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On September 16, 1963, approximately 200 Negro students marched from the campus of Florida A. & M. in Tallahassee to the county jail to protest the arrest, the day before, of some of their fellow classmates for attempting to integrate certain Tallahassee movie theatres. They were also apparently marching to protest general policies of segregation, including the segregation of the jail. Outwardly, the students did not display the characteristics of a normal demonstration, for they carried no signs and upon reaching the jail grounds made no speeches or other verbal protests. Although there was some singing and clapping, no violence was evident. Upon reaching the service entrance of the jail, not normally used by the public, a surprised deputy sheriff met them and requested that they move back from the door. They complied, but for the next thirty minutes stood or sat on the jail driveway and adjacent curtilage of the jailhouse. Although the demonstrators blocked traffic on this driveway, they did not block the vehicles on the public streets in the vicinity of the jail. The sheriff arrived and gave the Negroes ten minutes to disperse or else be arrested. A few left, but the majority refused and were arrested and indicted under the Florida criminal trespass statute.[1] The demonstrators were convicted by a jury, and the Circuit Court affirmed the convictions.[2] The United States Supreme Court granted certiorari when further appeal in the state court was prevented by the Florida District Court of Appeals' refusal to review the convictions.[3] Subsequently, the Court upheld the convictions, by a 5-4 decision, on the ground that there was sufficient evidence to support the trespass charges.[4]

In *Adderly v. Florida,* the Supreme Court took a step which it had previously hesitated to take. This opinion represents the first decision by the Court, since the Negro civil rights movement gained impetus in the early sixties, to permit the boundaries of property to define the limits of the first amendment. This Comment will trace

[1] Fla. Stat. Ann. § 821.18 (1965) provides:
> Every trespass upon the property of another, committed with a malicious and mischevious intent, the punishment of which is not specially provided for, shall be punished by imprisonment not exceeding three months, or by fine not exceeding one hundred dollars.

[2] The opinion of the Florida Circuit Court for Leon County (1964) is unreported.

[3] Adderly v. Florida, 175 So. 2d 249 (Fla. 1965) (per curiam), *cert. granted,* 382 U.S. 1023 (1966).

[4] Adderly v. Florida, 385 U.S. 39 (1966) (opinion for the majority written by Mr. Justice Black; dissenting opinion written by Mr. Justice Douglas, concurred in by the Chief Justice and Justices Brennan and Fortas).

the decisional development in the area of civil rights demonstrations, and discuss the significance *Adderly* has had upon the Negroes' right to demonstrate.[5]

During the past six years, the Negro civil rights movement has been most active in the streets and public meeting places. There is daily mention in the newspapers of the various means of self-help the Negroes are employing — picketing, protest marches, sit-ins, and even wade-ins — in seeking equality under the law. It was only a matter of time before the Supreme Court was faced with the opportunity of deciding the legality of these self-help methods. Generally, the convictions the Court was requested to review resulted from violation by demonstrators of petty criminal statutes, such as breach of the peace,[6] obstructing public passage ways,[7] and failure to disperse upon orders.[8]

In the line of cases preceding *Adderly,* the Court employed four basic methods for reversing the lower court convictions.

The first method was displayed in the Court's initial sit-in case, *Garner v. Louisiana,*[9] in which it skirted the issue of whether the Negroes had a constitutional right to be in a restaurant to protest its segregated facilities. Rather, it decided the case on the basis of total lack of relevant evidence to support a finding that a breach of peace statute had been violated and therefore, there was a denial of due process under the fourteenth amendment.[10] Thus, by failing to directly meet the constitutional issues presented, *Garner* signaled the Court's approach to future cases.

The Court also found the lack-of-evidence method a useful tool in several other cases.[11] Most significant of these was *Brown v. Louisiana,*[12] in which five Negroes were arrested for breach of the peace while staging a sit-in in a small, segregated library. The Court found that the Negroes did not disturb others, disrupt the library

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[5] See KALVEN, THE NEGRO AND THE FIRST AMENDMENT (1966) (excellent discussion of the rights of the Negro under the first amendment before *Adderly*).

[6] Brown v. Louisiana, 383 U.S. 131 (1966).

[7] Cox v. Louisiana, 379 U.S. 536 (1965).

[8] Henry v. City of Rock Hill, 376 U.S. 776 (1964) (per curiam) (common law, not statutory, breach of the peace).

[9] 368 U.S. 157 (1961). This case involved the arrest of several Negroes for disturbing the peace by attempting to be served at a segregated lunch counter. The Negroes were peaceful and did nothing more than ask for service. The convictions were reversed by a unanimous opinion because the record lacked any evidentiary support of the charge.

[10] U.S. CONST. amend. XIV, § 1, provides:

> No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

[11] Brown v. Louisiana, 383 U.S. 131 (1966); *cf.* Wright v. Georgia, 373 U.S. 284 (1963) (breach of peace convictions for playing basketball in a segregated park, reversed).

[12] 383 U.S. 131 (1966).

facilities, or violate the library regulations,[13] and reversed the convictions since there was "not the slightest evidence which would or could sustain the application of the statute to petitioners."[14] The majority conceded that the state could regulate its public facilities but added that in so doing it should not use regulations as a means to discriminate against those who were engaged in lawfully exercising their first amendment freedoms.[15] Thus the Court, in reversing the convictions on a procedural due process ground, failed again to decide the question of whether the first amendment guarantees demonstrators the right to exercise their freedoms of free speech or assembly against the wishes of property owners.

Mr. Justice Black wrote a strong dissent in *Brown,* perhaps in anticipation of the *Adderly* case, in which he chided the majority for not recognizing the right of a property owner to enjoy his property for its normal and dedicated use.[16] Apparently the Court did not feel bound by the reasoning in *Brown* because the decision in *Adderly,* written by Mr. Justice Black, adopts Black's dissenting view in *Brown.* This might suggest that the Court's original enthusiasm for the demonstrations of the civil rights movement has dampened somewhat.

Second, as evidenced by *Cox v. Louisiana,*[17] the Supreme Court has reversed convictions on the ground that the statutes upon which they were based were void for vagueness. That is, the statutes were found to be too broadly drawn to define and punish specific conduct with the result that the statute does not give fair warning of the conduct it prohibits.[18]

Cox involved the arrest of the leader of 2000 demonstrators protesting against segregation and discrimination. The leader was convicted of disturbing the peace, obstructing public passages, and

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[13] *Id.* at 142.

[14] *Id.* at 139.

[15] *Id.* at 143.

[16] *Id.* at 166, where Mr. Justice Black, in his dissent, wrote:

> The First Amendment, I think, protects speech, writings, and expression of views in any manner in which they can be legitimately and validly communicated. But I have never believed that it gives any person or group of persons the constitutional right to go wherever they want, whenever they please, without regard to the rights of private or public property or to state law. . . . Though the First Amendment guarantees the right of assembly and the right of petition along with the rights of speech, press, and religion, it does not guarantee to any person the right to use someone else's property, even that owned by government and dedicated to other purposes, as a stage to express dissident ideas.

[17] 379 U.S. 536 (1965). There were two separate majority opinions delivered by Mr. Justice Goldberg. No. 24 at 379 U.S. 536, reversed convictions for disturbing the peace and obstructing public passages. No. 49 at 379 U.S. 559, reversed a conviction for picketing before a courthouse.

[18] Cantwell v. Connecticut, 310 U.S. 296 (1940).

picketing near a courthouse.[19] Despite the reversal of the breach of peace conviction on the ground of vagueness, the Court used strong dictum, later adopted in *Adderly,* to the effect that there is a proper time and place for such demonstrations, and that it would have no tolerance for demonstrations not properly held.[20]

A third technique employed by the Court was to reverse the convictions because, as a result of state action, the Negroes involved were deprived of equal protection of the law secured to them by the fourteenth amendment.[21] Generally this tactic was used where a state statute or local ordinance required segregation,[22] or where there was evidence of statements made by officials indicating a policy of segregation.[23]

As a fourth method, the Court has incorporated the first amendment into the fourteenth and declared that the latter does not allow states to make criminal the peaceful expression of unpopular views.[24] This is held to be an infringement upon the right to exercise the first amendment freedoms. In this regard, *Edwards v. South Carolina*[25]

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[19] Interestingly enough, the Court found that the statute prohibiting picketing near a courthouse was a proper exercise of the state's police power. It felt that the state had a legitimate interest in protecting its judicial system from any influences or pressures such picketing might create. However, it reversed the conviction because it found that the Chief of Police had authorized the demonstration to be held where it was. To have upheld the conviction would have sanctioned entrapment by the state.

[20] 379 U.S. at 574, where the Court stated:

> Nothing we have said . . . is to be interpreted as sanctioning riotous conduct . . . or demonstrations, however peaceful their conduct or commendable their motives, which conflict with properly drawn statutes and ordinances designed to promote law and order, protect the community against disorder, regulate traffic, safeguard legitimate interests in private and public property, or protect the administration of justice and other essential government functions. . . .
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> We also reaffirm . . . that the right of peaceful protest does not mean that everyone with opinions or beliefs to express may do so at anytime and at any place. There is a proper time and place for even the most peaceful protest and a plain duty and responsibility on the part of all citizens to obey all valid laws and regulations.

[21] Civil Rights Cases, 109 U.S. 3 (1883) (established the doctrine that state action cannot deprive Negroes of equal protection under the laws).

[22] Robinson v. Florida, 378 U.S. 153 (1964) (state health regulations required segregation of toilet facilities); Peterson v. City of Greenville, 373 U.S. 244 (1963) (city ordinance required segregation in restaurants).

[23] Lombard v. Louisiana, 373 U.S. 267 (1963) (public officials openly stated that Negroes could not desegregate lunch counters); Johnson v. Virginia, 373 U.S. 61 (1963) (per curiam) (traffic judge compelled segregation in his courtroom). See also Griffin v. Maryland, 378 U.S. 130 (1964), in which the Court reversed convictions for trespassing in a segegated amusement park because the arresting individual was a deputy sheriff acting in his authority as such rather than in his authority as an agent of the park. The *Griffin* case is interesting because it seems to say that if an arresting officer is not enforcing the laws equally, the Court will find the necessary involvement by the state to make the convictions invalid under the fourteenth amendment. This is consistent with the Court's refusal to permit discriminatory use of the law at any level of the state government.

[24] Henry v. City of Rock Hill, 376 U.S. 776 (1964) (per curiam) (demonstrators assembled in a peaceful, orderly fashion in front of the city hall to protest segregation.

[25] 372 U.S. 229 (1963).

is important, since it clearly shows that demonstrations on public streets and in areas where the public is normally permitted to assemble are clearly legal if they are orderly. *Edwards* involved demonstrations on statehouse grounds which were open to the public. The Court reversed the breach of peace convictions because it found the Negroes' rights of speech, assembly, and petition for redress of grievances were violated.

The result of these four methods is that the Negro civil rights movement, as other protest movements which preceded it,[26] now has a claim to the use of the public streets and meeting places as a public forum to express its first amendment freedoms subject only to nondiscriminatory regulations which the state may impose to preserve social order and control. Until *Adderly* it appeared as if the Court were going to sanction all demonstrations so long as they were orderly and not in violation of a precise, narrowly drawn statute prohibiting such activity. However, *Adderly* presented a well-defined issue which could not be easily evaded. The Court could not employ the first method discussed above because there was sufficient evidence to support the criminal trespass convictions.[27] The mere fact of the Negroes' presence on the property was enough evidence to sustain the trespass charges. Moreover, unlike the breach of peace statute in *Cox,* Florida's trespass statute defined specific conduct of a limited kind and therefore was not void for vagueness.[28] Nor, as discussed in the third technique above, were the demonstrators denied the equal protection of the laws guaranteed to them by the fourteenth amendment, for there was no evidence that the trespass statute was not enforced equally. The Negroes were arrested not because the sheriff disagreed with the views they espoused, but only because they were using the jailgrounds in a non-traditional manner.[29] The case clearly was one within the fourth method mentioned and presented the court with the choice of either following its prior reasoning by supporting the demonstrators' rights to exercise their first amendment freedoms or subordinating those rights to Florida's trespass statute. The Court chose to depart from the trend of its previous opinions and upheld the rights of the property owner, in this instance the state, by allowing the demonstrators' convictions to stand.

It is significant that *Adderly* involved a demonstration on jailgrounds whereas the demonstrations in *Cox* and *Edwards* were held on courthouse and statehouse grounds respectively. The point is that

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[26] *See* Cantwell v. Connecticut, 310 U.S. 296 (1940); Thornhill v. Alabama, 310 U.S. 88 (1940).

[27] 385 U.S. at 46.

[28] *Id.* at 42.

[29] *Id.* at 47.

from time immemorial, citizens have traditionally gathered at their statehouses and customary meeting places to petition their government and express their views. However, such demonstrations have not been customary on jailgrounds. The Court emphasized that there was "no evidence at all that on any other occasion had similarly large groups of the public" congregated on the Tallahassee jailgrounds for any reason.[30]

The *Edwards, Cox* and *Adderly* cases display the application of what could be termed a normal use test which it appears the Court developed to determine the validity of a civil rights demonstration. Assuming that the Court is faced with the fundamental issue of whether to sanction a certain demonstration as a proper exercise of first amendment freedoms, it seems that the Court will now ask whether it has been customary for the property to be used as a platform for such demonstration. In so doing, the Court's concern appears to be with whether or not the property is being put to its dedicated use.[31] The examination precipitates to the sole question of whether or not the public previously has customarily gathered on this place to exercise its constitutional rights. If it has, then the demonstration is valid so long as it remains orderly.

If the Court continues to apply the normal use test to civil rights demonstrations, there may be a significant effect on the Negro civil rights movement. The Court in *Adderly* warns the Negroes that their demonstrations are not warranted in all public places. It advises them that the custodian of a public building has the power to maintain the security of that building and to preserve the property for its dedicated use.[32] The most obvious repercussion *Adderly* will have on the civil rights movement should be to cause its leaders to hesitate before they organize a demonstration. Their lesson from *Adderly* is that they no longer have free reign to demonstrate where they please; consequently, they will be forced to choose their demonstration sites more carefully.

It is necessary to point out that by restricting itself to the question of whether a demonstration is within the normal use of certain public property, the Court could very easily bind itself to an inflexible test. On its face, the examination of the nature of the public property involved appears sufficient to ascertain the validity of a demonstration but it seems to be too narrow a test to apply when one considers that the Court is balancing the valuable first amendment freedoms against the concept of property ownership. A test

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[30] *Ibid.*

[31] *Ibid.*: "The State, no less than a private owner of property, has power to preseve the property under its control for the use to which it is lawfully dedicated."

[32] *Ibid.*

that stops at the consideration of only the nature and normal use of the property fails to consider other important factors, such as the time and manner of the demonstrations or the serenity or security necessary for the proper use of the property. For example, by the strict application of the normal use test, a demonstration on a state-house lawn during the early hours of the morning or during the visit of a foreign dignitary would be valid. Moreover, application of the normal use test to a large demonstration protesting the discriminatory practices of a cemetery might prove awkward with a showing that similarly large groups had previously gathered on the cemetery grounds for Memorial Day services or burials. Here, the factor of serenity would be an important consideration.

Although in *Adderly* the Court made mention of the fact that security was necessary for a jailhouse,[33] it did not emphasize this factor as being important to the decision. Of course, it could be argued that these factors are inident to a normal use of the property, but as yet, the Court has not taken this step and until it does, the civil rights leaders will be hesitant and uncertain regarding the status of their demonstrations.

Unless the Court considers the above factors, and others of this nature, as necessary elements in a normal use test, it will find itself bound by a test too narrow to apply in all situations. It must be pointed out, however, that the Court has not yet had the opportunity to discuss any elements other than the place of the demonstration. Therefore, the Court's position is not so firmly entrenched that it cannot adopt these additional elements if it so desires. *Adderly* only discussed the propriety of the place of the demonstration. But from the language in *Adderly, i.e.,* that persons cannot exercise their first amendment freedoms "whenever and however and wherever they please,"[34] it seems reasonable that when the Court is presented with the proper case it will adopt these other necessary elements and in so doing give the normal use test the desired flexibility.

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[33] *Id.* at 41.

[34] *Id.* at 48.