



The Flag

Who Owns Old Glory?

* By Arthur M. Schlesinger Jr.

WHEN I THINK OF THE FLAG, I THINK OF FLAG DAY IN 1943. On that day, June 14th, in the midst of a great and terrible war, the Supreme Court clarified the meaning of the flag as the symbol of patriotism. * To achieve this clarification,

the court had to overrule itself. In 1940, before the United States entered World War II, the court had upheld compulsory flag salutes and compulsory pledges of allegiance for students in public schools. "National unity," the court declared in *Minersville School District v. Gobitis*, "is the basis of national security." And on that ground a Pennsylvania school board had a perfect right to expel kids who refused to recite the pledge and to salute the flag. The Gobitis children were guilty even though as Jehovah's Witnesses they believed that the salute and the pledge violated the Second Commandment.

The Gobitis decision led to widespread persecution of Witnesses. Mobs of self-appointed "patriots" har-

assed Witnesses, beat them up and punished one unfortunate fellow by castration. Then, three years later, in the case of *West Virginia State Board of Education v. Barnette*, the Supreme Court reversed Gobitis, by a 6-3 vote. The court held that laws compelling students in public schools to salute the flag and to recite the pledge of allegiance were unconstitutional.

The court spoke through Justice Robert H. Jackson, next to Oliver Wendell Holmes the best writer on the court

in the twentieth century. Jackson rested his decision on the First Amendment. Saluting the flag and pledging allegiance, Jackson said, were forms of speech. To require people to do these things violated their constitutional right to freedom of speech. "If there is any fixed star in our constitutional constellation," Jackson said, "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."

This decision, as noted, was handed down on Flag Day 1943. Young Americans were fighting and dying for the flag on many fronts around the planet, but the court's veto of compulsory salutes and compulsory pledges was generally applauded. Most Americans in 1943 thought the decision was a pretty good statement of what we were fighting for.

The flag thus incorporates the First Amendment. But today, in another national emergency, officials seek to narrow the meaning of the flag, to identify the flag with the president and his war. At the time of the *Barnette* case, the attorney general of the United States, Francis Biddle, was a strong civil libertarian. Sixty years later, a religious nut

occupies Biddle's office. A fanatic, as Mr. Dooley long ago remarked, is a man who "does what he thinks th' Lord wud do if He only knew th' facts in th' case."

Nevertheless, let us not surrender the flag to Attorney General John Ashcroft. People who protest the war against Iraq have as much right to rally round the flag as the hyperpatriots cheering on the war.

Nor does the fact that the nation is at war impose on citizens a moral obligation to shut up and support the government. As Theodore Roosevelt said during the First World War (no one was more hyperpatriotic than TR), "To announce

that there must be no criticism of the president, or that we are to stand by the president, right or wrong, is not only unpatriotic and servile, but is morally treasonable to the American public."

Let us never forget that the flag embodies the Bill of Rights. As for patriotism, Carl Schurz, who emigrated from Germany to become an influential figure in nineteenth-century America, defined its true meaning in a speech to the Anti-Imperialistic Conference in 1899: "Our country, right or wrong. When right, to be kept right; when wrong, to be put right." ©

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ROLLING STONE, MAY 15, 2003 71

The Flag Center

