 (footnote omitted).
\(^5\) For a collection of materials documenting Jefferson's efforts toward establishing religious freedom in Virginia, see 1 THE PAPERS OF THOMAS JEFFERSON 1760-1776 at 525-57 (1950). For a collection of Madison's efforts in Virginia and his influence on constitutional protections, see JAMES MADISON ON RELIGIOUS LIBERTY (R. Alley ed. 1985). See also E. BURNS, JAMES MADISON—PHILOSOPHER OF THE CONSTITUTION (1938).
\(^7\) W. MILLER, THE FIRST LIBERTY—RELIGION AND THE AMERICAN REPUBLIC 154 (1986). Williams' importance was understood at an even earlier date. Isaac Backus, a church leader in the late colonial period, was a delegate to the Massachusetts constitutional convention. Backus' advocacy of separation of church and state make him an important figure in developing first amendment protections. Backus recognized Roger Williams' importance in the church-state controversy and, in debates on the Massachusetts Constitution, urged the people of Massachusetts to follow Roger Williams' example. *Truth is Great and Will Prevail*, reprinted in ISAAC BACKUS ON CHURCH, STATE, AND CALVINISM—PAMPHLETS 422 (W. McLoughlin ed. 1968).
axiomatic. For example, in Virginia, the first act of the new House of Burgesses in 1629 established the Church of England. The assembly provided:

Act I

IT is ordered, That all ministers residing and being, or who hereafter shall reside and bee within this colony, shall conforme themselves in all thinges according to the cannon of the church of England. And if there shall bee any that, after notice given, shall refuse for to conforme himselfe, hee shall undergoe such censure, as by the said cannon in such cases is provided for such delinquent. That all acts formerly made concerning ministers shall stand in force, and bee duly observed and kept.9

Massachusetts was settled by Puritans, who saw themselves as Israelites in God's master plan. "Lovers of freedom, they came to find it—and then hurried to establish their newfound freedom by ruling out dissenters." An order of the General Court established a state church as early as 1635. Williams, in contrast, visibly and consistently advocated religious tolerance and a separation of church and state. He subsequently founded the town of Providence and the colony of Rhode Island on the principle of religious freedom.

Upon completing his training in England, Williams arrived in Massachusetts at the age of twenty-seven and immediately began to alienate Massachusetts church leaders. The church Williams found in Massachusetts called itself "separatist" to distinguish itself from the Church of England. Once these church people had reached the new world, they established their own church based on their own sectarian view of scripture. Church and state reunited, with the state serving as junior partner.12 When Williams was offered a position as teacher in the Boston church, he aggravated Massachusetts leaders by refusing the post. He explained, "I durst not officiate to an unseparated people, as, upon examination and conference, I found them to be."13

Over the next five years Williams officiated at Plymouth and Salem where he aggravated Massachusetts leaders further. He challenged the

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9. The Statutes at Large; Being a Collection of all the Laws of Virginia, from the First Session of the Legislative, in the Year 1619 at 149 (W. Hening ed. 1823).
11. See S. Cobb, supra note 8, at 173.
13. 6 The Complete Writings of Roger Williams 356 (1963). In E. Morgan,
validity of settlers’ titles to land, claiming that the king had defrauded the Indians; he argued that the government had no power to punish violations of the first four commandments of the Decalogue; he believed that the government should not require loyalty oaths; and he thought a man should not pray with his wife unless both were “regenerate.”\textsuperscript{14} Williams was summoned before the ministers and magistrates of the General Court, found guilty of disseminating new and dangerous opinions and, on October 9, 1635, was banished from Massachusetts. Williams fled and wintered with Indians, who provided him with shelter. The following spring, Williams founded the town of Providence, Rhode Island.

Over the course of the remaining forty-plus years of his life, Williams strove to establish and maintain Rhode Island as a haven for every variety of religious creed. He acted on the principle of “soul freedom,” requiring toleration of all beliefs, believing it fundamental to Christianity. A 1655 letter by Williams to the town of Providence, quoted by the Court in \textit{Abington School District}, exemplifies this principle:

\begin{quote}
There goes many a ship to sea, with many hundred souls in one ship, whose weal and woe is common, and is a true picture of a commonwealth, or human combination, or society. It hath fallen out sometimes, that both Papists and Protestants, Jews and Turks, may be embarked in one ship; upon which supposal, I affirm that all the liberty of conscience I ever pleaded for, turns upon these two hinges, that none of the Papists, Protestants, Jews or Turks be forced to come to the ship’s prayers or worship, nor compelled from their own particular prayers or worship, if they practice any.\textsuperscript{15}
\end{quote}

During Williams’ lifetime, including the three years he was the colony’s president, Rhode Island served as a refuge for Jews, Separatists, Baptists, Quakers and others. For example, fleeing religious persecution in New Amsterdam and Curacao, the first Jews arrived in Rhode Island between 1655 and 1657 and, during Williams’ presidency, established the first synagogue in North America at Newport in 1658.\textsuperscript{16} Williams himself was a Baptist for a short period of time, and the church he and other refugees formed is generally considered the first Baptist church in America.\textsuperscript{17}

\textit{Roger Williams: The Church and the State} 25 (1967), Morgan notes that Williams apparently insisted that the Bostonians make a public demonstration of remorse for having ever had anything to do with the Church of England, which Williams called “the Non-Church of England.”

\textsuperscript{14} E. Morgan, supra note 13, at 27.


\textsuperscript{16} J. Ernst, \textit{Roger Williams New England Firebrand} 351 (1932).

\textsuperscript{17} S. Ahlstrom, \textit{A Religious History of the American People} 170 (1972).
Rhode Island was second only to the island of Barbados as a base of operations for Quakers in the New World. 18

Williams’ actions served as a model for both religious and secular leaders in the new nation. His tolerance for disparate views was based on an abiding belief that a persecutor was no Christian and a church that persecuted was no Christian church.

II. THE GARDEN IN THE WILDERNESS

During his travels between England and Rhode Island, Williams engaged in a series of published exchanges with John Cotton, the chief spokesperson of Massachusetts orthodoxy. In a number of books and pamphlets, Williams argued against religious persecution and the intersection of church and state. Williams’ best known work was one of these exchanges, The Blody Tenent, of Persecution, for Cause of Conscience, discussed, in A Conference Between Truth and Peace, written in 1644. Cotton answered this work with several of his own, the most significant being a 1647 piece called The Blody Tenent, Washed, and Made White in the Bloud of the Lamb. Williams responded in 1652 with The Blody Tenent yet More Blody. In these writings, as well as others, Williams’ most persistent metaphor was that of the church as a garden in the wilderness.

Williams used the garden metaphor as a way of describing the importance of separating the church from the state and attributed the problems of his own time to their union. Williams said, “When they have opened a gap in the hedge or wall of separation between the garden of the church and the wilderness of the world, God hath ever broke down the wall itself, removed the candlestick, and made His garden a wilderness, as at this day.” 19 In Williams’ day, church and state were intertwined throughout England and New England. As noted earlier, Williams himself had been persecuted and banished from Massachusetts for disputing church doctrine. But he was not the only victim; all religious life suffered. The state of affairs during Williams’ time is summed up well by Alan Simpson:

The first chance to see what the Puritan saint would make of life, if he had the freedom to experiment, came in America. The early history of Massachusetts (together with that of Plymouth, Connecticut, and New Haven . . . ) is the story of .

18. Id. at 176. Williams has been criticized for the harsh language that he used in debating Quakers in the last years of his life. But while Williams was debating Quakers in Rhode Island, the churchmen of Massachusetts were hanging Quakers on the Boston Common. See W. MILLER, supra note 7, at 192.
men who shared an ideal, left the Old World to realize it in the New, only to discover when the work of planting was done that the spirit had evaporated. Frustration was the fate which awaited every Puritan.20

Williams had no confidence that church leaders, applying religious principles as secular authorities, could at once serve the interests of the church and the state. He argued that religion could survive only if church and state leaders left the holders of false beliefs unmolested to dwell among true believers. With attempts to weed out the false, there would inevitably come destruction of the true. Williams found support for this view in the teachings of the scriptures themselves. Particularly instructive of the harm resulting from overzealous church behavior was the story related in the Parable of the Tares,21 where an enemy planted tares (weeds) in a newly planted field of wheat and Jesus advised letting them both grow until harvest. Williams interpreted the passage as follows:

Oh, how contrary unto this command of the Lord Jesus have such as have conceived themselves the true messengers of the Lord Jesus in all ages not let such professors and prophets alone, whom they have judged tares, but have provoked kings and kingdoms (and some out of good intentions and zeal to God) to prosecute and persecute them even unto death? Amonst whom, God’s people (the good wheat) hath also been plucked up, as all ages and histories testify; and, too, too oft the world laid upon bloody heaps in civil and intestine desolations on this occasion. All which would be prevented—and the greatest breaches made up in the peace of our own or other countries—were this command of the Lord Jesus obeyed: to wit, to let them alone until the harvest. . . .22

In short, instead of freeing the garden of weeds, the leaders’ actions planted more of them. Rather than purifying the garden of the church, the garden was rendered a wilderness.

John Cotton attempted to meet Williams’ arguments by confining the right to regulate religion to “truly godly” magistrates and then only with regard to fundamental truths, apparently confident that he could identify and appoint the godly.23 Williams had no such confidence and countered that nearly all magistrates since the time of Christ would then be disqualified.24

23. E. Morgan, supra note 13, at 95.
24. Id.
Similarly, Williams understood that persecution in the name of the church coincided with the joining of church and state leadership and authority. In the first three centuries of its existence, the church flourished in the midst of persecution, but later suffered when it became the national religion. Christianity suffered because leaders, unable to distinguish between true followers of Christ and heretics, persecuted real Christians. Williams described the results of Constantine’s adoption of Christianity as Rome’s official religion this way: “then began the great Mysterie of the Church’s sleepe, the Gardens of Christ’s Churches sleep, the gardens of Christ’s churches turned into the Wilderness of National Religion, and the World (under Constantine’s Dominion) to the most unchristian Christiandome.”

National religion meant a thousand years of church rule by “bloody and Popish kings and Emperors.” Christ did not uphold his world with a bloody hand, Williams argued. The nationalization of religion meant the end of Christianity, and while the state remained joined with the church, the church could never be Christian.

The Supreme Court might well have applied Williams’ views when ruling on the propriety of governmental displays of religious objects. Unfortunately, like John Cotton, the Court appears convinced that it can distinguish the religious from the secular. In so doing, the Court ignores the sage teaching of Williams that governmental attempts to regulate religious observance merely deprive religion of its meaning.

III. The Cases

The first recent decision where the Court reviewed a governmental display of religious symbols was *Lynch v. Donnelly*, decided in 1984. Ironically, *Lynch* involved a Christmas display in the city of Pawtucket, in Roger Williams’ Rhode Island. The city, along with the downtown retail merchants’ association, sponsored a crèche depicting the birth of Jesus. The crèche contained a representation of the manger scene in Bethlehem shortly after the birth of Jesus, as described in the Gospels of Luke and Matthew, including the baby Jesus, Mary and Joseph. The display was located in a public park in the heart of the Pawtucket shopping district. The crèche was surrounded by a larger display including a Santa Claus house, reindeer pulling Santa’s sleigh, candy-striped poles, a Christmas tree, carolers and cut-out figures representing

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26. *Id.* at 244.
27. *E. Morgan, supra* note 13, at 96.
such characters as a clown, an elephant and a teddy bear. City residents
and the American Civil Liberties Union challenged the inclusion of
religious symbols in the display.

The Supreme Court, voting 5-4, reversed the lower court’s finding
that the city-sponsored crèche violated the establishment clause. The
Court emphasized that the impression gained from viewing the display
as a whole was a celebration of the secular aspects of Christmas.29

In reaching its decision, the Court did not employ any clear con-
stitutional standard. The justices’ opinions30 reflect a policy concern
over whether the display endangered other religions or nonreligion by
serving or endorsing religion, without any corresponding concern over
whether the governmental conduct threatened the displayed religion
itself. Justice O’Connor’s concurring opinion states the limited nature
of her concern directly. According to O’Connor, the central issue was
whether Pawtucket “endorsed Christianity by its display of the
crèche.”31 She found that it did not and therefore did not address the
question of whether the display damaged Christianity.

The majority opinion, written by Chief Justice Burger, suggests a
similar policy concern. After recounting the long list of governmental
actions accommodating religion, including the opening of congressional
sessions with a prayer, the Chief Justice said:

The District Court plainly erred by focusing almost exclu-
sively on the crèche. When viewed in the proper context of
the Christmas Holiday season, it is apparent that, on this
record, there is insufficient evidence to establish that the in-
cclusion of the crèche is a purposeful or surreptitious effort to
express some kind of subtle governmental advocacy of a par-
ticular religious message. In a pluralistic society a variety of
motives and purposes are implicated. The City . . . has prin-
cipally taken note of a significant historical religious event
long celebrated in the Western World. The crèche in the dis-
play depicts the historical origins of this traditional event long
recognized as a National Holiday.32

The dissent as well focused solely on the question of whether gov-
ernmental display of religious objects of one particular religion threat-
en religious not receiving such attention. Writing for justices Marshall,
Blackmun and Stevens, Justice Brennan wrote:

29. Id. at 672, 680.
30. Id. at 670 (Burger, C.J.); id. at 687 (O’Connor, J., concurring); id. at 694 (Bren-
nan, J., dissenting); id. at 726 (Blackmun, J., dissenting).
31. Id. at 690 (O’Connor, J., concurring).
32. Id. at 680.
When . . . officials participate in or appear to endorse the distinctly religious elements of this otherwise secular event, they encroach upon First Amendment freedoms. For it is at that point that the government brings to the forefront the theological content of the holiday, and places the prestige, power, and financial support of a civil authority in the service of a particular faith.33

The question that remained after Lynch was whether a government-sponsored crèche displayed without any secular symbols violated the establishment clause. That question was answered on the final day of the Supreme Court’s 1989 term in Allegheny v. ACLU.34 In Allegheny, a crèche was placed on the grand staircase of the Allegheny County Courthouse in downtown Pittsburgh. Like the crèche in Lynch, this crèche was a representation of the manger scene in Bethlehem shortly after the birth of Jesus. It included figures of the infant Jesus, Mary, Joseph, farm animals, shepherds and wise men, all placed in or before a wooden representation of a manger, which had at its crest an angel bearing a banner that proclaimed “Gloria in Excelsis Deo!” The display had a fence around three sides decorated with flowers and contained a sign stating, “This Display Donated by the Holy Name Society.”35

The Court, again voting 5-4, found that the county’s display violated the first amendment’s establishment clause.36 This time the majority adopted Justice O’Connor’s “endorsement” standard and found that the crèche violated this standard. According to the majority, the critical distinction between the displays in Lynch and Allegheny was the absence of secular figures in the Allegheny crèche to detract from the Christian significance of Christmas. The display in Lynch symbolized “secular Christmas,” while the display in Allegheny symbolized “religious Christmas.” The result was an endorsement of Christianity. Writing for the Court, Justice Blackmun stated:

Under the Court’s holding in Lynch, the effect of a crèche display turns on its setting. Here, unlike in Lynch, nothing in the context of the display detracts from the crèche’s religious message. The Lynch display comprised a series of figures and objects, each group of which had its own focal point. Santa’s house and his reindeer were objects of attention separate from the crèche, and had their specific visual story to tell.37

In sum, Lynch teaches that government may celebrate Christmas in some manner and form, but not in a way that

33. Id. at 711 (Brennan, J., dissenting).
35. Id. at 3094.
36. Id. at 3105.
37. Id. at 3103-04.
endorses Christian doctrine. Here, Allegheny County has transgressed this line. It has chosen to celebrate Christmas in a way that has the effect of endorsing a patently Christian message: Glory to God for the birth of Jesus Christ. Under Lynch, and the rest of our cases, nothing more is required to demonstrate a violation of the Establishment Clause.38

At the same time it invalidated the crèche, the Court in the companion case, City of Pittsburgh v. ACLU, voted 6-3 to approve another downtown Pittsburgh religious display.39 Outside an entrance to the public City-County Building, the city sponsored a display that included a forty-five-foot Christmas tree decorated with lights and ornaments and, next to it, an eighteen-foot Chanukah menorah. Beneath the tree, the city placed a sign which read “[D]uring this holiday season, the City of Pittsburgh salutes liberty. Let these festive lights remind us that we are keepers of the flame of liberty and our legacy of freedom.”40

Writing the opinion for a fractured Court, Justice Blackmun found that Chanukah, like Christmas, has both religious and secular dimensions, and that the menorah could be viewed as a secular object.41 This view was strengthened, he wrote, by the proximity of the secular Christmas symbol, the Christmas tree and the sign celebrating liberty. The total effect of the display, he found, did not serve to endorse Christianity or Judaism but reflected the city’s recognition that both Christmas and Chanukah are part of the winter holiday season.42

Concurring in the result, Justice O’Connor disagreed with Blackmun’s analysis of Chanukah. She found Chanukah to be a religious holiday with historical components and the menorah to be a central religious symbol and ritual object of the religious holiday.43 Neverthe-

38. Id. at 3105.
39. Id. at 3115-16.
40. Id. at 3095. The menorah is a nine-branched candle-holder which is the primary symbol of the Jewish holiday of Chanukah, an eight-day winter holiday occurring around Christmas time.
41. “But the menorah’s message is not exclusively religious. The menorah is the primary visual symbol for a holiday that, like Christmas, has both religious and secular dimensions.” Id. at 3112.
42. “In the shadow of the tree, the menorah is readily understood as simply a recognition that Christmas is not the only traditional way of observing the winter-holiday season.” Id. at 3114.
43. According to Justice O’Connor:
   The Easter holiday celebrated by Christians may be accompanied by certain “secular aspects” such as Easter bunnies and Easter egg hunts; but it is nevertheless a religious holiday. Similarly, Chanukah is a religious holiday with strong historical components particularly important to the Jewish people. Moreover, the menorah is the central symbol and ritual object of that religious holiday.
Id. at 3122.
less, she agreed that the city could display the menorah without violating the establishment clause. She concluded that the total display, rather than endorsing Judaism, endorsed a message of pluralism and freedom to choose one’s own beliefs. In her view, such an endorsement was permissible under the establishment clause.44

The four Justices who approved of the crèche in Allegheny—Kennedy, Rehnquist, White and Scalia—also found the menorah’s display constitutional. Focusing once again on the effect the display could have on adherents of religions not represented, these four justices concluded that so long as religious displays in no way coerce Christian or Jewish religious observance, governmental support for the displays does not violate the establishment clause.45

Only Justices Brennan, Marshall and Stevens concluded that it was constitutionally impermissible for both the crèche and the Chanukah menorah to be displayed by the local governments.46 Justice Brennan, writing for the three, rejected what he found as the three premises supporting the decision to permit the city’s display of the menorah: “[t]he Christmas tree is a secular symbol; Chanukah is a holiday with secular dimensions, symbolized by the menorah; and the government may promote pluralism by sponsoring or condoning displays having strong religious associations on its property.”47

Significantly, with regard to the final premise, Justice Brennan found that combining the symbols of multiple religions in no way minimizes the harm.48 Only in Allegheny dissenters found constitutional significance in the danger posed to the religions under display. While Justice Brennan’s opinion did not mention Roger Williams by name, it is clear that the Allegheny dissenters shared Williams’ concerns. Brennan wrote:

[I do not] discern the theory under which the government is permitted to appropriate particular holidays and religious objects to its own use in celebrating “pluralism”. . . . To lump the ritual objects and holidays of religions together without

44. The message of pluralism conveyed by the city’s combined holiday display is not a message that endorses religion over nonreligion. . . . In short, in the holiday context, this combined display in its particular physical setting conveys neither an endorsement of Judaism or Christianity nor disapproval of alternative beliefs, and thus does not have the impermissible effect of “mak[ing] religion relevant, in reality or public perception, to status in the political community.”


45. Id. at 3139-40 (Kennedy, J., concurring in part and dissenting in part).

46. Id. at 3124 (Brennan, J., concurring in part).

47. Id. at 3125.

48. Id. at 3128.
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.49

Justice Brennan also recognized that the state’s display of a Chanukah menorah, but not other holiday symbols, distorts the Jewish religious calendar and that of other minority religions:

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. . . . The holiday calendar they appear willing to accept revolves exclusively around a Christian holiday. And those religions that have no holiday at all during the period between Thanksgiving and New Year’s Day will not benefit, even in a second-class manner, from the city’s once-a-year tribute to “liberty” and “freedom of belief.” This is not “pluralism” as I understand it.50

IV. Weeds Growing in Roger Williams’ Garden

Lynch, Allegheny and City of Pittsburgh involve instances of local governments choosing to participate in the celebration of holidays during the “winter holiday season” by displaying religious objects associated with the holidays. If the Court can find some nonreligious, secular aspect to the holiday and finds that the display of religious symbols, joined with secular ones, produces a total effect that deprives the display of religious significance, then the government’s sponsorship does not violate the establishment clause. Only when the government chooses to display religious symbols in a way that maintains their religious integrity, and thereby participates in the religious aspect of the holiday, does governmental sponsorship of religious symbols violate the constitution. The effect of these decisions is to encourage local governments to denigrate religious symbols and empty them of their religious meaning. In Roger Williams’ terms, the Supreme Court is encouraging local governments to plant the weeds of secularism in the garden of religion.

Several of the justices seem to recognize that governmentally-sponsored displays could offend religiously-minded persons. Justice Kennedy, writing for the Chief Justice and Justices White and Scalia in Allegheny, wrote, “It is . . . true that some devout adherents of Judaism or Christianity may be as offended by the holiday display as are non-

49. Id.
50. Id. at 3128-29.
believers, if not more so.” Kennedy, however, thought these concerns were not a proper basis for the Court’s decisions. “[W]e have no jurisdiction over matters of taste within the realm of constitutionally permissible discretion.”

The interests at stake here, however, are more than a mere matter of taste. The danger posed by the association of the state with religion in our day is as real as that faced by Roger Williams’ society, although of a somewhat different form. Religion in today’s society runs the risk of amalgamation and dilution. Judaism risks becoming a branch of Christianity. Christianity risks becoming little more than the opportunity for a social occasion and a seasonal economic boon. The involvement of the state in this spiritual descent accelerates the process.

The association of Chanukah with Christmas distorts the essential nature of both. Christmas is an important religious holiday in the Christian religious cycle, although secondary to Easter. Chanukah is a minor Jewish holiday, paling in significance to the high holidays of Rosh Hashannah and Yom Kippur; the three festivals of Sukkot, Shavuot and Passover; and the weekly Sabbath celebration. The fact that Chanukah and Christmas both occur in the winter makes them no more alike in nature or significance than Yom Kippur is like Halloween, even though they both occur in the autumn. In Allegheny, Justice Blackmun recognized the distortion of Chanukah’s significance. He observed that “Chanukah is observed by American Jews to an extent greater than its religious importance would indicate: in the hierarchy of Jewish holidays, Chanukah ranks fairly low in religious significance.” As an explanation, he quoted the following from Jewish Identity on the Suburban Frontier:

The aspects of Hanukkah observance currently emphasized—the exchange of gifts and the lighting and display of the menorah in the windows of homes—offer ready parallels to the general mode of Christmas observance as well as proved a

51. Id. at 3146.
52. Id.
53. B. ISAACSON, DICTIONARY OF JEWISH RELIGION (1979), defines Chanukah as follows:
(Hebrew for dedication.) Festival commemorating the rededication of the Holy temple by the Maccabees in 165 B.C.E., three years after it was desecrated by Antiochus. Tradition says that the Maccabees found a cruse of oil that was supposed to last only a day but continued to burn for eight days, when a fresh supply could be prepared—hence the kindling of the eight lights of the Hannukkah menorah (a ninth light is the shammash, which is used to light the others). . . .

54. The Jewish calendar operates on a modified lunar cycle. Jewish holidays, therefore, come at different times during the secular calendar in different years. For example, in 1989 the first night of Chanukah was December 22. In 1994, the first night of Chanukah will be November 27.

55. Allegheny, 109 S. Ct. at 3097 (footnote omitted).
‘Jewish’ alternative to the holiday. Instead of alienating the Jew from the general culture, Hanukkah helps situate him as a participant in that culture. Hanukkah, in short, becomes for some the Jewish Christmas.\textsuperscript{56}

A corresponding effect of elevating Chanukah beyond its natural importance has been the deemphasis of more important Jewish holidays. For example, Daniel Elazar, in a work cited by Justice Blackmun, observed:

The traditional rhythm of Jewish life has two focal points: daily obligations of prayer and the yearly calendar punctuated with holy days and festivals. The two are connected by the weekly Sabbath. Just as the daily rhythm has been replaced by a weekly one, so, too, has the yearly rhythm been altered to respond to the rhythm of Christian observance.

Since the Christians have their great days in the American calendar, the Jews are entitled to theirs—provided they do not ask for too many. . . . In sum, Jews are expected to absent themselves from work on Rosh Hashanah and Yom Kippur, but are less and less likely to be found in the synagogue. The other festivals have reordered in priority. . . . Sukkot and Shavuot are practically forgotten by the majority of American Jews. . . .\textsuperscript{57}

The combined result of celebrating a “Jewish Christmas” and ignoring other peculiarly Jewish holidays is the weakening of traditional Judaism.

Surrounding symbols of the birth of Christ with candy canes, teddy bears and Santa Claus, as the city of Pawtucket did in \textit{Lynch}, has an even more obvious impact on Christianity. Christian symbols are cheapened and the association of religious and frivolous symbols throws Christian belief into question. Yet the Court not only condones the association of Christ with these trivial objects, it \textit{requires} such association on the theory that distracting viewers from the religious message satisfies the establishment clause.

Governmental sponsorship and display of religious symbols uniquely accelerates societal abandonment of traditional religion. Such participation reserves the government’s stamp of approval for a distorted, secularized version of Judaism and Christianity. These weakened versions become the “official religion.” As Roger Williams

\begin{footnotesize}
\textsuperscript{56} Id. at 3097 n.32, quoting M. SKLARE & J. GREENBLUM, JEWISH IDENTITY ON THE SUBURBAN FRONTIER 58 (1967).
\textsuperscript{57} D. ELAZAR, COMMUNITY AND POLITICS—THE ORGANIZATIONAL DYNAMICS OF AMERICAN JEWRY 118 (1976).
\end{footnotesize}
warned, when the state joins with religion the result is weakened religion. When the Court joins with secular and religious leaders in choosing permissible religious symbols, religion is distorted. The Court should have recognized that such governmental action violates the establishment clause.

V. Conclusion

For anyone familiar with Roger Williams’ ideas, the negative impact that state sponsorship of religious symbols has on religion should come as no surprise. He warned that once the state broke down the wall of separation and entered into the province of the church, the result would be the intrusion of wilderness into the garden of religion. He also recognized that state officials were unable to distinguish successfully among religious symbols. Justice Kennedy recognized as much when he observed, “This Court is ill-equipped to sit as a national theology board. ...” 58 Despite this recognition of the Court’s disability—and despite Roger Williams’ advice and the example of his practice—the Court ruled that the government may display some religious symbols some of the time without violating the constitution’s establishment clause. Rather than picking and choosing the circumstances in which religious symbols can and cannot be constitutionally displayed by the government, the Court should have ruled that all state displays of religious symbols violate the establishment clause. Only that position avoids official secularization of religion. As it stands, the Court, along with the local governments involved in sanctioning the sponsorship of religious symbols, leave themselves open to the charge that they are planting weeds in Roger Williams’ garden.

58. Allegheny, 109 S. Ct. at 3146 (Kennedy, J., concurring in part and dissenting in part).