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Constitutional Law - Due Process -Knowledge of the Law Required for Conviction Under Criminal Registration Ordinance

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CONSTITUTIONAL LAW—DUE PROCESS—KNOWLEDGE OF THE LAW REQUIRED FOR CONVICTION UNDER CRIMINAL REGISTRATION ORDINANCE—Defendant-appellant was charged with violation of a Los Angeles municipal ordinance which required all persons convicted of a felony in California, or of a crime committed elsewhere which would have been punishable as a felony in California, subsequent to January 1, 1921, to register with the Chief of Police upon remaining in the city longer than five days, or upon making more than five visits to the city within a thirty-day period. At the time of her arrest, appellant had been a resident of Los Angeles for seven years. Within that period she had been convicted (in Los Angeles) of forgery, a felony in California, and had subsequently failed to register as required.

At her jury trial appellant asserted that the application of the ordinance to her was a denial of due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States, but was convicted, fined $250, and placed on probation for three years. Her motion for arrest of judgment and new trial was denied and the judgment affirmed on appeal by the Appellate Department of the Superior Court. On appeal to the United States Supreme Court, *held,* reversed, four justices dissenting.[1] In the absence of actual knowledge or proof of facts sufficient to establish probable knowledge of the duty imposed by the ordinance, the conviction of appellant violated the due process requirement of the Fourteenth Amendment. *Lambert v. California,* 355 U.S. 225 (1957).

The police power has long been recognized as one of the least limitable of those exercisable by local government.[2] Nevertheless, a long line of Supreme Court decisions has imposed the vague language of the due process clause of the Fourteenth Amendment as a limitation on that power, requiring that it not be exercised in an arbitrary, unreasonable, or capricious manner.[3] The general tests for validity which have evolved from the cases suggest that the legislation must concern subject matter within the scope of the police power; that the means of regulation adopted must bear a relationship to the desired end; and that fundamental rights must not be abridged.[4] Whether specific legislation conforms to these tests is largely dependent on the character of the right allegedly abridged,[5] and the underlying factual data of which a court will take judicial notice.[6] However, in no case will a court purport to act as a legislative body, reviewing the wisdom of the legislation or deciding whether the regulatory means adopted are the best conceivable under the circumstances.[7] But all of these criteria, being in the nature of legal conclusions, are only slightly more informative as guides to validity than the language of the amendment itself. Delineation of the boundaries of due process as a limitation on the police power has been accomplished through the process of judicial inclusion and exclusion

[1] The opinion of the Court was delivered by Justice Douglas. Justice Frankfurter dissented in an opinion in which Justices Harlan and Whittaker joined. Justice Burton dissented without opinion.

[2] District of Columbia v. Brooke, 214 U.S. 138 (1909).

[3] E.g., Meyer v. Nebraska, 262 U.S. 390 (1923); Nebbia v. New York, 291 U.S. 502 (1934).

[4] Brown, "Due Process, Police Power and The Supreme Court," 40 HARV. L. REV. 943 (1927).

[5] Discussing the required relationship between the means and end the Court said, ". . . it is the character of the right, not of the limitation, which determines what standard governs the choice." Thomas v. Collins, 323 U.S. 516 at 530 (1945).

[6] For example, see Jacobson v. Massachusetts, 197 U.S. 11 (1905), where the Court recognized that vaccination afforded protection against smallpox; Biklé, "Judicial Determination of Questions of Fact Affecting the Constitutional Validity of Legislative Action," 38 HARV. L. REV. 6 (1924).

[7] McLean v. Arkansas, 211 U.S. 539 (1909).

as applied to specific cases.[8] As a result of this process the Supreme Court, recognizing the need for government to enact measures for the social betterment, has consistently held that it is not a violation of due process for a state to impose criminal liability for acts or omissions unaccompanied by criminal intent or guilty knowledge.[9] The opinion of the majority in the principal case recognizes and adds its approval to this line of precedent as applied to statutes imposing criminal penalties for acts, or for omissions where a person is alerted to the requirement of action by the circumstances, but refuses to apply the rule to an omission under conditions that do not warn of a duty to act.[10] As pointed out by the dissenting opinion of Justice Frankfurter, the reason for this distinction does not seem to arise out of comparison of concepts of fairness, hardship, and justice as applied to the two situations.[11] Similarly, there does not seem to be any reason for the distinction drawn by the majority between regulation of an activity and the regulation of a status acquired in consequence of an activity, so far as the power to enact a statute which excludes the element of scienter from proof of its violation is concerned.[12] There is one factor, however, implicit in the majority opinion, which serves to distinguish the principal case. The individual hardship and injustice which may be the result of conviction without regard to knowledge and intent has been justified under the due process requirement by a recognition of the overriding social interest in the increased compliance with criminal laws secured by a facilitated enforcement process.[13] That justification shrinks in stature when applied to an ordinance, the ultimate purpose of which is not to secure compliance with its provisions, but instead to bring about certain indirect effects. An analysis of the application of criminal registration ordinances suggests that their main purpose is not to obtain information concerning the activities and location of ex-criminals. It is rather to ease the law enforcement process by the creation of a statutory duty which will usually be neglected because of ignorance of its existence, thus enabling the police to arrest and detain

[8] Brown, "Due Process, Police Power and The Supreme Court," 40 HARV. L. REV. 943 (1927).

[9] United States v. Balint, 258 U.S. 250 (1922); Chicago, B. & Q. R. Co. v. United States, 220 U.S. 559 (1911); Shevlin-Carpenter Co. v. Minnesota, 218 U.S. 57 (1910).

[10] The absence of precedent for this holding is suggested by the fact that the majority cited in support of its opinion three decisions concerned with notice as a requirement of procedural due process in *civil* litigation. Mullane v. Central Hanover Trust Co., 339 U.S. 306 (1950); Covey v. Town of Somers, 351 U.S. 141 (1956); Walker v. Hutchinson City, 352 U.S. 112 (1956).

[11] But see Hughes, "Criminal Omissions," 67 YALE L.J. 590 at 619 (1958), where the author interprets the principal case as confined to omissions ". . . where the duty to act arises only because of a person's presence in a certain locality."

[12] The majority opinion refers approvingly to registration statutes, which are akin to licensing statutes in that they purport to regulate an activity.

[13] United States v. Balint, note 9 supra.

persons for investigation with regard to other unrelated criminal activity.[14] This is, in effect, an attempt to accomplish indirectly what could not be done directly.[15] Abusive and discriminatory practices have in fact marked the history of the application of this ordinance and of similar ordinances in other cities.[16] While these practices in themselves would not warrant invalidation of the ordinance, they do provide added reason for limiting its operation to the achievement of its avowed purpose of obtaining information about ex-criminals—a probable result of this decision.[17] Because of the narrow terms in which it is formulated, the decision is not calculated to weaken the established doctrine that ignorance of the law will not insulate against punishment for its violation.[18]

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[14] See 103 UNIV. PA. L. REV. 60 (1954); Lustig v. United States, 338 U.S. 74 (1949).

[15] For more direct attempts which were declared invalid under either the due process clause of the Fourteenth Amendment or of similar provisions of state constitutions, see Lanzetta v. New Jersey, 306 U.S. 451 (1939) (gangster statute which purported to punish any person not engaged in a lawful occupation who had been convicted of disorderly conduct three times or of any crime in New Jersey or any other state, and who was known to be a member of a gang composed of two or more persons); People v. Licavoli, 264 Mich. 643, 250 N.W. 520 (1933) (proof of recent reputation for engaging in illegal occupation or business was deemed prima facie evidence of being engaged in illegal occupation or business); People v. Belcastro, 356 Ill. 144, 190 N.E. 301 (1934) (persons reputed to be habitual violators of the criminal laws were deemed to be vagabonds, punishable as such).

[16] See 103 UNIV. PA. L. REV. 60 (1954). For a recent example see 18 THE REPORTER, p. 25:2, March 6, 1958.

[17] The majority opinion indicates that conviction for violation of the ordinance would be valid if the accused had knowledge of its existence, or if sufficient facts were in evidence to establish probable knowledge. Thus law enforcement officials who wish to enforce the statute for informational purposes will be able to do so, provided they adequately publicize the registration ordinance so as to give felons notice of the statutory duty.

[18] This point was noted by the dissent. Principal case at 232.