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"Lynch v. Donnelly: Christmas Creche and the Constitution"

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The public role of religion in American life, long a challenging issue for the Supreme Court in its interpretation of the Establishment Clause of the Constitution, commanded nationwide attention in 1984 when a lawsuit was brought against Pawtucket, Rhode Island, for its erection of a nativity scene in the center of the city's downtown shopping district.

Prior to the arrival of Lynch v. Donnelly, the Supreme Court had rendered decisions that prohibited public schools from orchestrating prayer, posting the Ten Commandments and organizing a moment of silence even it did not specifically authorize prayer. Those practices, with major implications for the separation of church and state, violated the First Amendment's (and the 14th Amendment's, by virtue of Incorporation Doctrine) Establishment Clause, which provided "Congress shall make no law respecting an establishment of religion."

Nativity scenes, which swell the emotions and religious beliefs of Christians, were a commonplace throughout the nation. Did public display of a Christmas Creche, a sacred Christian symbol, violate the First Amendment?

In Lynch v. Donnelly, a bitterly divided Court, in a 5-4 opinion written by Chief Justice Warren Burger, significantly lowered the wall separating church and state and upheld the public display of the creche. The Chief Justice wrote that, despite the

religious nature of the nativity scene, Pawtucket had a secular purpose in displaying it, as evidenced by the fact that it was a part of a Christmas exhibit that proclaimed, "Season's Greetings" and included Santa Claus, his reindeer, a Christmas tree, and figures of carolers, a clown, an elephant and a teddy bear. In short, the display represented a hybrid presentation of religious and secular elements.

Chief Justice Burger asserted that the First Amendment did not require complete separation, as demonstrated by our national motto—"In God we trust"—paid chaplains, presidential proclamations invoking God, the pledge of allegiance, and religious art in publicly supported museums. Burger said that the Constitution mandates "accommodation," and not merely tolerance, of all religion. Some Court watchers wondered at the time whether President Ronald Reagan's rhetoric about the national need for religion and "family values" had influenced the Chief Justice's opinion.

In a vigorous dissenting opinion, Justice William Brennan contended that the Burger Court had abandoned the rulings on the contours of the Establishment Clause, which it had inherited and developed. But Brennan interpreted Burger's ruling narrowly, maintaining that the question was still open on the constitutionality of a public display of a creche alone, or the display of another sacred symbol, such as a crucifixion scene, standing by itself. In 1989, the Court answered Justice Brennan's question with the requirement that, in order to avoid an Establishment Clause violation, public displays of religious symbols must be accompanied by secular symbols.

Chief Justice Burger's assertion that the creche had a secular purpose was, for the dissenters, and many clergy throughout the country, a point of contention. Justice Brennan rebuked the suggested secular character

of the nativity scene. He wrote: "For Christians the essential message of the nativity is that God became incarnate in the person of Christ." A spokesperson for the National Council of Churches complained that the Court had placed Christ "on the same level as Santa Clause and Rudolph the Red-Nosed Reindeer."

The Burger Court, it seemed, had succeeded in offending Christians and non-Christians alike. Some days, the Court can't win.

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