

# *Barnette Day*

*John Q. Barrett\**

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June 14, 2019, marks the 76th anniversary of the U.S. Supreme Court's decision, embodied in Justice Robert H. Jackson's opinion for the Court, in *West Virginia State Board of Education v. Barnette*.<sup>1</sup>

*Barnette*, decided amid the commendable patriotism of the U.S. home front during the dark middle period of World War II, invalidated a West Virginia board of education resolution requiring all public school teachers and students to participate in a salute to the American flag and a recitation of the Pledge of Allegiance.

The case was brought on behalf of students who were Jehovah's Witnesses. In deference to their belief that the Bible forbade them to bow down to graven images, they refused to salute the flag. For that refusal, they were expelled from school. Expulsion had the effect of making the children unlawfully absent, which subjected them to delinquency proceedings and their parents to criminal prosecution.

In *Barnette*, the Supreme Court held, 6-3, that the flag salute and pledge requirements violated the children's constitutional rights, which exist to strengthen "individual freedom of mind in preference to officially disciplined uniformity..."<sup>2</sup>

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\* Professor of Law, St. John's University School of Law, New York City, and Elizabeth S. Lenna Fellow, Robert H. Jackson Center, Jamestown, New York ([www.roberthjackson.org](http://www.roberthjackson.org)). I emailed an earlier version of this essay to The Jackson List on June 14, 2019.

For an archive of selected Jackson List posts, many of which include document images or photographs, visit <http://thejacksonlist.com>. This essay is posted there as a PDF file with "live" hyperlinks.

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<sup>1</sup> 319 U.S. 624 (1943), available at [www.law.cornell.edu/supremecourt/text/319/624](http://www.law.cornell.edu/supremecourt/text/319/624).

<sup>2</sup> *Id.* at 637.

Although Jackson's full opinion in *Barnette* bears close reading (and regular rereading), some words to consider particularly closely are his summary paragraphs:

The case is made difficult not because the principles of its decision are obscure but because the flag involved is our own. Nevertheless, 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. To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds. We can have intellectual individualism and the rich cultural diversities that we owe to exceptional minds only at the price of occasional eccentricity and abnormal attitudes. When they are so harmless to others or to the State as those we deal with here, the price is not too great. But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.

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. If there are any circumstances which permit an exception, they do not now occur to us.

We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.<sup>3</sup>

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<sup>3</sup> *Id.* at 641-42.

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Please also note the FIU LAW REVIEW's recent publication of a rich symposium on *Barnette*. It includes my article "Justice Jackson in the Jehovah's Witnesses' Cases," based on my keynote address at FIU's excellent *Barnette* 75<sup>th</sup> anniversary conference. [Click here to get to the symposium articles.](#)

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Additional links—

- a 2006 roundtable discussion featuring sisters Gathie and Marie Barnett (whose surname got misspelled at some point in the litigation) and related commentary—[click here](#);
- a 2012 Jackson List post, "Arguing *Barnette*"—[click here](#); and
- a 2010 Jackson List post, "The Newest *Barnette* Sister"—[click here](#).