

# Constitutional Law - Felon Registration Requirement as Violative of Due Process

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## Notes

### CONSTITUTIONAL LAW — FELON REGISTRATION REQUIREMENT AS VIOLATIVE OF DUE PROCESS

Defendant had lived in Los Angeles seven years, during which time she had been convicted of forgery. She failed to register as prescribed by an ordinance requiring any person convicted of a felony to register with the police, and, upon arrest on suspicion of another crime, was charged with violation of the registration ordinance.<sup>1</sup> Defendant contended that the ordinance violated her rights to due process of law under the Fourteenth Amendment, and she offered proof of her lack of actual knowledge of the requirement. The district court refused to admit this proof and found her guilty. The Appellate Division of the Superior Court affirmed the decision. On appeal to the United States Supreme Court, *held*, reversed. An ordinance imposing criminal liability for a passive failure of a person with a criminal record to register with the police is violative of the due process clause of the Fourteenth Amendment when applied so as not to require actual knowledge or probability of knowledge by the felon that he must register. *Lambert v. California*, 2 L.Ed.2d 228 (1957).

Due process in the Constitution of the United States has been divided by the courts into procedural due process and substantive due process.<sup>2</sup> Procedural due process is judicially interpreted in a literal manner to mean the formal or mechanical requirements which the law deems necessary in legal proceedings.<sup>3</sup> The area of substantive due process deals more with the depri-

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1. The Los Angeles ordinance, Section 52.38(a) of the Los Angeles Municipal Code, defines a convicted person as "any person who, subsequent to January 1, 1921, has been or hereafter is convicted of an offense punishable as a felony in the State of California, or who has been or who is hereafter convicted of any offense in any place other than the State of California, which offense, if committed in the State of California, would have been punishable as a felony."

Section 52.39 provides that it shall be unlawful for any convicted person to remain in Los Angeles more than five days without registering or for a person living outside of the city to come into the city on more than five occasions during a thirty-day period without registering. It prescribes the information which must be furnished to the police.

2. KAUFER, *FRONTIERS OF CONSTITUTIONAL LIBERTY* 594-97, § 2 (1956).

3. For illustrations of procedural due process, see *Mooney v. Holohan*, 294 U.S. 103 (1935); *Smith v. O'Grady*, 312 U.S. 329 (1941). Procedural due process is often defined as requiring reasonable notice and the right to be heard. *Snyder v. Massachusetts*, 291 U.S. 97 (1934); *American Surety Co. v. Baldwin*, 287 U.S. 156 (1932).

vations of life, liberty, and property which "shock the conscience."<sup>4</sup> A law which deprives a person of private rights and liberties in an arbitrary, capricious, or unreasonable manner is violative of substantive due process.<sup>5</sup> It is a deprivation which, although sufficiently filling the formal requirements of due process, offends "those canons of decency and fairness which express the notions of justice of English-speaking peoples even toward those charged with the most heinous offenses."<sup>6</sup> As Mr. Justice Holmes wrote, a substantive due process violation is one which is "too severe for the community to bear."<sup>7</sup> There is obviously an overlapping of procedural and substantive due process because situations arise involving personal deprivations which are questionable procedurally, and which also involve questionable substantive elements. This overlapping creates a nebulous area in the law.

Statutes and ordinances which require a certain type of conduct on the part of individuals frequently involve due process questions, and in America's jurisprudence there are numerous ones, somewhat similar to the ordinance in the instant case, which have been upheld by the Supreme Court. For example, pure food and drug legislation imposes criminal liability for a passive and unknowing failure to meet prescribed standards.<sup>8</sup> It may be noted, however, that in this area, the omission results in such a potentially grave danger to the public that it might well be said that the offender knew or *should have known* that his failure to meet sanitary or contents requirements would have or be likely to have detrimental effects on the public health. Too, many of these statutes involve penalties for the sale of goods made substandard by positive acts of the offender.<sup>9</sup> Narcotics

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4. For an excellent discussion of substantive due process, see *Rochin v. California*, 342 U.S. 165 (1952).

5. "It has become well-established in American judicial procedure that a law which in its substantive aspects deprives a person of private rights arbitrarily, unreasonably, and capriciously is violative of due process." 11 TEMP. L.Q. 551, 555 (1937). *Meyer v. Nebraska*, 262 U.S. 390 (1923).

6. *Malinski v. New York*, 324 U.S. 416, 417 (1945). See also *Rochin v. California*, 342 U.S. 165 (1952).

7. HOLMES, *THE COMMON LAW* 50 (1946).

8. *Barnes v. United States*, 142 F.2d 648, 649 (9th Cir. 1944), construing 53 STAT. 853 (1939), 21 U.S.C. § 342(b)(1) (1950). See also *Caroline Products v. United States*, 323 U.S. 18 (1944).

9. See note 8 *supra*. It may be noted that most food and drug statutes punish failure to meet prescribed standards; the failure being the result of adding to the contents or adulterating the product before sale. However, the Court has stated emphatically that when an interest as vital as the public health stands to be affected, regulations will be allowed, with no mention of a positive act being employed to cause the product to become impure. See *Barnes v. United States*, 142 F.2d 648, 649 (9th Cir. 1944).

laws which make possession of narcotics criminally punishable are likewise justified. In some cases, a knowledge requirement is present, but mere possession constitutes a rebuttable presumption of knowledge.<sup>10</sup> In other cases, no knowledge is required,<sup>11</sup> but the statutes can be justified in that not only does obtaining and retaining possession constitute an overt act, but also the very act of possessing narcotics is conduct which is detrimental and even dangerous to society. There are ordinances which require solicitors and salesmen to register or to obtain licenses before doing business in areas affected by the ordinances,<sup>12</sup> but these, too, require an overt act of actual solicitation before criminal liability is imposed. Similar laws are the membership group registration statutes.<sup>13</sup> In these statutes there is an express requirement of guilty knowledge on the part of the offender. There is also the element of overt action involved in formulation of an organization and in becoming a member of an established organization.

It may be noted that the conduct punished by the statute in the instant case differs from that punished by similar statutes which have met with judicial approval. First, it is evident that here there was no overt action on the part of the defendant, but merely a passive omission or failure to act in a prescribed manner. Second, the failure to act was not of a nature which would create in the offender an awareness of its anti-social content, nor is it a reasonable construction to say that there was such content

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10. *Yee Hem v. United States*, 268 U.S. 178 (1925), construing 38 STAT. 275 (1914), 21 U.S.C. § 171 (1922). This statute required knowledge, but mere possession of a narcotic was considered as a rebuttable presumption of knowledge.

11. *United States v. Balint*, 258 U.S. 250, 253 (1922). Here, the Court, in construing 38 STAT. 785 (1914), 26 U.S.C. § 211 (1954), held that the intent or knowledge requirement is a matter of legislative intent. The absence of legislative requirement of intent or knowledge on the part of the defendant does not necessarily violate due process.

The Louisiana Supreme Court in interpreting LA. R.S. 40:962 (1950) in *State v. Nicolosi*, 228 La. 65, 81 So.2d 771 (1955), and *State v. Johnson*, 228 La. 317, 82 So.2d 24 (1955), read in an intent requirement that was not expressly present. However, in *State v. Birdsell*, 232 La. 725, 95 So.2d 290 (1957), the Louisiana Supreme Court reversed a conviction under the same statute for possessing a hypodermic syringe. In this case, the court again read in an intent, but held that an innocent article like a syringe could not convey or create in the offender guilty knowledge.

12. "Without a doubt a state may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent." *Cantwell v. Connecticut*, 310 U.S. 296, 306 (1940). In this case, however, the conviction was reversed on grounds of violation of the defendant's religious freedom in that it was or seemed to be discriminatory.

13. *Bryant v. Zimmerman*, 278 U.S. 63 (1928), construing New York statute, Article V-A Civil Rights Law, c. 664, N.Y. Laws 1923, p. 1110.

present in the failure. These two elements being totally absent, the instant case can be clearly differentiated from previous decisions upholding similar statutes. Therefore, the most influential element in the instant case seems to be the absence of actual knowledge or the probability of such knowledge.<sup>14</sup> Since either actual or constructive knowledge can be a procedural requirement<sup>15</sup> and can also involve substantive due process considerations, this places the instant case in the nebulous area of overlap between substantive and procedural due process. The Court drew its rationale from both areas and concluded that the ordinance as applied here was violative of due process, without stating conclusively whether procedural or substantive due process was violated. From a procedural due process viewpoint, the Court analogized the instant case to the property cases involving expropriation and tax foreclosures<sup>16</sup> and cases in which lack of notice of forthcoming proceedings was held to be violative of due process.<sup>17</sup> It cited these cases as being applicable to the instant case in that complete lack of either actual or constructive knowledge makes the right to be heard valueless and actually nonexistent because it completely invalidates any possible defense which the defendant might raise. Apparently this analogy to the property cases was little more than a prelude to the real basis of the decision, for the Court next went into a more complete discussion of the substantive due process viewpoint.<sup>18</sup> Insofar as limitations on the local police power are concerned, the Court noted that the police power is one of the least limitable of the powers of local government,<sup>19</sup> but the Court recognized that due process does limit this power to some extent. Therefore, the problem the Court faced was whether this ordinance involved a discretionary exercise of the police power or whether it went further and became an arbitrary, capricious, or unreasonable application of the ordinance. It is clear that in drawing this line,

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14. The Court in the instant case assumed that the defendant had no actual knowledge of the registration requirement since she offered proof of this defense, which was refused in the lower court.

15. See *Covey v. Somers*, 351 U.S. 141 (1956); *Walker v. City of Hutchinson*, 352 U.S. 112 (1956); *Mullane v. Central Hanover Bank*, 339 U.S. 306 (1950).

16. See note 15 *supra*.

17. *Huling v. Kaw Valley Railway and Improvement Co.*, 130 U.S. 559 (1889). The property cases in note 15 *supra* deal with the rule that due process is the right to be heard after reasonable notice. They also deal with constructive notice or notice that, though it may not have actually reached the ears of the aggrieved party, was made in a public manner so that the courts may say that the party knew or *should have known* of the forthcoming proceedings.

18. For an excellent discussion of substantive due process, see *Rochin v. California*, 342 U.S. 165 (1952).

19. *District of Columbia v. Brooks*, 214 U.S. 138 (1909).

the frequently encountered problem of police protection of the public welfare versus judicial protection of individual rights arises.<sup>20</sup> The Court apparently considered the importance of the ordinance as a protection of the public to be negligible.<sup>21</sup> The value or necessity of the ordinance being relatively unimportant, or in the Court's words, "a convenience of law enforcement agencies," administration became arbitrary or unreasonable, rather than a discretionary exercise of police power.<sup>22</sup> At the end of the opinion, the Court commented that any other decision would result in as great an "evil" as if the law were written in a foreign language. Here, it can be clearly seen that the Court considered the ordinance as applied in the instant case one that placed an unreasonable burden upon the defendant's shoulders. Certainly if imposition of the criminal sanction is to be considered "evil," it violates substantive due process in that it is definitely unreasonable. Lack of knowledge is important in relation to substantive due process in the instant case, not because this lack fits within any set of definite rules of due process, but because it adds to the unreasonable element of the ordinance. Apparently, in the Court's opinion, lack of knowledge is just one factor, but one that is important enough to tip the scales to the side of judicial protection of individual rights. Lack of knowledge is also important in the instant case in that it makes arbitrary application more likely. Thus apparently this lack of knowledge, while not the deciding factor in itself, nevertheless when joined with other undesirable elements,<sup>23</sup> renders the statute as applied violative of due process.

The dissenting justices did not believe that the differences between this ordinance and similar laws requiring no guilty knowledge, which have been upheld consistently, adequate to support the majority opinion. They also considered this decision a step back into the outdated area of nonfeasance, misfeasance, and malfeasance. It is suggested that clear differences are shown between the problem here and other criminal ordinances

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20. *Wieman v. Updegraff*, 344 U.S. 183 (1952); *United States v. Balint*, 258 U.S. 250 (1922).

21. "At most the ordinance is but a law enforcement technique designed for the convenience of law enforcement agencies through which a list of the names and addresses of felons then residing in a given community is compiled." *Lambert v. California*, 2 L.Ed.2d 232 (U.S. 1957).

22. See Note, 103 U. PA. L. REV. 60, 92, 100-04, 107-12 (1954), for statistical information of the value of criminal registration statutes.

23. The undesirable elements are the ones present in this case, which the courts are somewhat hesitant upon which to base criminal liability. They are, no *scienter*, little benefit to the public, arbitrary application possibility, etc.

and statutes requiring no guilty knowledge. It is further suggested that the contrasting of passive omission with active commission or overt action is not a step back into the old area of nonfeasance and malfeasance, but an explanatory necessity. This definition is not employed by the majority as a dividing line between constitutionality and unconstitutionality. It is important in that passive and innocent omissions are more subject to arbitrary administration of the ordinance. Punishment for an innocent and passive omission serves to magnify the unreasonableness of the ordinance. In summary, it would appear that the decision in the instant case results in no modification of prior jurisprudence. It may, however, be valuable in determining the due process limitations the Court will impose on local exercise of the police power in an area of exception to the deeply ingrained rule that "ignorance of the law will not excuse."<sup>24</sup>

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#### CRIMINAL LAW — SUFFICIENCY OF STATUTORY DEFINITIONS

Two 1957 Louisiana Supreme Court decisions dealt with the sufficiency of statutory definitions of crimes. In the first case defendants, inmates of Angola, broke out of the dormitory in which they were confined and were recaptured while still on the prison grounds. They were convicted under the Louisiana simple escape statute<sup>1</sup> which broadly defines simple escape as the "intentional departure of a person from lawful custody . . . or from any place where lawfully detained." Defendants charged that the statute was unconstitutional in that its meaning was vague because the words "lawful custody" and "place where lawfully detained" were not sufficiently defined. On appeal, *held*, conviction affirmed. The general terms which adequately define a crime are a sufficient definition. The simple escape statute is not unconstitutional for vagueness because the meaning of the questioned terms can be taken according to their fair import, in the common meaning, and in connection with the context. *State v. Marsh*, 233 La. 238, 96 So.2d 643 (1957).

In the second case defendant, a legislator and employee of a paint store which had procured state contracts, was indicted under R.S. 48:422 which purported to make it a crime for a

24. *Shevlin-Carpenter Co. v. Minnesota*, 218 U.S. 57, 68 (1910).

1. LA. R.S. 14:110 (1950), as amended, La. Acts 1954, No. 122, § 1.