THE RIGHT OF FREE SPEECH AND ASSEMBLY: RE NAVARRO V. VILLEGAS

Presbitero J. Velasco, Jr.*

The year 1970 has been frequented with small "revolutionary" activities in the form of demonstrations, boycotts, effigyburning, marches and picketing which did not escape the more discerning eyes of the public. However, hardly do others realize the importance and effects of the measures taken. Some may even scorn the seemingly active student leaders who, as others may put it, would just want to "hog the limelight of the front pages or the flattering cameras of the television."

To any student of law, however, it is very important to analyze the interplay of the forces that are always present in demonstrations and rallies. On one side are the constitutionally protected rights of free speech, assembly and petition. On the other is the power of the government to limit or prohibit the exercise of such rights in the interest of public safety and welfare. Since the exercise of such rights usually involve the use of streets and other public places, it is evident that conflict between liberty and license will always arise. Such is what happened when the request of the Movement for a Democratic Philippines for a permit to stage a rally at Plaza Miranda was denied by the Mayor of Manila last February 24, 1970. The refusal resulted into a petition for mandamus which was resolved by the Supreme Court in favor of respondent mayor in the case of *Navarro v. Villegas.* [1]

In this article, we will study the nature and limitations of the freedom to assemble and petition the government for redress of grievances, the validity of municipal ordinances requiring a permit for the use of public places and the standards applied by the courts in order to justify the restrictions imposed upon the rights of assembly and petition. We will dissect and analyze the *Navarro v. Villegas* case in the light of decisions and principles obtaining here and abroad.

NATURE OF THE RIGHTS OF ASSEMBLY AND PETITION

Article III, section 1, (8) of the Philippine Constitution provides that "no law shall be passed abridging the freedom of speech, or of the press, or the rights of the people peaceably to assembly and petition the government for redress of grievances

* *Member*, Student Editorial Board, Philippine Law Journal.

1 G.R. No. 31687, February 15, 1970, 31 SCRA 730 (1970).

The right of assembly means the right of the citizens to meet peaceably for consultation and to discuss public issues. The right of petition means that persons can apply, without fear of penalty, to any branch or office of the government for redress of grievances. The persons assembling and petitioning must assume responsibility of charges made.[2]

It has been costumary from time immemorial, in all free countries and in most civilized countries, for people who are assembled for common purposes to parade together by day or reasonable hours at night, with banners and other paraphernalia, and with music of various kinds. These processions for political, religious and social demonstrations are resorted to for the express purpose of keeping unity of feeling and enthusiasm and frequently to produce some effect on the public mind by the spectacle of union of members. They are a natural product and exponent of common aims and valuable factors in furthering them.[3]

The right of assembly existed even before the adoption of the Constitution. The right is derived from those laws whose authority is acknowledged by civilized men throughout the world. It is found where civilization exists. The right was not granted to the people by the Constitution.[4]

The right of the people to so assemble for the purpose of petitioning Congress for redress of grievances or for anything else connected with the powers and duties of the government is an attribute of national citizenship[5] and thus a right and privilege secured to the citizens of our country by the Constitution. It was not by accident or co-incidence that the rights to freedom of speech and press were coupled in a single guaranty with the rights of the people peaceably to assemble and petition for redress of grievances, all these being, though not identical, inseparable.[6] The freedom of assembly is cognate to those of free speech and free press and is equally fundamental. These rights complement each other.[7] It is even said that the right of assembly and petition is rather the origin than a derivation of freedom of speech and of the press.

The Constitution does not confer the right of assembly but

---

[2] U.S. v. Bustos, 37 Phil. 731 (1918).

[3] Primicias v. Fugoso, 80 Phil. 75 (1948).

[4] U.S. v. Cruikshank, 92 U.S. 542, 23 L. Ed. 588 (1875).

[5] Maxwell v. Dow, 176 U.S. 581, 20 S. Ct. 448, 494, 44 L. Ed. 597 (1899)

[6] Thomas v. Collins, 323 U. S. 516, 65 S. Ct. 351, 89 L. Ed. 430 (1944).

[7] Powell v. Alabama, 287 U.S. 45, 53 S. Ct. 55, 84 A.L.R. 527, 77 L. Ed. 158 (1932).

guarantees its free exercise.[8] It is an important attribute of civilization and a necessary consequence of republican institutions. The very idea of a government republican in form implies a right on the part of its citizens to meet peaceably for consultation in respect of public affairs and to petition for redress of grievances.[9] It is one of the fundamental principles in a republican form of government that the people have the right to discuss their government without fear of being called to account in the courts for their expressions of opinion.[10] When citizens of a state become convinced that the administration of the affairs of their government is not carried on in accordance with the law or is not conducted for the best interest of all concerned, they have not only a right but it is their duty to present the cause of their grievances to the public and the free press of the state usually affords the best avenue for that purpose.[11]

Freedom of assembly is an essential element of the democratic system. At the root of this case lies the question of the value in our lives of the citizen's right to meet face to face with others for the discussion of their ideas and problems-religious, political, economic or social. Public debate and discussion take many forms including the spoken and the printed word, the radio and the screen. But assemblies face to face perform a function of vital significance in our democratic system and are no less important at the present time for the education of the public and the formation of opinion than they have been in our past history. The right of assembly lies at the foundation of our system of government. The cornerstone of that system is that government — all government, whether federal, state or local — shall be based on the consent of the governed. But the consent of the governed implies not only that the consent shall be uncoerced but also that it shall be grounded on adequate information and discussion. Otherwise, the consent would be illusory and a sham.[12]

Since the freedom of assembly lies at the foundation of a free society, the guaranty must therefore be given the most liberal and comprehensive construction, although it must be enjoyed in a peaceable and law-abiding manner.[13] The spirit of our free institutions allow the broadest scope and widest latitude to this constitutional guaranty.[14]

---

8 Spriggs v. Clark, 45 Wyo. 62, 14 P. 2d 667 (1932).

9 U.S. v. Cruikshank, *supra*, note 4.

10 Chicago v. Tribune Co., 307 Ill. 595, 139, N.E. 86 (1923).

11 U. S. v. Perfecto, 43 Phil. 58 (1922).

12 CHAFEE, FREE SPEECH IN THE UNITED STATES, 414 (1964).

13 Lair v. State of Oklahoma, 316 P. 2d 225, 71 A.L.R. 2d 856 (1957).

14 Gonzales v. Commission on Elections, G.R. No, 27833, April 18, 1969, 27 SCRA 835 (1969).

Peaceable assembly for lawful discussion cannot be made a crime. Those who insist and assist in the holding of meetings for peaceable political action cannot be branded as criminals on that score. The question, if the rights of free speech and peaceable assembly are to be preserved, is not as to the auspices under which the meeting is held but as to its purpose; not as to the relations of the speakers but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects.[15]

The right of assembly cannot be lawfully infringed by individuals, even momentarily anymore than by the state itself. The constitutional right to petition those invested with the powers of the government, being conferred to work out the public welfare rather than to secure private ends, can be neither denied by others nor surrendered by the citizen himself and accordingly, a corporation by-law which punishes with expulsion involving forfeiture of property rights an exercise of the right to assemble and petition, is void.[16]

LIMITATIONS

The right to assemble freely and the right of petition are not unlimited rights. These rights are subject to reasonable regulations to preserve and protect the general welfare. The right of assembly and petition are no more sacred than the right of free speech and as there may be an abuse of the latter right, so may there be an abuse of the right of assembly and petition.[17] But the legislative intervention can find constitutional justification only by dealing with the abuse as the right itself must not be curtailed. The greater the importance of safeguarding the community from the incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolable the constitutional right of free assembly in order to maintain the opportunity for free political discussion, to the end that the government may be responsive to the will of the people and that changes if desired, may be obtained by peaceful means. Therein lies the very foundation of constitutional government.[18]

The power of the state to abridge freedom of assembly is the exception rather than the rule. It must find justification in a reasonable apprehension of danger to organized government; the limitation upon individual liberty must have appropriate relation to the safety of the State.[19] Only the gravest abuses, endangering paramount

[15] De Jonge v. Oregon, 299 U.S. 353, 57 S. Ct. 255, 81 L. Ed. 278 (1936).
[16] Spayd v. Ringing Rock Lodge No. 665, 270 Pa. 67, 113 A. 70 (1921).
[17] *Re* Stolen, 193 Wis. 602, 214 N. W. 379 (1927).
[19] Herndon v. Lowry, 301 U.S. 242, 57 S. Ct. 732, 81 L. Ed. 1066 (1937).

public interests, give occasion for permissible limitation. It is therefore in our tradition to allow the widest room for discussion, the narrowest range for its restrictions, particularly when the rights of free speech is exercised in conjunction with peaceful assembly.[20]

It is a well-settled principle growing out of the nature of well-ordered civil societies that the exercise of these rights is not absolute for it may be so regulated that it shall not be injurious to the equal enjoyment of others having rights in the community or society. The power to regulate the exercise of the freedom of assembly and petition and other constitutional rights is termed the sovereign "police power" which is the power to prescribe regulations to promote the health, morals, peace, education, good order or safety and general welfare of the people.[21]

Thus, although the exercise of the right of assembly and petition is guaranteed by the Constitution, an unlawful assembly is punishable under our laws. In order to constitute the offense of unlawful assembly, it must appear that there is a common intent of the persons assembled to attain a purpose, whether lawful or unlawful, by the commission of such acts of intimidation or disorder as are likely to produce danger to the tranquility and peace of the neighborhood and have a natural tendency to inspire rational, firm and courageous persons in the neighborhood with well grounded fear of serious breaches of peace.[22] The essential elements of unlawful assembly are: 1) three or more persons must be assembled; 2) they must be assembled to do an unlawful act or being assembled shall attempt to do a lawful act in a violent, unlawful and tumultuous manner to the terror and disturbance of others; 3) the three or more persons must have a common purpose and act in concert to do the act complained of; 4) the intent or purpose necessary to render an assembly an unlawful assembly need not exist at the outset but may be found either at or after the time of the assembly; 5) it is immaterial whether the object which the persons composing the assembly have in view is lawful or unlawful if the intent is to effect the object of the assembly in such a manner as to give firm and courageous persons in the neighborhood of such assembly, ground to apprehend a breach of peace in the consequence of it.[23]

Under the Revised Penal Code, the following are considered illegal assemblies: 1) any meeting attended by armed persons for

20 Thomas v. Collins, *supra*, note 6.

21 Primicias v. Fugoso, *supra*, note 3.

22 New Jersey v. Butterworth, 104 N. J. L. 597, 142 A. 57, 58 A. L. R. 744 (1928).

23 Lair v. State of Oklahoma, *supra*, note 13.

the purpose of committing any of the crimes punishable by the Code and 2) any meeting in which the audience whether armed or not is incited to the commission of the crime of treason, rebellion or insurrection, sedition or assault upon a person in authority or his agents. If a person present at the meeting carries an unlicensed firearm, it shall be presumed that the purpose of such meeting, insofar as he is concerned, is to commit acts punishable under the Code and he shall be considered a leader or organizer of the meeting.[24] In illegal assemblies, the purpose is to incite in a meeting the commission of treason, rebellion, sedition or assault but the actual inciting is not a necessary element, for otherwise, the act would be punishable under inciting to sedition.

The intent with which persons assemble is the very essence of the offense of unlawful assembly. Such intent can be determined only by the language, acts, conduct and circumstances indicating adoption of the unlawful conduct of another person to be established either by direct proof or by circumstantial evidence. If by circumstantial evidence, the proof, in order to sustain a conviction, must be be inconsistent with innocence and consistent only with guilt. Each charge of unlawful assembly largely and necessarily depends upon the object and character of the meeting and whether or not the overt acts done by the participants therein pursuant to a common understanding are of such a nature as to incite well-grounded fear in persons of reasonable firmness and courage of a riot, rout, affray or other breaches of peace.[25]

It has been held that there may be an unlawful assembly even though there was no specific intent in the minds of those who assembled to act unlawfully, for unlawfulness may depend solely upon the numbers involved and their demeanor, so that the illegal purpose may have developed after the assembling.[26] In the case of *People v. Most*,[27] the accused was convicted for unlawful assembly for having delivered a speech at a meeting, glorifying the deeds of ten executed anarchists, denouncing and threatening with death the officers connected with the case of such persons and calling upon his listeners to arm and resist the authorities. The Court held that it was not decisive that only one man did the talking, since, if two or more other people indicated agreement in some fashion, the requisite of the crime is met. It did not believe it conclusive that the acts threatened were to happen in the future. The purpose of the

[24] REV. PEN. CODE, art. 148.
[25] New Jersey v. Butterworth, *supra*, note 22.
[26] People v. Kerrick, 86 Cal. App. 542, 261 P. 756 (1927).
[27] 128 N. Y. 108, 27 N. E. 970 (1891).

statute is to protect the public peace and such incendiary speeches as that of Most are not less dangerous merely because it is said that the time is not ripe for action as no one can foresee the consequences of such language.

There is however an authority to the view that a meeting cannot be prohibited merely because changes which are shocking or highly unpopular may be advocated.[28] Any group of people may demonstrate within the protection of the right of assembly and petition for redress of grievances provided there is no violence or intent to commit acts of violence or breaches of peace, even though the object of the demonstration is to protest publicly against the action taken by government officials and employees.[29]

In *Floes v. Denver*,[30] he state court held that the picket thrown around the governor's mansion is legal as no profane or offensive language was used. The court could not find justification for a conviction for the offense of "disturbing the peace of others" as the assembly was not attendant with assaults, fighting or violence or tumultous or offensive conduct. The right of the community to peace and quiet must be balanced against the constitutional right to appeal to the authorities for a redress of grievances. It would seem that what the public endures for the sake of sports, it should be able to dure in the assertion of fundamental rights. That is part of the price of freedoms.

In *U.S. v. Apurado*,[31] some 500 residents, wholly unarmed except for a few who carried canes, crowded into the chamber of the municipal council and demanded from the council the removal of the municipal treasurer, the secretary and the chief of police because they believed that they should not be permitted to hold office in the municipality on account of their outspoken allegiance to one of the religious factions into which the town was at that time divided. The council acceded to their wishes and drew up a formal document setting out the reason for its action. The Supreme Court in reversing the conviction of the accused said: "It is rather to be expected that more or less, disorder will mark the public assembly of the people to protest against grievances whether real or imaginary because on such occasions, feeling is always wrought to a high pitch of excitement and the greater the grievance, the more intense the feeling, the less perfect, as a rule, will be the disciplinary control of

[28] American League of the Friends of Germany of Hudson Country v. Eastmead, 116 N. J. E. 487, 174 A. 156 (1934).

[29] New Jersey v. Butterworth, *supra*, note 22.

[30] 122 Colo. 71, 220 P. 2d 373 (1950).

[31] 7 Phil. 422 (1907).

the leaders over their responsible followers. But if the prosecution be permitted to seize upon every instance of such disorderly conduct by individual members of a crowd as an excuse to characterize the assembly as a seditious and tumultous uprising against the authorities, then the right to assemble would become a delusion and a snare and the attempt to exercise it on the most righteous occasion and in the most peaceable manner would expose all those who took part therein to the severest and most unmerited punishment, if the purpose which they sought to attain did not happen to be pleasing to the prosecuting authorities. If instances of disorderly conduct occur on such occasions, the guilty individuals should be sought out and punished therefore, but the utmost discretion must be exercised in drawing the line between disorderly and seditious conduct and between an essentially peaceful assembly and a tumultous uprising."

VALIDITY OF ORDINANCES REGULATING THE USE OF PUBLIC PLACES

In studying the problems attendant to demonstrations and rallies, there are two types of ordinances worthy of consideration. One type forbids the obstruction of the streets and the other requiring a permit from some public official or governmental body before a proposed assembly may be had.

No one can doubt that an ordinance which has for its purpose to keep street traffic free from obstruction is valid and constitutional.[32] In *Commonwealth v. Surridge,* [33] it was held that although the right of peaceful assembly is secured by the constitution and an indubitable and important right scrupulously protected by the judiciary, it cannot be exercised when in conflict with the enjoyment of other well recognized rights of individuals or the public. The easement of passage for the public acquired by the layout of a highway includes reasonable means of transportation for persons and commodities and of transmission of intelligence. Whatever interferes with the exercise of this easement is a nuisance, even though no inconvenience or delay to public travel actually takes place. The court held it immaterial that the defendant had a permit, since it was beyond the ordinance-making power of the city to grant a permit which auhorized obstruction of a public way.

In *Commonwealth v. Hessler,*[34] it was held:

"Municipal authorities, as trustees for the public have the duty

[32] 265 Mass. 425, 164 N.E. 480 (1929).

[33] *Id.*

[34] 141 Pa. S. 421, 15 A. 2d 486 (1940).

> to keep their communities' streets, open and available for movement of people and property, the primary purpose to which the streets are dedicated. So long as the legislature to this end, does not abridge the constitutional liberty of one rightfully upon the street to impart information through speech or distribution of literature, it may lawfully regulate the conduct of those using the street. For example, a person could not exercise his liberty by taking his stand in the middle of a crowded street, contrary to traffic regulations to maintain his position to the stoppage of all traffic; a group of distributors could not insist upon a constitutional right to form a cordon across the street and to allow no pedestrian to pass who did not accept a tendered leaflet; nor does the guaranty of freedom of speech or of the press deprive a municipality of the power to enact regulations against throwing literature broadcast in the streets. Prohibition of such conduct would not abridge the constitutional liberty since such activity bears no necessary relationship to the freedom to speak, print or distribute information or opinion."

In *Commonwealth v. Davis*,[35] Justice Holmes speaking for the state court said:

> "As representative of the public, the legislature may and does exercise control over the use which the public may make of such places and it may and does delegate more or less of such control to the city or town immediately concerned. For the legislature absolutely or conditionally to forbid public speaking in a highway or public park, is no more an infringement of the rights of a member of the public than for the owner of a private house to forbid it in his house. Where no proprietary rights interfere, the legislature may end the right of the public to enter upon the public place by putting an end to the dedication to public uses. So it may take the less step of limiting the public use to certain purposes."

In the case of *Cox v. New Hampshire*,[36] the Court upheld the conviction of several members of Jehovah's Witnesses for waking close together through the business district of Manchester in an "information march", each carrying a sign reading "Religion is a Snare and A Racket". The Court justifying the conviction held:

> "Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society, maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses. The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but rather as one of the means of safeguarding the good order upon which they ultimately depend. The control of travel on the streets of cities is the most familiar illustration of this recognition of social need. Where a restriction of the use of highways in that relation is designed to promote the public convenience in the in-

[35] 167 U.S. 43, 17 S. Ct. 731, 42 L. Ed. 71 (1897).
[36] 312 U.S. 569, 61 S. Ct. 762, 85 L. Ed. 1049, 133 A.L.R. 1396 (1941).

> terest of all, it cannot be disregarded by the attempted exercise of some civil right which in other circumstances would be entitled to protection. One would not be justified in ignoring the familiar red traffic light because he thought it his religious duty to disobey the municipal command or sought by that means to direct public attention to an announcement of his opinions. As regulation of the use of the streets for parades or processions is a traditional exercise of control by local government, the question in a particular case is whether that control is exerted so as not to deny or unwarrantedly abridge the right of assembly and the opportunities for the examination of thought and the discussion of public questions immemorially associated with resort to public places."

From the above-mentioned case, there can be no doubt that making a speech in a street is not a nuisance per se, for any such rule is "scarcely suited to the genuis of our people or to the character of their institutions and would lead to repression of many usages of the people now tolerated as harmless, if not necessary."[37] Similarly an ordinance forbidding all processions and parades on the streets calculated to attract a crowd is unreasonable since a crowd of people is one of the most ordinary incidents of everyday life in any city of considerable size in this country. The use of its streets contemplates, not quietude and repose, but noise, bustle and confusion, incident to the transaction of the lawful business of the people and their lawful and harmless amusements and recreations, pleasures and devotions.[38] An abridgement of the rights of the people is present when street parades are prohibited since it represses associated effort and action. It discourages unity of feeling and expression on great public questions, economic, religious and political. It practically destroys these great public demonstrations that are the most natural product of common aims and kindred purposes.[39]

The other type of ordinance which has been used to regulate street meetings and parades is that which requires a permit before a group of persons can go on with a demonstration. The propriety of an ordinance which requires a prior permit is justified on the ground that although the use of the streets and public places has from ancient time been a part of the privilege of a citizen to use the streets and parks for communicating his views on national questions, it must be regulated in the interest of all. The use of public places is not absolute but relative and must be exercised in subordination to the

---

[37] Fairbanks v. Kerr, 70 Pa. 86, 10 Am. Rep. 664 (1872).

[38] FELMANN, THE CONSTITUTIONAL RIGHT OF ASSOCIATION 21 (1963) citing Anderson v. City of Wellington, 40 Kan. (73, 19 P. 719 (1888) and *In re* Gribben, 5 Okla. 379, (47 P. 1074) (1897).

[39] Anderson v. City of Wellington, *supra*, note 38 at 178, 19 P. at 722.

general comfort and convenience and in consonance with peace and good order.[40]

The validity of ordinances requiring a permit before one can demonstrate in public places depend upon the nature and scope of discretion which the ordinance vests in the licensing authority. In the case of *Massachusetts v. Davis,*[41] the state court sustained the conviction of a man who made a public address on the Boston Common without a permit from the mayor, contrary to a local ordinance. Justice Holmes of the ownership of the State of public streets and The Supreme Court of the United States accepted the concept of parks such that the restrictions on the rights of a person to speak in such places is justified. In affirming the decision of the state court, the Supreme Court could see nothing wrong with the fact that under Massachusetts law, there is no right to use the Common except in such manner and subject to such regulations as the legislative body may prescribe. It declared that the constitutional protection to the rights of assembly and petition did not destroy the power of the states to enact police regulations as to subjects within their control.

Following the holding in the *Davis* case, several ordinances which gave government officials an undefined discretion to grant or deny requests for permits were upheld by some state courts on the theory that if the official acted fairly or arbitrarily, such action could be corrected by the courts. The state courts did not find it necessary for the ordinances to provide the standards to guide the officials in its implementation considering that it is presumed that their discretion in such matters will be exercised in a fair and impartial manner.[42]

The Philippine Supreme Court in the case of *Primicias v. Fugoso*[43] seems to follow this view. It held that although the ordinance does not provide the gauge for its application, an official is not regarded as having a limitless discretion in approving or denying a request for a permit to stage a rally. There, the representative of the Coalesced Minority Parties addressed to the respondent a petition asking permission to hold a public meeting at Plaza Miranda for the purpose of petitioning the government for redress of grievances. The request was granted the same day but was revoked a day before the scheduled meeting, the reason being that the pro-

[40] Hague v. C.I.O., 307 U.S. 496, 59 S. Ct. 954, 83 L. Ed. 1423 (1939).

[41] *Supra,* note 35.

[42] Duquesne v. Fincke, 269 Pa. 112, 112 A. 130 (1920); People *ex rel* Doyle v. Atwell, 232 N.Y. 96, 133 N.E. 364, 25 A.L.R. 107 (1921).

[43] *Supra,* note 3.

posed meeting would be an "indignation rally" to which all the supposed electoral frauds alleged to have been perpetuated in many parts of the country would be bared before the people. The respondent believed that the passions of the people in the recently concluded election were still high and the public peace and order in Manila would be undermined by the proposed rally. Another request was futile. The ordinance involved provides:[44]

> "the streets and public places of the city shall be kept free and clear for the use of the public and the sidewalks and cressings for the pedestrians and the same shall only be used or occupied for other purposes as provided by ordinance or regulation x x x, Provided, That the holding of any parade or procession in any streets or public places is prohibited unless a permit therefore is first secured from the Mayor, who, shall, on every occasion, determine or specify the streets or public places for the formation, route or dismissal of such parade or procession; and Provided finally, that all applications to hold a parade or procession shall be submitted to the Mayor not less than 24 hours prior to the holding of such parade or procession."

Although there is no express and specific provision of the Revised Ordinances of the City of Manila regulating the holding of public meetings at any street or public place, this section was applied by analogy to meetings and assembly in such places.

The Supreme Court in granting the petition for mandamus said:

> "This provision is susceptible of two construction, one is that the Mayor is vested with unregulated discretion to grant or refuse to grant permit for the holding of a lawful assembly or meeting, parade or procession in the streets and other public places of the City of Manila; and the other is that the applicant has the right to a permit which shall be granted by the Mayor subject only to the latter's reasonable discretion to determine or specify the streets or public places to be used for the purpose, with a view of preventing confusion by overlapping to secure convenient use of the streets and public places by others and to provide adequate and proper policing to minimize the risk of disorder.
>
> The first construction with regard the said provision as a grant of unregulated and unlimited power to grant or refuse a permit for the use of the streets and other public places for processions, parades or meetings, would make the ordinance null and void as amounting to an abridgment of the freedom of expression and the right of assembly and petition. Under our democratic system of government, no such unlimited power maybe validly granted to any officer of the government except perhaps in cases of national emergency. The second construction should therefore be adopted that is, to construe the provisions of the said ordinance to mean that it does not confer upon the Mayor

[44] MANILA REV. ORDINANCES, CHAP. 118, sec. 1119.

> the power to refuse to grant the permit but only the discretion in issuing the permit, to determine or specify the streets or public places where the parade or procession may pass or the meeting may be held."

The High Court, therefore, refused to invalidate an ordinance which is unconstitutional on its face by supplying the standards in order to give the legislation an operation within the constitutional limits.

On the other hand, a different view was expressed in the case of *Hague v. C.I.O.*[45] where the United States Supreme Court held that a statute or ordinance which vests discretionary authority in some public officials or governmental body to grant or withhold permits is unconstitutional on its face. The evidence shows that Mayor Hague has adopted and enforced a deliberate policy of forbidding the respondent and their associates from communicating their views respecting the National Labor Relations Act to the citizens of Jersey City by holding meetings and assemblies in the open air and at public places. Previous to the futile requests of the CIO, petitioner had made use of every possible administrative device to prevent meetings from being held by any speakers except those he approved. The owner of public halls were deterred from renting them and permits for distribution of handbills were refused.

The Mayor acted under a city ordinance forbidding any public assembly to take place in or upon the streets, parks or public buildings of Jersey City unless a permit had been obtained three days ahead from the Director of Public Safety. The most important clause follows:

> "The Director of Public Safety is hereby authorized to refuse to issue said permit, when after investigation of all the facts and circumstances pertinent to this application, he believes it to be proper to refuse the issuance thereof; Provided, however, that said permit shall only be refused for the purpose of preventing riots, disturbances or disorderly assemblage."

An important contention of the Mayor of Jersey City was that a city's ownership of streets and parks is as absolute as a man's ownership of his home and that they consequently had the power to keep out anybody as they pleased or close the streets and parks to meetings entirely. This argument is based on the decision unanimously upheld by the United States Supreme Court in *Commonwealth v. Davis* in 1897.

---

[45] *Supra*, note 40

The answer to this argument was supplied by the Bill of Rights Committee of the American Bar Association which was allowed as friend of the court:

"We desire to stress the importance of open-air meetings as a means for public discussion and education. Outdoor public assemblies have a special function in the field of free expression that is fulfilled by no other medium. It is true that the press continues as a major vehicle of public discussion and that the new medium of the radio occupies a large part of the field. Yet it is also true that the open-air meetings still fill a major role and is indispensable in giving free public debate its traditional scope.

The outdoor meeting is especially well adapted to the promotion of unpopular causes, since such causes are likely to command little financial support and therefore must often be promoted by persons who do not have financial means to hire a hall or purchase time on the radio.

The informal character of the outdoor meeting is often of advantage in developing questions and answers — one of the best ways of forming public opinion. For this and the other reasons just mentioned, it may fairly be said that the outdoor meeting is the most democratic form of expression.

This importance of streets and parks for public assembly undermines the assumption of Justice Holmes that a city owns its parks in the same sense and with the same rights as a private owner owns his real estate, with the right to exclude or admit anyone he pleases.

The parks are held for the public. A man's house is primarily for himself and his family and if he chooses to admit strangers, that is his incidental right. But the primary purpose of the park is to provide generally for the use and recreation of the people. An essential difference between a city and the private owner is that the latter can admit some outsiders and exclude others on any whimsical basis he wishes. But surely a city has no such right in respect of the parks. A CITY MAY REGULATE REASONABLY IN THIS RESPECT BUT MAY NOT ARBITRARILY DISCRIMINATE. This does not mean that the city is unable to make any choices. Thus it can keep adults out of children's playgrounds. But it cannot keep out red-headed children while admitting youthful blondes and brunettes, nor can it limit the park benches to members of one political party.

Accordingly, though it is doubtless true that a city can regulate its property in order to serve its public purpose, there is, we submit, a constitutional difference between reasonable regulation and arbitrary exclusion. In short, the right of a city in respect of its park resembles other governmental rights in that it must be administered for the benefit of the public and not in an arbitrary manner. There are many different kinds of public benefits to be derived from parks and one of the most important is the constitutional right of assembly therein. The parks are held by the city subject to this right. It can be regu-

lated in a reasonable manner; it must not be denied."

Justice Roberts said that the *Boston Common* case did not apply: "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 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."

Another contention of the Jersey officials was that if the proposed meetings were held, disturbances were likely to follow because the meetings would be attacked by opponents. The officials offered as evidence, protests against such meetings which had been received from the Chamber of Commerce, two organizations of veterans and the Ladies of the Grand Army of the Republic. At least one threat of violence was voiced against the CIO and its sympathizers by a greatt mass meeting of 3,000 persons, all of who veterans who announced that if the authorities did not refuse a permit for an open-air meeting, the veterans would take the matter into their own hands and see to it that the meeting would be broken up.

To refute the argument, it was reasoned out that the right of assembly cannot mean that the right ceases unless everybody present, including opponents of the speakers, is certain to be peaceful. Law-abiding speakers and their supporters should not be deprived of assemblage in the open air because other persons are intolerant and ready to violate the law. Such a doctrine would mean that a citizen loses his constitutional rights because his opponents threatens to commit crimes. Surely a speaker ought not to be suppressed because his opponents proposed to use violence. It is they who should suffer for their lawlessness, not he.

The Supreme Court held the Jersey City ordinance void upon its face: "It does not make comfort or convenience in the use of the 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."

The basic premise on which the ordinance was invalidated in *Hague v. CIO* was applied and restated in *Kunz v. New York.* [46] Carl Kunz, a Baptist minister, applied for and received a permit which was good for only one year. Before the end of the year, however, his permit was revoked after a hearing by the police commissioner on evidence that he had denounced and ridiculed other religious beliefs. Subsequent requests were denied so he spoke before a group of persons without a permit and was arrested and convicted. On appeal, the conviction was reversed by the United States Supreme Court.

The city ordinance made it unlawful to hold public worship meetings on the streets without first obtaining a permit from the police commissioner. It was pointed out that the ordinance made no mention of the reasons for which a permit application could be refused. The interpretation of the ordinance by the police commissioner allowed him, as an administrative official, "to exercise discretion in denying subsequent permit applications on the basis of his interpretation, at that time, of what is deemed to be conduct condemned by the ordinance. Thus construed and administered, the ordinance gave the police commissioner "discretionary power to control in advance the right of the citizens to speak on religious matters on the streets of New York." As such the ordinance was held to be clearly invalid as a prior restraint on the exercise of the right of peaceful assembly and petition. The public authorities may regulate streets and parks, said the Court, but they may not institute a licensing system which vests in an administrative official, discretion to grant or withold a permit upon broad criteria unrelated to proper regulation of public places. It was apparent that the commissioner had denied the permits requested mainly on the effect of the speeches or sermons that Kunz was likely to deliver and not on the police considerations relating to the prevention of serious interference with the normal usage of streets and parks. Prior restraints on the right of free speech in public parks or streets are unconstitutional.

If, as argued by the State, Kunz's previous meetings had caused disorder, there are appropriate public remedies to protect the peace and order of the community. But the issue here is *suppression,* not punishment. It is sufficient to say that the govern-

[46] 340 U.S. 290, 71 S. Ct. 312, 328, 95 L. Ed. 267, 280 (1951).

ment cannot vest restraining control over the right to speak on religious subjects in an administrative official where there are no appropriate standards to guide his actions.

A strong dissent was written in this case by Justice Jackson. He said that Kunz would not have had any difficulty with the authorities with respect to sermons and speeches on public property had he confined himself to preaching his own religion or making temperate criticism or refutation of other religions. But Kunz not only denounced the Pope as Anti-Christ and the Jews as Christ killers but even said that all the Jews should be burned in incinerators as "garbage that didn't believe in Christ". These and similar utterances stirred strife and threatened violence. Language such as this in street meetings is not immune from prior municipal control.

Jackson said that there is a world of difference between Kunz saying these things in his own pulpit or hall and his saying them on the street, for the street preacher takes advantage of people's presence on the streets to impose his message upon what, in a sense, is a *captive audience*. A meeting on a private property is made up of an audience that has volunteered to listen. The question, therefore is not whether the state could if it tried, silence Kunz, but whether it must place its streets at his service to hurl insults at the passerby.

Justice Jackson it seems, went in his criticism beyond the reach of the Court's decision. In the first place, the Court did not hold that Kunz has the constitutional right to use fighting words in a speech on a public street; it only held that the city could not, by prior restraint, through the refusal to give him a permit, prevent him from making his speech. This does not mean that Kunz has the constitutional right to make a speech which incites to disturbance or riot; for if he should make such a speech, he might be punished for his act. Because an act may not be prevented does not mean that it may not subsequently be punished.

Because there is more reason for the constitutional ban on prior restraints of speech, it does not follow that there is no reason for the latter. Justice Jackson conceded that there may be no prior restraint on a speech to be delivered on private property. The difference seems to be that the speaker on the street or park has a captive audience — people cannot help but hear the speaker's invective and insults. But this is rarely the case; normally one does not hear what the soapbox orator says unless one chooses to listen by joining his audience and then one is voluntary rather than a captive audience. If a speaker knowingly incites a riot, he may be punished for his act whether his speech was delivered under the stars or in a

rented auditorium. But if freedom of speech is constitutionally guaranteed, it ought not to be in any way conditioned by the necessity to get a permit from public officials who may demand satisfactory proof that the speaker will not offend, insult, arouse, disgust or shock anyone.[47]

At the same time that the *Kunz* case was decided, the Supreme Court also pronounced judgment in the case of *Niemotko v. Maryland*,[48] which grew out of the refusal of the Park Commissioner and City Council of Havre de Grace, Maryland to permit a group of Jehovah's Witnesses to hold Bible talks in the town park. There was no ordinance requiring a permit but it had become the custom to obtain a permit from the park commissioner for meetings or celebrations in the park. After the denial of the request of the permit and the appeal to the mayor and city council, Niemotko proceeded to hold a meeting in the park. As soon as the meeting opened, he was arrested and convicted.

Upon appeal, the United States Supreme Court reversed the conviction. Chief Justice Vinson pointed outt that there was no evidence of disorder or threats of violence or riot or any sort of conduct which could be considered detrimental to the public peace or order, since even the evidence of the police showed that the defendant had conducted himself in a manner beyond reproach. The Court was completely committed to the proposition that a permit requirement is invalid as a prior restraint "in the absence of narrowly drawn, reasonable and definite standards for the officials to follow". All that appeared here was a custom or practice, with the public officials enjoying a limitless discretion. There was here no evidence that could serve as a valid basis for the refusal of a permit, in view of the fact that the city allowed other religious groups to use the park. The conclusion is inescapable, said the Court, that the use of the park was denied because of the city council's dislike for or disagreement with the Witnesses or their views. Such treatment of Jehovah's Witnesses was a denial of equal protection of the laws in the exercise of freedom of speech and religion which has a firmer foundation than the whims or personal opinions of a local governing body.

At this point, the cases settle the proposition that no licensing ordinance or law may, under the guise of regulating public places in the interests of public welfare and order, vest undefined discretion

---

[47] KONVITZ, FUNDAMENTAL LIBERTIES OF A FREE PEOPLE 181 (1957).

[48] 340 U.S. 268, 71 S. Ct. 325, 328, 95 L. Ed. 267, 280 (1951).

in any official to grant or withold permits to hold meetings or processions in the streets and other public places. Such ordinance is unconstitutional as a prior restraint.[49] It is improper to make the constitutional liberties of the citizen depend "upon the good impulses of a subordinate official entrusted with unlimited discretion and there can be no reasonable presumption that an unlimited discretion will not be exercised when the ordinance itself reposes an unlimited discretion."[50]

However, in 1953, in *Poulos v. New Hampshire*,[51] which also involved the denial of a park permit to Jehovah's Witnesses, the Court made it clear that it is unconstitutional for a city to require a license before one may conduct religious services in a park where, as interpreted by the state court, there is "uniform, non-discriminatory and consistent administration of the law". Justice Reed said that "there is no basis for saying that freedom and order are not compatible as that would be a decision of desperation". Regulation and suppression are not the same, either in purpose or result and courts of justice can tell the difference. The Court also ruled that where under state law, the remedy for a wrongful denial of the permit is through appropriate judicial review, however slow and costly this procedure may be, an aggrieved party must follow it and is not free to go ahead with the meeting without a permit. "Delay is unfortunate but the expense and annoyance of litigation is a price citizens must pay for life in an orderly society where the rights of the First Amendment have a real and abiding meaning."

Justices Douglas and Black dissented on the ground that any licensing of free speech is an unconstitutional prior restraint. They declared that there is no free speech in the sense of the Constitution when permission must be obtained from an official before a speech can be made.

The latest pronouncement of the United States Supreme Court on the validity of ordinances requiring a permit before one can hold a public meeting or rally was declared in *Shuttlesworth v. City of Birmingham*[52] which was decided in 1969. The facts show that on

---

[49] Matter of Frazee's, 63 Mich. 396, 30 N.W. 72 (1886); Chicago v. Trotter, 136 III 430, 26 N.E. 359 (1891); In re Gribben, *supra*, Note 38: Anderson v. Telford, 80 Fla. 376, 85 So. 673 (1920); State v. Coleman, 96 Conn. 190, 113 A. 385 (1921).

[50] A.C.L.U. v. Cortlandt, 109 N.Y.S. 2d 165 (1951).

[51] 345 U.S. 395, 73 S. Ct. 760, 97 L. Ed. 1105, 30 A.L.R. 2d 987 (1953).

[52] 394 U.S. 147, 89 S. Ct. 935 (1969).

the afternoon of April 12, Good Friday, 1963, 52 Negroes were led out of a Birmingham Church by three Negro ministers, one of them was petitioner, Fred Shuttlesworth. They walked in orderly fashion, two abreast for the most part, for four blocks. The purpose of their march was to protest the alleged denial of civil rights to Negroes in the city of Birmingham. The march stayed in the sidewalks except at street intersections and they did not intefere with other pedestrians. No automobile was obstructed nor were traffic signals disobeyed. At the end of four blocks, the marchers were stopped by the Birmingham police and were arrested for violating section 1159 of the General Code of Birmingham.

The ordinance reads as follows:

> "It shall be unlawful to organize or to hold or to assist in organizing or holding or to take part or participate in any parade or procession or other public demonstrations on the streets or other public way of the city, unless a permit therefore has been secured from the commission.
>
> * * * *
>
> The commission shall grant a written permit for such parade, procession or other public demonstrations, prescribing the streets or other public ways which may be used therefor, unless in its judgment the public welfare, peace, safety, decency, good order, morals or convenience require that it be refused. It shall be unlawful to use for such purposes any other streets or public ways than those set out in said permit."

The petitioner was convicted for violating the said ordinance and was sentenced to 90 days imprisonment at hard labor. The Alabama Court of Appeals reversed the judgment of conviction on the ground that the ordinance had been applied in a discriminatory fashion and that it was unconstitutional in imposing an invidious prior restraint without as certainable standards. But the judgment of the Court of Appeals was reversed by the Alabama Supreme Court by giving the language of section 1159, an extraordinarily narrow construction.

In reversing the conviction, the Supreme Court of the United States held:

> "There can be no doubt that the Birmingham ordinance, as it was written, conferred upon the City Commission virtually unbridled and absolute power to prohibit any parade, procession or demonstration on the city's streets or public ways. For in deciding whether or not to withhold a permit, the members of the Commission were to be guidded only by their own ideas of 'public welfare, peace, safety, health, decency, good order, morals or convenience'. This ordinance as it was written, therefore, fell squarely within the ambit of the many decisions of this court over the last 30 years, holding that a law

> subjecting the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective and definite standards to guide the licensing authority, is unconstitutional. It is settled by a long line of recent decisions of this court that an ordinance which, like this one, makes the peaceful enjoyment of freedoms which the Constitution guarantees contingent upon the uncontrolled will of an official — as by requiring a permit or license which may be granted or witheld in the discretion of such official — is an UNCONSTITUTIONAL CENSORSHIP OR PRIOR RESTRAINT upon the enjoyment of those freedoms. Staub v. City of Baxley, 355 US 313. And our decisions have made clear that a person faced with such unconstitutional licensing law may ignore it and engage with impunity in the exersise of the right of free expression for which the law purports to require a license. Lovell v. Griffin, 303 US 452.

The Supreme Court then proceeded to make a distinction between this case and that of *Cox v. New Hampshire* with respect to whether the control of the use of the streets for a parade or procession was exerted to deny or unwarrantedly abridge the right of assembly and the opportunities for the communication of thought and the discussion of public questions immemorially associated with resort to public places.

In *Cox v. New Hampshire*,[53] the court dealt with a permit statute that was silent as to the criteria which must guide the official in granting or refusing a permit requested. The statute was construed to require the issuance of a permit to anybody, subject only to the power of the licensing authority to specify the "time, place and manner" of the parade in order to accomodate competing demands for public use of the streets and to provide adequate and proper policing to minimize the risk of disorder. In affirming the conviction of the accused for parading without a permit, it was said that there was nothing to show that the statute has been administered otherwise than in the manner which the state court has construed it to require.

In this case, the Supreme Court of Alabama construed the language of the ordinance as not vesting in the Commission an unfettered discretion in granting or denying permits but one to be exercised in connection with the safety, comfort and convenience in the use of the streets by the general public. Its discretion, the Court added, must be exercised with uniformity of method of treatment after an investigation of the facts of each application, free from improper or inappropriate considerations and from unfair discrimination. A systematic, consistent and just order of treatment with the reference

---

[53] *Supra*, note 36.

to the convenience of public use of the streets and sidewalks must be followed.

In resolving the case, the United States Supreme Court took into consideration not only the facts of this case but also that of *Walker v. City of Birmingham*,[54] wherein the petitioner here requested a permit from the city commission. In denying the permit then, Commissioner Connor said to petitioner's representative: "No, you will not get a permit in Birmingham, Alabama to picket. I will picket you over to the city jail," and he repeated that twice. Two days later, petitioner sent a telegram to the same commissioner requesting for a permit which was refused. The commissioner closed his reply with a blunt admonition: "I insist that you and your people do not start any picketing on the streets in Birmingham, Alabama."

The Court said that the facts clearly show that the city authorities thought the ordinance meant exactly what it said in *Walker* v. *City of Birmingham*. The petitioner was clearly given to understand that under no circumstances would he and his group be permitted to demonstrate in Birmingham, not that a demonstration would be approved if a time and place were selected that would minimize trafic problems. There is no indication whatever that the authorities considered themselves obligated — as the Alabama Supreme Court more than fourteen years later said that they were — to issue permits "if after an investigation, they found that the convenience of the public in the use of the streets or sidewalks would not thereby be unduly disturbed." The ordinance, therefore, was administered arbitrarily as to deny or unwarrantedly abridge the right of assembly.

Evidently, the United States Supreme Court has upheld its rulings in several cases concerning the freedom of assembly that an ordinance which on its face has conferred upon the licensing authority, virtually unbridled and absolute power to deny request for a permit to hold meetings or other public demonstrations, is void and unconstitutional as a prior restraint. Had the Court stopped there, it could have strengthened the "preferred position" afforded to the rights of speech, assembly and petititon. But it did not. The Court acknowledged the theory that even though the ordinance as written is void on its face, if the court has construed it to mean that it will be administered with such standards as to give it validity or a field of operation within constitutional limits, then the ordinance will not be invalidated and only the application of such ordinance as construed will be subject to scrutiny. Thus if the ordinance or statute

[54] 388 U.S. 307, 87 S, Ct. 1824, 18 L. Ed. 2d 1210 (1946).

was administered in the fair and non-discriminatory manner which the court has construed it to require, then the implementation of the legislation is valid. Otherwise, it is unconstitutional.

It is submitted, however, that if a statute is void and unconstitutional on its face, no amount of construction by the courts can validate it. It fact, this method is not commendable as the construction of the words of the ordinance may change as the composition of the court changes. Furthermore, statutes or ordinances restricting the exercise of the right of speech, assembly and petition should be strictly construed against its implementation in case of doubt as to the meaning of its provisions. The proper procedure is to have the ordinance declared invalid when unconstitutional on its face and let the legislature or the city or municipal council enact a new statute or ordinance with sufficient standards to guide the licensing authority in its administration. This is more reasonable since the guaranty of protection under the Constitution requires at the least that such laws or ordinances should be clear as to the nature and scope of its application.

NAVARRO V. VILLEGAS[55]

This is a perfect example of a case involving an ordinance which does not provide sufficient standards for its application but which deficiency was supplied by the Philippine Supreme Court in the case of *Primicias v. Fugoso*.[56] The facts show that on January 30, 1970, a demonstration was held which resulted in nine hours of rioting wherein six persons were killed, hundreds were injured and many public and private properties were damaged. On February 12, of the same year, another demonstration sponsored by different schools and colleges in Manila was held which at this time can be said to be relatively peaceful. However on the 18th of the same month, after the demonstration at Plaza Miranda was through, riotin occurred at the Vecinity of the United States Embassy which resulted to injuries to few students and damage to property.

On February 24, 1970, Nelson Navarro, the petitioner in this case, acting in behalf of the Movement for a Democratic Philippines, an association of students, workers and peasants, wrote a letter to the Mayor of Manila, Antonio Villegas, applying for a permit to hold their rally at Plaza Miranda on the 26th of February, 1970 from 4:00 to 11:00 p.m. On the same day, Mayor Villegas wrote a reply to the petitioner denying his request for the use of Plaza Miranda.

[55] *Supra*, note 1.
[56] *Supra*, note 3.

The Mayor reasoned out that "in the greater interest of the community, this office, guided by a lesson gained from the events of the past few weeks, has temporarily adopted the policy of not issuing any permit for the use of Plaza Miranda for rallies or demonstrations during week days". The respondent, however, suggested that the Sunken Gardens can be used by the MPD for its rally provided that the rally be held earlier during the day in order that it may end before dark.

Navarro then filed a petition for a writ of mandamus compelling respondent Mayor to issue the permit to use Plaza Miranda. The Supreme Court in a resolution dated February 26, 1970, resolved the petition in favor of the respondent mayor on the following considerations:

> "That respondent Mayor has not denied nor absolutely refused the permit sought by the petitioner;
>
> That as stated in Primicias v. Fugoso, 80 Phil. 75, respondent Mayor possesses reasonable discretion to determine or specify the streets or public places to be used for the assembly in order to secure convenient use thereof by others and provide adequate and proper policing to minimize the risks of disorder and maintain public safety and order;
>
> That respondent Mayor has expressly stated his willingness to grant permits for peaceful assemblies at Plaza Miranda during Saturdays, Sundays and holidays when they would not cause unnecessarily great disruption of the normal activities of the community and has further offered Sunken Gardens as an alternative to Plaza Miranda as the site of the demonstration sought to be held this afternoon;
>
> That experiences in connection with present assemblies and demonstrations do not warrant the Court's disbelieving respondent Mayor's appraisal that a publi rally at Plaza Miranda, as compared to one at Sunken Garden as he suggested, poses a CLEAR AND MORE IMMINENT DANGER of public disorders, breaches of the peace, criminal acts, and even bloodshed as an aftermath of such assemblies and petitioner has manifested that it has no means of preventing such disorders;
>
> That, consequently, every time that such assemblies are announced, the community is placed in such a state of fear and tension that offices are closed early and employees dismissed, storefronts boarded up, classes suspended, and transportatiton disrupted, to the general detriment of the public;
>
> That civil rights and liberties can exist and be preserved only in an ordered society;
>
> That petitioner has failed to show a clear specific legal duty on the part of respondent Mayor to grant their application for permit unconditionally."

Justices Castro and Fernando wrote a dissenting opinion based on the ground that the refusal of respondent Mayor did not meet the standard of *Primicias v. Fugoso* ruling. That the refusal of the respondent amounted to one of prior restraint as he was not guided with narrow, objective and definite standards in the consideration of the request for the permit.

The ordinance in question is chapter 118, section 1119 of the Revised Ordinances of the City of Manila which provides that "the streets and public places of the city shall be kept free and clear for the use of the public x x x Provided, that the holding of any parade or procession in any streets or public places is prohibited unless a permit therefore is first secured from the Mayor, who shall, on every occasion, determine or specify the streets or public places for the formation, route or dismissal of such parade or procession."

Certainly, no one can deny that section 1119 as written is void and unconstitutional. It gives the Mayor an absolute, arbitrary and unbridled discretion in approving or denying a permit for a public meeting, parade or procession. An argument may be raised that the provision is not wholly without a standard as the first part of the section provides that the convenience or public use of the streets or other public places shall guide the Mayor in its implementation. But this alone will not suffice. We have found out that the ordinance in *Hague v. CIO* which provides that a permit shall only be refused for the purposes of preventing "riots, disturbances or disorderly assemblage" was declared void and the ordinance in *Shuttlesworth v. Birmingham* which provides that a written permit be granted by the Commission unless in its judgment, the "public welfare, peace, safety, decency, good order, morals or convenience" require that it be refused, was also confirmed to be invalid on its face. If the standards provided in the above-mentioned cases, which are concededly broader in scope and more in number, were not able to get the judicial nod as sufficient criteria for the application of the ordinances, how more can the standard of "convenience or public use" in the ordinance in question fare?

The Supreme Court in Shuttlesworth held that the ordinance vests limitless discretion upon the Commission in its implementation "for in deciding whether or not to withold a permit, the members of the Commission were to be guided only by their own ideas of 'public welfare, peace, safety, health, decency, good order, morals or convenience.'" The ordinance in *Hague v. CIO* empowers an administrative official to impose a previous restraint upon a meeting merely in anticipation of an uncontrollable riot, disturbance or disorderly assemblage that in fact might not occur. The

ordinance in the case at bar, clothes the Mayor with limitless discretion in granting or refusing a permit to demonstrate according to his own views and opinion regarding the potential effect of the activity to the convenience or use of the public. The ordinance *on its face*, makes the peaceful enjoyment of the freedom of speech, assembly, and petition contingent upon the uncontrolled will of the mayor and is therefore an unconstitutional censorship or prior restraint upon the enjoyment of those freedoms.

However, just like the ordinances in the case of *Cox v. New Hampshire*[57] and in *Shuttlesworth v. Birmingham*,[58] the ordinance in the case at bar though lacking in standards was given a "field of operation within constitutional limits" in *Primicias v. Fugoso*.[59] The Philippine Supreme Court held that the ordinance should not be construed to mean that the Mayor is vested with unregulated discretion but that the applicant has the *right* to a permit which shall be granted by the Mayor, subject only to the latter's reasonable discretion to determine or specify the streets or public places to be used for the purpose with a view to prevent confusion by overlapping, to secure convenient use of the streets and public places by others and to provide adequate and proper policing to minimize the risk of disorder.

The question that follows is whether the respondent Mayor has implemented section 1119 of the Revised Ordinances of Manila in the manner which are Supreme Court in *Primicias v. Fugoso*, has construed it to require.

The grounds for the Mayor's refusal are set forth in his reply to the petitioner:

> "In the greater interest of the general public and in order not to unduly disturb the life of the community, this office, guided by a lesson. gained from the events of the past few weeks, has temporarily adopted the policy of not issuing any permit for the use of Plaza Miranda for rallies or demonstrations during week days."

It is clear that the respondent did not premise his refusal under the criteria of *Primicias v. Fugoso*. It can even be doubted that the Mayor had in mind the construction placed by our Supreme Court on such ordinance when he made the refusal to grant the permit for the use of Plaza Miranda.

Surely, the respondent Mayor cannot base his refusal on the ground that there will be a "confusion by overlapping" as no other

---

[57] *Supra*, note 36.

[58] *Supra*, note 52.

[59] *Supra* note 3.

group has previously applied for the use of Plaza Miranda for the same date and time as that requested by petitioner.

There is no showing that the "convenient use of the streets and public places by others" will be impaired. It is submitted that if an ordinance which restricts the exercise of the rights of speech, assembly and petition should be strictly construed against its application, a construction of a vague section of such ordinance should likewise receive the same treatment. Therefore, the only inconvenience that may result in the use of the streets and public places by others is the disruption of transportation. But such outcome cannot be attributed to the demonstrations and rallies. It is the police force who should be blamed for not undertaking to guarantee the passage of buses and passenger jitneys through the site of the demonstration. They have the power to arrest anybody who obstructs the free flow of traffic to the detriment of the riding public.

Furthermore, Plaza Miranda is considered as a "convenient place for rallies and demonstrations as a forum wherein people can assert their rights and express their legitimate grievances in peaceful assembly." "It has earned the reputation as the 'Congress of the People', the 'Court of Last Resort', and the 'Forum of the Masses,' To force the Movement for a Democratic Philippines to the "inconspicuous 'Sunken Gardens' is a clear manifestation to clearly minimize the effectiveness of the projected rally, to sink it to futility."

Similarly, the Mayor did not show that he will not be able to provide "adequate and proper policing to minimize the risk of disorder". A newspaper account[60] shows that the physical location of Plaza Miranda, where the area is clearly delimited, affords peace officers the vantage position to provide adequate and proper policing of the plaza:

> **Some 1,000 uniformed MPD men were stationed at Mendoza and Evangelista streets. Although no uniformed policemen were at Plaza Miranda, a number of detectives mixed with the crowd.**
>
> **The MPD used the Quiapo Tower as their command post. Aside from the police assigned in the area, Metrocom and other government troopers are standing by. There were also about 1,000 MPD reserves in strategic places.**
>
> **Ambulances and medical men are standing by beside the Quiapo Church along Quezon Boulevard and Carriedo and at all exit at Quezon Boulevard.**

Furthermore, it is required that applications for permits must

[60] Manila Times, February 13, 1970, p. 10, col. 5.

be granted or denied only after an *investigation* of the condition of things surrounding the proposed assembly.[61] Evidently, the required attendant investigation was not made for the permit was denied on the same day the request was filed in the office of the mayor and for the fact that the request was denied by reason of the "lesson gained from the events of the past few weeks." Since a restriction on the exercise of free speech and assembly is a measure so stringent that it would be inappropriate as means of averting a relatively trivial harm to society, it is incumbent upon the Mayor to prove and base his denial upon clear and convincing evidence and hence an investigation is necessary for this purpose.

The respondent Mayor, therefore, did not administer the ordinance in the manner which our Supreme Court has construed it to require considering that his refusal was not based on any of the grounds laid down in *Primicias v. Fugoso* nor was there a clear and convincing proof as to the reason for his refusal nor was an investigation had before his decision was made. The ordinance was administered in such a way as to constitute a prior restraint on the enjoyment of the rights of assembly and petition.

STANDARD FOR LIMITATION

The question that is posed is what would justify curtailment of the fundamental rights of speech, assembly and petition either by way of prior restraint or subsequent punishment?

One standard is the "dangerous tendency" rule which is explained in *Gitlow v. New York* [62] as follows:

> "If the words uttered create a dangerous tendency which the State has a right to prevent, then such words are punishable. It is not necessary that some definite or immediate acts of force, violence or unlawfulness be advocated. It is sufficient that such acts be advocated in general terms. Nor is it necessary that the language used be reasonably calculated to incite persons to acts of force, violence or unlawfulness. It is sufficient if the natural tendency and probable effect of the utterance be to bring about the substantive evil which the legislative body seeks to prevent."

In justifying the conviction of Benjamin Gitlow for publishing the "Manifesto" about Communist doctrines and programs as a violation of a New York statute punishing the teaching of advocacy of anarchy, the Supreme Court said:

> "They threaten breaches of the peace and ultimate revolution.

---

[61] *Supra*, note 51.

[62] 268 U.S. 652, 45 S. Ct. 625, 69 L. Ed. 1138 (1925).

> And the immediate danger is nonetheless real and substantial because the effect of a given utterance cannot be accurately foreseen. The state cannot reasonably be required to measure the danger from every such utterance in the nice jeweler's scale. A single revolutionary spark may kindle a fire that, smouldering for a time, may burst into a sweeping and destructive conflagration. It cannot be said the state is acting arbitrarily or unreasonably when, in the exercise of its judgment as to the measures necessary to protect the public peace and safety, it seeks to extinguish the spark without waiting until it has kindled the flame or blazed into the conflagration. It cannot reasonably be required to defer the adoption of measures for its own peace and safety until the revolutionary utterances lead to actual disturbances of the public peace or imminent and immediate danger of its own destruction but it may in the exercise of its judgment, suppress the threatened danger in its incipiency. In People v. Lloyd, *** it was aptly said: Manifestly, the legislature has authority to forbid the advocacy of a doctrine designed to overthrow the government without waiting until there is a present and imminent danger of the success of the plan advocated. If the state were compelled to wait until the apprehended danger became certain, then its right to protect itself would come into being simultaneously with the overthrow of the government, when there would be neither prosecuting officer nor court for the enforcement of the law.'

In the application of the dangerous tendency rule, one must make a distinction between two kinds of legislation. One type is composed of statutes that punish certain acts like attempts to overthrow the government and which say nothing about utterances. If a person is to be prosecuted under such a law and the prosecution is based on the utterances, then it would be a question for the courts whether the defendant's utterances "involved such likelihood of bringing about the substantive evil as to deprive it of the constitutional protection." The utterances could be punished under the statute if their "natural tendency and probable effect were to bring about the substantive evil which the legislative body might prevent". The other type is made up of statutes that punish certain kinds of utterances like one that punishes utterances that teach or advocate the necessity or propriety of overthrowing the government by force or violence. In a prosecution under such law, the only question is whether the utterances teach or advocate the prohibited doctrine. The courts need not consider the tendency and probable effect of the defendant's utterances.

The doctrine of dangerous tendency is said to have found ground in the cases of *Evangelista v. Earnshaw,*[63] *People v. Evangelista,*[64]

[63] 57 Phil. 255 (1932).
[64] 57 Phil. 354 (1932).

People v. Feleo,[65] and *People v. Nabong*. [66] A perusal of these cases will show that the prosecution of the accused in each of them was more or less for utterances advocating the overthrow of the Philippine Government made in meetings or assemblies sponsored by Communists or the Communist Party. Our Legislature has decided that utterances of this kind are dangerous and are to be punished. Thus article 142 of the Revised Penal Code punishes

> "the act of inciting to sedition by means of speeches, proclamations, writings, emblems, cartoons, banners or other representations *tending* to the same end, or upon any person or persons who shall utter seditious words or speeches write, publish or circulate scurrilous libels against the Government of the Philippines or any of the duly constituted authorities thereof, which *tend* to disturb or obstruct any lawful officer in executing the functions of his office or which *tend* to instigate others to cabal and meet together for unlawful purposes, x x x or which lend or tend to stir up the people against the lawful authorities or to disturb the peace of the community, the safety and order of the Government, x x x."

It is submitted that the resolution of these cases were based on the article itself which punishes inciting to sedition or a *tendency* thereof. A resort to the dangerous tendency rule in these cases will only be superfluity. It cannot therefore be said that the Supreme Court has adopted this doctrine in the above-mentioned cases.

A reading of section 142 of the Revised Penal Code which punishes inciting to sedition and the Gitlow statute will show a difference in its wording. The latter statute prohibits language advocating, advising or teaching the overthrow of organized government by force or violence or by assasination of the executive head or of any of the executive officials of the government or by any unlawful means. Obviously, our statute punishes utterances inciting any person to sedition or any tendency thereof while the Gitlow statute does not mention the word *tend* or *tendency*. It was precisely for this reason that the dangerous tendency rule was used in that case so as to justify the conviction of Gitlow for publishing the "Revolutionary Age Manifesto." Since a tendency to incite sedition is expressly made punishable there is no need for the application of the dangerous tendency rule in cases under article 142 of the Revised Penal Code.

In *Cabansag v. Fernandez*,[67] the Supreme Court used this rule and the clear and present danger rule alternately without committing itself to one of the two doctrines. The Court said that "while the

[65] 57 Phil. 451 (1932).
[66] 57 Phil. 455 (1932).
[67] 102 Phil. 152 (1957).

sending of the letter to the Office of the President asking for help because of the precarious predicament of Cabansag, may not be a wise one, such act alone would not be contemptuous. To be so the danger must cause a serious, imminent threat to the administration of justice. Nor can we infer that such act has a dangerous tendency to belittle the court or undermine the administration of justice. . ." With due respect to the Court, I fail to see any wisdom in the use of the two doctrines this way. These are two extreme poles which must be applied one at a time. In the dangerous tendency rule, it is enough that there is a tendency, likelihood or indication that the substantive evil apprehended may occur in some indefinite future time while the clear and present danger rule to be applicable, there must be a showing that the substantive evil must be extremely serious and the degree of imminence extremely high. By this case, the dangerous tendency rule did not receive the judicial sanction as a standard of justified limitation of the freedom of assembly and petition since the Supreme Court did not make a choice between the rules.

Serious objections were made against the application of the dangerous tendency rule. Justice Roberts in *Herndon v. Lowry*,[68] said that the Gitlow decision furnished no warrant for the contention that under a law which described in general terms the mischief to be remedied and the actor's intent, the "standard of guilt may be made the dangerous tendency of his words". The power of the state to abridge freedom of speech and assembly is the exception rather than the rule and the penalizing even of utterances of a defined character must find its justification in a reasonable apprehension of danger to organized government. The judgment of the legislature is not unfettered. The limitation upon individual liberty must have appropriate relation to the safety of the state. Legislation which goes beyond this need violates the principles of the Constitution. If, therefore, a state statute penalizes innocent participation in a meeting held with an innocent purpose merely because the meeting was held under the auspices of an organization, membership in which or the advocacy of whose principles is denounced as criminal, the law so construed and applied, goes beyond the power to restrict abuses of freedom of speech and arbitrarily denies that freedom. And where a statute is so vague and uncertain as to make criminal an utterance or an act which may be innocently said or done with no intent to induce resort to violence or on the other hand may be said or done with a purpose violently to subvert the government, a conviction under such law cannot be sustained.

"The bad tendency test is an English 18th century doctrine,

[68] 301 U.S. 242, 57 S. Ct. 732, 81 L. Ed. 1066 (1937).

wholly at variance with any true freedom of discussion, because it permits the government to go outside its proper field of acts, present or probable, into the field of ideas and to condemn them by the judgment of a judge, who, human nature being what it is, consider a doctrine they dislike to be so liable to cause harm some day that it had better be nipped in the bud."[69]

The dangerous tendency rule has been pictured as so broad and so vague that no one can predict with any reasonable degree of certainty what it means. At best, it has been said, one can only guess. The theory has been compared to a dragnet ready to enmesh all who dare speak out. It use, it has been argued, destroys free expression and the fear of the threat of censorship reduces this freedom to a "mere intellectual abstraction". In its omnipresence, only those who wish to live dangerously dare discuss matters of public concern; the others are reduced to the discussion of academic non-controversial or colorless issues.

The other standard used in justifying limitations on the exercise of the right of free assembly and petition is the clear and present danger rule. The classic doctrine was launched by Mr. Justice Holmes in *Schenck v. U.S.*[70] in justifying the conviction of the accused for printing and distributing leaflets which advocated opposition and resistance to World War I draft.

> "The question in every case is whether the words used are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war many things that might be said in time of peace are such a hindrance to the effort that their utterance will not be endured so long as men fight and that no court could regard them as protected by any constitutional right. It seems to be admitted that if an actual obstruction of the recruiting service were proved, liability for words that produced that effect might be enforced."

The right of free speech, free press and the right of assembly may not be denied or abridged. But although the rights of free speech and assembly are fundamental, they are not in their nature absolute. Their exercise is subject to their restriction, if the particular restriction proposed is required in order to protect the state from destruction or from serious injury, political, economic or moral. The necessity which is essential to a valid restriction does not exist

---

[69] CHAFEE, *supra*, note 12 at 322.

[70] 249 U.S. 47, 39 S. Ct. 247, 63 L. Ed. 470 (1919).

unless speech would produce or is intended to produce a clear and imminent danger of some substantive evil which the state constitutionally may seek to protect.[71]

In case of utterances for the propagation of the idea that certain laws should be violated or that certain criminal acts be accomplished, Justice Brandeis distinguished advocacy from incitement and said that even advocacy of violation, however morally reprehensible, is not a justification for denying free speech where the advocacy falls short of incitement and there is nothing to indicate that the advocacy would be immediately acted on. The wide difference between advocacy and incitement, between preparation and attempt, between advocacy and incitement, between preparation and Even if it is shown that the speech has created an imminent or immediate danger that alone is not sufficient sustain the restriction or punishment for it must be shown that the feared evil is relatively serious as society may not limit free speech merely to avert a relatively trivial harm to society.

According to Justice Brandeis, only an emergency can justify a limitation on the right of free speech and press. "Those who won our independence by revolution were not cowards. They did not fear political change. The did not exalt order at the cost liberty. To courageous, self-reliant men, with confidence in the power of the free and fearless reasoning applied through the processes of popular government, no danger flowing from speech can be deemed clear and present unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion. If there be time to expose through discussion the falsehood and the fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence. Only an emergency can justify repression. Such must be the rule if authority is to be reconciled with freedom. A person, therefore, may challenge a law abridging free speech and assembly by showing that there was no emergency justifying it and ask the court to decide whether there actually did exist at the time, a clear danger; whether the danger was imminent and whether the evil apprehended was one so substantial as to justify the stringent restriction imposed by the legislature."[72]

The clear and present danger rule means that the evil consequence of he comment or utterance must be extremely serious and the degree of imminence extremely high before the utterance can

[71] Whitney v. California, 274 U.S. 357, 47 S. Ct. 641, 71 L. Ed. 1095 (1927).

[72] *Ibid.*

be punished. The danger to be guarded against is the substantive evil sought to be prevented. This test then as a limitation on freedom of expression is justified by the danger or evil of a substantive character that the state has a right to prevent. Unlike the dangerous tendency rule the danger must not only be clear but also present. The term "clear" seems to point to a causal connection with the danger of the substantive evil arising from the utterance questioned. "Present" refers to the time element. It is used to be identified with imminent and immediate danger. The danger must not only be probable but very likely inevitable. The word "present" has been defined by jurisprudence as meaning imminent,[73] urgent[74] and impending.[75] It will require an unusual quantum of proof to establish a present danger.[76]

When Congress has provided a restriction upon speech or assembly in the form of a law which punishes certain utterances as productive of a clear and present danger of substantive evil, the court is not bound by legislative findings for the enactment of the statute cannot alone establish the facts which are essential to its validity. The Court must determine for itself whether the prohibitory legislation was in fact necessary and it is not bound or controlled by the fact that a vast majority of the citizens, acting through their representatives feared serious injury unless the restriction is imposed.[77]

It is noteworthy to look into two cases, one of which is *Thomas v. Collins* and the other is *Terminello v. Chicago,* both of which were decided during he period when the clear and present danger rule was said to have achieved majority status.

The case of *Thomas v. Collins*[78] involved a statute which required labor organizers to register and procure an organizer's card before they could solicit union membership. The accused was charged with contempt for violating an order restraining him from soliciting membership without first having complied with the statute. The evidence shows that after having been served with the order, he went ahead and delivered a previously scheduled address to a peaceful and orderly labor meeting. The accused argued that the statute is invalid on the ground of previous restraint and denial of equal protection of laws and he relied on the clear and present dang-

[73] Craig v. Harney, 331 U.S. 367, 67 S. Ct. 1249, 91 L. Ed. 1796 (1943)
[74] Abrams v. U.S., 250 U.S. 616, 40 S. Ct. 17, 63 L. Ed. 1173 (1919).
[75] Thomas v. Collins, *supra*, note 6.
[76] Schneiderman v. U.S., 320 U.S. 118, 63 S. Ct. 1333, 87 L.Ed. 1796 (1943)
[77] Whitney v. California, *supra*, note 70.
[78] *Supra*, note 6.

er rule. The prosecution, on the other hand, contended that the statute was no more than a registration law designed to assure previous identification and that it conferred ministerial rather than discretionary power. It was alleged that the statute is just one of regulation of a business practice and the question of speech and press does not concern the court.

The Supreme Court rejected the idea that the First Amendment is not applicable to business or economic activity and restated the preferred position to which the freedoms of the First Amendment had been elevated. It gave the view that only restrictions of speech and press that are justified are those that create a "clear and present danger" to public interest. "Only the gravest abuses, endangering paramount interest, give occasion for permissible limitation". It was conceded that labor unions are subject to state regulation to the extent required by public interest but whatever this interest might be, such regulation may not invade the domain reserved for free speech and assembly. Within this domain is included the free discussion concerning the conditions in industry and the causes of labor disputes indispensable to the effective and intelligent use of the processes of government to shape the destiny of modern industrial society. The Court, therefore, rejected the idea that one must register before a speech could be made in which support for a lawful movement was enlisted. In the absence of a grave and immediate danger to an interest which, the state has a right to protect, lawful assemblies cannot be called instruments of harm that require previous identification of speakers.

In the case of *Terminello v Chicago*,[79] the accused, a Catholic priest who was under suspension by his bishop, had been charged with disorderly conduct in violation of a city ordinance forbidding breaches of the peace. He delivered a public address to a capacity audience in an 800-seat auditorium outside of which a picket line of several hundred was formed and a crowd of about one thousand gathered to protest. The meeting was held in an atmosphere of people being escorted through picket lines, clothing being torn, stench bombs and other missiles thrown at the building, epithets hurled at those who attended the meeting, windows broken and attempts made, one by a flying wedge of forty boys, to rush the auditorium. The accused on the other hand, not only condemned the conduct of the crowd outside but also denounced, with considerable vigor, various political and racial groups as inimical to the welfare of the nation.

[79] 337 U.S. 1, 69 S. Ct. 894, 93 L. Ed. 1131 (1948).

Terminello was tried before a jury which received the following instruction from the trial judge:

> "Misbehavior may constitute a breach of peace if it stirs the public to anger, invites dispute, brings about a condition of unrest or creates a disturbance, or if it molests the inhabitants in the enjoyment of peace and quiet by arousing alarm."

He was found guilty and the appellate court of Illinois affirmed the conviction. The Supreme Court, by a five to four decision, reversed the judgment. The reason for the reversal was one that made it unnecessary for the majority to go into the facts of the case; it found the charge to the jury, an unconstitutional restriction of free speech. The instruction was an authoritative construction of the ordinance under which Terminello was convicted.

Speaking for the Court, Justice Douglas said that under our system of government, the function of free speech is to invite dispute and it may serve its purpose best when it induces a condition of unrest, creates dissatisfaction with conditions as they are, even stirs people to anger. Provocative and challenging as speech often is, may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. And that is why, although it is not absolute, speech is protected from censorship or punishment except when there is a likelihood that it will produce a "clear and present danger" of a serious substantive evil far above public inconvenience, annoyance or even unrest. As applied to Terminello, the ordinance here was found to be a denial of the right of free speech guaranteed by the Constitution and this is true even though, throughout the proceedings, the state appellate courts had assumed that only conduct amounting to fighting words were punishable under the ordinance.

The clear and present doctrine was impliedly accepted in *Primicias v. Fugoso*,[80] but it was not until the case of *Gonzales v. Commission on Elections*,[81] that our Supreme Court expressly held that such rule is the one to be applied as the standard in testing the validity of restrictions imposed on the exercise of the rights of speech, assembly and petition.

The inquiry that arose in the case of *Navarro v. Villegas*[82] is whether there existed a clear and present danger of public disorder, breaches of peace, criminal acts and bloodshed at the time the res-

[80] *Supra*, note 3.
[81] *Supra*, note 14.
[82] *Supra*, note 1.

pondent Mayor of Manila denied the request for a permit of the petitioner.

To show a clear and present danger, one must prove that the evil consequence of the comment or utterance must be extremely serious and the degree of imminence extremely high before the utterance can be punished. There is the necessity of a finding of a "clear" danger, a causal connection of the proposed assembly with the danger of substantive evil. It is clear from the facts that the riots and bloodshed on the January 30 and February 18 demonstrations, did not occur while it was in progress but after it was terminated. The violence on February 18, 1970 even happened almost two kilometers away from Plaza Miranda long after the rally had dispersed. The facts also show that the speeches delivered during the demonstrations did not incite the participants to commit acts of violence. The news account of the February 12 rally showed that the speeches centered on American "imperialism", the "feudalism in our country", the "fascism" of the Marcos Administration and the need for reforms.[83] Furthermore, it was not shown that the riots and disorder were perpetrated by the petitioner and the members of the Movement for a Democratic Philippines. As a matter of fact, the leaders made it clear throughout that the rally was intended to be peaceful and instructive to all those who would like to advance the cause of national democracy. They repeatedly asked the participants in the past demonstrations, not be taken in by provocateurs or to give the police and military no chance to take repressive action.[84]

Furthermore, the causes of bloodshed, riots or disorder can be attributed to so many things that it is not just and reasonable to say that the proposed assembly has a causal connection with the evils feared. The riots or disorder may be due or could have been started by an altercation between a person and another or between two groups for reasons unimaginable under the sun. It may be caused by another organization different from that which the petitioner represents in order to discredit the latter organization. It may be caused by provocateurs and goons hired by government tacticians in order to remove the reform movement from the sympathy of the public. It is for these and other causes which make us hesitant to conclude that there exists a "clear" danger or a causal connection between the substantive evils feared and the proposed assembly. All these are purely speculative such that suppression of the exercise

[83] Manila Times, February 13, 1970, p. 1, col. 5.

[84] *Id.*

of the right of assembly and petition cannot be justified.

Granting, however, that there exists a "clear" danger, is it *present?* The word "present" was held to mean "imminent", "impending" and "urgent". Do the facts show an imminent, overhanging or eventual danger? On the January 30 demonstration, violence resulted in injuries to scores of students death to six persons and damage to many public and private properties. On the other hand, the February 12 rally was peaceful and orderly but in the February 18 demonstration, violence again ensued after the meeting had ended. If you ask a person of extraordinary prudence, he will tell you that according to the probabilities, the riots or disorder may or may not occur on a 50-50 chance. The mere fact that it happened in the last demonstration would not show that it would happen again, for the proposed rally may be as peaceful and commendable as that of the February 12th. An "unusual quantum of proof" is required in order to warrant a conclusion that a present danger exists. As none was offered, it cannot be said that the substantive evil feared is so imminent, urgent and impending that it will result if the projected rally is allowed.

Moreover, the fact that respondent Mayor offered the petitioner the use of Sunken Gardens and even Plaza Miranda on Saturdays and Sundays shows that there was really no clear and present danger of the evils which the government has a right to prevent. If the danger was so imminent that violence would occur at Plaza Miranda on the date sought, the same would also happen at the Sunken Gardens and surrounding areas. If it would occur at Plaza Miranda on the date applied for by petitioner, the same result must be expected on a Saturday on Sunday.. Since the Supreme Court has made a finding that there existed a clear and present danger of disorder and violence, it should have altogether prohibited any demonstration by the Movement for a Democratic Philippines on such date. For to say that it is present in one place at a certain hour and day and is inexistent in another place at the same hour and day is to be inconsistent. Otherwise, it would be like saying that a killer for hire will shoot his victim only in one place and not in another.

"The mere possibility that the petitioner may say or do something tending to disturb public order is insufficient to warrant denial of the license prayed for. Otherwise, we would in effect nullify the Bill of Rights, for all rights are susceptible of abuse and hence, the possibilitiy of such abuse is always present in the exercise of any right. Obviously, a right of such magnitude as to be guaranteed by no less than four provisions of the fundamental law — and

these of the most transcendental and vital to the democratic system underlying the structure of Our Republic — cannot be curtailed on the basis of an abstract and speculative possibility of a threat to peace or breach of peace, which may or may not result."[85]

"Fear of serious injury alone cannot justify suppression of free speech and assembly. To justify suppression of free speech, there must be reasonable ground to fear that serious evil will result if free speech is practiced. There must be a reasonable ground to believe that the evil to be prevented is a serious one. Prohibition of free and assembly is measure is so stringent that it would be inappropriate as the means for averting a relatively trivial harm to a society."[86]

The standard now accepted in the United States is the balancing of interests rule. This test is said to have gained a foothold in *Schneider v. State* [87] in 1939 when Justice Roberts said:

> "In every case, therefore, where legislative abridgment of the rights is asserted, the courts should be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions. 'And so, as cases arise, the delicate and difficult task upon the courts is to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights."

This test evolved due to the view that the clear and present danger rule was said to be not a rule of universal applicability and validity nor an automatic mechanism that relieves a court of the need for careful scrutiny of the features of a given situation and evaluation of the competing interests involved.

Justice Frankfurter is of the opinion that the balancing test is the proper approach for the courts to apply in all free speech cases. In *Dennis v. U.S.* [88] he said:

> "Absolute rules would inevitably lead to absolute exception and such exceptions would eventually corrode the rules. The demands of free speech in a democratic society as well as the interest in national security are better served by 'candid and informed weighing of the competing interests' within the confines of judicial process, than by announcing dogmas too inflexible for non-Euclidean problems to be solved."

---

[85] Ignacio v. Ela, 99 Phil. 346 (1956).
[86] *Supra*, note 72.
[87] 308 U.S. 147, 60 S. Ct. 146, 84 L. Ed. 155 (1939):
[88] 341 U.S. 494, 71 S. Ct. 857, 95 L. Ed. 1137 (1951).

The theory of balancing of interests represents a wholly pragmatic approach to the problem of First Amendment freedoms, indeed, to the whole problem of constitutional interpretation. It rests on the theory that it is the Court's function in the case before it when it finds public interests served by legislation on the one hand and the First Amendment freedoms affected by it on the other, to balance the one against the other and to arrive at a judgment where the greater weight shall be placed. If on balance it appears that the public interest served by the restrictive legislation is of such a character that it outweighs the abridgment of freedom, then the Court will find the legislation valid. In short, the balance of interests theory rests on the theory that constitutional freedoms are not absolute, not even those stated in the First Amendment and that they must be abridged to some extent to serve appropriate and important public interests.[89]

In ascertaining the point or line of equilibrium, the following factors are relevant: a) the social value and importance of the specific aspect of the particular freedom restricted by the legislation; b) the specific thrust of the restriction, i. e., whether the restriction is direct or indirect, whether or not the persons affected are few; c) the value and importance of the public interest sought to be secured by the legislation — the reference here is to the nature and gravity of the evil which Congress seeks to prevent; d) whether the specific restriction decreed by Congress is reasonably appropriate and necessary for the protection of such public interest; and e) whether the necessary safeguarding of the public interest involved may be achieved by some other measure less rectrictive of the protected freedom.[90]

The balancing of interests test means that in determining whether the constitutional prohibition against abridgment of freedom of speech, assembly, and petition has been violated, the court should balance the competing interests involved. In the case of *Navarro v. Villegas* the exercise of the petitioner can be equated with the inconvenience suffered by the people in Manila.

The right to freedom of speech, assembly and petition for redress of grievances are fundamental personal rights of the people recognized and guaranteed by our Constitution. They, along with other civil rights are inviolate and may be exercised without the

---

[89] KAUPER, CIVIL LIBERTIES AND THE CONSTITUTION 118 (1966). (1966).

[90] 27 SCRA 835 (1969).

prior necessity of securing a permit from the government. In fact, these are effective weapons of the citizenry against an abusive and corrupt government.

The public assemblies are well adapted to the promotion of causes concerning the people since these are the effective ways of forming public opinion and are less expensive than hiring a hall or purchasing time on the radio.

Furthermore, it cannot be denied that the demonstrations and rallies in recent years had been used as very effective instruments of citizen protest in the achievement of badly needed reforms for the betterment of the lot of the students, farmers, peasants and other segments of the population.

On the other hand, the inconvenience suffered by the people in Greater Manila was minimal compared to the injury which the petitioner may suffer if denied the permit considering that the achievement of the demands of the proposed demonstration will benefit not only the people in Manila but all those concerned in all parts of the country. As was said in one case, "it would seem that what the public endures for the sake of sports, it should be able to endure in the assertion of the fundamental rights". This is part of the price of our freedoms.

SUMMARY

The rights of peaceful assembly and petition for redress of grievances are guaranteed and protected by the Constitution. These are not absolute, not unlimited rights as it can be regulated in the interest of public safety and general welfare. Any regulation or ordinance which restricts the exercise of such rights must contain sufficient standards to prevent its unwarranted abridgment. For this matter, an ordinance which, on its face, vests unbridled or limitless discretion in the licensing authority in approving or denying permits for the exercise of the rights of assembly and petition in public places, should be declared void and unconstitutional. It is submitted that such ordinance should not be construed by our courts so as to make it "pass the constitutional muster". The more acceptable procedure is to declare the ordinance void and let the legislating power enact a new one with sufficient guideliness for its implementation.

Considering that the exercise of the right of assembly and petition is an essential element in the proper functioning of a democratic system, the clear and present danger rule is the most suitable and

reasonable standard for reconciling order and authority with freedom.

The ordinance in *Navarro v. Villegas* vests limitless discretion in the licensing official in such a way that the grant of a permit will depend upon his own notions of "convenience or public use" and hence is void and unconstitutional on its face. Conceding that the construction placed on such ordinance is valid, the licensing official did not administer it in the manner which our Suprme Court has construed it and therefore constitutes a prior restraint on the rights of the applicant. From the analysis of the facts, it shows that there was no clear nor present danger of breaches of peace, disorder, criminal acts and blooshed such that the restriction upon the rights of the applicant is void and the petition for mandamus should have been granted.