cant amount of spontaneous speech" that might be engaged in on a holiday or weekend when it was not possible to obtain a permit.[1553]

The Problem of "Symbolic Speech".—Very little expression is "mere" speech. If it is oral, it may be noisy enough to be disturbing,[1554] and, if it is written, it may be litter;[1555] in either case, it may amount to conduct that is prohibitable in specific circumstances.[1556] Moving beyond these simple examples, one may see as well that conduct may have a communicative content, intended to express a point of view. Expressive conduct may consist in flying a particular flag as a symbol[1557] or in refusing to salute a flag as a symbol.[1558] Sit-ins and stand-ins may effectively express a protest about certain things.[1559]

Justice Jackson wrote: "There is no doubt that, in connection with the pledge, the flag salute is a form of utterance. Symbolism is a primitive but effective way of communicating ideas. The use of an emblem or flag to symbolize some system, idea, institution, or personality is a short cut from mind to mind."[1560] When conduct or action has a communicative content to it, governmental regulation or prohibition implicates the First Amendment, but this does not mean that such conduct or action is necessarily immune from governmental process. Thus, although the Court has had few opportunities to formulate First Amendment standards in this area, in upholding a congressional prohibition on draft-card burnings, it has stated the generally applicable rule. "[A] government regulation is sufficiently justified if it is within the constitutional power of Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged

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[1553] 536 U.S. at 167.

[1554] *E.g.*, Saia v. New York, 334 U.S. 558 (1948); Kovacs v. Cooper, 336 U.S. 77 (1949).

[1555] *E.g.*, Schneider v. Town of Irvington, 308 U.S. 147 (1939).

[1556] *Cf.* Cohen v. California, 403 U.S. 15 (1971).

[1557] Stromberg v. California, 283 U.S. 359 (1931).

[1558] West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943).

[1559] In Brown v. Louisiana, 383 U.S. 131 (1966), the Court held protected a peaceful, silent stand-in in a segregated public library. Speaking of speech and assembly, Justice Fortas said for the Court: "As this Court has repeatedly stated, these rights are not confined to verbal expression. They embrace appropriate types of action which certainly include the right in a peaceable and orderly manner to protest by silent and reproachful presence, in a place where the protestant has every right to be, the unconstitutional segregation of public facilities." Id. at 141–42. *See also* Garner v. Louisiana, 368 U.S. 157, 185, 201 (1961) (Justice Harlan concurring). On a different footing is expressive conduct in a place where such conduct is prohibited for reasons other than suppressing speech. *See* Clark v. Community for Creative Non-Violence, 468 U.S. 288 (1984) (upholding Park Service restriction on overnight sleeping as applied to demonstrators wishing to call attention to the plight of the homeless).

[1560] West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624, 632 (1943).