AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 8: The New Deal/Great Society Era—Democratic Rights/Free Speech/Public Property, Subsidies, Employers, and Schools

Hague v. Committee for Indus. Organization, **307 U.S. 496** (1939)

*The Congress of Industrial Organizations (CIO) and Mayor Frank Hague of Jersey City, New Jersey, fought bitterly during the early New Deal period. The CIO, inspired by the Wagner Act and support from the Roosevelt administration, was determined to organize local workers into unions. Hague, supported by local employers, was determined to keep the city largely union-free. Hague’s efforts included physically removing union activists from Jersey City, bans on union meetings, prohibitions on distributing union literature, and an ordinance which declared, “no public parades or public assembly in or upon the public streets, highways, public parks or public buildings of Jersey City shall take place or be conducted until a permit shall be obtained from the Director of Public Safety.” The CIO filed a lawsuit in federal district court, claiming that these ordinances violated their free speech rights under the Fourteenth Amendment. The district court granted a wide-ranging injunction and that injunction was sustained by the Court of Appeals for the Third Circuit. Hague appealed to the Supreme Court of the United States. The Committee on the Bill of the Rights of the American Bar Association filed an amicus brief supporting the CIO. That brief asserted that*

*the right of assembly is one of the most vital elements of our system of government and that the right to hold open-air meetings in cities forms an important part of this right of assembly. It is the interference with that basic attribute of American citizenship that has convinced this Committee that there is here involved a far-reaching question, the decision of which will be of vital importance in respect of the maintenance of American civil rights.*

*The Supreme Court by a 5-2 vote declared the Jersey City ordinance unconstitutional. Justice Roberts’s majority opinion held that persons have a constitutional right to assemble for speech purposes on public parks and streets. What are the sources of this right? What are the limits? How did he distinguish* Davis v. Massachusetts *(1897)? Do you find that distinction convincing?* Hague *was a case involving a labor union with significant connections to the Roosevelt Administration. Suppose Mayor Hague was a committed proponent of racial equality fighting to keep the Klan out of Jersey City. Would the justices have made the same decision?*

JUSTICE ROBERTS delivered an opinion in which JUSTICE BLACK concurred.

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Prior to the Civil War there was confusion and debate as to the relation between United States citizenship and state citizenship. Beyond dispute, citizenship of the United States, as such, existed. The Constitution, in various clauses, recognized it but nowhere defined it. Many thought state citizenship, and that only, created United States citizenship.

. . .

The first sentence of the [Fourteenth] Amendment settled the old controversy as to citizenship by providing that ‘All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.’ Thenceforward citizenship of the United States became primary and citizenship of a state secondary.

The first section of the Amendment further provides: ‘No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; . . . .’

. . .

The question now presented is whether freedom to disseminate information concerning the provisions of the National Labor Relations Act, to assemble peaceably for discussion of the Act, and of the opportunities and advantages offered by it, is a privilege or immunity of a citizen of the United States secured against State abridgment by Section 1 of the Fourteenth Amendment. . . . The bill, the answer and the findings fully present the question. The bill alleges, and the findings sustain the allegation, that the respondents had no other purpose than to inform citizens of Jersey City by speech, and by the written word, respecting matters growing out of national legislation, the constitutionality of which this court has sustained.

Although it has been held that the Fourteenth Amendment created no rights in citizens of the United States, but merely secured existing rights against state abridgment, it is clear that the right peaceably to assemble and to discuss these topics, and to communicate respecting them, whether orally or in writing, is a privilege inherent in citizenship of the United States which the Amendment protects.

. . .

Citizenship of the United States would be little better than a name if it did not carry with it the right to discuss national legislation and the benefits, advantages, and opportunities to accrue to citizens therefrom. All of the respondents’ proscribed activities had this single end and aim. . . .

Natural persons, and they alone, are entitled to the privileges and immunities which Section 1 of the Fourteenth Amendment secures for ‘citizens of the United States.’ Only the individual respondents may, therefore, maintain this suit.

. . . What has been said demonstrates that, in the light of the facts found, privileges and immunities of the individual respondents as citizens of the United States, were infringed by the petitioners, by virtue of their official positions, under color of ordinances of Jersey City, unless, as petitioners contend, the city’s ownership of streets and parks is as absolute as one’s ownership of his home, with consequent power altogether to exclude citizens from the use thereof, or unless, though the city holds the streets in trust for public use, the absolute denial of their use to the respondents is a valid exercise of the police power.

The findings of fact negative the latter assumption. In support of the former the petitioners rely upon *Davis v. Massachusetts* (1897). . . .

The ordinance there in question apparently had a different purpose from that of the one here challenged, for it was not directed solely at the exercise of the right of speech and assembly, but was addressed as well to other activities, not in the nature of civil rights, which doubtless might be regulated or prohibited as respects their enjoyment in parks. In the instant case the ordinance deals only with the exercise of the right of assembly for the purpose of communicating views entertained by speakers, and is not a general measure to promote the public convenience in the use of the streets or parks.

We have no occasion to determine whether, on the facts disclosed, the *Davis* Case was rightly decided, but we cannot agree that it rules the instant case. Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens. The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied.

We think the court below was right in holding the ordinance . . . void upon its face. It does not make comfort or convenience in the use of streets or parks the standard of official action. It enables the Director of Safety to refuse a permit on his mere opinion that such refusal will prevent ‘riots, disturbances or disorderly assemblage.’ It can thus, as the record discloses, be made the instrument of arbitrary suppression of free expression of views on national affairs for the prohibition of all speaking will undoubtedly ‘prevent’ such eventualities. But uncontrolled official suppression of the privilege cannot be made a substitute for the duty to maintain order in connection with the exercise of the right.

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JUSTICE FRANKFURTER and JUSTICE DOUGLAS did not participate.

JUSTICE STONE, with JUSTICE REED, concurring

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It has been explicitly and repeatedly affirmed by this Court, without a dissenting voice, that freedom of speech and of assembly for any lawful purpose are rights of personal liberty secured to all persons, without regard to citizenship, by the due process clause of the Fourteenth Amendment. . . . *Gitlow v. New York* (1925). . . . It has never been held that either is a privilege or immunity peculiar to citizenship of the United States, to which alone the privileges and immunities clause refers, . . . and neither can be brought within the protection of that clause without enlarging the category of privileges and immunities of United States citizenship as it has hitherto been defined.[[1]](#footnote-1)

 CHIEF JUSTICE HUGHES, concurring:

[omitted]

JUSTICE McREYNOLDS, dissenting

. . . [T]he District Court should have refused to interfere by injunction with the essential rights of the municipality to control its own parks and streets. Wise management of such intimate local affairs, generally, at least, is beyond the competency of federal courts, and essays in that direction should be avoided.

. . .

JUSTICE BUTLER, dissenting

I am of opinion that the challenged ordinance is not void on its face; that in principle it does not differ from the Boston ordinance, as applied and upheld by this Court . . . in *Davis v. Massachusetts*.

1. The reason for this narrow construction of the clause and the consistently exhibited reluctance of this Court to enlarge its scope has been well understood since the decision of the *Slaughter-House Cases* (1873). If its restraint upon state action were to be extended more than is needful to protect relationships between the citizen and the national government, and if it were to be deemed to extend to those fundamental rights of person and property attached to citizenship by the common law and enactments of the states when the Amendment was adopted, such as were described in *Corfield v. Coryell* (C.C.E.D. Pa. 1823), it would enlarge Congressional and judicial control of state action and multiply restrictions upon it whose nature, though difficult to anticipate with precision, would be of sufficient gravity to cause serious apprehension for the rightful independence of local government. [footnote by Justice Stone] [↑](#footnote-ref-1)