AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 9: Liberalism Divided – Democratic Rights/Free Speech/Other Issues

**Commonwealth of Pennsylvania v. Stotland, 214 Pa. Super. 35 (PA 1969)**

*In April 1968 on the day following the assassination of Martin Luther King, Jr., the mayor of Philadelphia declared a state of emergency due to rioting. The mayor’s order included a prohibition on groups of twelve or more people “from gathering or congregating upon pubic highways or public sidewalks, or in any other outdoor place, except those who are awaiting transportation, engaging in recreational activities at a usual and customary place, or peaceably entering or leaving buildings.”*

*Janet Stotland was arrested on the campus of the University of Pennsylvania, where she was then a law student, while gathering with some 250 people to protest the mayor’s emergency proclamation. The crowd was not itself disorderly, but the demonstrators were ordered by police to disperse. Those who refused to disperse were arrested, including Stotland. Stotland was convicted of violating the emergency proclamation. She was tried de novo in county court and the conviction was affirmed. She then appealed to the state superior court, which affirmed the ruling in a per curiam decision. Two judges issued a concurring opinion explaining that that they agreed that the proclamation order was a valid restriction of Stotland’s First Amendment rights of assembly in the limited circumstances of the emergency.*

PER CURIAM.

*Affirmed*.

Judge SPAULDING, with whom Judge HOFFMAN joins, concurring.

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. . . . While I agree with the holding of the majority that the ordinance is a constitutionally valid exercise of State police power delegated to Philadelphia by the Home Rule Charter, I do so only because of the limitations which I understand the ordinance to impose upon the exercise of the emergency powers.

The question posed relates to the power of the State to impose time, size and area limitations upon peaceful public assemblies. A State may under its police powers regulate these aspects of assembly although the conduct which is the subject of regulation is intertwined with expression and association. *Cox v. Louisiana* (1964). . . .

The time, place and manner of speech and assembly may constitutionally be regulated by a precise and narrowly drawn regulatory statute evincing a legislative judgment that certain specific conduct should be limited or proscribed. *Edwards v. South Carolina* (1963). The regulation must rest upon the legislative judgment that the conduct which is the subject of regulation or prohibition would endanger an interest which the State may legitimately protect from interference, and the means employed must relate to the protection of the interest involved. Finally, the statute must limit administrative discretion to considerations of public interest in the enforcement of the statute. . . .

Turning to the case at hand, it is necessary to determine whether Ordinance 10-819 satisfies the conditions for constitutional regulation of the time, place and manner of public assembly. It is important to note that the ordinance does not undertake to regulate the content of speech. There are no limitations affecting the sponsorship, purpose, hours or duration of assemblies. The prohibition is effective only in the geographic areas of the city in which a State of Emergency has been declared. The prohibition is effective for a maximum period of two weeks. No limitation of any kind is imposed upon indoor assemblies.

The ordinance specifies that the emergency powers may be invoked only if the city “is suffering, or is in imminent danger of suffering civil disturbance, disorder, riot or other occurrence which will seriously and substantially endanger the health, safety and property of the citizens. . . .” The alternative conditions that the city be “suffering” or be “in imminent danger of suffering” a riot indicate that the emergency powers may be employed as a preventive measure as well as a control device. As the Commonwealth suggests in its brief, the words “imminent danger” have the same meaning as “clear and present danger.”

Both the ordinance and its history indicate that the only danger defined by the language “civil disturbance, disorder, riot or other occurrence” is a large scale urban riot. . . .

The language of the ordinance supports the conclusion that the powers may be exercised only to control or avert a large scale riot. The eight specific measures which the Mayor is authorized to apply are uniquely designed to combat this catastrophic form of civil disorder. The powers to restrict surface and air transportation into and within the city are aimed at containing a riot within existing riot-struck areas. The prohibitions upon the sale of weapons and inflammable liquids are designed to restrict or prevent arson and violence by limiting the availability of articles which might be employed to these ends. Restrictions imposed on the sale of alcoholic beverages may prevent the further aggravation and release of inflamed passions and hostilities. The powers to limit public assembly and to impose a curfew provide readily enforceable crowd control devices during an existing riot and limit the opportunities for the public venting of emotions which, when there is a clear and present danger of riot, may turn the possibility of riot into reality.

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Experience has demonstrated that a large scale riot may not be susceptible to control by the ordinary law enforcement techniques involving enforcement of criminal statutes providing for the punishment of individual violent acts after the violence has occurred. . . . The number and mobility of rioters require enforcement techniques aimed at containing or averting outbreaks of violence through crowd control measures readily understood by inhabitants of riot areas and easily applied by enforcement officers.

In ordinary times and at ordinary places, large public assemblies, especially for the purpose of peacefully communicating controversial ideas and minority viewpoints, must be given the greatest possible protection. However, in the highly charged atmosphere prevailing when the danger of a large scale riot is present, large public assemblies, although peaceful to all appearances, may inflame passions or promote clashes between persons or groups with divergent views and ignite the violence which may quickly become a full scale riot. The purpose of the limitation upon assembly is to eliminate the possibility of these dangerous confrontations at times and places where there is a clear and present danger of a large scale riot. The effect of the limitation is merely to delay assemblies until they can be held without endangering the entire community.

I therefore would construe Ordinance 10-819 as authorizing the Mayor to declare a State of Emergency only after he has found that there is a clear and present danger of a large scale civil disorder and granting him the power to limit public assembly only if the limitation is necessary to avert the danger and only in those geographic areas where it is needed for the success of the preventive action.

As so construed, I believe the ordinance to be constitutional. The limitations imposed upon assembly by Ordinance 10-819 are attained through a legislative directive that specific conduct be restricted because that conduct threatens an interest which may legitimately be protected by the state. Maintaining peace and public order is the most fundamental duty of government and is the primary justification for the existence of State Police power. “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.” . . . City Council was not unreasonable in its conclusion that under the limited conditions within which the ordinance permits regulation of assembly, public assembly dangerously interferes with this interest.

. . . . In *Cox*, the conduct was deemed to pose a danger because it occurred at a certain Place, at or near a courthouse. In this case, the conduct was deemed to pose a danger because it occurred at a certain Time, when there was a clear and present danger of a large riot. A narrow temporal limitation upon assembly is no less constitutional than a narrow geographic limitation.

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