

Should Hanukkah Menorahs be on Public Property?

In a few days Jews will begin to celebrate the holiday of Hanukkah, to commemorate the first recorded fight for religious freedom, when their ancestors fought and won against Greek tyranny. They will light a menorah, or hanukiah, every day for eight days, and eat foods fried in oil to remember the miracle of the oil that was supposed to last only one day, but lasted eight days instead.

There will be menorah lightings in many *public* places, a project spearheaded by The Chabad Lubavitch movement. Since 1979, there has even been a very large "National Menorah" on the Ellipse near the White House in Washington. Indeed, the story it tells has universal value. But many voiced concern that religious displays on *public* land threaten the principle of separation of church and state. They ask: Is a *public* menorah lighting somehow endorsing Judaism as an official state religion? Let us examine this issue.

The First Amendment to the US constitution states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.

Are the two parts in contradiction? If I light my own giant menorah on public land and stay with it continuously, is this allowed because of my own freedom of exercising my religion, or disallowed because religion in a public place might imply government endorsement?

This issue has been taken up many times by the courts, culminating in a 1989 Supreme Court case. The American Civil Liberties Union challenged the city of Pittsburgh's right to display both a nativity scene and a menorah on public land, in the case *Allegheny County vs ACLU*. The Supreme Court decided, by a vote of 5 to 4, that the nativity scene displayed alone is not allowed; and, by a vote of 6 to 3, that the menorah is allowed as a secular decoration, because it conveys a message of religious freedom that is meaningful to all. The Christmas tree, as a secular symbol, is also allowed.

Four justices wanted to allow both the nativity scene and the menorah; three wanted to disallow both; and two wanted to disallow the nativity scene, if alone, but allow the menorah alongside a Christmas tree.

The Supreme Court may decide what is allowed, but does not decide what is wise. Let us now turn to the latter.

What are the arguments in favor of religious displays in public places?

First, we do allow some religion in public with little challenge. There are prayers before and after legislative meetings. The Pledge of Allegiance says that US is “one Nation under God, indivisible, with liberty and justice for all.” The dollar bill says “In God We Trust”. And President Washington proclaimed a national day of Thanksgiving to God, which has been observed continuously since the founding of the country.

Second, when the main religion surrounds the others with its symbols, children subliminally get the message that it is the preferred religion. Jewish children must be encouraged to feel proud about their holiday. So should members of other religions. After all, those who cannot share in a public celebration will always feel like outsiders, like tolerated minorities. It has also been reported that assimilated American Jews have been drawn back into the fold by the public lighting of menorahs.

What are the arguments against religious displays in public places?

First, a menorah is a religious symbol, unlike a Christmas tree, which is secular with pagan origins. The menorah was lit by ancient Jews at the Temple in Jerusalem. In fact, one of its functions is to publicize the miracle (*Pirsumey Nissa* in Hebrew). It is customary to place the hanukiah near a window of one’s house, visible from the street. The Talmud says:

Our Rabbis taught: It is incumbent to place the Hanukkah lamp... at the window nearest the street. [Shabbat 21b]

Rava asked: [If there is a choice between lighting] the Hanukkah lights and saying kiddush over the wine [for the Sanctification of Shabbat], is

[kiddush] more important, because it is a more frequent obligation? [Shabbat is weekly, whereas Hanukkah is only annual.] Or are the Hanukkah lights preferable, on account of publicizing the miracle? After asking, he himself answered it: The Hanukkah lights are preferable, because they publicize the miracle. [Shabbat 23b]

So permitting only secular displays on public land excludes the menorah.

Second, and most importantly, allowing menorahs and Christmas trees in public would encourage Muslims, Bahais, Buddhists, Hindus, Confucianists, Shintos, Wiccans and other pagan-like sects, etc., to ask for a piece of the action. This might turn City Hall grounds into museums of religion, if all faiths put up a display. And even if each one is allotted exactly the same square footage, which one will should get the choicest position, the most visible one, and which one should get relegated to the back? There would be no end to disputes. It also conveys the message that all religions are equal.

There are three options: Allow only secular items associated with a religion; allow both religious and secular items; or allow neither.

If one allows only secular items associated with a religion, the effect is that Christmas trees, Santa Clauses, elves, reindeer, etc., are OK, but not menorahs. What if we used only secular Jewish items? Dreidels perhaps? But dreidels are religious symbols. They show the Hebrew letters for "A great miracle happened there". Stars of David perhaps? But the Star of David also symbolizes another state, Israel, and might elicit charges of dual loyalty.

If one allows both religious and secular items associated with a religion, the effect is that hanukiot would be displayed together with nativity scenes, virgin mothers, crosses, crucifixes, etc. What message do these associations convey?

If one allows neither religious nor secular items associated with a religion, the main benefit to Jews is that it confines the religion of the majority, Christianity, to private property. Indeed, many, perhaps most, US communities are exclusively Christian, and Christian displays on public land encounter no challenge or competition. This promotes a

"Christian country" mentality among the people, and idea that must be fought by non-Christians.

My personal preference is that all religious symbols with no attendants should be confined to private property. Why *must* they be on public land? There is plenty of large private land, such as houses of worship, shopping malls, community buildings, etc. Jews could put giant hanukiot on private property, to be seen by all for miles around. You could put one on the lawn of your house.

Enjoy the lights and don't let them go out!

Chag sameach.