CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – The "Contemplation of Justice"

Adderly v. Florida, 385 U.S. 39 (1966)

There may be some public places which are so clearly committed to other purposes that their use for the airing of grievances is anomalous. There may be some instances in which assemblies and petitions for redress of grievances are not consistent with other necessary purposes of public property. A noisy meeting may be out of keeping with the serenity of the statehouse or the quiet of the courthouse. No one, for example, would suggest that the Senate gallery is the proper place for a vociferous protest rally. And, in other cases, it may be necessary to adjust the right to petition for redress of grievances to the other interests inhering in the uses to which the public property is normally put. See Cox v. New Hampshire, supra; Poulos v. New Hampshire, 345 U. S. 395. But this is quite different from saying that all public places are off limits to people with grievances. See Hague v. CIO, supra; Cox v. New Hampshire, supra; Jamison v. Texas, 318 U. S. 413, 318 U. S. 415-416; Edwards v. South Carolina, supra. And it is farther yet from saying that the "custodian" of the public property, in his discretion, can decide when public places shall be used for the communication of ideas, especially the constitutional right to assemble and petition for redress of grievances. See Hague v. CIO, supra; Schneider v. State, 308 U. S. 147, 308 U. S. 163-164; Cantwell v. Connecticut, 310 U. S. 296; Largent v. Texas, 318 U. S. 418; Niemotko v. Maryland, 340 U. S. 268; Shuttlesworth v. City of Birmingham, 382 U. S. 87. For to place such discretion in any public official, be he the "custodian" of the public property or the local police commissioner (cf. Kunz v. New York, 340 U. S. 290), is to place those who assert their First Amendment rights at his mercy. It gives him the awesome power to decide whose ideas may be expressed and who shall be denied a place to air their claims and petition their government. Such power is out of step with all our decisions prior to

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today where we have insisted that, before a First Amendment right may be curtailed under the guise of a criminal law, any evil that may be collateral to the exercise of the right must be isolated and defined in a "narrowly drawn" statute (Cantwell v. Connecticut, supra, at 310 U. S. 307) lest the power to control excesses of conduct be used to suppress the constitutional right itself. See

Stromberg v. California, 283 U. S. 359, 283 U. S. 369; Herndon v. Lowry, 301 U. S. 242, 301 U. S. 258-259; Edwards v. South Carolina, supra, at 372 U. S. 238; NAACP v. Button, supra, at 371 U. S. 433.

In modern times, also, such arrests are usually sought to be justified by some legitimate function of government. [Footnote 2/4] ***Yet, by allowing these orderly and civilized protests against injustice to be suppressed, we only increase the forces of frustration which the conditions of second-class citizenship are generating amongst us.***

[Footnote 2/1]

"Where would we really find the principal danger to civil liberty in a republic? Not in the governors as governors, not in the governed as governed, but in the governed unequipped to function as governors. ***The chief enemies of republican freedom are mental sloth, conformity, bigotry, superstition, credulity, monopoly in the market of ideas, and utter, benighted ignorance.*** Relying as it does on the consent of the governed, representative government cannot succeed unless the community receives enough information to grasp public issues, and make sensible decisions.

"The rights of free speech and assembly, while fundamental in our democratic society, still do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time. The constitutional guarantee of liberty implies the existence of an organized society maintaining public order, without which liberty itself would be lost in the excesses of anarchy. . . . A group of demonstrators could not insist upon the right to cordon off a street, or entrance to a public or private building, and allow no one to pass who did not agree to listen to their exhortations."

379 U.S. at 379 U. S. 554-555.

"The conduct which is the subject of this statute -- picketing and parading -- is subject to regulation even though intertwined with expression and association. The examples are many of the application by this Court of the principle that certain forms of conduct mixed with speech may be regulated or prohibited."

Id. at 379 U. S. 563.

See, e.g., De Jonge v. Oregon, 299 U. S. 353; Feiner v. New York, 340 U. S. 315; Niemotko v. Maryland, 340 U. S. 268; Edwards v. South Carolina, 372 U. S. 229; Cox v. Louisiana, 379 U. S. 536; Shuttlesworth v. City of Birmingham, 382 U. S. 87. The same is true of other measures which inhibit First Amendment rights. See, e.g., NAACP v. Alabama, 357 U. S. 449; Bates v. City of Little Rock, 361 U. S. 516; Shelton v. Tucker, 364 U. S. 479; NAACP v. Button, 371 U. S. 415. If the invalidity of regulations and official conduct curtailing First Amendment rights turned on an unequivocal showing that the measure was intended to inhibit the rights, protection would be sorely lacking. It is not the intent or purpose of the measure, but its effect on First Amendment rights, which is crucial.