AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 8: The New Deal/Great Society Era—Democratic Rights/Free Speech

---

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

Harriet Adderley, an African-American student at Florida A&M University, participated in a protest against segregation held on the grounds of the local jail in Tallahassee, Florida. When she and other students refused to leave after being asked to do so by the local sheriff, they were arrested and charged with "trespass with a malicious and mischievous intent" upon public property. Adderley was convicted and the Supreme Court of Florida refused to hear her appeal. Adderley appealed to the Supreme Court of the United States.

The Supreme Court by a 5-4 vote sustained Adderley's conviction. Justice Black's majority opinion made a sharp distinction between the places in which protests can and cannot occur. On what basis did he make that distinction? Is this distinction consistent with the First Amendment? Justice Douglas insisted that persons normally have a constitutional right to engage in a peaceful protest on all government property. Is this correct? Suppose you wish to protest an increase in tuition at your university. After Adderley, *where could you conduct that protest? Where, on your best interpretation of the First Amendment, should you be able to conduct that protest?*

JUSTICE BLACK delivered the opinion of the Court.

. . . Petitioners have insisted from the beginning of this case that it is controlled by and must be reversed because of our prior case[] of *Edwards v. South Carolina* (1963). . . . We cannot agree.

The *Edwards* case, like this one, did come up when a number of persons demonstrated on public property against their State's segregation policies. They also sang hymns and danced, as did the demonstrators in this case. But here the analogies to this case end. In *Edwards,* the demonstrators went to the South Carolina State Capitol grounds to protest. In this case, they went to the jail. Traditionally, state capitol grounds are open to the public. Jails, built for security purposes, are not. The demonstrators at the South Carolina Capitol went in through a public driveway, and, as they entered, they were told by state officials there that they had a right as citizens to go through the State House grounds as long as they were peaceful. Here, the demonstrators entered the jail grounds through a driveway used only for jail purposes and without warning to or permission from the sheriff. . . .

. . . The Florida trespass statute under which these petitioners were charged . . . is aimed at conduct of one limited kind, that is, for one person or persons to trespass upon the property of another with a malicious and mischievous intent. There is no lack of notice in this law, nothing to entrap or fool the unwary.

. . .

The sheriff, as jail custodian, had power . . . to direct that this large crowd of people get off the grounds. There is not a shred of evidence in this record that this power was exercised, or that its exercise was sanctioned by the lower courts, because the sheriff objected to what was being sung or said by the demonstrators or because he disagreed with the objectives of their protest. The record reveals that he objected only to their presence on that part of the jail grounds reserved for jail uses. There is no evidence at all that, on any other occasion had similarly large groups of the public been permitted to gather on this portion of the jail grounds for any purpose. Nothing in the Constitution of the United States prevents Florida from even-handed enforcement of its general trespass statute against those refusing to obey the

sheriff's order to remove themselves from what amounted to the curtilage of the jailhouse. The State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated. For this reason, there is no merit to the petitioners' argument that they had a constitutional right to stay on the property, over the jail custodian's objections, because this "area chosen for the peaceful civil rights demonstration was not only 'reasonable,' but also particularly appropriate. . . ." Such an argument has as its major unarticulated premise the assumption that people who want to propagandize protests or views have a constitutional right to do so whenever and however and wherever they please. . . . The United States Constitution does not forbid a State to control the use of its own property for its own lawful nondiscriminatory purpose.

. . . .

JUSTICE DOUGLAS, with whom THE CHIEF JUSTICE, JUSTICE BRENNAN, and JUSTICE FORTAS concur, dissenting.

. . . [T]he Court errs in treating the case as if it were an ordinary trespass case or an ordinary picketing case.

The jailhouse, like an executive mansion, a legislative chamber, a courthouse, or the statehouse itself . . . . is one of the seats of government, whether it be the Tower of London, the Bastille, or a small county jail. And when it houses political prisoners or those who many think are unjustly held, it is an obvious center for protest. The right to petition for the redress of grievances has an ancient history and is not limited to writing a letter or sending a telegram to a congressman; it is not confined to appearing before the local city council, or writing letters to the President or Governor or Mayor. . . . Conventional methods of petitioning may be, and often have been, shut off to large groups of our citizens. Legislators may turn deaf ears; formal complaints may be routed endlessly through a bureaucratic maze; courts may let the wheels of justice grind very slowly. Those who do not control television and radio, those who cannot afford to advertise in newspapers or circulate elaborate pamphlets may have only a more limited type of access to public officials. Their methods should not be condemned as tactics of obstruction and harassment as long as the assembly and petition are peaceable, as these were.

There is no question that petitioners had as their purpose a protest against the arrest of Florida A. & M. students for trying to integrate public theatres. . . . The petitioners who testified unequivocally stated that the group was protesting the arrests, and state and local policies of segregation, including segregation of the jail. This testimony was not contradicted, or even questioned. . . . There was no violence; no threat of violence; no attempted jail break; no storming of a prison; no plan or plot to do anything but protest. The evidence is uncontradicted that the petitioners' conduct did not upset the jailhouse routine; things went on as they normally would. . . .

We do violence to the First Amendment when we permit this "petition for redress of grievances" to be turned into a trespass action. . . . [T]he jailhouse grounds were not marked with "NO TRESPASSING" signs, nor does respondent claim that the public was generally excluded from the grounds. Only the sheriff's fiat transformed lawful conduct into an unlawful trespass. . . .

. . .

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. . . . But this is quite different from saying that all public places are off limits to people with grievances. . . . 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. . . . For to place such discretion in any public official, be he the "custodian" of the public property or the local police commissioner . . . 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 today. . . .

. . .

Today, a trespass law is used to penalize people for exercising a constitutional right. Tomorrow, a disorderly conduct statute, a breach of the peace statute, a vagrancy statute will be put to the same end. It is said that the sheriff did not make the arrests because of the views which petitioners espoused. That excuse is usually given, as we know from the many cases involving arrests of minority groups for breaches of the peace, unlawful assemblies, and parading without a permit. The charge against William Penn, who preached a nonconformist doctrine in a street in London, was that he caused "a great concourse and tumult of people" in contempt of the King and "to the great disturbance of his peace." . . . That was in 1670. In modern times, also, such arrests are usually sought to be justified by some legitimate function of government. 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.