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Philosophy of Law

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West Virginia State Board of Education v. Barnette 8 May 2014

The state of West Virginia in 1943 made it compulsory, required by law, to salute the American flag and pledge allegiance in public schools. Students who refused to this mandate were expelled and their absence became unlawful and brought legal problems to their parents. The students were Jehovah’s witnesses of the Barnette family who refused to the salute and pledge on religious grounds. The issue before the court was whether the compulsory flag salute and pledge were constitutional. Did the students have protection from forced recital and participation in the patriotic ceremony under 1st and 14th amendment rights?

In a very similar and previous Supreme Court case in 1940, MinersVille School District v. Gobitis, the court held that the 1st amendment did not provide protection for excusal from the pledge and salute in public schools for students on the basis of religious grounds. Three years later in West Virginia State Board of Education v. Barnette the court held that the Free Speech clause of the 1st amendment prohibited the compulsory salute and pledge in public schools, guaranteeing protection to students. This latter ruling overturned the former ruling.

In Jackson’s opinion he notes that the students do not harm anyone by their refusal to the pledge and salute. Their denial to participate does not infringe on any other one’s rights. This inciting of the Harm Principle is a classic way of defending one’s actions under 1st amendment rights. The student’s liberties should extend so long as they do not pose any clear and present danger or immediate harm. The student’s refusal to profess and partake in the patriotic ceremony does not bring harm to anyone. Perhaps the most patriotic of citizens or most zealous of instructors are not pleased with a student’s refusal the pledge and salute, say offended, however a student’s refusal is not an insult nor an attack to the beliefs or mindset behind the patriotic ceremony. It is merely one abstaining from submitting to ideas that are not in alignment with their most deep rooted beliefs. In no way has the student’s refusal made a declaration or statement against those who do submit to the pledge and salute or towards the ideas behind the patriotic ceremony. Because there is no harm to be proven or even noted a student’s right to refuse the pledge and salute should be guaranteed under the 1st amendment through the Harm Principle.

Another key point in Jackson’s opinion is the idea of submission to a belief prescribed by government to be against the idea behind the Bill of Rights, and more specifically, the 1st amendment. The strong protection of free speech ingrained in the 1st amendment and historic upholding have been to safeguard the benefits brought by free speech. The exchange and expression of ideas that allow for criticism of the government so that corruption may be better stopped are essential to a democracy. The value of free speech and the benefits it yields are the ideas behind the 1st amendment. The Bill of Rights empowers an individual to speak their mind, whereas a compulsory flag salute and pledge is forcing an individual to speak something the government believes even if it is something the individual does not believe or hold in their mind. By having a state adopt a patriotic creed that creates a bias towards a selection of certain ideas. This acceptance of select ideas by default makes speech that is against state adopted ideas at risk of silencing, in other words a chilling effect of sorts. Refusal by the students to submit to the pledge and salute was labeled as insubordination. The state, by forcing a public to profess and engage in the patriotic ceremony, made certain symbolic speech, such as refusal to participate in the pledge and salute, illegal. However it was reasoned and argued that refusal of participation in the public ceremony was protected speech as it did no harm to anyone, protected by the Harm Principle. In prescribing one idea the state has silenced another; this is a violation of the First Amendment’s Free Speech Clause and a threat to the principles behind the First Amendment.

In the Globitis decision it was reasoned that the school’s interest in creating national unity was worth protecting more than the individual liberty claim of students and that the court would be over extending its jurisdiction by regulating boards of education. However Jackson in his opinion shoots down these arguments, claiming that the 14th amendment’s due process clause was intended to ensure the Court’s jurisdiction could reach where it is needed,

*”Much of the vagueness of the due process clause disappears when the specific prohibitions of the First become its standard. The right of a State to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a "rational basis" for adopting. But freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the State may lawfully protect” (West).*

The idea that the court is overreaching with its power is not true, for it’s the immediate duty of the court to ensure the liberties guaranteed by the Bill of Rights are safeguarded. Jackson also reasons that national unity is a doorway to something that the Bill of Rights intended to never be opened,

*"It seems trite but necessary to say that the First Amendment to our Constitution was designed to avoid these ends by avoiding these beginnings. There is no mysticism in the American concept of the State or of the nature or origin of its authority. We set up government by consent of the governed, and the Bill of Rights denies those in power any legal opportunity to coerce that consent. Authority here is to be controlled by public opinion, not public opinion by authority” (West).*

The principles behind the Bill of Rights are indisputably for limited government, the protection of people from the ill will of a powerful government. To enable a government such power can only hurt the people.

The court in this case, West Virginia State Board of Education v. Barnette, overruled a previous decision, and with good reason. The mistake made in the Gobitis ruling was heavily criticized in its time. The idea that a state can force you to say something in hopes of persuading you to believe what you are saying just by uttering it is ridiculous. The goal of national unity is not accomplished by rejecting principles that define the nation. The court’s jurisdiction able to reach where it is needed is no crime or grievance. It is good to see a wrong undone.

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