

ROEL EBRALINAG, EMILY EBRALINAG, REPRESENTED BY THEIR PARENTS, MR. & MRS. LEONARDO EBRALINAG, JUSTINIANA TANTOG, REPRESENTED BY HER FATHER, AMOS TANTOG, JEMIL OYAO & JOEL OYAO, ...

G.R. No. 95770. December 29, 1995

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

The State moves for a reconsideration of our decision dated March 1, 1993 granting private respondents' petition for certiorari and prohibition and annulling the expulsion orders issued by the public respondents therein on the ground that the said decision created an exemption in favor of the members of the religious sect, the Jehovah's Witnesses, in violation of the "Establishment Clause" of the Constitution. The Solicitor General, on behalf of the public respondent, furthermore contends that:

The accommodation by this Honorable Court to a demand for special treatment in favor of a minority sect even on the basis of a claim of religious freedom may be criticized as granting preference to the religious beliefs of said sect in violation of the "non-establishment guarantee" provision of the Constitution. Surely, the decision of the Court constitutes a special favor which immunizes religious believers such as Jehovah's Witnesses to the law and the DECS rules and regulations by interposing the claim that the conduct required by law and the rules and regulation (sic) are violative of their religious beliefs. The decision therefore is susceptible to the very criticism that the grant of exemption is a violation of the "non-establishment" provision of the Constitution.

Furthermore, to grant an exemption to a specific religious minority poses a risk of collision course with the "equal protection of the laws" clause in respect of the non--exempt, and, in public schools, a collision course with the "non-establishment guarantee."

Additionally the public respondent insists that this Court adopt a "neutral stance" by reverting to its holding in *Gerona* declaring the flag as being devoid of any religious significance. He stresses that the issue here is not curtailment of religious belief but regulation of the exercise of religious belief. Finally, he maintains that the State's interests in the case at bench are constitutional and legal obligations to implement the law and the constitutional mandate to inculcate in the youth patriotism and nationalism and to encourage their involvement in public and civic affairs, referring to the test devised by the United States Supreme Court in *U.S. vs. O'Brien*.^[1]

II

All the petitioners in the original case^[2] were minor schoolchildren, and members of the sect, Jehovah's Witnesses (assisted by their parents) who were expelled from their classes by various public school authorities in Cebu for refusing to salute the flag, sing the national anthem and recite the patriotic pledge as required by Republic Act No. 1265 of July 11, 1955 and by Department Order No. 8, dated July 21, 1955 issued by the Department of Education. Aimed primarily at private educational institutions which did not observe the flag

ceremony exercises, Republic Act No. 1265 penalizes all educational institutions for failure or refusal to observe the flag ceremony with public censure on first offense and cancellation of the recognition or permit on second offense.

The implementing regulations issued by the Department of Education thereafter detailed the manner of observance of the same. Immediately pursuant to these orders, school officials in Masbate expelled children belonging to the sect of the Jehovah's Witnesses from school for failing or refusing to comply with the flag ceremony requirement. Sustaining these expulsion orders, this Court in the 1959 case of *Gerona vs. Secretary of Education*[3] held that:

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. xxx.

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.

Upholding religious freedom as a fundamental right deserving the "highest priority and amplest protection among human rights," this Court, in *Ebralinag vs Division Superintendent of Schools of Cebu*[4] re--examined our over two decades-old decision in *Gerona* and reversed expulsion orders made by the public respondents therein as violative of both the free exercise of religion clause and the right of citizens to education under the 1987 Constitution.[5]

From our decision of March 1, 1993, the public respondents filed a motion for reconsideration on grounds hereinabove stated. After a careful study of the grounds adduced in the government's Motion For Reconsideration of our original decision, however, we find no cogent reason to disturb our earlier ruling.

The religious convictions and beliefs of the members of the religious sect, the Jehovah's Witnesses are widely known and are equally widely disseminated in numerous books, magazines, brochures and leaflets distributed by their members in their house to house distribution efforts and in many public places. Their refusal to render obeisance to any form or symbol which smacks of idolatry is based on their sincere belief in the biblical injunction found in Exodus 20:4,5, against worshipping forms or idols other than God himself. The basic assumption in their universal refusal to salute the flags of the countries in which they are found is that such a salute constitutes an act of religious devotion forbidden by God's law. This assumption, while "bizarre" to others is firmly anchored in several biblical passages.[6]

And yet, while members of Jehovah's Witnesses, on the basis of religious convictions, refuse to perform an act (or acts) which they consider proscribed by the Bible, they contend that such refusal should not be taken to indicate disrespect for the symbols of the country or evidence that they are wanting in patriotism and nationalism. They point out that as citizens, they have an excellent record as law abiding members of society even if they do not demonstrate their refusal to conform to the assailed orders by overt acts of conformity. On the contrary, they aver that they show their respect through less demonstrative methods manifesting their allegiance, by their simple obedience to the country's laws,[7] by not engaging in antigovernment activities of any kind,[8] and by paying their taxes and dues to society as self-sufficient members of the community.[9] While they refuse to salute the flag, they are willing to stand quietly and peacefully at attention, hands on their side, in order not to disrupt the ceremony or disturb those who believe differently.[10]

The religious beliefs, practices and convictions of the members of the sect as a minority are bound to be seen by others as odd and different and at divergence with the complex requirements of contemporary societies, particularly those societies which require certain practices as manifestations of loyalty and patriotic behavior. Against those who believe that coerced loyalty and unity are mere shadows of patriotism, the tendency to exact "a hydraulic insistence on conformity to majoritarian standards,"[11] is seductive to the bureaucratic mindset as a shortcut to patriotism.

No doubt, the State possesses what the Solicitor General describes as the responsibility "to inculcate in the minds of the youth the values of patriotism and nationalism and to encourage their involvement in public and civic affairs." The teaching of these values ranks at the very apex of education's "high responsibility" of shaping up the minds of the youth in those principles which would mold them into responsible and productive members of our society. However, the government's interest in molding the young into patriotic and civic spirited citizens is "not totally free from a balancing process"[12] when it intrudes into other fundamental rights such as those specifically protected by the Free Exercise Clause, the constitutional right to education and the unassailable interest of parents to guide the religious upbringing of their children in accordance with the dictates of their conscience and their sincere religious beliefs.[13] Recognizing these values, Justice Carolina Grino-Aquino, the writer of the original opinion, underscored that a generation of Filipinos which cuts its teeth on the Bill of Rights would find abhorrent the idea that one may be compelled, on pain of expulsion, to salute the flag sing the national anthem and recite the patriotic pledge during a flag ceremony.[14] "This coercion of conscience has no place in a free society".[15]

The State's contentions are therefore, unacceptable, for no less fundamental than the right to take part is the right to stand apart.[16] In the context of the instant case, the freedom of religion enshrined in the Constitution should be seen as the rule, not the exception. To view the constitutional guarantee in the manner suggested by the petitioners would be to denigrate the status of a preferred freedom and to relegate it to the level of an abstract principle devoid of any substance and meaning in the lives of those for whom the protection is addressed. As to the contention that the exemption accorded by our decision benefits a privileged few, it is enough to re-emphasize that "the constitutional protection of religious freedom terminated disabilities, it did not create new privileges. It gave religious equality, not civil immunity."[17] The essence of the free exercise clause is freedom from conformity to religious dogma, not freedom from conformity to law because of religious dogma.[18] Moreover, the suggestion implicit in the State's pleadings to the effect that the flag ceremony requirement would be equally and evenly applied to all citizens regardless of sect or religion and does not thereby discriminate against any particular sect or denomination escapes the fact that "[a] regulation, neutral on its face, may in its application, nonetheless offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion."[19]

III

The ostensible interest shown by petitioners in preserving the flag as the symbol of the nation appears to be integrally related to petitioner's disagreement with the message conveyed by the refusal of members of the Jehovah's Witness sect to salute the flag or participate actively in flag ceremonies on religious grounds.[20] Where the governmental interest clearly appears to be unrelated to the suppression of an idea, a religious doctrine or practice or an expression or form of expression, this Court will not find it difficult to sustain a regulation. However, regulations involving this area are generally held against the most exacting standards, and the zone of protection accorded by the Constitution cannot be violated, except upon a showing of a clear and present danger of a substantive evil which the state has a right to protect.[21] Stated differently, in the case of a regulation which appears to abridge a right to which the fundamental law accords high significance it is the regulation, not the act (or refusal to act), which is the exception and which requires the court's strictest scrutiny. In the case at bench, the

government has not shown that refusal to do the acts of conformity exacted by the assailed orders, which respondents point out attained legislative cachet in the Administrative Code of 1987, would pose a clear and present danger of a danger so serious and imminent, that it would prompt legitimate State intervention.

In a case involving the Flag Protection Act of 1989, the U.S. Supreme Court held that the "State's asserted interest in preserving the flag as a symbol of nationhood and national unity was an interest related to the suppression of free expression ...because the State's concern with protecting the flag's symbolic meaning is implicated only when a person's treatment of the flag communicates some message." [22] While the very concept of ordered liberty precludes this Court from allowing every individual to subjectively define his own standards on matters of conformity in which society, as a whole has important interests, the records of the case and the long history of flag salute cases abundantly supports the religious quality of the claims adduced by the members of the sect Jehovah's Witnesses. Their treatment of flag as a religious symbol is well-founded and well-documented and is based on grounds religious principle. The message conveyed by their refusal to participate in the flag ceremony is religious, shared by the entire community of Jehovah's Witnesses and is intimately related to their theocratic beliefs and convictions. The subsequent expulsion of members of the sect on the basis of the regulations assailed in the original petitions was therefore clearly directed against religious practice. It is obvious that the assailed orders and memoranda would gravely endanger the free exercise of the religious beliefs of the members of the sect and their minor children.

Furthermore, the view that the flag is not a religious but a neutral, secular symbol expresses a majoritarian view intended to stifle the expression of the belief that an act of saluting the flag might sometimes be — to some individuals — so offensive as to be worth their giving up another constitutional right - the right to education. Individuals or groups of individuals get from a symbol the meaning they put to it. [23] Compelling members of a religious sect to believe otherwise on the pain of denying minor children the right to an education is a futile and unconscionable detour towards instilling virtues of loyalty and patriotism which are best instilled and communicated by painstaking and non-coercive methods. Coerced loyalties, after all, only serve to inspire the opposite. The methods utilized to impose them breed resentment and dissent. Those who attempt to coerce uniformity of sentiment soon find out that the only path towards achieving unity is by way of suppressing dissent. [24] In the end, such attempts only find the "unanimity of the graveyard." [25]

To the extent to which members of the Jehovah's Witnesses sect assiduously pursue their belief in the flag's religious symbolic meaning, the State cannot, without thereby transgressing constitutionally protected boundaries, impose the contrary view on the pretext of sustaining a policy designed to foster the supposedly far-reaching goal of instilling patriotism among the youth. While conceding to the idea - adverted to by the Solicitor General — that certain methods of religious expression may be prohibited [26] to serve legitimate societal purposes, refusal to participate in the flag ceremony hardly constitutes a form of religious expression so offensive and noxious as to prompt legitimate State intervention. It is worth repeating that the absence of a demonstrable danger of a kind which the State is empowered to protect militates against the extreme disciplinary methods undertaken by school authorities in trying to enforce regulations designed to compel attendance in flag ceremonies. Refusal of the children to participate in the flag salute ceremony would not interfere with or deny the rights of other school children to do so. It bears repeating that their absence from the ceremony hardly constitutes a danger so grave and imminent as to warrant the state's intervention.

Finally, the respondents' insistence on the validity of the actions taken by the government on the basis of their averment that "a government regulation of expressive conduct is sufficiently justified if it is within the constitutional power of the government (and) furthers an important and substantial government interest" [27] misses the whole point of the test devised by the United States Supreme Court in *O'Brien*, cited by respondent,

because the Court therein was emphatic in stating that "the government interest (should be) unrelated to the suppression of free expression." We have already stated that the interest in regulation in the case at bench was clearly related to the suppression of an expression directly connected with the freedom of religion and that respondents have not shown to our satisfaction that the restriction was prompted by a compelling interest in public order which the state has a right to protect. Moreover, if we were to refer (as respondents did by referring to the test in O'Brien) to the standards devised by the US Supreme Court in determining the validity or extent of restrictive regulations impinging on the freedoms of the mind, then the O'Brien standard is hardly appropriate because the standard devised in O'Brien only applies if the State's regulation is not related to communicative conduct. If a relationship exists, a more demanding standard is applied.[28]

The responsibility of inculcating the values of patriotism, nationalism, good citizenship, and moral uprightness is a responsibility shared by the State with parents and other societal institutions such as religious sects and denominations. The manner in which such values are demonstrated in a plural society occurs in ways so variable that government cannot make claims to the exclusivity of its methods of inculcating patriotism so all-encompassing in scope as to leave no room for appropriate parental or religious influences. Provided that those influences do not pose a clear and present danger of a substantive evil to society and its institutions, expressions of diverse beliefs, no matter how upsetting they may seem to the majority, are the price we pay for the freedoms we enjoy.

WHEREFORE, premises considered, the instant Motion is hereby DENIED.

SO ORDERED.

Narvasa, C.J., Regalado, Davide, Jr., Romero, Bellosilo, Melo, Puno, Vitug, Francisco, and Hemosisima, Jr., JJ., concur.

Mendoza, J., see concurring opinion.

Padilla, J., reiterate my Separate Opinion in G.R. 95770 (Ebraling vs. The Division Superintended of Schools of Cebu), 1 March 1993, 219 SCRA 276.

Panganiban, J., took no part.

[1] "To this end," the motion states, "a government regulation of expressive religious conduct which debases the constitutional mandate for citizenship training is justifiable. As succinctly outlined in one U.S. case:

A government regulation of expressive conduct is sufficiently justified if it is within the Constitutional power of this government; it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression and if the incidental restriction on alleged First Amendment freedom is greater than is essential to the furtherance of that interest. (United States v O'Brien, 391 U.S. 367)"

[2] G.R. No 95770, and G.R. No. 95887 March 1, 1993, 219 SCRA 256 (1993).

[3] 106 Phil. 2(1959).

[4] Supra, note 2.

[5] Id., at 272-273 (1993).

[6] See, for e.g. Daniel 3: 1-30.

[7] Rollo, p. 8.

[8] Id.

[9] Id.

[10] Rollo, p. 10.

[11] State of Wisconsin v. Yoder 40 LW 4476 (1972)

[12] Id.

[13] Id., See also, Pierce v. Society of Sisters 268 U.S. 510, 534 (1925).

[14] Ebralinag, supra, at 270.

[15] Id., at 275, Cruz J. (Concurring).

[16] L. TRIBE, GOD SAVE THIS HONORABLE COURT: HOW THE CHOICE OF SUPREME COURT JUSTICES SHAPES OUR HISTORY, 31 (1985).

[17] See supra note 15, citing Justice Frankfurter.

[18] Id.

[19] Sherbert v. Verner, 374 U.S. 398 (1963).

[20] For instance, the Motion for Reconsideration characterizes the practices and observations of the sect as "bizarre," Rollo, p. 229, "seditious" Id., p. 240 and "anti--social" Id. (emphasis supplied). In making these points, the Motion makes this tongue-in-cheek observation: "Because of their religious conviction that they "are not part of this world, and being allegedly concerned "about the adverse effect that the world's influence can have on our children", the Jehovah's Witnesses ask that their children...be exempted from participating in almost all school activities and social function (sic) which, as they pointed out below are contrary to Bible (sic) principles. "Id. The statement, "not part of this world" was deliberately taken out of context. Here is what the paragraph from the sect's manual says:

As one might expect, this view of the future also had a significant effect on the first Christians. It caused them to be a distinctive people, separate from the world. As the historian E.G. Hardy noted in his book Christianity and the Roman Government: "The Christians were strangers and pilgrims in the world around them; their citizenship was in heaven; the kingdom to which they looked was not part of this world. The consequent want of interest in public affairs came thus from the outset to be a noticeable feature in Christianity. Annex "B", p. 7.

[21] West Virginia v. Barnette 319 US 624, at 339 (1942).

[22] U.S. v. Eichman 496 US 310,313; 110 Led 2d 287 (1990).

[23] Supra, note 4.

[24] Id., at 640.

[25] Id., at 641. "Recognizing that the right to differ is the centerpiece of our First Amendment ...a government cannot mandate by fiat a feeling of unity in its citizens. Therefore, that very same government cannot carve out a symbol of unity and prescribe a set of approved messages to be associated with that symbol when it cannot mandate the status or feeling the symbol purports to represent." See, Texas v Johnson, 491 US 397 at 400 (1989).

[26] Raising the "Children of God" caper, the Solicitor General's brief states:

How about the Children of God, also known as Future Visions of Family which engages in free love and sex sharing among its members by way of obedience to the biblical injunction "to love your neighbor and love

yourself" as interpreted by its founder, Moses David Berg, through his writings entitled "The Law of Love" and "Growing in Faith." Despite the crusades of Cardinal Sin and the Aquino government, this self-styled sex cult has gain (sic) foothold and spread in numbers in this country, offering free sex, cutely termed as "flirty fishing to win people for the Lord." Will this Honorable Court also recognize and allow their communal free love and sex orgies to continue unabated as part of their religious belief and protected by their constitutional right of freedom of religion, thereby sideswiping the present Government's program to prevent the spread of venereal diseases and the dreaded AIDS through the use of condoms?" Rollo, p. 245.

[27] Supra, note 1.

[28] Referring to the test devised in O'Brien the U.S. Supreme Court in *Texas v. Johnson*, supra, held: "We must first determine whether Johnson's burning of the flag constituted expressive conduct permitting him to invoke the First Amendment in challenging his conviction. If his conduct was expressive, we next decide whether the State's regulation is related to the suppression of free expression. If the state's regulation is not related to expression, then the less stringent standard we announced in *United States vs O'Brien* for regulations of noncommunicative conduct controls. If it is then we are outside O'Brien's test, and we must ask whether this interest justifies Johnson's conviction under a more demanding standard. Id, at 403.

CONCURRING OPINION

MENDOZA, J.:

The value of the national flag as a symbol of national unity is not in question in this case. The issue rather is whether it is permissible to compel children in the Nation's schools to salute the flag as a means of promoting nationhood considering that their refusal to do so is grounded on a religious belief.

Compulsory flag salute lies in a continuum, at one end of which is the obligation to pay taxes and, at the other, a compulsion to bow down before a graven image. Members of a religious sect cannot refuse to pay taxes,[1] render military service,[2] submit to vaccination[3] or give their children elementary school education[4] on the ground of conscience. But public school children may not be compelled to attend religious instructions[5] or recite prayers or join in bible reading before the opening of classes in such schools.[6]

In determining the validity of compulsory flag salute, we must determine which of these polar principles exerts a greater pull. The imposition of taxes is justified because, unless support for the government can be exacted, the existence of the State itself may well be endangered. The compulsory vaccination of children is justified because unless the State can compel compliance with vaccination program there is danger that a disease will spread. But unlike the refusal to pay taxes or to submit to compulsory vaccination, the refusal to salute the flag threatens no such dire consequences to the life or health of the State. Consequently, there is no compelling reason for resorting to compulsion or coercion to achieve the purpose for which flag salute is instituted.

Indeed schools are not like army camps where the value of discipline justifies requiring a salute to the flag. Schools are places where diversity and spontaneity are valued as much as personal discipline is. They are places for the nurturing of ideals and values, not through compulsion or coercion but through persuasion, because thought control is a negation of the very values which the educational system seeks to promote. Persuasion and not persecution is the means for winning the allegiance of free men. That is why the Constitution provides that the development of moral character and the cultivation of civic spirit are to be pursued through education that includes a study of the Constitution, an appreciation of the role of national heroes in historical development, teaching the rights and duties of citizenship and, at the option of parents and guardians, religious instruction to be

taught by instructors designated by religious authorities of the religion to which they belong. It is noteworthy that while the Constitution provides for the national flag,[7] it does not give the State the power to compel a salute to the flag.

On the other hand, compelling flag salute cannot be likened to compelling members of a religious sect to bow down before a graven image. The flag is not an image but a secular symbol. To regard it otherwise because a religious minority regards it so would be to put in question many regulations that the State may constitutionally enact or measures which it may adopt to promote civic virtues which the Constitution itself enjoins the State to promote.[8]

It trivializes great principles to assimilate compulsory flag salute to a form of command to worship strange idols not only because the flag is not a religious symbol but also because the salute required involves nothing more than standing at attention or placing one's right hand over the right breast as the National Anthem is played and of raising the right hand as the following pledge is recited:

Ako'y nanunumpang magtatapat sa watawat ng Pilipinas at sa Republikang kanyang kinakatawan — isang bansang nasa kalinga ng Dios buo at hindi mahahati, na may kalayaan at katarungan para sa lahat.

(I pledge allegiance to the flag and to the nation for which it stands — one nation under God indivisible, with liberty and justice for all.)

In sum compulsory flag salute violates the Constitution not because the aim of the exercise is doubtful but because the means employed for accomplishing it is not permitted. Legitimate ends cannot be pursued by methods which violate fundamental freedoms when the ends may be achieved by rational ones.

For this reason I join in holding that compulsory flag salute is unconstitutional.

[1] United States v. Lee, 455 U.S. 25 (1982).

[2] Gillette v. United States, 401 U.S. 437 (1971); Hamilton v. Regents of the University of California, 293 U.S. 245 (1934). Cf. People v. Lagman and People v. Sosa, 66 Phil. 13 (1938).

[3] Jacobson v. Massachusetts, 197 U.S. 11 (1904); People v. Abad Lopez, 62 Phil. 835 (1936); Lorenzo v. Director, 50 Phil. 595 (1927).

[4] Wisconsin v. Yoder, 406 U.S. 205 (1972). PHIL. CONST., Art. XIV, S2(2) provides that "elementary education is compulsory for all children of school age."

[5] Art. XIV, §3(3) only provides "for optional religious instruction on public elementary and high education is compulsory for all children of school age."

[6] Engel v. Vitale, 307 U.S. 421 (1962); Abington School Dist. v. Schempp, 374 U.S. 203 (1963); cf. Wallace v. Jaffree, 472 U.S. 38 (1985).

[7] CONST., Art. XVI, §1.

[8] See Art. II, §13; Art. XIV, §3 (2).

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