

GENARO GERONA, ET AL., PETITIONERS AND APPELLANTS, VS. THE HONORABLE SECRETARY OF EDUCATION, ET AL., RESPONDENTS AND APPELLEES.

G.R. No. 13954. August 12, 1959

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

Petitioners are appealing the decision of the Court of First Instance of Masbate dismissing their complaint. Acting upon the "Urgent Motion For Writ of Preliminary Injunction" filed on behalf of petitioners on December 12, 1958, and without objection on the part of the Solicitor General, by resolution of this Court of December 16, we issued the corresponding writ of preliminary injunction restraining respondents from excluding or banning petitioners-appellants, their children and all other of Jehovah's

Witnesses for whom this action has been brought, from admission to public schools, particularly the Buenavista Community School, solely on account of their refusal to salute the flag or preventing their return to school should they have already been banned, until further orders from this Court.

The facts involved are not disputed. On June 11, 1955, Republic Act No. 1265 was approved and went into effect. Acting upon section 2 of said Act authorizing and directing the Secretary of Education to issue or cause to be issued rules and regulations for the proper conduct of the flag ceremony, said Secretary issued Department Order No. 8, series of 1955 on July 21, 1955 which Department Order quoting Republic Act No. 1265 in its entirety, we reproduce below for purposes of reference:

"REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY
MANILA

Department Order
No. 8, s. 1955 July 21, 1955

COMPULSORY DAILY FLAG CEREMONY IN ALL PUBLIC AND PRIVATE SCHOOLS To the Director of Public Schools and the Director of Private Schools:

1. Quoted below is Republic Act No. 1265 entitled "An Act Making Flag Ceremony Compulsory in all Educational Institutions," which is self-explanatory.

"SECTION 1. All educational institutions henceforth observe daily ceremony, which shall be simple and dignified and shall include playing or singing of the Philippine National Anthem.

"Section 2. The Secretary of Education is hereby authorized and directed to issue or cause to be issued rules and regulations for the proper conduct of the flag ceremony herein provided.

"Section 3. Failure or refusal to observe the flag ceremony provided by this Act and in accordance with rules

and regulations issued by the Secretary of Education, after proper notice and hearing, shall subject the educational institution concerned and its head to public censure as an administrative punishment which shall be published at least once in a newspaper of general circulation.

In case of failure to observe for the second time the flag ceremony provided by this Act, the Secretary of Education, after proper notice and hearing, shall cause the cancellation of the recognition or permit of the private educational institution responsible for such failure.

"SECTION 4. This Act shall take effect upon its approval. Approved, June 11. 1955."

2. As provided in Section 2 of the Act, the rules and regulations governing the proper conduct of the required flag ceremony, given in the inclosure to this Order, are hereby promulgated. These rules and regulations should be made known to all teachers and school officials, public and private. The patriotic objective or significance of the Act should be explained to all pupils and students in the schools and to all communities through the purok organizations and community assemblies.

(Sgd.) G. Hernandez, Jr.
Secretary of Education

Incl.:
As stated

(Inclosure of Department Order No. 8, s. 1955)

RULES AND REGULATIONS FOR CONDUCTING THE FLAG CEREMONY IN ALL EDUCATIONAL INSTITUTIONS

1. The Filipino Flag shall be displayed by all educational institutions, public and private, every school day throughout the year. It shall be raised at sunrise and lowered at sunset. The flag-staff must be straight, slightly and gently tapering at the end, and of such height as would give the Flag a commanding position in front of the building or within the compound.

2. Every public and private educational institution shall hold a flag-raising ceremony every morning except when it is raining, in which event the ceremony may be conducted indoors in the best way possible. A retreat shall be held in the afternoon of the same day.

The flag-raising ceremony in the morning shall be conducted in the following manner:

a. Pupils and teachers or students and faculty members who are in school and its premises shall assemble-information facing the flag. At command, books shall be put away or held in the left hand and everybody shall come to attention. Those with hats shall uncover. No one shall enter or leave the school grounds during the ceremony.

b. The assembly shall sing the Philippine National Anthem accompanied by the school band or without the accompaniment if it has none; or the anthem may be played by the school band alone. At the first note of the Anthem, the flag shall be raised briskly. While the flag is being raised, all persons present shall stand at attention and execute a salute. Boys and men with hats shall salute by placing the hat over the heart. Those without hats may stand with their arms and hands down and straight at the sides. Those in military or Boy Scout uniform shall give the salute prescribed by their regulations. The salute shall be started as the Flag rises, and completed upon last note of the anthem.

c. Immediately following the singing of the Anthem, the assembly shall recite in unison the following patriotic pledge (English or Vernacular version), which may bring the ceremony to a close. This is required of all public schools and of private schools which are intended for Filipino students or whose population is predominantly Filipino. English Version

I love the Philippines.
It is the land of my birth;
It is the home of my people.
It protects me and helps me to be strong, happy and useful.
In return, I will heed the counsel of my parents;
I will obey the rules of my school;
I will perform the duties of a patriotic, law-abiding citizen;
I will serve my country unselfishly and faithfully;
I will be a true Filipino in thought, in word, in deed.

3. The retreat shall be observed as follows:

a. Teachers and pupils or faculty members and students whose classes end after the last school period in the afternoon before sun down shall assemble facing the flag. At command, the Philippine National Anthem shall be sung with accompaniment of the school band. If the school has no band, the assembly will only sing the Anthem. Boys who have been taking part in preparatory military training or Boy Scout activities shall attend the retreat in formation and execute the salute prescribed for them. Others shall execute the same salute and observe the same deportment as required of them in the flag-raising ceremony. The flag should be lowered slowly so that it will be in the hands of the color detail at the sound of the last note of the Anthem.

b. If the school so prefers, it may have its bugle corp play "To the Colors", instead of the singing of the National Anthem, for the retreat. At the sound of the first note, the assembly shall stand at attention facing the flag and observe the same deportment as required in the flag-raising ceremony. Or, it may have its bugle corp play "To the Colors" and at the sound of the first note everybody within hearing distance shall stand at attention, face the flag, and observe the same deportment as required in the flag-raising ceremony.

4. The flag should be handled reverently in raising or lowering it and not allowed to touch the ground. This can be insured by having one pupil hold the flag while another pupil fastening it to or unfasten it from the halyard.

5. To display the National Flag at half-mast when necessary, it must be hoisted to full-mast, allowing it to fly there for a moment, and then brought down to half-mast. To lower the flag, it must again be hoisted to full-mast before bringing it down."

In his turn the Director of Public Schools issued Circular No. 22, series of 1955, on July 30, 1955 addressed to Division Superintendents of Schools, enclosing a copy of Department Order No. 8, series of 1955 and enjoining strict compliance therewith.

It would appear that pursuant to the Department Order in question, the flag ceremony contemplated therein was held daily in every school, public and private. Petitioners' children attending the Buenavista Community School, Uson, Masbate, refused, to salute the flag, sing the national anthem and recite the patriotic pledge contrary to the requirement of Department Order No. 8; as a result they were expelled from school sometime in September, 1955. It is said that other children similarly situated who refused or failed to comply with the requirement about saluting the flag are under threats of being also expelled from all public schools in the Philippines.

Petitioners thru counsel wrote to the Secretary of Education petitioning that in the implementation of this flag ceremony, they and their children attending school be allowed to remain silent and stand at attention with their arms and hands down and straight at the sides and that they be exempted from executing the formal salute, singing of the National Anthem and the reciting of the patriotic pledge, giving their reason for the same. On December 16, 1955 the Secretary of Education wrote to counsel for petitioners denying the petition, making it clear that the denial was the final and absolute stand of the Department of Education on the matter and that counsel may thereafter feel free to seek a judicial determination of the constitutionality or interpretation of Republic Act No.

1265 as construed and applied to Jehovah's Witnesses. The letter also informed petitioners' counsel that with reference to his letter of December 1, 1955 relative to the request for reinstatement of petitioners' children who had been expelled from school for non-compliance with Department Order No. 8, no favorable action could be taken thereon. So, on March 27, 1957 petitioners commenced the present action asking that a writ of preliminary injunction issue to restrain the Secretary of Education and the Director of Public Schools from enforcing Department Order No. 8 "as applied to petitioners and all others of Jehovah's Witnesses for whom this action is brought and to restrain them from excluding from the public schools the children of the petitioners on account of their refusal to execute a formal salute to the flag, sing the national anthem and recite the patriotic pledge, and that after hearing, the trial court declare Department Order No. 8 invalid and contrary to the Bill of Rights and that the preliminary injunction prayed for be made permanent.

Petitioners-appellants belong to what is called the JEHOVAH'S witness, an unincorporated body teaching that the obligation imposed by law of God is superior to that of laws enacted by the State. Their religious beliefs include a literal version of Exodus, Chapter 20, verses 4 and 5, which say: "Thou shalt not make unto thee any graven image, or any likeness of anything that is in heaven above, or that is in the earth beneath, or that is in the water under the earth; thou shalt not bow down thyself to them, nor serve them." They consider that the flag is an "image within this command. For this reason they refuse to salute it.

To further make clear the stand of petitioners as to the relative position and priority of religious teaching on the one hand and laws promulgated by the State on the other, we quote from appellant's brief on page 50 thereof:

"In *Halter vs. Nebraska*, 205 U.S. 34, 41, 27 S. Ct. 419, 51 L. Ed. 696 (1907), the United States Supreme Court held that the flag 'is an emblem of National sovereignty.'

"To many persons the saluting of a national flag means nothing. To a sincere person who believed in God and the Bible as his Word, and who is in a covenant with Almighty God to do his will exclusively, it means much. To such person 'sovereignty' means the supreme authority or power. Many believe that 'the higher powers,' mentioned in the Bible at Romans 13:1, means the 'sovereign state'; but to the Christian this means Jehovah God and his son, Christ Jesus, Jehovah's anointed King. They, Father and Son are the higher powers, to whom all must be subject and joyfully obey." (Italics supplied)

The question involved in this appeal is a highly important one. We are called upon to determine the right of a citizen as guaranteed by the Constitution about freedom of religious belief and the right to practice it as against the power and authority of the State to limit or restrain the same. Our task is lessened by the fact that petitioners do not challenge the legality or constitutionality of Republic Act 1265. All that they question is the legality or constitutionality of Department Order No. 8. series of 1955 of the Department of Education implementing said Republic Act.

The realm of belief and creed is infinite and limitless bounded only by one's imagination and thought. So is the freedom of belief, including religious belief, limitless and without bounds. One may believe in most anything, however strange, bizarre and unreasonable the same may appear to others, even heretical when weighed in the scales of orthodoxy or doctrinal standards. But between the freedom of belief and the exercise of said belief, there is quite a stretch of road to travel. If the exercise of said religious belief clashes with the established institutions of society and with the law, then the former must yield and give way to the latter. The Government steps in and either restrains said exercise or even prosecutes the one exercising it.

One may believe in polygamy because it is permitted by his religion, but the moment he translates said religious belief into an overt act, such as engaging or practising plural marriages, he may be prosecuted for bigamy and he may not plead or invoke his religious belief as a defense or as a matter of exemption from the operation of the law.

In the case of *Reynolds vs. U. S.* (98 U.S. 145) the U.S. Supreme Court upheld the validity of a law prohibiting and punishing polygamy even as against the claim of religious belief of the Mormons. Said the Court:

"So here, as a law of the organization of society under the exclusive dominion of the United States, it is provided that plural marriages shall not be allowed. Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances." (Italics supplied)

Again, one may not believe in the payment of taxes because he may claim that according to his religious belief, the payment of taxes means service to one other than God. As long as he confines himself to mere belief, well and good. But when he puts said belief into practice and he actually refuses to pay taxes on his property or on his business, then the State steps in, compels payment, and enforces it either by court action or levy and distraint.

One of the important questions to determine here the true meaning and significance of the Filipino flag. Petitioners believe and maintain that it is an image and therefore to salute the same is to go against their religious belief. "Thou shalt not make unto thee any graven . . . thou shalt not bow down thyself to them or serve them."

They also claim that the flag salute is a religious ceremony, participation in which is forbidden by their religious belief. We disagree. Appellants themselves (page 61 of their brief) concede that the flag is a symbol of the State. They give the meaning of the word "image" on page 51 of their brief as follows:

"Under the word 'image' this comment is given by Webster: 'Image, in modern usage, commonly suggests religious veneration?'" (Italics supplied)

The flag is not an image but a symbol of the Republic of the Philippines, an emblem of national sovereignty, of national unity and cohesion and of freedom and liberty which it and the Constitution guarantee and protect. Considering the complete separation of church and state in our system of government, the flag is utterly devoid of any religious significance. Saluting the flag consequently does not involve any religious ceremony. The flag salute, particularly the recital of the pledge of loyalty is no more a religious ceremony than the taking of an oath of office by a public official or by a candidate for admission to the bar. In said oath, taken while his right hand is raised, he swears allegiance to the Republic of the Philippines* promises to defend the Constitution and even invokes the help of God; and it is to be doubted whether a member of Jehovah's Witness who is a candidate for admission to the Philippine Bar would object to taking the oath on the ground that it is religious ceremony.

After all, the determination of whether a certain ritual is or is not a religious ceremony must rest with the courts.. It cannot be left to a religious group or sect, much less to a follower of said group or sect; otherwise, there would be confusion and misunderstanding for there might be as many interpretations and meanings to be given to a certain ritual or ceremony as there are religious groups or sects or followers, all depending upon the meaning which they, though in all sincerity and good faith, may want to give to such ritual or ceremony.

We understand that petitioners, during the flag ceremony, are willing to remain silent and stand at attention with their arms and hands down straight at the sides, and they agree that boys, members of Jehovah's Witness who have been taking part in military training or Boy Scout activities, and are in uniform, may execute the salute to the flag prescribed by the Circular for them. So, the requirement contained in Department Order No. 8 that during the flag ceremony those without hats may stand with their arms and hands down and straight at the sides, including the formal salute by boys in military and Boy Scout uniform, meets with the conformity of petitioners. Of course, there is the other requirement that boys and men with hats shall salute the flag by placing their hats over the heart, but petitioners and other members of the Jehovah's Witness could well solve this requirements or avoid it by putting away their hats just as pupils holding books, may put them away, at command (Rules and Regulations,

Sec. 2, par. [a]). Consequently, the opposition of petitioners to the flag salute may be reduced to their objection to singing the National Anthem and reciting the patriotic pledge.

After a careful and conscientious examination of the patriotic pledge as reproduced at the beginning of this decision, frankly we find nothing, absolutely nothing, objectionable, even from the point of view of religious belief. The school child or student is simply made to say that he loves the Philippines because it is the land of his birth and the home of his people; that because it protects him, in return he will heed the counsel of his parents, obey the rules and regulations of his school, perform the duties of a patriotic and law-abiding citizen; and serve his country unselfishly and faithfully, and that he would be a true Filipino in thought, in word, and in deed. He is not even made to pledge allegiance to the flag or to the Republic for which it stands. So that even if we assume for a moment that the flag were an image, connoting religious and veneration instead of a mere symbol of the State and of national unity, the religious scruples of appellants against bowing to and venerating an image are not interfered with or otherwise jeopardized. . .

And as to the singing of the National Anthem, which we reproduce below:

Land of the morning,
Child of the sun returning.
With fervor burning,
Thee do our souls adore.
Land dear and holy,
Cradle of noble heroes,
Ne'er shall invaders,
Trample thy sacred shores.
Ever within thy skies and through thy clouds,}
and o'er thy hills and sea,
Do we behold the radiance, feel the throb
of glorious liberty.
Thy banner, dear to all our hearts,
Its sun and stars alight.
O—never shall its shining field
Be dimmed by tyrant's might. Beautiful land of love,
O—land—of—light,
In thine embrace 'tis rapture to lie.
But it is glory ever, when thou art wronged,
For us, thy sons to suffer and die.

the same thing may be said; that it speaks only of love of country, of patriotism, liberty and the glory of suffering and dying for it. It does not even speak of resorting to force and engaging in military service or duty to defend the country, which service might meet with objection on the part of conscientious objectors. Surely, petitioners do not disclaim or disavow these noble and sacred feelings of patriotism, respect, even veneration for the flag and Jove of country for which the flag stands.

Men may differ and do differ on religious beliefs and creeds, government policies, the wisdom and legality of laws, even the correctness of judicial decisions and decrees; but in the field of love of country, reverence for the flag, national unity and patriotism, they can hardly afford to differ, for these are matters in which they are mutually and vitally interested, for to them, they mean national existence and survival as a nation or national extinction.

In enforcing the flag salute on the petitioners, there was absolutely no compulsion involved, and for their failure

or refusal to obey school regulations about the flag salute they were not being persecuted. Neither were they being criminally prosecuted under threat of penal sanction. If they chose not to obey the flag salute regulation, they merely lost the benefits of public education being maintained at the expense of their fellow citizens, nothing more. According to a popular expression, they could take it or leave it. Having elected not to comply with the regulations about the flag salute, they forfeited their right to attend public schools.

In the case of *Hamilton vs. University of California*, 293 U.S. 243, 79 L. Ed. 343, quite similar to the present case, appellants therein were taxpayers and citizens of the United States and of California. The University of California received endowment and support from the State legislature under certain conditions such as that any resident of California of the age of 14 years or upward of approved moral character shall have the right to enter the University as a student and receive instructions therein. The University as part of its curriculum and instruction required military science and tactics in the Reserve Officers Training Corps. Appellants conformed to all requirements of the University except taking the course in military science and tactics and for this the regents of the University suspended them. Appellants were members of the Methodist Episcopal Church and of the Epworth League. For many years their fathers have been ordained ministers of that church. They believed that war and preparation for war is a violation of their religious belief. In other words, they were conscientious objectors to war. They believed that war, training for war, and military training were immoral, wrong and contrary to the letter and spirit of the teaching of God and precepts of the Christian religion. They petitioned for exemption from the military science and tactics course but the regents refused to make military training optional or to exempt them and they were suspended. So they initiated court action with the California Supreme Court to compel the regents of the University to admit them. In that action they assailed the validity of the State law providing for military training in the University. Their petition was denied by the State Supreme Court. In affirming the decision of the State Supreme Court, the Supreme Court of the United States held that:

"* * *. California has not drafted or called them to attend the University. They are seeking education offered by the State and at the same time insisting that they be excluded from the prescribed course solely upon grounds of their religious beliefs and conscientious objections to war, preparation for war and military education. Taken on the basis of the facts alleged in the petition, appellants' contentions amount to no more than an assertion that the due process clause of the Fourteenth Amendment as a safeguard of 'liberty' confers the right to be students in the state university free from obligation to take military training as one of the conditions of attendance.

"Viewed in the light of our decisions that proposition must once be put aside as untenable. * * *

"In *United States vs. Macintosh*, 283 U.S. 605, 75 L. ed. 1302, 51, S. Ct. 570, a later naturalization case, the applicant was unwilling, because of conscientious objections, to take unqualifiedly the statutory" oath of allegiance which contains this statement; 'That he will , support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same.' U.S.C. title 8, Sec. 381. His petition stated that he was willing if necessary to take up arms in defense of this country, 'but I should want to be free to judge of the necessity.' In amplification he said: 'I do not undertake to support "my country, right or wrong" in any dispute which may arise, and I am not willing to promise beforehand, and without knowing the cause for which my country may go to war, either that I will or that I will not "take up arms in defense of this country," However "necessary" the war may seem to be to the government of the day.' The opinion of this court quotes from petitioner's brief a statement to the effect that it is a fixed principle of our Constitution, zealously guarded by our laws, that a citizen cannot be forced and need not bear arms in a war if he has conscientious religious scruples against doing so.' And, referring to that part of the argument in behalf of the applicant this court said (p. 623): 'This, if it means what it seems to say, is an astonishing statement. Of course, there is no such principle of the Constitution, fixed or otherwise. The conscientious objector is relieved from the obligation to bear arms in obedience to no constitutional provision, express or implied; but because,

and only because, it has accorded with the policy of Congress thus to relieve him. The privilege of the native-born conscientious objector to avoid bearing arms comes not from the Constitution but from the acts of Congress. That body may grant or withhold the exemption as in its wisdom it sees fit; and if it be withheld, the native-born conscientious objector cannot successfully assert the privilege. No other conclusion is compatible with the well-nigh limitless extent of the war powers as above illustrated, which include by necessary implication, the power, in the last extremity, to compel the armed service of any citizen in the land, without regard to his objections or his views in respect of the justice or morality of the particular war or of war in general. In *Jacobson v. Massachusetts*, 197 U.S. 11, 29, 49 L. ed. 643, 651, 25 S. Ct. 358, 3 Ann. Cas. 765, this Court (upholding a state compulsory vaccination law) speaking of the liberties guaranteed to the individual by the Fourteenth Amendment, said: ". . . and yet he may be compelled, by force if need be, against his will and without regard to his personal wishes or his pecuniary interests, or even his religious or political convictions, to take his place in the ranks of the army of his country and risk the chance of being shot down in its defense." "

"And see *University of Maryland v. Coale*, 165 Md. 224, 167 A. 54, a case, similar to that now before us, decided against the contention of a student in the University of Maryland who on conscientious grounds objected to military training there required. His appeal to this Court was dismissed for the want of a substantial federal questions. 290 U.S. 597, 78 L. ed. 525, 54 S. Ct. 131.

"Plainly there is no ground for the contention that the regents' order, requiring able-bodied male students under the age of twenty-four as a condition of their enrollment to take the prescribed instruction in military science and tactics, transgresses any constitutional right asserted by these appellants."

Mr. Justice Cardozo in his concurring opinion said:

"I assume for present purposes that the religious liberty protected by the First Amendment against invasion by the nation is protected by the Fourteenth Amendment against invasion by the states.

"Accepting that premise, I cannot find in the respondents' ordinance an obstruction by the state to 'the free exercise' of religion as the phrase was understood by the founders of the nation, and by the generations that have followed. *Davis vs. Beason*, 133 U. S. 333, 342, 33 L. ed. 637, 10 S. Ct. 299.

"There is no occasion at this time to mark the limits of governmental power in the exaction of military service when the nation is at peace. The petitioners have not been required to bear arms for any hostile purpose, offensive or defensive, either now or in the future. They have not even been required in any absolute or peremptory way to join in courses of instruction that will fit them to bear arms. If they elect to resort to an institution for higher education maintained with the state's moneys, then and only then they are commanded to follow courses of instruction believed by the state to be vital to its welfare. This may be, condemned by some unwise or illiberal or unfair when there is violence to conscientious scruples, either religious or merely ethical. More must be shown to set the ordinance at naught. In controversies of this order courts do not concern themselves with matters of legislative policy, unrelated to privileges or liberties secured by the organic law. The first Amendment, if it be read into the Fourteenth, makes invalid any state law 'respecting an establishment of religion or prohibiting the free exercise thereof.' Instruction in military science is not instruction in the practice or tenets of a religion. Neither directly nor indirectly is government establishing a state religion when it insists upon such training. Instruction in military science, unaccompanied here by any pledge of military service, is not an interference by the state with the free exercise of religion when the liberties of the constitution are read in the light of a century and a half of history during days of peace and war. * * *

"Manifestly a different doctrine would carry us to lengths that have never yet been dreamed of. The conscientious objector, if his liberties were to be thus extended, might refuse to contribute taxes in furtherance of a war, whether for attack or for defense, or in furtherance of any other end, condemned by his conscience as irreligious or immoral. The right of private judgment has never yet been so exalted above the powers and the compulsion of the agencies of government. One who is a martyr to a principle— which may turn out in the end to be a delusion or an error—does not prove by his martyrdom that he has kept within the law."

We are not unmindful of the decision of the United States Federal Supreme Court on similar set of facts. In the case of *Minersville School District vs. Gobitis*, 310 U.S. 586, 84 L. ed. 1375, two Jehovah Witnesses children were expelled from the public school of Minersville for refusing to salute the national flag in accordance with the regulations promulgated by the school board for the daily flag ceremony. Their father Gobitis on behalf of his two children and in his own behalf brought suit to enjoin the school authorities from continuing to exact the execution of the flag ceremony as a condition of his children's admittance in school. After trial, the District Court gave him relief and this decree was affirmed by the Circuit Court of Appeals. On appeal to the Federal Supreme Court, the decrees of both the District Court and the Circuit Court of Appeals were reversed with the lone dissent of Chief Justice Stone, on the ground that the requirement of participation of all pupils in the public schools in the flag ceremony did not infringe the due process law and liberty guaranteed by the Constitution, particularly the one referring to religious freedom and belief. Three years later, that is, on June 14, 1943, the ruling laid down the *Minersville School District vs. Gobitis* case, was the case of *West Virginia State Board of Education vs. Barnette*, 319 U.S. 624-671 reversed by a sharply divided court, the majority opinion being penned by Mr. Justice Jackson in which Justices Black, Douglas and Murphy concurred; while Mr. Justice Frankfurter who wrote the opinion in the *Gobitis* case, filed a long dissenting opinion, and Justices Roberts and Reed adhered to the views expressed in the *Gobitis* case.

Neither attempting to justify the ruling laid down in the *Minersville vs. Gobitis* case nor desiring to criticize the doctrine of the *West Virginia vs. Barnette* case, frankly, we are more inclined to favor the former as more in keeping with the spirit of our Constitution and the government policy as laid down in Republic Act No. 1265 entitled "An Act Making Flag Ceremony Compulsory In All Educational Institutions".

We cannot help thinking that one reason that may have possibly influenced the decision in the *West Virginia State Board of Education vs. Barnette* case, was that the children involved in said case and their parents found themselves in a serious dilemma for refusing to salute the flag as required by the regulations of the School Board.

They were expelled by the School Board and their absence was considered unlawful and because of the law of compulsory school attendance of all children of school age, they were considered as truants and the school officials threatened to send them to reformatories maintained for criminally inclined juveniles. Parents of such children have been prosecuted or were threatened with prosecution for cause such as alleged delinquency and if convicted, were subject to fine not exceeding \$50.00 and a jail term not Exceeding 30 days. That is why in the majority opinion it was stated:

"* * *. The sole conflict is between authority and rights of the individual. The state asserts power to condition access to public education on making a prescribed sign and profession and at the same time to coerce attendance by punishing both parent and child.

Such a grave and embarrassing situation, however, does not obtain in the Philippines. True, we have a law (Republic Act 896) requiring compulsory enrollment of children of school age, but said law contains so many exceptions and exemptions that it can be said that a child of school** age is very seldom compelled to attend school, let alone the fact that almost invariably, there is school crisis every** year wherein the pupils applying for admission in public schools could not be accommodated, and what is equally important is that there is no punishment or penal sanction either for the pupil who fail to attend school or is expelled for failure to comply with school regulations such as the compulsory flag salute ceremony, or his parents.

In the case of *re Summers*, 325 U.S. 561-578, decided on June 11, 1945, that is, two years after the decision in the case of *West Virginia*, the Supreme Court of the United States affirmed a decision of the Illinois Supreme Court refusing admission of petitioner Clyde Wilson Summers to the Illinois Bar. Summers had complied with all the prerequisites to admission to the Bar of that state, but he was a conscientious objector who did not believe in the

use of force or war because of his religious belief. He described this attitude of his as follows:

"The so-called 'misconduct' for which petitioner could be reproached for is his taking the New Testament too seriously. Instead of merely reading or preaching the Sermon on the Mount, he tries to practice it. The only fault of the petitioner consists in his attempt to act as a good Christian in accordance with his interpretation of the Bible, and according to the dictates of his conscience. We respectfully submit that the profession of law does not shut its gates to persons who have qualified in all other respects even when they follow in the footsteps of that Great Teacher of mankind who delivered the Sermon on the Mount. We respectfully submit that under our Constitutional guarantees even good Christians who have met all the requirements for the admission to the bar may be admitted to practice law"

The Constitution of Illinois required service in the militia in time of war of men of petitioner's age group. The Federal Supreme Court defined the position of Summers as a conscientious objector in the following words:

"* * * without; detailing petitioner's testimony before the Committee or his subsequent statements in the record, his position may be compendiously stated as one of non-violence. Petitioner will not serve in the armed forces. While he recognizes a difference between the military and police forces, he would not act in the latter to coerce threatened violations. Petitioner would not use force to meet aggression against himself or his family, no matter how aggravated or whether or not carrying a danger of bodily harm to himself or others. He is a believer in passive resistance. We need to consider only his attitude toward service in the armed forces.

It was not denied that Summers was unwilling to serve in the militia of Illinois because of his religious belief. In affirming the decision of the Illinois Supreme Court excluding Summers from the practice of law in that state, the Federal Supreme Court held that the action of the State Supreme Court did not violate the principle of religious freedom contained in the Constitution.

If a man lived, say on an island, alone and all by himself without neighbors, he would normally have complete and absolute rights as to the way he lives, his religion, including the manners he practices his religious beliefs. There would be no laws to obey, no rules and regulations to follow. He would be subject only to Nature's physical laws. But man is gregarious by nature and instinct and he gravitates toward community life, to receive and enjoy the benefits of society and of social and political organization. The moment he does this and he becomes a member of a community or nation, he has to give up some of his rights for the benefit of his fellow citizens and for the general welfare, just as his fellow men and companions also agree to a limitation of their rights in his favor. So, with his religion. He may retain his freedom or religious belief, but as to practising the same, he would have to give up some of those practices repugnant to the general welfare and subordinate them to the laws and sovereignty of the State. In other words, the practice of religion or religious belief is subject to reasonable and non-discriminatory laws and regulations by the state.

In the case of *Prince vs. Commonwealth of Massachusetts*, 88 L. ed. 645, the United States Supreme Court affirmed a decision convicting Sarah Prince of a violation of the Child Labor Law of Massachusetts. Mr. Justice Rutledge who wrote the opinion tersely described the case thus:

"The case brings for review another episode in the conflict between Jehovah's Witnesses and state authority. This time Sarah Prince appeals from convictions for violating Massachusetts' child labor laws, by acts said to be a rightful exercise of her religious convictions.

"When the offenses were committed she was the aunt and custodian of Betty M. Simmons, a girl nine years of age." * * * (italics supplied)

The defendant in this case allowed Betty, under her legal custody who was at the same time her niece, to distribute religious pamphlets intended to propagate the religion of Jehovah Witness. The question involved was

whether or not the law in question contravened the Fourteenth Amendment by denying appellant freedom of religion and denying to her the equal protection of the law. Defendant claimed that the child was exercising her God given right and her constitutional right to preach the gospel and that no preacher of God's commands should be interfered with. She rested her case squarely on freedom of religion. In affirming the judgment of conviction and upholding the law as against the claim of religion and the exercise of religious belief, the court said:

"* * *. And neither rights of religion nor rights of parenthood are beyond limitation. Acting to guard the general interest in youth's well-being, the state as *parens patriae* may restrict the parent's control by requiring school attendance, regulating or prohibiting the child's labor, and in many other ways. Its authority is not merely because the parent grounds his claim to control the course of conduct on religion or conscience. Thus, he cannot claim freedom from compulsory vaccination for the child more than for himself on religious grounds. The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death. * * * It is too late now to doubt that legislation appropriately designed to reach such evils is within the state's police power, whether against the parent's claim to control of the child or one that religious scruples dictate contrary action."

Incidentally, it must be noted that this case was decided after that of *West Virginia vs. Barnette*, *supra*.

In requiring school pupils to participate in the flag salute, the State thru the Secretary of Education was not imposing a religion or religious belief or a religious test on said students. It was merely enforcing a non-discriminatory school regulation applicable to all alike whether Christian, Moslem, Protestant or Jehovah's Witness. The State was merely carrying out the duty imposed upon it by the Constitution which charges it with supervision over and regulation of all educational institutions, to establish and maintain a complete and adequate system of public education, and see to it that all schools aim to develop among other things, civic conscience and teach the duties of citizenship. (Art. XIV, section 5 of the Constitution). It does nothing more than try to inculcate in the minds of the school population during the formative period of their life, love of country and love of the flag, all of which make for united and patriotic citizenry, so that later in after years they may be ready and willing to serve, fight, even die for it. It is well known that whatever is taught to the youth during this period, such as love of God, of parents, respect for elders, love of the truth, loyalty, honoring one's word and respecting the rights of other, becomes a habit or second nature that will remain with them always. School children of kingdoms and empires are taught early to respect and love the king or the emperor for these rulers and sovereigns symbolize the nation, and the children as future citizens or subjects will come to love their country.

Petitioners do not question the right of public schools, to conduct the flag salute ceremony regularly but they do "question the attempt to compel conscientious objectors guided by the word of God to salute the flag or participate in the ceremony to specific commandment of Jehovah God. It is perfectly proper and lawful for one not bound by a covenant with Jehovah to salute the flag when that person desires to salute it. It is entirely wrong to interfere with that right or prevent such one from saluting the flag. Conversely, it is also true that it is wrong and illegal to compel one who, for conscience' sake, cannot participate in the ceremony." (p. 85, Appellant's Brief)

The trouble with exempting petitioners from participation in the flag ceremony aside from the fact that they have no valid right to such exemption is that the latter would disrupt school discipline and demoralize the rest of the school population which by far constitutes the great majority. If the children of Jehovah Witnesses are exempted, then the other pupils, especially the young ones seeing no reason for such exemption, would naturally ask for the same privilege because they might want to do something else such as play or study, instead of standing at attention saluting the flag and singing the national anthem and reciting the patriotic pledge, all of which consume considerable time; and if to avoid odious discrimination this exemption is extended to others, then the flag ceremony would soon be a thing of the past or perhaps conducted with very few participants, and the time will come when we would have citizens untaught and uninculcated in and not imbued with reverence for the flag and

love of country, admiration for national heroes, and patriotism—a pathetic, even tragic situation, and all because a small portion of the school population imposed its will, demanded and was granted an exemption. In a way that might be regarded as tyranny of the minority, and a small minority at that.

In a few cases, such exemptions in a limited way have been afforded members of a religious group. Conscientious objectors in the United States who because of their religion were unwilling to serve in the war particularly as regards actual fighting or field duty, were allowed to do some work in relation to the war, but not involving combat duty or the use of force. But that was by special legislation. If that is possible here as regards exemption from participation in the flag ceremony, then petitioners would have to look to the Legislature, not the courts for relief.

The freedom of religious belief guaranteed by the Constitution does not and cannot mean exemption from or non-compliance with reasonable and non-discriminatory laws, rules and regulations promulgated by competent authority. As was said by Mr. Justice Frankfurter in his dissent in *West Virginia vs. Barnette*, supra:

"The constitutional protection of religious freedom * * * gave religious equality, not civil immunity. Its essence is freedom from conformity to religious dogma, not freedom from conformity to law because of religious dogma. Religious loyalties may be exercised without hindrance from the State, not the State may not exercise that which except by leave of religious loyalties is within the domain of temporal power. Otherwise each individual could set up his own censor against obedience to laws conscientiously deemed for the public good by those whose business it is to make laws." (*West Virginia State Board vs. Barnette*, supra, at p. 653; italics supplied)

In conclusion we find and hold that the Filipino flag is not an image that requires religious veneration; rather— it is a symbol of the Republic of the Philippines, of sovereignty, an emblem of freedom, liberty and national unity; that the flag salute is not a religious ceremony but an act and profession of love and allegiance and pledge of loyalty to the fatherland which the flag stands for; that by authority of the legislature, the Secretary of Education was duly authorized to promulgate Department Order No. 8, series of 1955; that the requirement of observance of the flag ceremony or salute provided for in said Department Order No. 8, does not violate the Constitutional provision about freedom of religion and exercise of religion; that compliance with the non-discriminatory and reasonable rules and regulations and school discipline, including observance of the flag ceremony is a prerequisite to attendance in public schools; and that for failure and refusal to participate in the flag ceremony, petitioners were properly excluded and dismissed from the public school they were attending.

In view of the foregoing, the appealed decision is affirmed.

The writ of preliminary injunction heretofore issued is ordered dissolved. No costs.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, and Endencia, JJ., concur.

CONCURRING

BARRERA.:

I am in substantial accord with the well-thought and well-expressed opinion of Mr. Justice Montemayor.

As much reliance has been placed by appellants on the *Barnette* case decided by the Supreme Court of the United States (*West Virginia State Board of Education vs. Barnette*, 319 U.S. 624, 87 L. ed. 1628), two fundamental features distinguishing that case from the one before us, bear some stressing.

The underlying and, I believe, compelling consideration that impelled the majority in the *Barnette* case to overrule

the Gobitis decision (*Minersville School District vs. Gobitis*, 310 U. S. 586, 84 L. ed 1375) was the compulsory nature of the order of the State Board of Education making non-compliance therewith virtually unlawful in the sense that under the West Virginia Code, upon expulsion of the disobeying pupil, his parents or guardian become liable to criminal prosecution^[1] for such absence due to expulsion and if convicted are subjected to fine not exceeding \$50 and jail term not exceeding thirty days.^[2] The delinquent pupil may be proceeded against and sent to reformatories maintained for criminally inclined juveniles.^[3] Hence, the Court treated the case as one where "the sole conflict is between authority and rights of the individual. The State asserts power to condition access to public education on making a prescribed sign and profession, and at the same time to coerce attendance (in school) by punishing both parent and -child". As thus presented, really the conflict there between authority and liberty became deeply sharpened and has attained the proportion of repugnance to a degree that left no choice to the Court except to apply the rationale of the grave-and-imminent-danger rule and to enjoin, under the circumstances, the enforcement of the West Virginia School Regulation.

Fortunately the problem the instant case presents to us is unaccompanied by such dire consequences. Non-compliance with our prescribed flag ceremony does not result in criminal prosecution either of the pupil or of the parent. AU that the unwilling pupil suffers is inability to continue his studies in a public school. If this and nothing else is the consequence, as it presently appears to be the complaint of appellants in this, case, then I perceive no clear offense is done to the Constitution.

One other significant distinction between the *Barnette* case and the one before us is the substantial difference in the manner the flag salute is to be executed, under the two laws, and of course, the varying reaction and attitude taken by the Jehovah's Witnesses in relation thereto. In West Virginia, the law requires the "stiff-arm" salute, the saluter to keep the right hand raised with palm turned up while the following is repeated: "I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands; one Nation, indivisible with liberty and justice for all". The Jehovah's Witnesses considered this posture of raising the hand at the same time reciting the pledge as an act of obeisance contrary to their religious beliefs. Here, what is required of all persons present during the flag ceremony is to stand at attention while the flag is being raised and the National Anthem is being played or sung. Boys and men with hats shall place the hat over the heart. Those without hats may stand with their arms and hands down and straight at the sides. Those in military or Boy Scout uniform shall give the salute prescribed by their regulations. Appellants here have manifested through counsel, both in their brief and, I understand, in the course of the oral argument, that they do not object to this requirement of standing at attention with their arms and hands down and straight at the sides. Consequently, there seems to be no irreconcilable fundamental conflict, except perhaps as regards the singing of the National Anthem and the recital (unaccompanied by any particular physical position) of the patriotic pledge near the close of the ceremony. As to the import of the National Anthem and the Patriotic Pledge, I can add nothing to the very sober and well-considered opinion of Justice Montemayor.

As I see the issue, disentangled as it should and could be from the stress and strain of counsels' doctrinal discussion and argumentation on the fundamentals of the freedom of religion about which there could be no serious disagreement, and if viewed and interpreted rationally—in a spirit of harmony, goodwill and in keeping with an appropriate sense of nationalism—I find no reasonable consideration making the flag ceremony executed in the manner prescribed by the questioned Department order and regulation, clearly repugnant to the Constitution.

[1] Section 1851 (1) West Virginia Code.

[2] Section 1847. 1851, *Idem*.

[3] Section 4904 (4), Idem.

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