9-1-1998


Todd Lundell

Follow this and additional works at: https://scholarsarchive.byu.edu/byuplr

BYU ScholarsArchive Citation

This Article is brought to you for free and open access by the All Journals at BYU ScholarsArchive. It has been accepted for inclusion in Brigham Young University Prelaw Review by an authorized editor of BYU ScholarsArchive. For more information, please contact scholarsarchive@byu.edu, ellen_amatangelo@byu.edu.


Todd Lundell

Facts of the Case

The School Board of Minersville, Pennsylvania, under the authority of the state, adopted a resolution making it compulsory to salute the flag and recite the pledge of allegiance as part of a daily patriotic exercise. As members of the Jehovah’s Witnesses religious group, the Gobitis children, ages twelve and ten, believed that saluting the flag was a type of idol worship and that one’s allegiance should only be given to God. In accordance with these beliefs the children refused to participate in either the salute or the allegiance ceremonies. After being expelled from school, their father brought suit to compel the school board to reinstate them, alleging that the expulsion directly violated the First and Fourteenth Amendments. An injunction against the expulsion was granted by the Federal District Court (21 F. Supp. 581) and was upheld by the Third Circuit Court of Appeals (108 F. 2d 683). The case came before the Supreme Court of the United States on April 25, 1940 (310 U.S. 586).
Argument for the Petitioners

The argument for the petitioners rested on three fundamental points: (1) The School Board lawfully adopted a resolution under the authority delegated to it by the state, and the expulsion was well within the power and authority of that body; (2) The expulsion of the children did not violate any right under the Constitution of the United States or under that of the state of Pennsylvania; and (3) The children's refusal to salute the national flag was not founded on any religious belief. Petitioners argued that:

The act of saluting the flag has no bearing on what a pupil may think of his Creator... the ceremony is not, by any stretch of the imagination, a 'form of worship.' Like the study of history or civics or the doing of any other act which might make a pupil more patriotic as well as teach him or her 'loyalty to the State and National Government,' the salute has no religious implications. (310 U.S. 586, 588)

Argument for the Respondents

The respondents had three basic arguments for their case. (1) The resolution set forth by the School Board compelling students to salute the flag is in violation of the Fourteenth Amendment of the Constitution of the United States. It has been repeatedly assumed by the Court that the Fourteenth Amendment prohibits the state from abridging a person's civil liberties just as those same liberties are protected from the National government by the First Amendment; (2) The refusal to salute the flag was based on a sincere religious belief and a strict interpretation of what is explicitly laid out in the Bible. This Court has repeatedly held that the individual alone is privileged to determine what he shall or shall not believe... Will any court attempt to say that respondents mistakenly believe what is set forth in the twentieth chapter of Exodus in the Bible? (310 U.S. 586, 589) (3) The flag salute is an experiment and cannot be said to have any definite benefits. To expel students for resisting this experiment and therefore deny them of the educational opportunities afforded by the state is "wrong and is cruel and unusual punishment."

Opinion of the Court

The opinion of the Court, written by Justice Frankfurter, reversed the rulings of the lower courts and held that the right to religious liberty does not prohibit the state from enacting laws of general scope deemed necessary for the public good, as long as they are not directed against any particular religious belief. Justice Frankfurter asserted that "conscientious scruples have not, in the course of the long struggle for religious toleration, relieved the individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs" (310 U.S. 586, 594).
Argument for the Petitioners

The argument for the petitioners rested on three fundamental points: (1) The School Board lawfully adopted a resolution under the authority delegated to it by the state, and the expulsion was well within the power and authority of that body; (2) The expulsion of the children did not violate any right under the Constitution of the United States or under that of the state of Pennsylvania; and (3) The children’s refusal to salute the national flag was not founded on any religious belief. Petitioners argued that:

The act of saluting the flag has no bearing on what a pupil may think of his Creator... the ceremony is not, by any stretch of the imagination, a ‘form of worship.’ Like the study of history or civics or the doing of any other act which might make a pupil more patriotic as well as teach him or her ‘loyalty to the State and National Government,’ the salute has no religious implications. (310 U.S. 586, 588)

Argument for the Respondents

The respondents had three basic arguments for their case. (1) The resolution set forth by the School Board compelling students to salute the flag is in violation of the Fourteenth Amendment of the Constitution of the United States. It has been repeatedly assumed by the Court that the Fourteenth Amendment prohibits the state from abridging a person’s civil liberties just as those same liberties are protected from the National government by the First Amendment; (2) The refusal to salute the flag was based on a sincere religious belief and a strict interpretation of what is explicitly laid out in the Bible. This Court has repeatedly held that the individual alone is privileged to determine what he shall or shall not believe... Will any court attempt to say that respondents mistakenly believe what is set forth in the twentieth chapter of Exodus in the Bible? (310 U.S. 586, 589)

(3) The flag salute is an experiment and cannot be said to have any definite benefits. To expel students for resisting this experiment and therefore deny them of the educational opportunities afforded by the state is “wrong and is cruel and unusual punishment.”

Opinion of the Court

The opinion of the Court, written by Justice Frankfurter, reversed the rulings of the lower courts and held that the right to religious liberty does not prohibit the state from enacting laws of general scope deemed necessary for the public good, as long as they are not directed against any particular religious belief. Justice Frankfurter asserted that “conscientious scruples have not, in the course of the long struggle for religious toleration, relieved the individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs” (310 U.S. 586, 594).
The Court also refused to look at the specifics of the resolution to determine whether or not the desired end (patriotic unity) could be met by compelling students to salute the flag contending that "the courtroom is not the arena for debating issues of educational policy. . . . 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" (310 U.S. 586, 598). The Court also made it clear that national unity should be protected above religious liberty. "National unity is the basis of national security. . . . The ultimate foundation of a free society is the binding tie of cohesive sentiment" (310 U.S. 586, 595). Thus, the Court concluded that the school board was justified in abridging the liberty of the individual for the purpose of protecting a general degree of freedom.

Dissenting Opinion

Justice Stone wrote the dissenting opinion. He agreed with the Court that individual liberties are not absolute; governments also have the rights and powers given them by the people. When religious practices are dangerous to the public health and safety they may and indeed must be suppressed. However, as Justice Stone wrote, "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" (310 U.S. 586, 602). He further affirmed that when there are competing interests of the individual and the state, all prudence must be taken to preserve the essentials of both. The duty of the Court is to decide whether such compromise is possible. Thus, the opinion of Justice Stone was that in deciding this case the Court had failed in its duty.

Strict Separationist vs. Non-Separationist Viewpoints

This is one of the few cases where the strict separationist view of the ACLU appears to coincide with the non-separationist view expressed by Dr. Robert L. Cord. In answering the question of whether a student can be compelled to salute the flag, the ACLU emphatically asserts "No." However, they go on to say that "the Pledge is not objectionable simply because it contains a reference to God. The courts generally reason that the routine use of the phrase 'under God' has deprived it of religious significance" (Lynn, Stern, and Thomas 16). In other words, the ACLU contends that although a person cannot be compelled to recite the Pledge, the use of the word God does not preclude its use in the public schools.

In his book Separation of Church and State, Robert L. Cord does not give any specific commentary on Gobitis. He does, however, mention the case in order to discriminate between it and other cases lacking the coercion element. Cord clearly wants to focus on the more important issue of "may the state - where no coercion exists and with the willingness of the students who choose to participate - constitutionally conduct an admitted religious worship service?" (151). From Cord's tendency to focus on cases where there is no coercion
The Court also refused to look at the specifics of the resolution to determine whether or not the desired end (patriotic unity) could be met by compelling students to salute the flag contending that "the courtroom is not the arena for debating issues of educational policy. . . . 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" (310 U.S. 586, 598). The Court also made it clear that national unity should be protected above religious liberty. "National unity is the basis of national security. . . . The ultimate foundation of a free society is the binding tie of cohesive sentiment" (310 U.S. 586, 595). Thus, the Court concluded that the school board was justified in abridging the liberty of the individual for the purpose of protecting a general degree of freedom.

Dissenting Opinion

Justice Stone wrote the dissenting opinion. He agreed with the Court that individual liberties are not absolute; governments also have the rights and powers given them by the people. When religious practices are dangerous to the public health and safety they may and indeed must be suppressed. However, as Justice Stone wrote, "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" (310 U.S. 586, 602). He further affirmed that when there are competing interests of the individual and the state, all prudence must be taken to preserve the essentials of both. The duty of the Court is to decide whether such compromise is possible. Thus, the opinion of Justice Stone was that in deciding this case the Court had failed in its duty.

Strict Separationist vs. Non-Separationist Viewpoints

This is one of the few cases where the strict separationist view of the ACLU appears to coincide with the non-separationist view expressed by Dr. Robert L. Cord. In answering the question of whether a student can be compelled to salute the flag, the ACLU emphatically asserts "No." However, they go on to say that "the Pledge is not objectionable simply because it contains a reference to God. The courts generally reason that the routine use of the phrase 'under God' has deprived it of religious significance" (Lynn, Stern, and Thomas 16). In other words, the ACLU contends that although a person cannot be compelled to recite the Pledge, the use of the word God does not preclude its use in the public schools.

In his book Separation of Church and State, Robert L. Cord does not give any specific commentary on Gobitis. He does, however, mention the case in order to discriminate between it and other cases lacking the coercion element. Cord clearly wants to focus on the more important issue of "may the state - where no coercion exists and with the willingness of the students who choose to participate - constitutionally conduct an admitted religious worship service?" (151). From Cord's tendency to focus on cases where there is no coercion
involved, we may deduce that he believes coercion to act against one's personal religious beliefs to be fundamentally unconstitutional. However, regarding laws prohibiting certain religious actions, Cord and the ACLU would be diametrically opposed in their views. Still, they remain in certain harmony with regards to their opinions in the Minersville case.

**Inconsistencies and Faulty Reasoning Within Gobitis Case**

"A grave responsibility confronts this Court whenever in course of litigation it must reconcile the conflicting claims of liberty and authority" (310 U.S. 586, 591). With these words Justice Frankfurter began his opinion and subsequently relinquished the religious liberty of the individual to the whims of the majority, all in hopes of establishing a cohesive sentiment. I believe that the Court clearly made a poor decision in reversing the lower courts' decisions and showed a lack of good judgment in not looking further into the facts of this case.

In writing the opinion of the Court, Justice Frankfurter argued for the legitimacy of forcing a person to salute the flag in order to bring about a unifying sentiment among the members of society. He maintained that this "cohesive sentiment" is the binding tie of society without which government could not exist to protect such rights as religious liberty. However, even if we grant that this unifying sentiment is superior to the liberties invoked by the First and Fourteenth Amendments, I agree with the writer of a *Washington Law Review* article in that "even if the end to be attained is more important... there is no reason why the court should forego its duty to scrutinize the means adopted" (J.S.A. 266).

The opinion of the present case is also inconsistent with other Supreme Court cases involving civil liberties where all facts were duly considered. Fred L. Howard, in the *Missouri Law Review*, points out that in the case of *Schneider v. New Jersey* the Court explicitly expressed its duty to consider all details when civil liberties are at stake (Howard 108). Justice Roberts wrote the following in his opinion:

In every case, therefore, where legislative abridgment of the rights is asserted, the courts should be astute to examine the effect of the challenged legislation... the delicate and difficult task falls upon the courts to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the right. (308 U.S. 147, 161)

The Court has not only recognized its absolute duty to consider the details of cases concerning the infringement of civil liberties, but it has also gone so far as to establish a standard by which to judge such cases. In *Schneck v. United States*, Justice Holmes set forth the basis for what has come to be known as the "clear and present danger test." It was found that in connection with the right to free speech, "the question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress
involved, we may deduce that he believes coercion to act
against one's personal religious beliefs to be
fundamentally unconstitutional. However, regarding laws
prohibiting certain religious actions, Cord and the ACLU
would be diametrically opposed in their views. Still, they
remain in certain harmony with regards to their opinions
in the Minersville case.

Inconsistencies and Faulty Reasoning Within Gobitis
Case

"A grave responsibility confronts this Court
whenever in course of litigation it must reconcile the
conflicting claims of liberty and authority" (310 U.S. 586,
591). With these words Justice Frankfurter began his
opinion and subsequently relinquished the religious
liberty of the individual to the whims of the majority, all in
hopes of establishing a cohesive sentiment. I believe that
the Court clearly made a poor decision in reversing the
lower courts’ decisions and showed a lack of good
judgment in not looking further into the facts of this case.

In writing the opinion of the Court, Justice
Frankfurter argued for the legitimacy of forcing a person
to salute the flag in order to bring about a unifying
sentiment among the members of society. He maintained
that this “cohesive sentiment” is the binding tie of society
without which government could not exist to protect such
rights as religious liberty. However, even if we grant that
this unifying sentiment is superior to the liberties invoked
by the First and Fourteenth Amendments, I agree with the
writer of a Washington Law Review article in that “even if
the end to be attained is more important . . . there is no
reason why the court should forego its duty to scrutinize
the means adopted” (J.S.A. 266).

The opinion of the present case is also inconsistent
with other Supreme Court cases involving civil liberties
where all facts were duly considered. Fred L. Howard, in
the Missouri Law Review, points out that in the case of
Schneider v. New Jersey the Court explicitly expressed its
duty to consider all details when civil liberties are at stake
(Howard 108). Justice Roberts wrote the following in his
opinion:

In every case, therefore, where legislative
abridgment of the rights is asserted, the
courts should be astute to examine the effect
of the challenged legislation . . . the delicate
and difficult task falls upon the courts to
weigh the circumstances and to appraise the
substantiality of the reasons advanced in
support of the regulation of the free
enjoyment of the right. (308 U.S. 147, 161)

The Court has not only recognized its absolute duty
to consider the details of cases concerning the
infringement of civil liberties, but it has also gone so far as
to establish a standard by which to judge such cases. In
Schenck v. United States, Justice Holmes set forth the basis
for what has come to be known as the “clear and present
danger test.” It was found that in connection with the
right to free speech, “the question in every case is whether
the words used are used in such circumstances and are of
such a nature as to create a clear and present danger that
they will bring about the substantive evils that Congress
has a right to prevent" (249 U.S. 47, 52).

In deciding Gobitis, the lower courts used the clear and present danger test as the very foundation of both of their decisions. Yet Justice Frankfurter completely omits any reference to this test once the case got to the Supreme Court. This omission is serious enough to at least deserve mention by the Court. That the present case doesn't live up to the standard set forth by Justice Holmes is obvious. There is not sufficient danger in the refusal of two elementary age school children to justify the state or national government infringing upon constitutionally guaranteed civil rights.

Another inconsistency in the decision of the present case involves similar civil liberty cases. Thomas F. Flynn writes the following:

As contrasted to the Supreme Court decisions in regard to the religious guarantees of the Constitution under the Fourteenth Amendment, there are the cases decided by the Supreme Court in regard to freedom of speech, press, and assembly under this amendment. (Flynn 114)

In Gobitis, the Court ruled that the government can intrude upon religious liberty to protect national unity. But in previous cases the Court ruled that government cannot impose itself upon the freedom of speech or press, unless the exercise of such promotes the overthrow of government by force or violence. In Herndon v. Lowry, the Court found a statute making it illegal to solicit members to the communist party to be in violation of the right to free speech (Flynn 114).

Should we really believe that two children refusing to salute the flag pose a greater risk to national unity than the distribution of Communist literature? Or is it that the right to free speech is greater than the right to believe as our conscience dictates? I have already addressed the earlier question, but in regards to the latter, I don't believe that the framers of the constitution would have thought one civil liberty greater than another especially when there is no conflict between them. The repression of religious liberty was the catalyst that drove these great men to the New World in search of freedoms not offered by their mother countries. According to Robert L. Cord, a constitutional scholar and expert in the issue of separation of church and state, “a great many of the early American settlements were formed by dissident religious minorities fleeing from the Protestant establishments of England, Ireland, and Scotland” (3). There is no evidence that should lead us to believe that the right to free speech should be placed on a preferential level to religious liberty. Therefore, to remain consistent, the Court should have ruled that the compulsory flag salute was unconstitutional.

The author of Gobitis, Justice Frankfurter, defends his position by saying:

Except where the transgression of constitutional liberty is too plain for argument, personal freedom is best maintained—so long as the remedial channels of the democratic process remain open and unobstructed—when it is ingrained in people’s habits and not enforced against...
has a right to prevent” (249 U.S. 47, 52).

In deciding *Gobitis*, the lower courts used the clear and present danger test as the very foundation of both of their decisions. Yet Justice Frankfurter completely omits any reference to this test once the case got to the Supreme Court. This omission is serious enough to at least deserve mention by the Court. That the present case doesn’t live up to the standard set forth by Justice Holmes is obvious. There is not sufficient danger in the refusal of two elementary age school children to justify the state or national government infringing upon constitutionally guaranteed civil rights.

Another inconsistency in the decision of the present case involves similar civil liberty cases. Thomas F. Flynn writes the following:

As contrasted to the Supreme Court decisions in regard to the religious guarantees of the Constitution under the Fourteenth Amendment, there are the cases decided by the Supreme Court in regard to freedom of speech, press, and assembly under this amendment. (Flynn 114)

In *Gobitis*, the Court ruled that the government can intrude upon religious liberty to protect national unity. But in previous cases the Court ruled that government cannot impose itself upon the freedom of speech or press, unless the exercise of such promotes the overthrow of government by force or violence. In *Herdon v. Lowry*, the Court found a statute making it illegal to solicit members to the communist party to be in violation of the right to free speech (Flynn 114).

Should we really believe that two children refusing to salute the flag pose a greater risk to national unity than the distribution of Communist literature? Or is it that the right to free speech is greater than the right to believe as our conscience dictates? I have already addressed the earlier question, but in regards to the latter, I don’t believe that the framers of the constitution would have thought one civil liberty greater than another especially when there is no conflict between them. The repression of religious liberty was the catalyst that drove these great men to the New World in search of freedoms not offered by their mother countries. According to Robert L. Cord, a constitutional scholar and expert in the issue of separation of church and state, “a great many of the early American settlements were formed by dissident religious minorities fleeing from the Protestant establishments of England, Ireland, and Scotland” (3). There is no evidence that should lead us to believe that the right to free speech should be placed on a preferential level to religious liberty. Therefore, to remain consistent, the Court should have ruled that the compulsory flag salute was unconstitutional.

The author of *Gobitis*, Justice Frankfurter, defends his position by saying:

Except where the transgression of constitutional liberty is too plain for argument, personal freedom is best maintained—so long as the remedial channels of the democratic process remain open and unobstructed—when it is ingrained in people’s habits and not enforced against
popular policy by the coercion of adjudicated law. (310 U.S. 586, 599)
In other words, as long as the legislative process is in full effect, and there is due process of law, it is not the place of the Court to impose its beliefs on policy makers, even if there is an infringement of civil liberties. Fred L. Howard reveals the absurdity of such a limited interpretation of judicial duties. In reference to the above statement by Justice Frankfurter, Howard makes this important claim:

His statement is made in the face of the fact that the plaintiffs are members of a numerically small and politically impotent group that cannot secure its own relief through the public forum but must rely upon the courts to enforce the provisions of the Constitution that were designed to protect them from just such oppressive laws.

The Bill of Rights was specifically designed to protect the minority from the oppressive rule of the majority. To limit the scope of judicial review as Gobitis does is to dissolve the inalienable rights of the Constitution into the raging waters of majority opinion. The dissenting voice of Justice Stone powerfully argues that this is “no more than the surrender of the constitutional protection of the liberty of small minorities to the popular will” (310 U.S. 586, 606).

**Influence on Subsequent Cases**

Gobitis provoked intense criticisms in the years that followed, yet such criticism did not stop states from changing their laws as a direct result of the decision. Many states enacted statutes requiring that students salute the flag as a daily activity, and provided that refusal to participate be deemed insubordination. A 1940 Washington Law Review article reports that “the broad language of the majority opinion should have far-reaching effects on sedition laws” (J.S.A. 266). However, these widely anticipated far-reaching effects were not meant to be.

Just two and a half years after Gobitis, another case involving a Jehovah's Witness was brought before the Supreme Court. The case has been summarized as follows:

In the case of Jones v. Opelika, 316 U.S. 584, the Supreme Court had struck a blow at the dissemination of “Witness” literature by holding that the city of Opelika could validly pass an ordinance requiring a license for anyone selling books and pamphlets on the streets. But to the majority opinion the Chief Justice and three others dissented.

It was this dissenting opinion that had the most significant impact on future cases. The Chief Justice during this case was Justice Stone, the same Justice who had written a scathing dissent in Gobitis. The three others who opposed with Justice Stone in the Jones case were crucial because they had sided with the majority in Gobitis and saw this as an opportunity to express their current position. Justices Black, Douglas, and Murphy each
popular policy by the coercion of adjudicated law. (310 U.S. 586, 599)

In other words, as long as the legislative process is in full effect, and there is due process of law, it is not the place of the Court to impose its beliefs on policy makers, even if there is an infringement of civil liberties. Fred L. Howard reveals the absurdity of such a limited interpretation of judicial duties. In reference to the above statement by Justice Frankfurter, Howard makes this important claim:

His statement is made in the face of the fact that the plaintiffs are members of a numerically small and politically impotent group that cannot secure its own relief through the public forum but must rely upon the courts to enforce the provisions of the Constitution that were designed to protect them from just such oppressive laws.

(108)

The Bill of Rights was specifically designed to protect the minority from the oppressive rule of the majority. To limit the scope of judicial review as Gobitis does is to dissolve the inalienable rights of the Constitution into the raging waters of majority opinion. The dissenting voice of Justice Stone powerfully argues that this is “no more than the surrender of the constitutional protection of the liberty of small minorities to the popular will” (310 U.S. 586, 606).

Influence on Subsequent Cases

Gobitis provoked intense criticisms in the years that followed, yet such criticism did not stop states from changing their laws as a direct result of the decision. Many states enacted statutes requiring that students salute the flag as a daily activity, and provided that refusal to participate be deemed insubordination. A 1940 Washington Law Review article reports that “the broad language of the majority opinion should have far-reaching effects on sedition laws” (J.S.A. 266). However, these widely anticipated far-reaching effects were not meant to be.

Just two and a half years after Gobitis, another case involving a Jehovah’s Witness was brought before the Supreme Court. The case has been summarized as follows:

In the case of Jones v. Opelika, 316 U.S. 584, the Supreme Court had struck a blow at the dissemination of “Witness” literature by holding that the city of Opelika could validly pass an ordinance requiring a license for anyone selling books and pamphlets on the streets. But to the majority opinion the Chief Justice and three others dissented.

(Rever 94)

It was this dissenting opinion that had the most significant impact on future cases. The Chief Justice during this case was Justice Stone, the same Justice who had written a scathing dissent in Gobitis. The three others who opposed with Justice Stone in the Jones case were crucial because they had sided with the majority in Gobitis and saw this as an opportunity to express their current position. Justices Black, Douglas, and Murphy each
recanted their previous decision by saying, "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 also was wrongly decided" (316 U.S. 584, 623-4).

This opened the door to further debate on the compulsory flag salute issue. With the change of opinion of three of the Supreme Court Justices, the District Court for the Southern District of West Virginia in *Barnette et al. v. West Virginia State Board of Education*, made a bold move and granted an injunction against the compulsory salute in the face of the *Gobitis* decision. In what was another remarkable, yet not entirely unexpected decision, the Supreme Court upheld the injunction and reversed the *Gobitis* decision. This new decision proclaimed that compulsion is not a "permissible means" to attain national unity because it impedes upon the "sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control" (319 U.S. 624).

How could the Court in such a short time issue such radically different opinions? Many have said that during the *Gobitis* case the Court became susceptible to outside pressures. Madaline Kinter Remmlein writes, "although the constitutional question was raised in each case, sociological issues at stake appeared to have influenced the courts in some instances quite as much as the threat of infringement of religious freedom" (74). An author for the *Michigan Law Review* explained the influences on the Court during the *Gobitis* case: "Many persons attributed the attitude of the Court to the imminence of a second world war, requiring action to unify national sympathies and emotions" (Taylor 321). Whatever the cause of that decision, its reversal was an impressive display of intellectual honesty. That the Court could admit its mistake and, amid much criticism, make the right decision restored some faith in the court system that may have been lost because of *Gobitis*. What the *Gobitis* decision so appallingly eliminated, the *Barnette* decision restored—the inalienable freedoms of the Bill of Rights.

**Works Cited**


Rover, Thomas A. "Constitutional Law—Resolution of
recanted their previous decision by saying, "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 also was wrongly decided" (316 U.S. 584, 623-4).

This opened the door to further debate on the compulsory flag salute issue. With the change of opinion of three of the Supreme Court Justices, the District Court for the Southern District of West Virginia in Barnette et al. v. West Virginia State Board of Education, made a bold move and granted an injunction against the compulsory salute in the face of the Gobitis decision. In what was another remarkable, yet not entirely unexpected decision, the Supreme Court upheld the injunction and reversed the Gobitis decision. This new decision proclaimed that compulsion is not a "permissible means" to attain national unity because it impedes upon the "sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control" (319 U.S. 624).

How could the Court in such a short time issue such radically different opinions? Many have said that during the Gobitis case the Court became susceptible to outside pressures. Madaline Kinter Remmlein writes, "although the constitutional question was raised in each case, sociological issues at stake appeared to have influenced the courts in some instances quite as much as the threat of infringement of religious freedom" (74). An author for the Michigan Law Review explained the influences on the Court during the Gobitis case: "Many persons attributed the attitude of the Court to the imminence of a second world war, requiring action to unify national sympathies and emotions" (Taylor 321). Whatever the cause of that decision, its reversal was an impressive display of intellectual honesty. That the Court could admit its mistake and, amid much criticism, make the right decision restored some faith in the court system that may have been lost because of Gobitis. What the Gobitis decision so appallingly eliminated, the Barnette decision restored—the inalienable freedoms of the Bill of Rights.

Works Cited

Rover, Thomas A. "Constitutional Law—Resolution of


Minersville School District v. Gobitis

Carl Reynolds

The 1940 case of Minersville School District v. Gobitis (310 U.S. 586) presents a church-state issue involving the constitutionality of a compulsory state regulation, the adherence to which would result in the violation of a personal, religious belief. The question presented before the U.S. Supreme Court in this case is whether or not a “state regulation requiring that pupils in the public schools, on pain of expulsion, participate in a daily ceremony of saluting the national flag” is in violation of personal and religious freedom guaranteed by the United States Constitution (310 U.S. 586).

“The Minersville School District, under claim of authority conferred by the Pennsylvania School Code, adopted a resolution which required teachers and pupils to salute the American flag as a daily patriotic demonstration” (“Constitutional Law—Compulsory Flag” 124-5). The Gobitis children, “aged twelve and thirteen, had been excluded from the public school because of repeated refusal to salute the national flag and recite the pledge of allegiance in accordance with an authorized order of the school board” (Andersen 149). The Gobitis children refused to salute the flag because they claimed that it violated their religious beliefs as Jehovah's