

Jehovah's Witnesses—Separate from State?

Jacob Valdez

Professor B. Kuykendall

Govt 2305

29 April 2018

Jehovah's Witnesses—Separate from State?

The separation of church and state was an inevitable product of progress. Long before Europeans ever explored America, the dilemmas confronting religion's influence in politics and vice versa manifest themselves. Because of their refusal to pinch grains of salt before the Roman emperor in worship, numerous early Christians were murdered at the hands of non-Christian rulers. (McAninch 2021) Later in 'holy wars', Christians likewise encouraged indiscriminate slaughter of non-Christians as one religion boasted over another its superiority. (Jacoby 21) The opium of the people blinded men on both sides as they marched for their state. Religion was not simply a matter of belief; it was the subject of sovereignty.

Separating church and the state was inconceivable. If religion parted from it, how would the State align its citizens? To be sure, diminishing established church might have afforded the State greater freedom, but in an unenlightened world, the two were often too finely intertwined to separate. In Colonial America, a unique spirit of independence kindled that unified many to not only obey, but even fight for their own government. The spirit of patriotism urged Americans on to fight and win sovereignty from Britain.

Shortly afterward, that spirit of patriotism replaced God in the governing document of the United States. Rather than acknowledging sovereignty from any deity, the Founders stated it would originate from the consent of the governed. (Jacoby 21) "[T]hey established 'the first secular government that was ever founded in this world' . . .

They knew that to put God in the Constitution was to put man out.” Yes, the Constitution separated church and state.

Amended into the document that introduced separation of church and state, soon came the First Amendment which spelled out the manner of that separation: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” (“Constitution”, Amendment 1) In doing so, it penned the Free Exercise Clause and the Establishment Clause.

Free exercise of religion is a natural right as the First Amendment dictates: “Congress shall make no law respecting . . . religion . . . prohibiting the free exercise thereof”. (“Constitution”, Amendment 1) Obviously, such free exercise of religion could not hinder another’s freedom. The First Amendment proponents “intended that all should have the right to worship, or not to worship . . . They wished to preserve the individuality and liberty of all”. (Jacoby 21)

In addition to giving citizens bounded freedom of religion, separation of church and state checks government power. (Greenhouse 502) That “Congress shall make no law respecting an establishment of religion. . .” clearly shows that it may not deprive one’s self-determination in matter of religion. (“Constitution”, Amendment 1) The writers of the First Amendment clearly understood that “laws should make no distinction on account of creed’ (Jacoby 21) “They knew the terrible history of the church too well to place in her keeping, or in the keeping of her God, the sacred rights of man . . . to prevent the few from governing the many, and the many from persecuting and destroying the few.” (Jacoby 21)

Essentially then, the separation of church and state unified Americans by permitting differences. A citizen became free to believe whatsoever he or she desired so long as the State was rendered its due of obedience to law. This previously radical concept now found its incorporation in America as a result of being “a necessary condition of progress.” (Jacoby 22)

In place of religion, the State became a source of moral authority to citizens. Morals set would naturally promote the State’s interests such as obedience and economic involvement. The centuries following the Revolution saw greater emphasis placed on one’s economic standing as opposed to adherence to traditional moral values. (Greenhouse 501) One became more routinely identified in terms of economic standing. (498) While citizens receive a sense of accomplishment in personal economic development, more importantly, the State gains in its economy growth. In addition, outcasting religion from the State redirected reverential fear from a deity toward the State. Thus, separating religion vested more power into the State becoming “both the source of federal power (through representative government) and the foundation of its moral authority.” (Greenhouse 493)

In fact, the very phrase ‘good citizen’ demonstrates that citizenship calls for meeting not just any kind of objectives but those of moral nature when contributing to government. However, could one remain a good citizen while sincerely held religion demanded refraining from patriotic practices? The record of Jehovah’s Witnesses indicates so.

The organization now known as Jehovah's Witnesses was previously referred to as the Bible Students. (Jehovah's Witnesses 149, 157) For nearly 40 years approaching World War One, the Bible Students had been prophesying a time of unprecedented trouble would begin in 1914. (McAninch 1006; Jehovah's Witnesses 60, 61) That year, an assassination, alliances, and animosity plunged the world into war.

In July 1917, the Bible Students published *The Finished Mystery*, a Bible study aid that exposed ties between churches and states in statements such as:

“As a class, according to the scriptures, the clergymen are the most reprehensible men on earth for the great war that is now afflicting mankind. For 1,500 years they have taught the people the satanic doctrine of the divine right of kings to rule. They have mixed politics and religion, church and state . . . Ambitious kings of Europe armed for war, because they desired to grab the territory of other peoples; and the clergy patted them on the back and said: ‘Go to it, you can do no wrong; whatsoever you do is all right.’” (Jehovah's Witnesses 648)

European clergy, however, were not the only ones encouraging their nations to go to war. While much of *The Finished Mystery* had been written while the United States was uninvolved, by July 1917, American clergy were also directing their flock to the fight. (Jehovah's Witnesses 647) Edged on by anger, some American clergy sought to extinguish such blatant denunciations. (649-650) Soon they found a pretext to do just that in the very book that infuriated them. One paragraph read:

“Nowhere in the New Testament is Patriotism (a narrowminded hatred of other peoples) encouraged. Everywhere and always murder in its every form is forbidden; and yet, under the guise of Patriotism the civil governments of earth demand of peace-loving men the sacrifice of themselves and their loved ones and the butchery of their fellows, and hail it as a duty demanded by the laws of heaven.” (McAninch 1008)

Just as the Separation doctrine refused to acknowledge any one religion as superior to another, so the Bible Students did not want to exalt any nation above another by taking sides in war. (Rutherford 272) They would rather die at the hands of those who were not Bible Students—even from their own nation—than kill their brothers. (Jehovah’s Witnesses 648) The majority of Bible Students, then, conscientiously objected to military service. (650)

Draft board committees were not able to read the conscience, though. While the Bible Students’ legal cooperation did help a few gain conscientious objector status, most did not. (McAninch 1007) Many young Bible Student men would write to Joseph Rutherford, the Bible Student taking the lead at that time, who would reply: “If you cannot conscientiously engage in war, Section 3 of the Selective Draft Act makes provision for you to file application for exemption”. (Macmillan 86)

In conscientiously objecting to military service, the Bible Students were not trying to establish any state church. They were simply trying to practice sincerely held beliefs. However, the United States did not feel conscientious objection should be considered free exercise. Many draft-population Bible Students were sent to an army

camp in Long Island, New York (Macmillan 87) There, General James Franklin Bell oversaw Camp Upton and tried to persuade the Bible Students to take up arms. (88) On one occasion, he even personally asked Rutherford to tell the young men to serve overseas. How that is bad. However, Rutherford refused, explaining that every person is their own moral agent. Rutherford simply explained to those who had written letters to him asking for help how they might do what they felt right, but he did not decide such personal matters for anyone.

Later Rutherford visited General Bell at Camp Upton. There Bell revealed that a large number of clergymen had recently convened in Philadelphia (Macmillan 87) Angered by their negative portrayal in *The Finished Mystery*, the clergymen wanted to silence the Bible Students. “They selected John Lord O'Brien of the Department of Justice to introduce a bill to have all cases against the Espionage Law tried on court martial with the death penalty imposed as punishment” (Macmillan 87)

The Espionage Law was designed to criminalize “false statements that would impede the success of United States military forces, causing insubordination, disloyalty or mutiny within the military, and obstructing the draft.” (McAninch 1008) However, it only made “false” statements criminal. As passed by the Senate, the Espionage Law included an amendment by Senator France who believed “nothing in this act shall be construed as limiting the liberty or impairing the right of any individual to publish or speak what is true with good motives, and for justifiable ends.” (1008-1009) The Espionage Law, therefore, did not criminalize honest criticism of government.

However, the clergy's delegate, Lord O'Brien, argued the need to amend France's Amendment out of the Espionage Act. (McAninch 1009) He openly presented his intention of silencing the Bible Students, for leaving them unchecked, he felt would allow discredit to foster toward the war effort and encourage draft resistance. O'Brien maintained that the death penalty was the only suitable punishment for "the most dangerous type of propaganda used in this country [. . .] religious pacifism: i.e., opposition to the war on the ground that it is opposed to the Word of God [. . .] the Bible"

O'Brien was not alone. To one of his supporters, General Howe, he wrote: "One of the most dangerous examples of this sort of propaganda is the book called *The Finished Mystery*, a work written in extremely religious language and distributed in enormous numbers [(some 850,000 copies)]." (McAninch 1008, 1009) On May 4, 1918, the Senate accepted O'Brien's proposal to remove Senator France's amendment from the Espionage Act. No longer could one proclaim "what is true, with good motives and for justifiable ends" such as sincere religious beliefs without fear of persecution. (Macmillan 88) This Act became a powerful weapon in the hands of opposers to frame the witnesses as criminals.

However, the Bible Students were not alone either. While conscientious objection became criminal, the death penalty on court martial was not passed. When Rutherford visited General Bell at Camp Upton, after explaining all the effort they spent to silence the Bible Students, General Bell said: "That bill [death penalty] did not pass, because

Wilson prevented it; but we know how to get you, and we are going to do it!” (Macmillan 88)

In shockingly blatant statements, the state revealed just how partial it had become. Hardly would one consider the efforts of government officials at silencing the Bible Students to be free exercise of religion. While such free exercise is properly restrained when it threatens national security, the Bible Students were not anarchists. *The Finished Mystery* encouraged Bible Students to be obedient to the government until asked to disobey what they believed was God’s will. (Jehovah’s Witnesses 648) As a testimony to this:

“When it had been learned that the government objected to the book, [. . .] Rutherford had immediately sent a telegram to the printer to stop producing it, and at the same time, a representative of the Society had been dispatched to the intelligence section of the U.S. Army to find out what their objection was. When it was learned that because of the war then in progress, pages 247-53 of the book were viewed as objectionable, the Society [Bible Students legal corporation] directed that those pages be cut out of all copies of the book before they were offered to the public. And when the government notified district attorneys that further distribution would be a violation of the Espionage Act (although the government declined to express an opinion to the Society on the book in its altered form), the Society directed that all public distribution of the book be suspended.” (Jehovah’s Witnesses 652)

Even when sent to prison, the Bible Students still remained peaceful. (Macmillan 102-104) Yes, they had the right to free exercise of their religion, but instead the church and state were working hand in glove to reestablish national religious standards. The Bible Students were heartlessly denied free exercise of religion by church and state alike, and that opposition continued.

One reverend incited authorities to arrest Bible students stating: “One of your patriotic duties that confronts you [. . .] is the suppression of International Bible Students Association.” (Jehovah’s Witnesses 649-650) On May 8, 1918, all eight officers of Watchtower Bible and Tract Society arrested (Macmillan 90) While released on bail, the Witnesses learned of scope of their persecution. One of those arrested recalls hearing: “[I]t isn’t just one organization that is active against you. There is a definite campaign to stop your work.” (Macmillan 91)

On June 3, four criminal charges were brought against Rutherford and seven other Bible Student officers. (Macmillan 90) The first two were for conspiring to “cause insubordination in the military” and “obstruct the recruiting service”. The latter actually asserted they had attempted to “cause insubordination in the military” and be “obstructing the recruiting service.” (McAninch 1010) Soon before the trial began, though, the Bible Students learned their judge would be Judge Garvin. They felt he was biased so asked for another judge. However, the next judge was Judge Howe. (McAninch 1011) They did not know that he was the same one who shared O’Brien’s sentiments that *The Finished Mystery* was a “most dangerous example . . . of propaganda” (Macmillan 92)

This time the Rutherford and the others did not have enough time to ask for another judge.

The prosecution of Rutherford and the other seven Bible Student officers was biased from its root. Before beginning, Judge Howe told the attorneys “I’m going to give these defendants all that is coming to them.” (Macmillan 92) He clearly did not separate church in the state laying down his partial ruling. Even though acknowledging that “the book was written before the United States entered the war and before the Selective Draft Act and Espionage Law had been passed, so no intent to interfere with these laws could be shown in the writing of the book”, “the Government contended that The Finished Mystery was written and published designedly to hinder the United States in raising an army and prosecuting the war”. (Macmillan 92, 95)

Found guilty of conspiring and attempting to violate the Espionage Act, seven of the officers received an 80 year sentence; the eighth was given 40 years. (McAninch 1010) Why were these men given a sentence four times longer than that of the instigator of World War I? (Jehovah’s Witnesses 652) Judge Howe stated: “The religious propaganda in which these men are engaged is more harmful than a division of German soldiers [1,200 men]. They have not only called in question the law officers of the Government and the army intelligence bureau but have denounced all the ministers of all the churches. Their punishment should be severe.” (Macmillan 99)

Within a year, though, the charges were dropped. (McAninch 1012) The eight Bible Students were vindicated following *habeas corpus* found on the trial. Among other errors, Chief Justice White of the Supreme Court found that the lower court “had

exceeded its jurisdiction by punishing as a contempt an act which it had no power to so punish [. . .] the action of the court was arbitrary, beyond the limits of any discretion possessed, and violative of due process of law under the Fifth Amendment.” (Macmillan 97) For instance, the defendants did not receive “the temperate and impartial trial to which they were entitled” (McAninch 1011) “It was demonstrated that there were 130 procedural errors in that highly prejudiced trial.” (Jehovah’s Witnesses 653) While the court had charged the Witnesses with conspiracy for violating the Espionage Act, it had superficially overlooked the fact that “all the manuscript of the entire book (except a chapter on the Temple) was in the hands of the printer before the enactment of the Espionage Law; hence, it was impossible for any such conspiracy as charged to have been entered into to violate the law.” (Macmillan 98) Once the Bible Students learned of the government’s objection to the book, they stopped publishing it. (Jehovah’s Witnesses 652) The Bible students truly were innocent as one of the accused testified:

We never at any time combined, agreed or conspired to do anything whatsoever to affect the draft or interfere with the Government in the prosecution of the war, nor did we have any thought of so doing; that we never had any intention of interfering in any manner with the war; [. . .] [O]ur work was wholly religious and not at all political”. (Macmillan 98)

The fact that Rutherford remained on the Supreme Court Bar until his death 23 years later proves he and the seven others were truly exonerated. (Jehovah’s Witnesses 654) This vindication clearly identifies the separation between church and state lacking in 1918 as an impartial examination determines. The undeniable free exercise of religion

and absence of state dictation on matters of religion are apparent. More outstandingly, is the peace that Bible Students—and later Witnesses, as they came to be known—enjoyed as a result. (McAninch 1012) Rather than weakening the government, tolerating differences in non-freedom-infringing viewpoints strengthened the unity of America as it welcomed its own citizens.

Echoes of this principle remain embedded in national culture today. The Pledge of Allegiance, for instance, reads: “I pledge allegiance to . . . the United States of America . . .”. Encyclopedia Americana explains: “the flag, like the cross is sacred [. . .] The rules and regulations relative to human attitude toward national standards use strong, expressive words, as, ‘Service to the Flag,’ ‘Respect for the Flag,’ ‘Reverence for the Flag,’ ‘Behavior Towards the Flag.’” (316) It is not without reason that one finds it difficult to distinguish whether worship of deity or state is made in strong expressive words as “service”, “respect”, “reverence”, and “behavior”. In separating church and state, the Founders made America their god–dictating “the moral architecture of the U.S. state.” (Greenhouse 502)

Nevertheless, not all were willing to bow down. For instance, on October 23, 1935, William and Lillian Gobitas both Jehovah’s Witnesses were expelled from school for refusing to salute the flag. (Van Orden 137) The “Witnesses maintained that to salute would be to ascribe salvation to the government represented by the flag”, yet Jehovah’s Witnesses—being an international organization—refuse to exalt any state above another. (Smith 541; Jehovah’s Witnesses 669) A book published by the Witnesses near that time, *Children*, stated that flag saluting ceremonies at school and elsewhere may identify

Witnesses as different from other people but “affords them the opportunity to prove their faith and obedience and to maintain their integrity towards God and his King.” (McAninch 1021)

With those facts in mind 12-year-old William Gobitas and his sister Lillian refused to salute the flag. (Van Orden 136) “Lillian was not blind to the ultimate sacrifices that were made in the name of flag and country” even as she acknowledged: “[t]his is a very sensitive thing, the flag salute, because when you think about how many people gave their lives for flag and country and here we were not saluting.” (140) However she still gave her religious beliefs priority. William too said: “I do not salute the flag not because I do not love my country but I love my country and I love God more and must obey his commandments.” (Van Orden 139)

Although sincere, not all appreciated their beliefs. Immediate persecution followed their stand—or rather, refusal to stand—for saluting the flag. Schoolmates made fun of them. (Van Orden 137) Within two weeks, they were expelled from school. (McAninch 1016) A general bad reputation for Jehovah’s Witnesses quickly developed as the gullible jumped from hearing of a Witness refuse to salute to holding the “widely held perception that the Witnesses were unpatriotic [in the sense of being subversive].” (Smith 541)

In response to their expulsion, the Gobitas family sued the Minersville School District of Pennsylvania. (Van Orden 139) This was not the first litigation over a minor conscientiously refusing to salute the flag. In 1925, Russell Tremain refused to salute, but his family lost their case in the lower courts. (Henderson 750) In 1937, *Carlton B.*

Nicholls v. Mayor and School Committee of Lynn in the Massachusetts Supreme Court reaffirmed that flag salutes are compulsory. (Smith 569) The U.S. Supreme Court dismissed similar cases *Leoles v. Landers* in 1937, *Hering v. State Board of Education* in 1938, and *Gabrielli v. Knickerbocker* in 1939 as not pertinent to the Constitution. (Jehovah's Witnesses 685) In view of this history, the Gobitas family did not appear to have much hope in their case.

Surprisingly, though, the trial court found that while generally requiring flag salutes, exceptions could be made "based on sincerely held religious convictions". (McAninch 1016) "[T]he court observed that compelling children to salute the flag, in spite of their conscientious religious objections, is hardly a reasonable way to teach civics and loyalty to the government." The Minersville School District appealed this decision, yet the Third Court agreed with its lower that compulsory salute "is of at least doubtful efficacy and, as applied to [Gobitas children], plainly lacking in necessity." (1017)

The Supreme Court, though, reversed in the *Gobitis* case. (McAninch 1017) The Court found that the First Amendment was not being violated when a student was expelled for refusing to salute the flag. (Smith 543) Justice Frankfurter led the reversal stating: "[n]ational unity is the basis of national security" and "[t]he ultimate foundation of a free society is the binding tie of cohesive sentiment". (McAninch 1017) While Justice Stone dissented, the remaining justices follow Frankfurter's decision.

"This decision was followed by almost a countrywide enactment of flag salute statutes and rules." (McAninch 1019) Schools and county officials worked closely

together mandate flag salutes, expel Witnesses, then prosecute for truancy. (Smith 544) Not only young were affected though. Witnesses were beaten, tarred and feathered, fired (McAninch 1019-1020), kidnapped, chased, castrated, maimed, held incommunicado, stripped, (Jehovah's Witnesses 671) and threatened. (Van Orden 141) "On June 24, 1940 Time reported that 'at week's end [there was] little Witness literature left unburned in Maine.'" (McAninch 1019-1020) In other situations, houses or even Witnesses faced that same threat and even bombs. (McAninch 1019; Van Orden 141) Some were shot at night; others jailed in hundreds by day for distributing literature. (Jehovah's Witnesses 671) "Under every conceivable circumstance—on the streets, at places of employment, when Witnesses called at homes in their ministry—flags were thrust in front of them, with the demand that they salute—or else!"

On June 28, 29 1940, nine Witnesses were engaging in a door to door literature distribution work. (Smith 545) A law enforcement officer stopped them, took their literature, and asked them to leave, so the Witnesses left. The next day, they went to the Mayor's office to ask for their literature back. (546) Approaching the office, the nine were suddenly surrounded by the Deputy and American Legionnaires. One of the first to arrive "removed his deputy sheriff's badge and proclaimed, 'what will be done from here on will not be done in the name of the law.'" (548) Another Legionnaire who was a physician brought a stomach pump and castor oil offering the Witnesses to drink it or be force fed. The young Witness recalled: "If you don't drink it, we will force it down." He was eventually forced to drink 16 ounces of castor oil. The other Witnesses each drank 4 ounces. Afterwards, all nine men were tied together and marched to the flagpole

before a crowd of around 1,500 that had gathered in front of the courthouse. (549) Next, they were asked to salute the flag to which they refused. These nine men choking on castor oil were then refused “access to a toilet for some seven hours.” (McAninch 1020) When the officers finally let them go, they said for the Witnesses to never return. (Smith 549) The F.B.I. did open an investigation into this event but it fell to “foot-dragging”.

This is not an isolated account. Many other travesties of justice occurred in the two years following the *Gobitis* ruling but were not investigated. (Smith 549) Why were the Witnesses persecuted to such an extent? One non-Witness commented:

“The only way to understand why Jehovah's Witnesses are so unpopular is to go back in history and remind ourselves why the early Christians were so unpopular. If I want to bring clearly before my eyes just how these early Christians must have appeared to the highly respectable and patriotic Romans of their day, I have only to look at Jehovah's Witnesses today . . . Lastly, there is the irritating question of the flag salute . . . [W]ere the early Christians doing but this very thing when they refused to put their pinch of salt upon the altars of the Roman emperor?” (McAninch 1020-1021)

The irony of the situation was that the separation of church and state among other First Amendment freedoms were meant to protect those truly sincere about a belief, yet by ruling adversely against the Witnesses, the Supreme Court initiated a storm of persecution against those they sought to protect. The Witnesses were being persecuted just as were some Colonial American separatists who partially heightened awareness of the First Amendment's necessity. (McAninch 1027) Was this persecution

the “national unity” Justice Frankfurter had in mind when he decided against the *Gobitis* case? Did any of the resulting persecution the Witnesses faced bear resemblance to the liberating intent of the separation of church and state? In the years following, many began to question the ruling of *Gobitis*.

Among these were three Justices who sided with Frankfurter in *Gobitis*. (Van Orden 141) Justices Douglas, Black, and Murphy were also joined by new Justices Jackson and Brennan. (Smith 544) Justice Brennan wrote about this situation: “The moment that any court takes to itself the right to hold a religious view unreasonable, that moment the American courts begin to deny the rights of religious freedom. The very purpose of our guarantees of freedom of religion is that unpopular minorities may hold views unreasonable in the opinion of the majorities.” Justice Jackson joined him in ringing language:

“The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One’s right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections [and should neither of Supreme Court rulings].”
(Abrams 39)

While Justice Frankfurter wrote that “[n]ational unity is the basis of national security” and “[t]he ultimate foundation of a free society is the binding tie of cohesive

sentiment” (McAninch 1017), Jackson countered: “we apply the limitations of the Constitution with no fear that freedom to be intellectually and spiritually diverse or even contrary will disintegrate the social organization.” (Abrams 39) Many other justices began expressing Jackson’s view (McAninch 1022) The next time an issue of flag saluting approached the Supreme Court, these Justices committed themselves to seize the opportunity of laying down true justice—and that opportunity came.

In West Virginia, the State Board of Education declared flag salutes to be mandatory and made “refusal to salute the Flag [sic] be regarded as an act of insubordination, and refusal shall be dealt with accordingly.” (Smith 543) In the early months of 1942, at Slip Hill Grade School, two Witness girls refused to salute to flag. (Abrams 31; Peterson 768) The Barnette sisters held the same views as the Gobitas children that they must “give [their] devotion and worship to Jehovah God, not to any image of any sort, and [. . .] bowing down to the flag, saluting it, was like [. . .] bowing down and giving reverence to [. . .] an idol” (Peterson 769-773) Their parents sued following their expulsion. Although the issue of flag salutes had just been decided in the Supreme Court two years ago, “[t]he three-judge federal district court took the [. . .] unusual step of disregarding an unreversed Supreme Court decision directly on point and issued the injunction.” (McAninch 1022) In 1943, *West Virginia State Board of Education v. Barnette* was in the Supreme Court.

Justice Jackson acknowledged the seriousness of this case during World War Two stating: “Few claims of right command greater respect than sincere invocations of religious liberty, and few justifications for government action command greater force

than invocations of national security in wartime.” (Abrams 38) Even in this delicate situation, though, Jackson made a firm ruling. Justice Jackson joined by the majority decided one should have the freedom to salute or not salute. He stated: “To enforce [the Bill of Rights] today is not to choose weak government over strong government. It is only to adhere as a means of strength to individual freedom of mind in preference to officially disciplined uniformity for which history indicates a disappointing and disastrous end” (Abrams 38) Although the ruling was primarily decided on grounds of free speech, the effect it also has on separation of church and state shines forth in Jackson’s conclusion:

“If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.” (Abrams 39)

As a result of their *Barnette* victory, Jehovah’s Witnesses were readmitted to public education schools. (McAninch 1024) They were not forced to salute the flag, and Witness persecution even decreased. (Van Orden 141)

If the Supreme Court of the United States was able to reach a conclusion on such a violent issue as flag salute, then surely peaceful exercise of religion would demand much less debate, yet history confirms otherwise. Indeed:

“[F]or most of modern American history, we’ve worked very hard to legislate, regulate and agitate to get the true believers out of sight and out of mind. We’ve tried to license them out of existence, put them in jail,

limit them to certain public places, forbid them from all public places.”

(Lusty 233-234)

Jehovah's Witnesses' door to door preaching work has experience all those challenges, yet their name explains the reason they preach so zealously. In the 1800's, Jehovah's Witnesses were simply referred to as "Christians." (Jehovah's Witnesses 149) Then, approaching the turn of the century the term "Bible Students" began to distinguish them. (151) However, as the Bible Students progressed through the twentieth century, they felt the need to witness to others about their God, Jehovah. Regarding the manner of their witnessing:

“Each Witness is a minister, even the nine-year-old child on the street corner in *Prince v. Massachusetts*. Although they do have houses of worship, called "Kingdom Halls," they have asserted that their church is the street, for that is where they proselytize -- distributing literature, ringing doorbells, and in times past playing phonographs and driving sound trucks.” (McAninch 1002)

In this way, Witnesses seek to preach to everyone, everywhere their message. (Jehovah's Witnesses 10-12) However, they have experienced many obstacles in their witnessing. Their unconventional activity is not without taboo nor does it bring much appreciation. “Between 1933 and 1951 there were 18,866 arrests of American Witnesses and about 1500 cases of mob violence against them.” (Smith 540) In the mid 1940's the Witnesses were currently involved in 200 cases. (McAninch 1027) Yes, the Witnesses are essentially “dissenters from traditional religion”. (McAninch 1003) However, society's

“oppressive response to dissent is often what provides the latter's strength and cohesion” and the Witnesses’ preaching history bears no less. “Efforts at persecution and censorship seem to have made them all the more determined. Attempts to repress their activities seem to have been rationalized as proof of their basic dogma [that they are the one true religion]; this, in turn, encourages them to redouble their efforts.”

Some authorities try to require Witnesses to obtain a solicitation license before witnessing. The Witnesses will not apply for one because they believe “Jehovah God commands his Witnesses to preach the gospel of his kingdom, and God’s commandments are supreme and must be obeyed by his witnesses [. . .] To ask humans for permission to do something that God has commanded would be an insult to God.” (Jehovah’s Witnesses 681-682) This took place in 1937 in the City of Griffin, Georgia where Witness were incarcerated for not requesting permission from city manager to preach. (McAninch 1028) After losing in lower courts, the Witnesses appealed to the Supreme Court, yet they were denied for lack of Constitutional question. (McAninch 1028) A similar instance took place five years later in the city of Opelika, yet instead of denying the appeal, the Witnesses lost *Jones v. City of Opelika*. (1034) The Court ruled that requiring a solicitation license—even for a fee—was Constitutional since a solicitation license applied to commercial activity.

In the midst of that litigation, though, *Schneider v. State* was ascending to the Supreme Court. A city in New Jersey required any solicitor to obtain a license prior to solicitation. (McAninch 1029) The police would make an assessment to determine if the

individual is “of good character” and soliciting for a purpose free of fraud. The soliciting license would also limit when and how canvassing may be done.

To the Witnesses, this ordinance posed a real problem to their ministry. Since much of their witnessing is done via dissemination of tracts, they sued the State of New Jersey. While the State argued its ordinance protected the citizens of fraud and neighborhood of trash, the Supreme Court ruled in favor of Jehovah’s Witnesses in *Schneider v. State* stating:

“[P]amphlets have proved most effective instruments in the dissemination of opinion. And perhaps the most effective way of bringing them to the notice of individuals is their distribution at the homes of the people. On this method of communication the ordinance imposes censorship, abuse of which engendered the struggle in England which eventuated in the establishment of the doctrine of the freedom of the press embodied in our Constitution. To require a censorship through license which makes impossible the free and unhampered distribution of pamphlets strikes at the very heart of the constitutional guarantees.” (Lusty 234)

Although this would mean a Witness could hand out 100 tracts to householders who all subsequently let them become litter, the Court suggested “prosecuting [. . .] the one who actually litters.” (McAninch 1029) It stated, “when the exercise of police power infringes upon the fundamental personal liberties of speech and press, the Court must “appraise the substantiality of the reasons advanced in support of the regulation”.

Subsequent witnessing issues have further clarified free exercise of religion and checked state influence in church. *Lovell v. City of Griffin* applied free speech to the Witnesses' work. It pointedly explained that no one may be compelled to obtain a permit to engage in free speech. (McAninch 1028-1029) *Cantwell v. Connecticut* clarified what 'free speech' meant. (1030) While "profane, indecent, or abusive remarks" directed toward a person would not qualify as such, preaching that one religion is superior to another remains the right of a citizen. (1031) *Murdock v. Pennsylvania* observed that:

"[H]and distribution of religious tracts is an age-old form of missionary evangelism—as old as the history of printing presses. It has been a potent force in various religious movements down through the years This form of religious activity occupies the same high estate under the First Amendment as do worship in the churches and preaching from the pulpits. It has the same claim to protection as the more orthodox and conventional exercises of religion." (Lusty 234-235)

It follows, then, that if a state were to deny the Witness his or her right to preach door to door, the state might as well outlaw any form of preaching such as church ceremonies, expunge the Free Exercise Clause from the First Amendment, and establish a state church.

While they did not start with the intention of doing so, Jehovah's Witnesses have certainly expanded the freedoms of American citizens as they helped sever church-state ties. Citizens are more free than ever to hold sincere religious convictions, believe differently, and enjoy free speech. In fact, Witnesses have somewhat crusaded

conglomeration of ‘freedom of religion’ and ‘freedom of speech’ by their litigation. (McAninch 1026) This places freedom of religion on a high stool along freedom of thought, speech, and expression. However, not all have appreciated these freedoms.

Approaching the twenty first century, residents in the small town of Stratton, Ohio felt increasingly exposed to globalization as foreign solicitors from vacuum cleaner salesman to lawnmowing services came to their homes. (Lusty 229-230) As a result, the village of Stratton imposed an ordinance on solicitors requiring them to first register to obtain license to “advertis[e], promot[e], [or] sell ... any product, service, organization, or cause” to obtain a village-issued permit to engage in their activity. (Lusty 229) The permit would be granted free upon furnishing basic personal information to the city mayor. This included the solicitor’s name, address, and list of address that were planned to visit. (Lusty 230-232) As in times past, the Witnesses did not feel it necessary to ask for permission to witness. (Jehovah’s Witnesses 681-682; Lusty 233) Soon, the *Watchtower and Bible Tract Society of New York Inc., et al., v. Village of Stratton, Ohio, et al.* was in the Supreme Court. Recently, though, the Court confirmed in *Hill v. Colorade* “the right of every person to be let alone” (Lusty 229) Did that ruling impact how the Supreme Court would rule in *Stratton* for or against requiring a solicitation license?

Actually, the Court recognized that “Jehovah’s Witnesses do not consider themselves as solicitors.” (Supreme Court of the United States 41) It also acknowledged that free speech must be free—not subject to any license. Some of the Supreme Court Justices mockingly responded to the Village of Stratton’s presentation of their

“beautiful” ordinance: “[Do y]ou think it's a beautiful idea that I have to ask the Government for permission before I go down the block ... to talk ... because I'm concerned about the garbage pick-up ... what about trick-or-treaters ... and they're solicitors too.” (Supreme Court of the United States 27-28) One Justice remarked: “To require a censorship through license which makes impossible the free and unhampered distribution of pamphlets strikes at the very heart of the constitutional guarantees.”

(Lusty 234)

Should not such reasoning have been clear to the Stratton officials? What was it that motivated the city officials to fight their ordinance up to the Supreme Court? Were the residents really tired of solicitors as Stratton claimed they were. Of its 290 residents in 2002, only 32 had filled in applications asking solicitors not to come to their home. (Lusty 232) One Justice insinuated, “You're concerned about people who were even not concerned about [not having solicitors]” (Supreme Court of the United States 43)

Then, why did they so adamantly pursue their license requirement? Upon further questioning such as whether permission is needed to ask one's neighbor for a cup of sugar, Stratton's attorney answered: “it is not the type of cause that the communication [this ordinance] is directed at.” (Supreme Court of the United States 29) Unwittingly, the Village's attorney admitted that their ordinance was targeted at specific kinds of speech. The *Stratton* case found that homeowners could fill out a form specifically denying Witnesses audience with them. (Supreme Court of the United States 38) In fact, one Stratton attorney stated: “people move to Stratton with the understanding that they would not be bothered by Jehovah's Witnesses” implying that the Village could limit

their free exercise of religion. (Lusty 229) Essentially, Stratton was trying to establish its own church as to what kind of religion was allowed and not.

An objective analysis of the facts indicates that Jehovah's Witnesses have remained separate from the America, but the State has not always done the same. The patient perseverance of Witnesses from unjust imprisonment, to countrywide persecution, to witnessing ordinance opposition cries out for equal treatment by the State. It also speaks volumes on the sincerity of worship Jehovah's Witnesses claim. They are truly conscientious when objecting to military service, not simply seeking a comfortable life. Rather, the Witnesses hold their faith through life and death.

For the benefit of not only Jehovah's Witnesses, but citizens and the State too, a separation must exist between excessive or improper church-state involvement. Limited failure to do so has meant decades of suffering. "If separation of Church and State ever [ceased] to exist in this place that we now know as the United States of America, it would be because this place that we call the United States of America [no longer] to exist[s] and some other entity has taken it over" (Kuykendall), yet that need not be an inevitable outcome of church. Actually, that idealistic future is part of what Jehovah's Witnesses preach. (Jehovah's Witnesses 716) Yes, "[t]here will come a time when public men may speak their honest convictions in religion without being maligned by the ignorant and superstitious, but not yet" (Jacoby 31)

The Witnesses strict separation from involvement in the State's business and litigation of States that do otherwise humbles all-citizens and states-to consider their own integrity

Works Cited

- Abrams, Douglas E. "Justice Jackson and the Second Flag-Salute Case: Reason and Passion in Opinion-Writing." *Journal of Supreme Court History*, vol. 36, no. 1, Mar. 2011, pp. 30-47.
- "Constitutional Topic: The First Amendment." USConstitution.net. 3 Jan. 2011. 27 Feb. 2011 .
- Encyclopedia Americana. "Respect or Reverence for the Flag." Encyclopedia Americana, vol. 11, *The Encyclopedia Americana Corporation*, 1919, pp. 316–316.
- Greenhouse, Carol J. "Separation of Church and State in the United States: Lost in Translation?." no. 2, 2006, p. 493.
- Henderson, Jennifer Jacobs. "Conditional Liberty: The Flag Salute Before Gobitis and Barnette." *Journal of Church & State*, vol. 47, no. 4, Sept. 2005, pp. 747-767.
- Jacoby, Susan. "A New Birth of Reason: Robert Ingersoll, the Great Agnostic, Inspired Late-19Th-Century Americans to Uphold the Founders' Belief in Separation of Church and State." *American Scholar*, vol. 82, no. 1, Winter 2013, pp. 20-31.
- Jehovah's Witnesses. *Jehovah's Witnesses—Proclaimers of God's Kingdom*. Watchtower Bible and Tract Society of New York Inc., 1993. *Watchtower Online Library*, wol.jw.org/en/wol/lv/r1/lp-e/0/56385.
- Kuykendall, Bill. "Separation of Church and State in the United States" 26 Mar. 2018.
- Lusty, Kathryn. "Proselytizers, Pamphleteers, Pests, and Other First Amendment Champions: Watchtower Bible and Tract Society of New York, Inc. V. Village of Stratton." *BYU Journal of Public Law*, vol. 18, 01 Jan. 2003, p. 229.

Macmillan, A. H. *Faith on the March*. 1st ed., Prentice Hall, 1957.

[http://www.bible.cfmin.com/Faith on the March.pdf](http://www.bible.cfmin.com/Faith%20on%20the%20March.pdf)

McAninch, William Shepard. "A Catalyst for the Evolution of Constitutional Law:

Jehovah's Witnesses in the Supreme Court." *University of Cincinnati*, vol. 55, 01
Jan. 1987, p. 997.

Peterson, Gregory L. "Recollections of West Virginia State Board of Education V.

Barnette." *St. John's Law Review*, vol. 81, no. 4, Fall2007, pp. 755-796.

Rutherford, Joseph F. Children. Watchtower Bible and Tract Society, 1941.

Smith, Chuck. "The Persecution of West Virginia Jehovah's Witnesses and the

Expansion of Legal Protection for Religious Liberty." *Journal of Church & State*,
vol. 43, no. 3, Summer2001, p. 539.

Supreme Court of the United States. Watchtower and Bible Tract Society of New York

Inc., Et Al., v. Village of Stratton, Ohio, Et Al., *Alderson Reporting Company*.

Washington, D.C. pp. 1-53. [https://www.supremecourt.gov/oral_arguments/
argument_transcripts/2001/00-1737.pdf](https://www.supremecourt.gov/oral_arguments/argument_transcripts/2001/00-1737.pdf)

Van Orden, James F. "'Jehovah Will Provide': Lillian Gobitas and Freedom of Religion."

Journal of Supreme Court History, vol. 29, no. 2, July 2004, pp. 136-144.