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CONSTITUTIONAL LAW - VALIDITY OF CRIMINAL SYNDICALISM STATUTE

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CONSTITUTIONAL LAW — VALIDITY OF CRIMINAL SYNDICALISM STATUTE —The defendant was indicted for assisting in the conduct of a meeting which was called under the auspices of the Community Party, an organization advocating criminal syndicalism. The statute defined criminal syndicalism as "the doctrine which advocates crime, physical violence, sabotage, or any unlawful acts or methods as a means of accomplishing or effecting industrial or political change or revolution," [1] and described a number of offenses, including the presiding at, or the assisting in, the conduct of a meeting of an organization advocating criminal syndicalism as defined in the act. The state court upheld the indictment under a construction of the statute making it apply to a meeting of such organization regardless of whether the doctrine of criminal syndicalism was taught or advocated at the meeting. *Held*, the statute so construed violated the right of free speech and peaceable assembly guaranteed by the Fourteenth Amendment. *De Jonge v. State of Oregon*, 299 U. S. 353, 57 S. Ct. 255 (1937).

At the close of the World War many states, in a desire to curb communist labor agitation, adopted uniform statutes which created the new crime of criminal syndicalism.[2] These statutes purported to make membership in any organization advocating industrial or political change by force or violence a criminal offense.[3] A serious objection to this type of legislation is its encroachment on the fundamental rights of freedom of speech and peaceable assembly. These rights of personal liberty are not in their nature absolute,[4] and neither

[1] Oregon Code (1930), §§ 14-3,110 to 14-3,112; as amended by Ore. Laws (1933), c. 459, p. 868, §§ 1-3.

[2] CHAFEE, FREEDOM OF SPEECH 404 (1920), contains a list of states adopting these statutes. CHAFEE, THE INQUIRING MIND 74 (1928); 76 UNIV. PA. L. REV. 198 (1928).

[3] The Oregon criminal syndicalism statute is typical. 42 HARV. L. REV. 265 at 267 (1929); 10 CAL. L. REV. 512 (1922).

[4] Frohwerk v. United States, 249 U. S. 204, 39 S. Ct. 249 (1919); New York ex rel. Bryant v. Zimmerman, 278 U. S. 63, 49 S. Ct. 61 (1928); Stromberg v.

the First Amendment,[5] which operates only as a limitation on federal action,[6] nor the provisions of the state constitution,[7] preclude the proper exercise of the police power by the states when the public peace and security is endangered.[8] In recent years, it has become recognized that "liberty" [9] under the due process clause of the Fourteenth Amendment includes the fundamental rights of free speech and peaceable assembly. As a consequence, the Supreme Court has had to scrutinize these criminal syndicalism statutes in an effort to determine the extent to which these rights could be curtailed. The Court has encountered considerable difficulty in applying the classic test of a "clear and present danger" [10] to the statutory provisions that condemn mere association with an organization, the chief purpose of which is to foster criminal syndicalism. In many cases, the prosecution is based on conduct of the defendant which exceeded mere passive membership,[11] with the result that the statute could be sustained as a valid exercise of the police power of the state, for clear evidence could be produced of incitement to force and violence. Even where the indictment merely charges the defendant with association with an organization advocating criminal syndicalism, the statute has been upheld on the finding that it endangers the public peace and security.[12] In his concurring opinion in the

California, 283 U. S. 359, 51 S. Ct. 532, 73 A. L. R. 1484 (1931); Near v. Minnesota, 283 U. S. 697, 51 S. Ct. 625 (1930); Whitney v. California, 274 U. S. 357, 47 S. Ct. 641 (1927); Jarrett and Mund, "The Right of Assembly," 9 N. Y. UNIV. L. Q. REV. 1 (1931); 10 WIS. L. REV. 298 (1935).

[5] United States Constitution, Amend. I: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

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

[7] People v. Steelik, 187 Cal. 361, 203 P. 78 (1921); State v. Dingman, 37 Idaho 253, 219 P. 760 (1923); People v. Ruthenberg, 229 Mich. 315, 201 N. W. 358 (1924).

[8] Whitney v. California, 274 U. S. 357, 47 S. Ct. 641 (1927); 1 A. L. R. 331 (1919); 20 A. L. R. 1535 (1922); 73 A. L. R. 1494 at 1498 (1931); 10 WIS. L. REV. 298, note 4 (1935).

[9] Gitlow v. New York, 268 U. S. 652, 45 S. Ct. 625 (1925); Stromberg v. California, 283 U. S. 359, 51 S. Ct. 532, 73 A. L. R. 1484 (1931); Near v. Minnesota, 283 U. S. 697, 51 S. Ct. 625 (1930); Grosjean v. American Press Co., 297 U. S. 233, 56 S. Ct. 444 (1935); CHAFEE, THE INQUIRING MIND 99 (1928); Warren, "The New Liberty Under the Fourteenth Amendment," 39 HARV. L. REV. 431 (1926); 20 ILL. L. REV. 809 (1926).

[10] This test was laid down by a unanimous Court in Schenck v. United States, 249 U. S. 47, 39 S. Ct. 247 (1919).

[11] State v. Laundy, 103 Ore. 443, 204 P. 958 (1922); People v. Lloyd, 304 Ill. 23, 136 N. E. 505 (1922); People v. Ruthenberg, 229 Mich. 315, 201 N. W. 358 (1924); State v. Moilen, 140 Minn. 112, 167 N. W. 345 (1918); State v. Hennessy, 114 Wash. 351, 195 P. 211 (1921); 42 HARV. L. REV. 265 at 267 (1929); 45 HARV. L. REV. 927 at 928 (1932).

[12] Whitney v. California, 274 U. S. 357, 47 S. Ct. 641 (1927); 10 CAL. L. REV. 512 (1922); 76 UNIV. PA. L. REV. 198 (1928); 81 UNIV. PA. L. REV. 997 (1933); 22 ILL. L. REV. 541 (1928). This is similar to the European principle

Whitney case,[13] Justice Brandeis pointed out that the validity of these statutes should depend primarily on the actual danger threatened by such gatherings and that the mere legislative declaration should not be conclusive. This opinion has definitely influenced subsequent decisions[14] in which the Court declared these statutes unconstitutional if the acts of the defendant did not create a possibility of violence. The principal case is in accord with this tendency for it is apparent, on the face of the indictment, that there is an absence of a "clear and present danger," in that the accused was prosecuted, not for affiliation with an organization advocating criminal syndicalism, but for merely assisting in the conduct of a meeting.

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that a man is known by the company he keeps and that guilt is not personal. See CHAFEE, FREEDOM OF SPEECH 265 (1920).

[13] Whitney v. California, 274 U. S. 357, 47 S. Ct. 641 (1927). Justice Brandeis concurred on the ground that the power of review is limited on appeal.

[14] Fiske v. Kansas, 274 U. S. 380, 47 S. Ct. 655 (1927); Stromberg v. California, 283 U. S. 359, 51 S. Ct. 532, 73 A. L. R. 1484 (1931); 31 YALE L. J. 674 (1922); 45 HARV. L. REV. 927 (1932).