Chapter Two: Minersville School District v. Gobitis (1940)

I (Won't) Pledge Allegiance to the Flag

Three Big Things:

1. Jehovah's Witnesses take literally the Bible's exhortation to "have no other gods before me." After experiencing persecution in Germany for not pledging their allegiance to the Fuhrer, leaders of the Witnesses discouraged saluting or reciting oaths to any national symbol – including the American flag.

2. Many public schools in the U.S. required students to salute the American flag and say the Pledge of Allegiance, hoping this would foster patriotism and a sense of civic duty and community in the youth. When young Jehovah's Witnesses refused, they were punished with expulsion.

3. The Jehovah's Witnesses insisted this was a violation of religious liberty. In 1940, the Supreme Court disagreed. (They'd overturn this decision a few years later.)

Background

Arguably no religious group faced more persecution and hostility in the 20th century United States than the Jehovah's Witnesses. They proselytized aggressively in the streets and went door-to-door offering copies of *The Watchtower* and wanting to talk about "end times." They were not, however, a group known for political participation. They didn't usually vote, most rejected Social Security numbers as a "mark of the beast," and their leadership discouraged serving on juries or other forms of civic participation. Believers were expected to work for a living, obey the law, and "render unto Caesar" – as long these things did not explicitly conflict with the Word of God.

Despite all this, Jehovah's Witnesses have arguably done more than any other religious group to promote freedom of religion and freedom of speech in the U.S. To date, they've been involved in something like two dozen U.S. Supreme Court cases, almost all of them concerned with First Amendment protections. The vast majority occurred in the 1930s and 1940s.

In the waning years of the Great Depression, as Europe stumbled towards war, patriotism in the United States became mandatory in all but name. Many states passed laws requiring public school students to salute the American Flag and say the Pledge of Allegiance each day, apparently assuming that nothing promotes heartfelt commitment like mandatory obeisance. Photographs from the era show a salute quite different from today's. Right arms were extended forward and slightly upwards towards the flag while participants chanted in unison their devotion to the collective.

In Nazi Germany, a very similar salute was required of all good citizens, although in the *faterland*, nationalism was personified in their new Chancellor, Adolph Hitler, rather than a mere flag. Jehovah's Witnesses in Germany refused to salute, citing the Second Commandment – "Thou shalt have no other gods before me" – as well as several other Old Testament passages suggesting that the Lord Their God was not a fan of split allegiances. Joseph F. Rutherford, who succeeded Witnesses founder and leader Charles Taze after his death in 1916, suggested American Jehovah's Witnesses avoid what they saw as similar oaths back home.

German Jehovah's Witnesses would soon be sent to their deaths in various Nazi concentration camps, while their American counterparts were merely mocked, belittled, and periodically assaulted. The official eruption of World War II in 1939 only increased these tensions, despite the U.S. avoiding direct involvement for the first few years (until the Japanese attacked Pearl Harbor in December of 1941). Meanwhile, Jehovah's Witnesses schoolchildren who took their beliefs a bit too seriously for the comfort of the masses became the focal point for what had heretofore been sporadic and decentralized ugliness.

Believe What You Want, But Do What We Say

Lillian Gobitas (the name was later misspelled in court records), age 12, and her brother Billy, age 10, refused to participate in the Pledge of Allegiance. They believed the Bible forbid such direct promises of obedience to anything or anyone other than the Lord God, and they were expelled from school as a result. The Court determined in an 8–1 decision that the school had the right to require the pledge as part of promoting good citizenship; it wasn't a violation of Constitutional rights because the requirement didn't target their religion intentionally.

From the Majority Opinion by Justice Felix Frankfurter:

> *The ultimate foundation of a free society is the binding tie of cohesive sentiment. Such a sentiment is fostered by all those agencies of the mind and spirit which may serve to gather up the traditions of a people, transmit them from generation to generation, and thereby create that continuity of a treasured common life which constitutes a civilization... The flag is the symbol of our national unity, transcending all internal differences, however large, within the framework of the Constitution...*
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> *The wisdom of training children in patriotic impulses by those compulsions which necessarily pervade so much of the educational process is not for our independent judgment. Even were we convinced of the folly of such a measure, such belief would be no proof of its unconstitutionality... But the courtroom is not the arena for debating issues of educational policy.*

Justice Harlan Stone wrote one of the most famous dissenting opinions in Court history in response. Several of his points would be revisited when a new majority overturned *Minersville* a mere three years later.

> *The law which is thus sustained is unique in the history of Anglo-American legislation. It does more than suppress freedom of speech, and more than prohibit the free exercise of religion, which concededly are forbidden by the First Amendment and are violations of the liberty guaranteed by the Fourteenth. For, by this law, the state seeks to coerce these children to express a sentiment which, as they interpret it, they do not entertain, and which violates their deepest religious convictions...*
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> *History teaches us that there have been but few infringements of personal liberty by the state which have not been justified, as they are here, in the name of righteousness and the public good, and few which have not been directed, as they are now, at politically helpless minorities...*
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> *The Constitution may well elicit expressions of loyalty to it and to the government which it created, but it does not command such expressions or otherwise give any indication that compulsory expressions of loyalty play any such part in our scheme of government as to override the constitutional protection of freedom of speech and religion. And while such expressions of loyalty, when voluntarily given, may promote national unity, it is quite another matter to say that their compulsory expression by children in violation of their own and their parents' religious convictions can be regarded as playing so important a part in our national unity as to leave school boards free to exact it despite the constitutional guarantee of freedom of religion.*

The Red, White, Black & Blue

While there were vocal critics of the *Gobitis* decision, many Americans took it as federal validation to do whatever seemed patriotically necessary to Jehovah's Witnesses in their area. Violence against believers surged dramatically, often with the tacit approval of law enforcement. The *Gobitis* decision didn't birth this particular prejudice, but it was certainly perceived as sanctioning it.

It's easy to imagine the Supremes remaining safely beyond the pale of popular opinion or social forces, but they are, in fact, part human and may even read the news from time to time. The makeup of the Court evolves as well, and shortly after the *Gobitis* decision, it changed rather dramatically. Chief Justice Charles E. Hughes retired, as did Justice McReynolds. Justice Stone, author of the sole dissent in *Gobitis*, was promoted to Chief Justice. President Franklin D. Roosevelt appointed Justices Robert Jackson and Wiley Rutledge to fill the vacancies left by Hughes and McReynolds.

On Second Thought…

The Court heard *Jones v. City of Opelika* in 1941. Once again, the beliefs and choices of the Jehovah's Witnesses were central. Could the State charge "licensing fees" on religious books and pamphlets? The Court initially determined that they could. Justices Hugo Black, William Douglas, and Francis Murphy – all of whom had voted with the majority in *Gobitis* – added a dissent in which they repudiated their previous decision:

> *The opinion of the Court {in* Jones v. Opelika*} sanctions a device which, in our opinion, suppresses or tends to suppress the free exercise of a religion practiced by a minority group. This is but another step in the direction which* Minersville School District v. Gobitis *(1940) took against the same religious minority, and is a logical extension of the principles upon which that decision rested. Since we joined in the opinion in the* Gobitis *case, we think this is an appropriate occasion to state that we now believe that it was also wrongly decided.*
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> *Certainly our democratic form of government functioning under the historic Bill of Rights has a high responsibility to accommodate itself to the religious views of minorities, however unpopular and unorthodox those views may be. The First Amendment does not put the right freely to exercise religion in a subordinate position. We fear, however, that the opinions in these and in the* Gobitis *case do exactly that.*

Jones was reconsidered the following session, and in 1942 the Court reversed itself on this theological Stamp Act. The reversal, combined with the comments of Black, Douglas, and Murphy, suggested to those paying attention that the winds of jurisprudential change were blowing – and briskly.

Excerpts from Minersville School District v. Gobitis (1940), Majority Opinion by Justice Felix Frankfurter

{Edited for Readability}

Certainly the affirmative pursuit of one's convictions about the ultimate mystery of the universe and man's relation to it is placed beyond the reach of law. Government may not interfere with organized or individual expression of belief or disbelief. Propagation of belief – or even of disbelief – in the supernatural is protected, whether in church or chapel, mosque or synagogue, tabernacle or meetinghouse. Likewise, the Constitution assures generous immunity to the individual from imposition of penalties for offending, in the course of his own religious activities, the religious views of others, be they a minority or those who are dominant in government. (*Cantwell v. Connecticut*, 1940)

But the manifold character of man's relations may bring his conception of religious duty into conflict with the secular interests of his fellow men. When does the constitutional guarantee compel exemption from doing what society thinks necessary for the promotion of some great common end, or from a penalty for conduct which appears dangerous to the general good? …

Situations like the present are phases of the profoundest problem confronting a democracy – the problem which Lincoln cast in memorable dilemma: "Must a government of necessity be too strong for the liberties of its people, or too weak to maintain its own existence?" …

The ultimate foundation of a free society is the binding tie of cohesive sentiment. Such a sentiment is fostered by all those agencies of the mind and spirit which may serve to gather up the traditions of a people, transmit them from generation to generation, and thereby create that continuity of a treasured common life which constitutes a civilization. "We live by symbols." The flag is the symbol of our national unity, transcending all internal differences, however large, within the framework of the Constitution…

The precise issue, then, for us to decide is whether the legislatures of the various states and the authorities in a thousand counties and school districts of this country are barred from determining the appropriateness of various means to evoke that unifying sentiment without which there can ultimately be no liberties, civil or religious. To stigmatize legislative judgment in providing for this universal gesture of respect for the symbol of our national life in the setting of the common school as a lawless inroad on that freedom of conscience which the Constitution protects, would amount to no less than the pronouncement of pedagogical and psychological dogma in a field where courts possess no marked and certainly no controlling competence…

The wisdom of training children in patriotic impulses by those compulsions which necessarily pervade so much of the educational process is not for our independent judgment. Even were we convinced of the folly of such a measure, such belief would be no proof of its unconstitutionality. For ourselves, we might be tempted to say that the deepest patriotism is best engendered by giving unfettered scope to the most crochety beliefs. Perhaps it is best, even from the standpoint of those interests which ordinances like the one under review seek to promote, to give to the least popular sect leave from conformities like those here in issue.

But the courtroom is not the arena for debating issues of educational policy. It is not our province to choose among competing considerations in the subtle process of securing effective loyalty to the traditional ideals of democracy, while respecting at the same time individual idiosyncrasies among a people so diversified in racial origins and religious allegiances. So to hold would, in effect, make us the school board for the country. That authority has not been given to this Court, nor should we assume it.

Excerpts from Minersville School District v. Gobitis (1940), Dissenting Opinion by Justice Harlan Stone

{Edited for Readability}

Two youths, now fifteen and sixteen years of age, are by the judgment of this Court held liable to expulsion from the public schools and to denial of all publicly supported educational privileges because of their refusal to yield to the compulsion of a law which commands their participation in a school ceremony contrary to their religious convictions. They and their father are citizens, and have not exhibited by any action or statement of opinion, any disloyalty to the Government of the United States. They are ready and willing to obey all its laws which do not conflict with what they sincerely believe to be the higher commandments of God. It is not doubted that these convictions are religious, that they are genuine, or that the refusal to yield to the compulsion of the law is in good faith, and with all sincerity. It would be a denial of their faith, as well as the teachings of most religions, to say that children of their age could not have religious convictions.

The law which is thus sustained is unique in the history of Anglo-American legislation. It does more than suppress freedom of speech, and more than prohibit the free exercise of religion, which concededly are forbidden by the First Amendment and are violations of the liberty guaranteed by the Fourteenth. For, by this law, the

state seeks to coerce these children to express a sentiment which, as they interpret it, they do not entertain, and which violates their deepest religious convictions.

It is not denied that such compulsion is a prohibited infringement of personal liberty, freedom of speech and religion, guaranteed by the Bill of Rights, except insofar as it may be justified and supported as a proper exercise of the state's power over public education. Since the state, in competition with parents, may, through teaching in the public schools, indoctrinate the minds of the young, it is said that, in aid of its undertaking to inspire loyalty and devotion to constituted authority and the flag which symbolizes it, it may coerce the pupil to make affirmation contrary to his belief and in violation of his religious faith. And, finally, it is said that, since the Minersville School Board and others are of the opinion that the country will be better served by conformity than by the observance of religious liberty which the Constitution prescribes, the courts are not free to pass judgment on the Board's choice.

Concededly the constitutional guaranties of personal liberty are not always absolutes. Government has a right to survive and powers conferred upon it are not necessarily set at naught by the express prohibitions of the Bill of Rights. It may make war and raise armies. To that end, it may compel citizens to give military service and subject them to military training despite their religious objections (*Hamilton v. Regents*, 1934). It may suppress religious practices dangerous to morals, and presumably those also which are inimical to public safety, health and good order (*Davis v. Beason*, 1890). But it is a long step, and one which I am unable to take, to the position that government may, as a supposed educational measure and as a means of disciplining the young, compel public affirmations which violate their religious conscience…

The guaranties of civil liberty are but guaranties of freedom of the human mind and spirit and of reasonable freedom and opportunity to express them. They presuppose the right of the individual to hold such opinions as he will and to give them reasonably free expression, and his freedom, and that of the state as well, to teach and persuade others by the communication of ideas. The very essence of the liberty which they guarantee is the freedom of the individual from compulsion as to what he shall think and what he shall say, at least where the compulsion is to bear false witness to his religion. If these guaranties are to have any meaning, they must, I think, be deemed to withhold from the state any authority to compel belief or the expression of it where that expression violates religious convictions, whatever may be the legislative view of the desirability of such compulsion.

History teaches us that there have been but few infringements of personal liberty by the state which have not been justified, as they are here, in the name of righteousness and the public good, and few which have not been directed, as they are now, at politically helpless minorities. The framers were not unaware that, under the system which they created, most governmental curtailments of personal liberty would have the support of a legislative judgment that the public interest would be better served by its curtailment than by its constitutional protection. I cannot conceive that, in prescribing, as limitations upon the powers of government, the freedom of the mind and spirit secured by the explicit guaranties of freedom of speech and religion, they intended or rightly could have left any latitude for a legislative judgment that the compulsory expression of belief which violates religious convictions would better serve the public interest than their protection.

The Constitution may well elicit expressions of loyalty to it and to the government which it created, but it does not command such expressions or otherwise give any indication that compulsory expressions of loyalty play any such part in our scheme of government as to override the constitutional protection of freedom of speech and religion. And while such expressions of loyalty, when voluntarily given, may promote national unity, it is quite another matter to say that their compulsory expression by children in violation of their own and their parents' religious convictions can be regarded as playing so important a part in our national unity as to leave school boards free to exact it despite the constitutional guarantee of freedom of religion.