

Constitutional History of the United States

By

Dr. Frank Mallonee

Florence State University

April 11, 1972

The Jehovah Witnesses quarrel with the school authorities involved what really remains an unsolved problem in the law of religious freedom. The first amendment provides that Congress shall pass no law respecting the establishment of a national religion or prohibiting the free exercise thereof. That probation is a very general probation. It has always been quite affective against the general run of religious presenting such things as compulsory church attendance, etc. But it offered no solution when religious sects raise abjection to a regulation on the surface with nothing to do with religion. These conflicts are far from rare. Many sects object to military service. The Jewish reject to jury duty on Friday because it is their Sabbath Day. Quakers will not swear oaths.

Where the sect is respectable the American law has sought to make amendments. But when a sect, so drastic in its innovation that it is rejected by society, it lies in siege. It becomes the target of new laws that are extensively nondiscriminatory but carefully designed to harass. Eventually accommodations must be made. A softening of public attitudes regarding the sect. If not, it will die or go underground.

Since the Civil War there has been three sects, aside from the Jehovah Witnesses, who have found adjustments to make, the

Mormons, Christian Scientist, and the Salvationist. The Church of Jesus Christ of Latter Day Saints, the Mormons, was established in 1829 by Joseph Smith Jr. It was established in the town of Harmony Pennsylvanian. Mr. Smith claimed a divine commission to restore what he called the true worship in North America. From the very beginning Smith and his band were extremely unpopular for many reasons.

1. They had very humble origins and very lofty potentials.
2. Financially they were irresponsible.
3. They advocated use of violence against external and internal enemies.

Smith said that plural marriage was not only right but the religious duty of a man who could support more than one wife. Congress passed upon it. The United States Congress struck out with a series of hostile statues. They punished bigots, disenfranchised them and confiscated all of the church properties. In the 1890's the Mormons renounced polygamy as a religious duty.

The key tenet of Christian Scientist, founded by Mary Baker Eddy in the city of Boston in the late 1860's, is a spiritual healing. Eddy thought one could care myself of physical ailments through faith healing, prayer and proper mental attitudes. He can also instill a care in others by similar faith or attitudes. The medical profession said Eddy could be a menace to the gullible. States quickly passed laws. Christian Scientist were incapable of getting legally qualified license. Eventually state legislatures came to see that the Christian Scientist were very different from general run of quacks. Now every state provides exemption for bona fide faith healers. On the whole, the Christian Scientist have ceased to be controversial.

April 13, 1972

The Salvation Army first reached American shores in 1880. And the Salvationist are strictly non theological in their doctrine. Their sole mission is to rescue the urban poor people who have been ignored by the regular churches. The Salvationist tries to rescue them from gambling, naughty girls, and especially liquor. Many churches resented the Salvation Army as an amusement. They had difficulties in their early years. Hoodlums would break up their meetings. A special part of their meetings was a parade. Many cities passed ordinances prohibiting parades entirely or restricting them to a license. But most important, the Salvationist nonsectarian good works, their steadfast dishonor, profoundly impressed the more responsible community leaders. Their unselfishness have made them a highly respectable part of the American religious community.

In all of these narratives, the Mormons, Christian Scientist and Salvationist, religious freedom was not mentioned. They appealed to state and federal courts. Their appeals failed because state and federal courts consistently adhered to a traditional rule and the traditional rule there can be no constitutional right to a religious exemption from a general regulation dealing on its face with religion but with ordinary secular affairs of state. The various enactments dealt with matters in scope of government authority, medicine, etc. It was irrelevant material that some people had. This was the state of the law in 1935.

“Judge” Rutherford encouraged the non-salute in 1935. School authorities responded with disciplinary acts. Pennsylvanian and Massachusetts lead the way. By 1939 more than two hundred

Witnesses children had been expelled from school. That indicated that many school districts wanted to seek a compromise. Aside from hardships the threat of school laws hung over all Witnesses unable to afford private schooling.

The Jehovah Witnesses turned to the courts. In six states they brought suit for an injunction for the readmission of all their children to the public schools. In each case the state courts ruled against them. But they kept trying. Their persistence was finally awarded in a case decided in 1940, *Minersville School District VS Gobitis*.

Minersville School District VS Gobitis

Walter Gobitis brought suit before a federal judge in Philadelphia for an injunction compelling for the readmission of his two expelled children to the Minersville public school. Gobitis won because the district court held that this compulsory Flag-Salute violated religious freedom. The circuit court of appeals affirmed that decision. The Minersville School Board went to the Supreme Court on a Writ of Certiorari, and at long last the Witnesses had their test case. Unfortunately "Judge" Rutherford decided to double as legal counsel. He fired the regular lawyers and filed a brief in the Supreme Court on behalf of Jehovah Witnesses. That brief was of little value to the Supreme Court. He appealed at great lengths to the Scriptures and very little to the Constitution.

The Civil Liberty Union saw the Witnesses in great trouble and they filed an Amicus Curiae Brief that compulsory Flag Salute violated the sects Civil Liberty. It was so harsh that it was a denial of Due Process of Law.

On June 3, 1940 the Supreme Court reversed all lower court decisions and the Witnesses lost. Frankfurter said that these scruples on the part of the Witnesses, regardless of noble and meaningful, did not relieve the individual from obedience to a general law. The mere possession of religion does not discharge him of his political responsibilities. He ended that opinion by saying that the Supreme Court of the United States is not an arena for debating educational policies. Many people were displeased with the decision. They felt the court laid down a new and dangerous doctrine. That religious freedom be suppressed as long as the ballot box remained free.

Gobitis ushered in a very bad period for the Jehovah Witnesses. The times were very tense. Hitler was marching across Europe. The Witnesses were very obvious candidates for scapegoating. The most spectacular thing was the outbreak of violence. In June of 1940 several hundred incidences occurred in which force was used.

The Witnesses fought back through courts but were very limited successful. The state of New Hampshire dealt the Witnesses defeats in the United States Supreme Court.

1. Cox VS New Hampshire -1941- Court unanimously upheld statute

“A New Hampshire town required that a license be obtained before parades could be held within the town. A group of Jehovah's Witnesses held a sidewalk parade without first obtaining the license and they were fined for violating the law. The Jehovah's Witnesses challenged the New Hampshire law, saying that its provisions violated their First Amendment rights. Specifically, they challenged the fee attached to the permit as a means of suppressing their free speech rights.”

2. Chaplinsky VS New Hampshire -1942-Unanimously upheld abusive language conviction of Witnesses for calling a city marshal "You are a God-damned racketeer" and "a damned Fascist".

By the last half of 1942 persecution against Jehovah Witnesses was disappearing and important reason was that active intervention of the Civil Rights Section of the Department of Justice. The main statutory weapon used was the section of some old post-Civil War Civil Rights Legislation making it a misdemeanor for anyone acting under the color of any law to deprive any person of a federal statutory right. Under provisions of the Civil Rights Section prosecuted sheriff involved in castor oil incidence.

In the meantime there was a great deal reaction against the Gobitis decision. The St. Louis Post Dispatch said it was a terrible decision. The New Republic said Frankfurter zeal is what is historically saving America from a couple of school children. The Catholic publications most bitterly deplored the Jehovah Witnesses scandal. The solid hostility of scholarly comment was impressive. Example. Thirty five scholarly writings of the time, only four were favorable. By mid-1942 the Gobitis decision was under fire from all sides. It was good as dead. An official barrier remained as the opportunity was coming.

West Virginia State Board of Education VS Barnette.

The West Virginia state law required public schools to give instruction in history and civics for the purpose of teaching patriotism and perpetuating the ideas. The State Board of Education under the authority to provide course of study adopted to that and acting under

that in June 9, 1942 that the salute to the flag would now become a regular part of West Virginia program of activities for public schools. All teachers would be required to participate in the flag salute. A refusal would be considered as an act of subordination.

The individual complaints in this case were Walter Barnette, Paul Stull and Lucy McClure. They were relatives. McClure was Barnette's sister and Stull was brother-in-law. All three were very poor. Seven children had been had been expelled for insubordination. The West Virginia law required all children 7-14 to be enrolled in school. Violators would be fined or imprisoned. A habitually truant child would be considered to be delinquent. Stull put his children in a private school. The other two could not afford to send their children to a private school.

In the summer of 1942 they were found violating compulsory school laws. On June 14, 1943 the Supreme Court overruled the Gobitis Decision. The argument was this, we have the right to speak, and we have the right to remain silent.

Since 1943 the Jehovah Witnesses have settled down to a quieter existence. They no longer attack the United States Government as agent of Satan. Even drives at Catholic Church has slowed down. They still look to the end of the world. They seem to be equipped for a long stay. Significance of the case - Intellectual development of the Supreme Court. Many Civil Right cases goes back to this in protecting Civil Liberties.