AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 9: Liberalism Divided – Individual Rights/Personal Freedom and Public Morality

**North Carolina v. Dobbins, 277 N.C. 484 (NC 1971)**

*In 1969, the city council of Asheville, North Carolina, authorized the mayor to declare a “state of emergency endangering the lives, safety, health and welfare of the people” and empowered him during such an emergency to prohibit the possession of firearms off one’s own property and to prohibit travel on any public street except for specific purposes. A few months later, the mayor made use that city ordinance because of rioting and prohibited traveling with firearms and imposed a 9:00 pm curfew. The state of emergency was lifted three days later.*

*A highway patrolman stopped a car owned by Preston Dobbins and driven by Victor Chalk just after 11:00 pm on the second night of the curfew. The police discovered a shotgun in the car, and Chalk indicated that they were going to his mother’s house to protect it from rioters. Prior to his trial, Dobbins made a motion to have the evidence quashed on the grounds that the mayor’s order was unconstitutional. The motion was dismissed by the trial judge, and Dobbins was convicted. He lost an appeal to the circuit court. Dobbins then appealed to the state supreme court, which unanimously affirmed those rulings and upheld the constitutional validity of the declaration of emergency and the restrictions on travel as justified under the state’s police power.*

Justice LAKE.

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. . . . Tragic experiences in other cities across the nation were a reminder that, if those who threatened the destruction of property began to carry out that threat, violence would probably erupt throughout the city, resulting in numerous personal injuries and much bloodshed. The danger was clear and present, the time remaining for preventive measures a matter of hours. Under these circumstances, the contention of the defendant, that the Constitution of the United States and the Constitution of North Carolina forbid the city authorities to declare a state of emergency and to proclaim and enforce a temporary, night-to-night, city-wide curfew, with specified exceptions for emergency and necessary travel, is patently without support either in authority or logic.

The fact that, during the three nights in which this curfew was in effect, there was no such destruction and violence in the city does not support the defendant’s assertion that the proclamation of the curfew was unnecessary and was an unreasonable restraint upon the liberty of the people of the city, including the defendant. On the contrary, it is an indication that Mayor Montgomery, a doctor, exercised sound judgment and prescribed an effective preventive measure. . . .

Of course, the right to travel upon the public streets of a city is a part of every individual’s liberty, protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution and by the Law of the Land Clause, Article I, s 17, of the Constitution of North Carolina. The familiar traffic light is, however, an ever present reminder that this segment of liberty is not absolute. It may be regulated, as to the time and manner of its exercise, when reasonably deemed necessary to the public safety, by laws reasonably adapted to the attainment of that objective. The constitutional protection of the freedom of travel “does not mean that areas ravaged by flood, fire or pestilence cannot be quarantined when it can be demonstrated that unlimited travel to the area would directly and materially interfere with the safety and welfare of the area.” *Zemel v. Rusk* (1965). . . .

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Even as to those major segments of individual liberty, expressly protected from Federal restraint by the First Amendment to the Constitution of the United States, governmental protection of the public safety “from present excesses of direct, active conduct are not presumptively bad.” *American Communications Association, CIO v. Douds* (1950). . . .

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The defendant contends that the right to travel is related to the First Amendment freedoms of speech, assembly and religion. If so, this does not render it immune to restriction by State law, reasonably necessary for the protection of the public safety in view of prevailing conditions and reasonably calculated to promote such safety under those conditions. Of course, the right to travel on the public streets is a fundamental segment of liberty and, of course, the absolute prohibition of such travel requires substantially more justification than the regulation of it by traffic lights and rules of the road.

We do not have before us a prolonged curfew, imposed by an unduly fearful or arbitrary official upon a serene and peaceful city engaged in its normal pursuits. We have before us a temporary prohibition of travel in a city faced with a clear and present danger of violent upheaval, accompanied by widespread destruction of property and personal injury. To prevent, control and terminate such an upheaval is the primary function of government. Neither the Fourteenth Amendment nor Article I, s 17, of the State Constitution prevents the City Government of Asheville from discharging this duty owed by it to the people of the city.

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Neither the Constitution of the United States nor the Constitution of this State requires the city authorities to delay such action until fires have been ignited and rioting has commenced. All that is required is the existence of a clear and present danger of such disastrous and unlawful conduct. This condition existed in Asheville when the curfew here in question was proclaimed, according to the record before us.

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*Affirmed*.

Justice MOORE did not participate.