

Liberal Pluralism and Constitutional Democracy: The Case of Freedom of Conscience

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Introduction

Over the past decade my outlook on fundamental questions of political theory and practice has become more decisively “liberal.” I am less inclined than I once was to see the political community as the architectonic association to which other associations are rightly subordinated. Our social life comprises multiple sources of authority and sovereignty—individuals, parents, civil associations, churches, and state institutions, among others—no one of which is dominant in all spheres, for all purposes, on all occasions. Non-state authority is not simply a concession from or gift of the state. A well-ordered state does not create, but rather recognizes (and sees itself as recognizing) other sources of authority.

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cally sealed spheres, each governed by its own principles of authority. Political pluralism is consistent with the fact of overlapping authority claims, whose relationship to one another must be worked out. For example, from a pluralist standpoint, neither parents, educational experts, nor state institutions possess dominant power over all aspects of the education of children. Rather, the substance of particular controversies shapes our judgment concerning the appropriate allocation of decisional authority.

It is said that during medieval times, Bulan, king of the Khazers, summoned four wise men to his kingdom—a secular philosopher, a Muslim scholar, a Christian scholar, and a rabbi. After interrogating them

on the content and basis of their beliefs, Bulan called his people together in an assembly, declared that he accepted Judaism, and decreed that all Khazers would thenceforth be instructed in and practice Judaism as their communal faith.

I suspect that this chain of events strikes most modern readers as strange. Would it seem less strange if—rather than one man deciding for all—the people had assembled themselves and, after the most scrupulous democratic deliberation, settled on Judaism as the official national religion? I think not.

There is a threshold question, which I take to be the defining question for theoretical liberalism: Does the state possess the legitimate power to make collectively binding decisions on this matter? If not, the question of *how* such decisions should be made is never reached. From this liberal pluralist perspective, the content of religious faith is a clear example of a matter that is not rightfully subject to plenipotentary state power.

It is not hard to forge a theoretical link between liberalism and political pluralism. (In my recent book I call this complex of ideas “liberal pluralism.”) The more difficult question is whether liberalism, so understood, makes a compelling claim to truth. Why should we treat non-state authority as anything other than the creature of (perhaps tacit) political decisions? Is liberty, however understood, anything more than a political construction, subject to alteration through normal political processes? I doubt that theoretical argumentation can decisively adjudicate such questions. So I want to take a different tack—an appeal to moral intuitions and experiences encoded in our tradition of constitutional adjudication. Specifically, I want to ask how claims based on freedom of conscience are most plausibly understood.

Freedom of Conscience: Two Cases

To frame this inquiry, I begin by recalling an important but largely forgotten episode in US constitutional history: the rapid and almost unprecedented turn-

about by the Supreme Court on a matter of fundamental importance.

Acting under the authority of the state government, the school board of Minersville, Pennsylvania had required both students and teachers to participate in a daily pledge of allegiance to the flag. In the 1940 case of *Minersville v. Gobitis*, the Supreme Court decided against a handful of Jehovah's Witnesses who sought to have their children exempted on the grounds that this exercise amounted to a form of idolatry strictly forbidden by their faith. With but a single dissenting vote, the Court ruled that it was permissible for a

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school board to make participation in saluting the American flag a condition for attending public school, regardless of the conscientious objections of parents and students.

Relying on this holding and quoting liberally from the majority's decision, the West Virginia State Board of Education issued a regulation making the flag statute mandatory statewide. When a challenge to this decision arose barely three years later, the Court in *West Virginia v. Barnette* reversed itself by a vote of six to three. To be sure, during the brief interval separating these cases, the lone dissenter in *Gobitis* had been elevated to Chief Justice and two new voices, both favoring reversal, had joined the Court, while two supporters of the original decision had departed. But of the seven justices who heard both cases, three saw fit to reverse themselves and to set forth their reasons for the change.

This kind of abrupt, explicit reversal is very rare in the annals of the Court, and it calls for some explanation. A clue is to be found in the deservedly well-known peroration of Justice Jackson's majority decision overturning compulsory flag salutes:

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 limitation 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.

I want to suggest that the protected "sphere of intellect and spirit" and the antipathy to forced professions of faith to which Jackson refers enjoy a central place in

the development of American political thought and in liberal political theory more generally. Expounded under the rubric of "conscience," not least by James Madison, it provides one of the clearest examples of inherent limits to legitimate state power.

In his famous "Memorial and Remonstrance" of 1785, coauthored with Thomas Jefferson and directed against the Virginia proposal to publicly fund teachers of Christianity, Madison insisted that the religion of every man "must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate." He described this right as "unalienable;" indeed, two of the amendments that Madison drafted for inclusion in the *Bill of Rights* made explicit reference to "rights of conscience":

The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established; nor shall the full and equal rights of conscience be in any manner, or in any pretext, infringed.

And:

No state shall violate the equal rights of conscience, or the freedom of the press, or the trial by jury in criminal cases.

In the subsequent floor debate on the draft *Bill of Rights* (August 17, 1789), Madison characterized the proposed restriction on the states as "the most valuable amendment in the whole list." Although the

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House of Representatives accepted Madison's proposal to make guarantees of basic rights binding on the states, the Senate refused to go along. (It took nearly 150 years for the Supreme Court to decide that the Fourteenth Amendment had provided the vehicle for enforcing these rights vis-à-vis state governments as well as the federal government.)

Substantive Due Process, Fundamental Liberties, and Freedom of Conscience

Over the next century, the Supreme Court played at most a minor role in protecting what we now understand as the basic civil rights of individuals. During the decades after the Civil War, the Court increasingly deployed a broad construction of individual property rights against states while typically leaving political and civil liberties under the aegis of state power. In 1920, for example, the case of *Gilbert v. Minnesota* came before the Supreme Court. Gilbert, a pacifist, had criticized American participation in World War I. He was

convicted under a state statute prohibiting advocacy of teaching that interfered with or discouraged enlistment in the military. While the Court's majority declined to extend Fourteenth Amendment liberty guarantees to Gilbert, Justice Brandeis dissented, writing:

I have difficulty believing that the liberty guaranteed by the Constitution, which has been held to protect [a wide property rights], does not include liberty to teach, either in the privacy of the home or publicly, the doctrine of pacifism . . . I cannot believe that the liberty guaranteed by the 14th Amendment includes only liberty to acquire and to enjoy property.

Over time, the Court's unwillingness to abandon its doctrine of broad economic rights helped create the basis for a broader understanding of constitutionally protected and enforceable liberties. Two important cases decided in the 1920s spearheaded this expansion and helped lay the foundation for nationally recognized rights of conscience. The first stemmed from a Nebraska law which, reflecting the nativist passions stirred by World War I, prohibited instruction in any modern language other than English. Acting under statute, a trial court convicted a teacher in a Lutheran parochial school for teaching a Bible class in German. In *Meyer v. Nebraska*, the Supreme Court struck down this law as a violation of the Fourteenth Amendment's liberty guarantee. Writing for a seven-member majority, Justice McReynolds declared that while the state

May do much, go very far indeed, in order to improve the quality of its citizens, physically, mentally, and morally . . . but the individual has certain fundamental rights which must be respected. A desirable end cannot be promoted by prohibited means.

Two years later, the Supreme Court handed down a second key ruling. Through a ballot initiative, the people of Oregon enacted a law requiring all parents and legal guardians to send children between the ages of eight and sixteen to public schools. This amounted to outlawing most non-public schools. The Society of Sisters, an Oregon corporation that maintained a system of Catholic schools, sued on the grounds that this law was inconsistent with the Fourteenth Amendment. In *Pierce v. Society of Sisters*, decided in 1925, the Court agreed. Justice McReynolds, this time writing for a unanimous court, declared that

The fundamental theory of liberty upon which all governments in the Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State . . .

Six years later, in 1931, the Supreme Court handed down its decision in the case of *US v. Macintosh*. Douglas Clyde Macintosh was born in Canada, came to the US as a graduate student at the University of Chicago, was ordained as a Baptist minister in 1907, and became Chaplain of the Yale Graduate School. When World War I broke out, he returned to his native Canada to volunteer for service as a military chaplain.

He reentered the US in 1916 and applied for naturalization in 1925. When asked whether he would bear arms on behalf of his country, he responded that he could not accept an undertaking without knowing the cause for which his country was asking him to fight or believing the war was just, and he declared that his "first allegiance was to the will of God." After he was denied naturalization, he went to court.

The government argued that naturalization was a privilege, not a right; that the government has the right to impose any conditions it sees fit on that privilege; that the exemption of native-born citizens from military service on grounds of conscience was a statutory grant, not a Constitutional belief; and that Congress had not provided such statutory exemption for individuals seeking naturalization. The lawyers for Macintosh argued that our history makes it clear that conscientious exemption from military service was an integral element of the rights of conscience, guaranteed by the First and Ninth Amendments.

By a vote of five to four, a deeply divided Court decided in favor of the government. The case turned on matters of statutory construction and on broader considerations. Writing for the majority, Justice Sutherland insisted that

When [Macintosh] speaks of putting his allegiance to the will of God above his allegiance to the government, it is evident, in light of his entire statement, that he means to make *his own interpretation* of the will of God the decisive test . . . We are a Christian people . . . but, also, we are a Nation with a duty to survive. . . . Submission and obedience to the laws of the land, as well as those made for war . . . are not inconsistent with the will of God.

Writing for the four dissenters, Chief Justice Hughes began by offering an argument based on statutory construction, but like Sutherland, he did not end there. Hughes framed the broader argument this way:

When one's belief collides with the power of the State, the latter is supreme within its sphere and submission or punishment follows. But, in the forum of conscience, duty to a moral power higher than the State has always been maintained The essence of religion is belief in a relation to God involving duties superior to those arising from any human relation There is abundant room for enforcing the requisite authority of law as it is enacted and requires obedience, and for maintaining the conception of the supremacy of law as essential to orderly government, without demanding that either citizens or applicants for citizenship shall assume by oath an obligation to regard allegiance to God as subordinate to allegiance to civil power.

From *Gobitis* to *Barnette*: The Rise and Fall of Felix Frankfurter

This brings me back to the dueling Court decision with which I began. As I will show, *Gobitis* and *Barnette* bring into play a number of issues much debated among students of jurisprudence and political theory

during the past decade: the clash between history-based and principle-based interpretations of constitutional norms; the roles of courts and legislatures in a constitutional democracy; the competition between parents and the state for control of education; the appropriate contents and limits of civic education. The deepest issue is the relative weight to be given to claims based upon individual liberties and those based upon social order and cohesion.

In writing for the majority in the *Gobitis* case, Justice Frankfurter offered an argument in favor of a democratic state whose legitimate powers include the power to prescribe civic exercises such as the flag salute. He located the controversy in a complex field of plural and competing claims: liberty of individual conscience versus the state's authority to safeguard the nation's civic unity. The task is to "reconcile" these competing claims, which means "prevent[ing] either from destroying the other." Because liberty of conscience is so fundamental, "every possible leeway" should be given to the claims of religious faith; however, the "very plurality of principles" prevents us from establishing the "freedom to follow conscience" as absolute.

In considering the judicial enforcement of religious freedom, Frankfurter contended that we are dealing with a "historic concept." That is, we should not look at its underlying logic or principles, but rather and only at the way this concept has been applied in the past. Further, Frankfurter insisted that "the mere possession of religious convictions which contradict the relevant concerns of a political society does not relieve the citizen from the discharge of political responsibilities." On its face, this premise is fair enough; but it raises the question of what must be added to "mere possession" to create a valid claim against the state. When (if ever) does the Constitution require some individuals to be exempted from doing what society thinks is necessary to promote the common good? Conversely, what are the kinds of collective claims that rightly trump individual reservations?

Frankfurter offers a specific answer to the latter, insisting that social order and tranquility provide the basis for enjoying all civil rights—including rights of conscience and exercise. Indeed, all specific activities and advantages of government "presuppose the existence of an organized political society." National unity is the basis of national security—a highest-order public value (as we would now say, a "compelling state interest"). National unity is secured by the "binding tie of cohesive sentiment," which is the "ultimate foundation of a free society."

Toward the conclusion of his opinion, Frankfurter touched on an issue that figures centrally in our current debates—the right of public authorities "to awaken in the child's mind considerations . . . contrary to those implanted by the parent." He is right to sug-

gest that the bare fact of a clash with parents does not suffice to render a state's action illegitimate. But who seriously thinks that parental claims are always trumps? The thesis is rather that there are certain classes of claims that parents can interpose against state authority—especially when the state employs particularly intrusive means in pursuit of public purposes. Recall that what was at stake in *Gobitis* was not just the right of the state to require civic education; it was the state's power to compel students to engage in affirmations contrary to conscientious belief.

Frankfurter insisted that the state "may in self-protection utilize the educational process for inculcating those almost unconscious feelings which bind men together." And if the state gets it wrong? Frankfurter concluded his opinion with a profession of faith in the democratic process: It is better to use legislative processes to protect liberty and rectify error, rather than transferring the contest to the judicial arena. So long as the political liberties needed for effective political contestations are left unaffected, "education in the

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abandonment of foolish legislation is itself a training in liberty [and] serves to vindicate the self-confidence of a free people." There is clearly some wisdom in this position, which is enjoying a modest resurgence today. What it overlooks is the cost—especially to the most affected individuals and groups—of waiting for a democratic majority to recognize its mistake.

However, Justice (soon to be Chief Justice) Stone had forcefully dissented, arguing that the law in dispute did more than suppress and prohibit the free exercise of religion: it sought to coerce individuals to perform acts to which they are conscientiously opposed. Further, a valid end does not imply that all means in its pursuit are permitted. Even if national unity is an important interest of the state, Stone argued, "there are other ways to teach loyalty and patriotism which are the sources of national unity, than by compelling the pupil to affirm that which he does not believe and by commanding a form of affirmance which violates his religious convictions."

Despite his eloquence, Stone persuaded none of his brethren to follow him. But Frankfurter's argument raised a storm of controversy the moment it was handed down, and many of those criticisms anticipated the kind of jurisprudence that emerged only a few years later and flowered in the following decades.

Among many critics, William Fennell, a prominent member of the New York Bar, argued against Frankfurter's endorsement of the liberal democratic position, asking his readers to consider the consequences for previous decisions, such as *Pierce v. Society of Sisters*: wouldn't Frankfurter's jurisprudence have left every Catholic in the state of Oregon vulnerable to the anti-Catholic majority's repressive folly? Another critic, William F. Anderson, writing in the *Michigan Law Review*, contended that "if individual liberties are something more than the by-product of a democratic process, if in fact they have an intrinsic value worthy of protection, it is difficult to justify a decision which subordinates a fundamental liberty to a legislative program of questionable worth."

What may well be regarded as the *coup de grace* was delivered by Thomas Reed Powell, Joseph Story Professor of Law at Harvard, a pioneering legal realist, and no softy. His article addressing conscience and the Constitution drips with scorn for Jehovah's Witnesses. Powell termed them "ignorant," "unreflecting, dogmatic, indoctrinated," and "simple-minded and unintelligent." He even compared them to "mental defectives" and spoke approvingly of an education that weans children away from the "nonsense of their parents."

Yet Powell could not bring himself to accept Frankfurter's opinion. Three stumbling blocks proved insurmountable. First, as a matter of legal fact, he could not agree with Frankfurter's assertion that freedom of religion cannot be deployed against general legislation not specifically directed against religion. Second, as a practical matter, the effort to coerce children to salute the flag insincerely and contrary to conscience "seems . . . likely to be self-defeating" when measured against its goal of fostering patriotism and national unity. But finally, the issue of religious liberty was squarely on the table, in tension with the inculcation of national unity. By the logic of Frankfurter's own argument, if important constitutional values are in competition, then they must be weighed against one another. This the majority failed to do. Powell insisted that the Court must address quantitative as well as qualitative issues: How "important" is it to the nation to compel children to join in a patriotic ceremony which for them is idolatry? To what "extent" would exempting them impair the power of the state to preserve itself? Is the public interest "slight" or "major"?

The effects of these criticisms became apparent by 1942, when the Court decided the case of *Jones v. Opelika*. The facts were these: Jehovah's Witnesses had been going door-to-door selling religious books. Various municipalities enacted statutes requiring all booksellers to take out licenses and pay substantial fees in order to distribute books legally. The Jehovah's Witnesses refused to do so, citing free exercise claims as well as other arguments.

Writing for the five-man majority, Justice Reed argued that, granting the presumption in favor of First Amendment freedoms, public determinations of time, place, and manner were rightly viewed as consistent with those freedoms. Indeed:

We see nothing in the collection of a non-discriminatory licensing fee . . . from those selling books or papers, which abridges the freedoms of worship, speech, or press.

Led by Chief Justice Stone, four members of the Court dissented. In his opinion, Stone argued that it is essential to examine the extent for the burden the law places on religious free exercise, which the majority blithely refused to do. The power to tax may well amount to the power to censor or suppress. Further, it does not suffice to say that the tax on speech and religion is "non-discriminatory."

Justice Murphy's dissent addressed Stone's questions and amplified his argument. The burden, Murphy insisted, was significant, and that fact was significant in resolving the case. To be sure, it was necessary to distinguish between burdens on thought and those on action. Moreover, the defendants had failed to specify the harms to be avoided through the licensing system or to show that the statutes were drawn narrowly and precisely to address those evils.

Even more significant than these two individual dissents was a brief dissenting statement jointly authored by three justices (Murphy, Black, and Douglas) who had formed part of the *Gobitis* majority:

The opinion of the Court sanctions a device which in our opinion suppresses or tends to suppress the free exercise of a religion practiced by a minority group. This is but another step in the direction which *Minersville School District v. Gobitis* took against the same religious minority and is a logical extension of the principles upon which that decision rested. Since we joined in the opinion in the *Gobitis* case, we think this is an appropriate decision to state that we now believe that it was also wrongly decided.

In the course of a comprehensive survey of the development of liberties protected under the Fourteenth Amendment, John Raeburn Green commented that while there was nothing good to be said about the majority decision, *Jones v. Opelika* "in the long run will mark an advance for [religious] liberty, because of the dissenting opinions." He was right, and sooner than he thought. In the very next year (1943), the replacement of Justice Byrnes, one of the *Opelika* majority, led to its reversal by a vote of five to four in the case of *Murdock v. Pennsylvania*. More remarkably, *Gobitis* was overruled by a stunning six to three, in *West Virginia v. Barnette*.

In his majority decision, Justice Jackson did not question that state's right to educate for patriotism and civic unity. But in his view, what was at stake was not education, rightly understood, but something quite different: "a compulsion of students to declare a belief." Jackson insisted that assuring individual rights

strengthens government by bolstering support for it. In the long run, individual freedom of mind is more sustainable and powerful than is “officially disciplined uniformity.” Indeed, “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.”

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through persuasion and example, but the question is whether under the Constitution compulsion is a permissible means for its achievement. It is in this context that Jackson penned his famous words about the fixed star in our constitutional constellation.

The three repentant justices who had issued promissory notes in the *Opelika* dissent redeemed them by joining the *Barnett* majority. Black and Douglas began their concurrence by noting the appropriateness of explaining the reasons for their change of view. They insisted that, as a constitutional matter, while the state can impose reasonable regulations on time, place, or manner of religious activity, it can suppress religious liberty only to ward off “grave and pressing immediate dangers.” But in this case the danger was remote at best, and the policy only speculatively connected to its professed end. Further, the state’s burden is especially heavy because the nature of the means employed—the statutory exaction of specific words—constitutes a form of “test oath” that has always been especially “abhorrent” in the United States. And even if this policy were constitutionally acceptable, it would be self-defeating: “Words uttered under coercion are proof of nothing but loyalty to self-interest. Love of country must spring from willing hearts and free minds . . .”

The third penitent, Justice Murphy, also concurred. Freedom of thought and religion, he contended, implies the right both to speak and to remain silent, except when compulsion is required for the preservation of an ordered society—as in the case of compulsion to testify in court. The compelled flag salute did not come close to meeting that test: its benefits were too indefinite and intangible to justify the restriction on freedom and invasion of privacy.

Justice Frankfurter, the author of the majority opinion in *Gobitis*, penned a lengthy dissent, with a personal *apologia* whose tone of injured dignity was set by

its opening sentence: “one who belongs to the most vilified and persecuted minority in history is not likely to be insensible to the freedoms guaranteed by our Constitution.” But he declared that what was at stake was not a constitutional question but rather a policy judgment. In this arena, the courts should override legislatures only if reasonable legislators could not have chosen to employ the contested means in furtherance of legitimate ends. As a general proposition, there is a presumption in favor of legislatures, and legislation must be considered valid if there exists some rational basis for connecting it to a valid public purpose.

Frankfurter contended that liberal democracy is more a matter of active, self-governing citizens than of protective or tutelary courts:

Of course patriotism cannot be enforced by the flag salute. . . . Only a persistent positive translation of the faith of a free society into the convictions and habits and actions of a community is the ultimate reliance against unabated temptations to fetter the human spirit.

Conclusion: Jurisprudence, Moral Intuition, and Political Theory

I am not a legal historian, and it must be obvious that I have told this tale not for its own sake, but with moral intent. I want to use these materials as a basis for testing our judgments about two questions. First: looking at the judicial bottom-line—the “holding”—are we more inclined to favor the outcome in *Gobitis* or in *Barnette*? Second: what kinds of broader principles underlie our judgment concerning these specific cases?

I have discussed the dueling cases with a number of scholars and friends (some are both). The consensus runs roughly as follows. It is easy to sympathize with

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Frankfurter’s dismay at the deployment of judicial review to immunize concentrated economic power against public scrutiny; with his belief that democratic majorities should enjoy wide latitude to pursue the common good as they see it; with his belief that the requirements of social order and unity may sometimes override the claims, however worthy, of individuals, parents, civil associations, and religious faith; and with his conviction that the systematic substitution of judicial review of democratic self-correction can end by weakening citizenship itself. Nonetheless, say my interlocutors, Frankfurter’s reasoning in *Gobitis* was unsound, and his holding unacceptable. There are cer-

tain goods and liberties that enjoy a preferred position in our order and are supposed to be lifted above everyday policy debate. If liberty of conscience is a fundamental good, as Frankfurter acknowledges, then it follows that state action interfering with it bears a substantial burden of proof. A distant harm, loosely linked to the contested policy, is not enough to meet that burden. The harm must be a real threat; it must be causally linked to the policy in question; and the proposed remedy must do the least possible damage to the fundamental liberty, consistent with the abatement of the threat. The state's mandatory pledge of allegiance failed all three of these tests. *Gobitis* was wrongly decided; the ensuing uproar was a public indication that the Court had gone astray; and the quick reversal in *Barnette*, with fully half the justices in the new six-member majority switching sides, was a clear indication of the moral force of the objections. This is my position as well, and I would be happy to test it against those whose conscientious judgments differ.

We now reach my second question: is our judgment on these cases a particularized moral intuition, or does it reflect some broader principles? The latter, I think. What Justice Jackson termed the "sphere of intellect and spirit" is at or near the heart of what makes us human. The protection of that sphere against unwarranted intrusion represents the most fundamental of all human liberties. There is a strong presumption against state policies that prevent individuals from the free exercise of intellect and spirit. There is an even stronger presumption against compelling individuals to make affirmations contrary to their convictions. (These presumptions drive Madison's understanding of freedom of conscience, discussed earlier in this essay.) This does not mean that compulsory speech is always wrong; courts and legislatures may rightly compel unwilling witnesses to give testimony and may rightly punish any failure to do so that does not invoke a well-established principle of immunity, such as the bar against coerced self-incrimination. Even here, the point of the compulsion is to induce individuals to tell the truth as they see it, not to betray their innermost convictions in the name of a state-administered orthodoxy.

It is easy for politics—even stable constitutional democracies—to violate these principles. In that obvious empirical sense, fundamental liberties are political constructions. But that democratic majorities can deprive minorities of liberty, often with impunity, does not make it right. Like all politics, democratic politics is legitimate to the extent that it recognizes and observes the principle limits to the exercise of democratic power. The liberties that individuals and the associations they constitute should enjoy in all but the most desperate circumstances go well beyond the political rights that democratic politics requires. We cannot rightly assess the importance of politics without

acknowledging the limits of politics. The claims that political institutions can make in the name of the common good coexist with claims of at least equal importance that individuals and civil associations make, based on particular visions of the good for themselves or for human kind. This "political pluralism" may be messy; it may lead to confrontations not conducive to maximizing public unity and order. But if political pluralism, thus understood, reflects the complex truth of the human condition, then the practice of politics must do its best to honor the principles that limit the scope of politics.

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Sources: Bulan is discussed in Jehuda Halevy, *The Book of Proof and Argument*, edited with an introduction and commentary by Isaak Heinemann (Oxford: East and West Library, 1947); William A. Galston, *Liberal Pluralism: The Implications of Value Pluralism for Political Theory and Practice* (Cambridge UP, 2002); *Minersville v. Gobitis*, 310 US 586 (1940); *West Virginia v. Barnette*, 319 US 624 (1943); James Madison and Thomas Jefferson, "Memorial and Remonstrance" (1785); James Madison, Amendment to the Constitution for inclusion in the *Bill of Rights* (June 8, 1789); *Gilbert v. Minnesota*, 254 US 325 (1920); Justice Brandeis' dissent is found at 254 US 343; *Meyer v. Nebraska*, 262 US 390 (1923); Justice McReynold's decision can be found at 262 US 401; *Pierce v. Society of Sisters*, 268 US 510 (1925); Justice McReynold's opinion is found at 268 US 535; *US v. Macintosh*, 283 US 605 (1931); Justice Sutherland's majority opinion is found at 283 US 625 and Chief Justice Hughes' dissent is found at 633–634; Justice Frankfurter's remarks are found at 301 US 591–600 (italics are mine); Justice Stone's remark can be found at 301 US 601; William G. Fennell, "The 'Reconstructed Court' and Religious Freedom: The *Gobitis* Case in Retrospect," *New York University Law Quarterly Review* 31; William F. Anderson, *Michigan Law Review* 39 (1940); Thomas Reed Powell, "Conscience and the Constitution," in *Democracy and National Unity*, edited by William T. Hutchinson (Chicago: University of Chicago Press, 1941); *Jones v. Opelika*, 316 US 584 (1942); Justice Reed's remark can be found at 316 US 598; Justice Murphy's dissent can be found at 316 US 618–620; the dissent of Murphy, Black and Douglas can be found at 316 US 623–624; John Raeburn Green, "Liberty Under the Fourteenth Amendment," *Washington University Law Quarterly*, 27 (1942); *Murdock v. Pennsylvania*, 319 US 105; Justice Jackson's decision in *West Virginia v. Barnette* can be found at 319 US 630–637; Black and Douglas's decision can be found at 319 US 643–644; Justice Murphy's decision can be found at 319 US 644–646; Justice Jackson's dissent can be found at 319 US 646–656.