

THE HORTATIVE HORN

In the beginning (sometime in the late 1800s), Man created the automobile. And we saw that it was good. But we also saw that it was dangerous, particularly to pedestrians (be they human or animal) or other vehicles in its way. So Man created (or at least offered as an accessory) the horn. And we saw (and heard) that it was loud.

Indeed, few features of early automobiles are as distinctive and memorable as their horns. One can imagine the sound produced by the Sterk Manufacturing Company of Chicago's "Long Distance Siren," a 1906 advertisement for which proclaimed that "A quarter turn of the handle produces a volume of sound sufficient in every case to secure the right-of-way." Automotive historians would probably agree that the Klaxon hand-operated horn became almost as famous as the vehicles to which it was attached.

Of course, too much of a good thing can be bad, and the power to honk can be and on occasion has been abused. To protect public hearing (if not sanity), therefore, laws have placed limits on a person's right to toot his or her own horn. But how restrictive can such limits be? Can they prohibit us from giving a quick beep to a passing friend? Can they bar us from responding to the instruction "Honk if you like (or dislike) X"?

Fortunately, the recent case of *City of Eugene v. Powlowski* (involving more recent vehicles) addressed this precise question.

In January 1991, various individuals conducted demonstrations regarding the Persian Gulf War at the federal courthouse in Eugene, Oregon. The protestors represented both anti-war and pro-war positions. Many protestors carried signs inviting passing motorists to honk in support of their particular position. Norman Edward Powlowski and

Vernice Ann Moug honked their vehicle horns while driving past.

Unfortunately for Norman and Vernice, they were cited for violating the Eugene Municipal Code. That ordinance adopted a statute that prohibited "Using a horn otherwise than as a reasonable warning or making any unnecessary or unreasonably loud or harsh sound by means of a horn or other warning device."

At their trials, the defendants argued that the ordinance was unconstitutional, claiming it violated their right to free expression. Unfortunately for Norman and Vernice, the trial court rejected their arguments and found them guilty.

Norman and Vernice appealed. On November 4, 1992, the Court of Appeals of Oregon reversed the lower court's decision, ruling that the ordinance *was* unconstitutional.

The Court of Appeals began by quoting the Oregon Constitution's provision that "No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever; but every person shall be responsible for the abuse of this right." The Court noted that a law may be found unconstitutional if it prohibits protected expression.

As the Court observed, "Causing a mechanical device to make a sound does not always constitute speech." However, here, Norman and Vernice had honked their automobile horns to show either support or disapproval of a political issue or a matter of public concern. If they had *shouted* their approval or disapproval from their automobiles, that expression clearly would have been constitutionally protected. The court concluded that "Their expression is no

less protected because it is manifested by a mechanical sound, unless there is an important public safety or health interest at stake."

The Court agreed that a city has the authority to enact reasonable legislation to regulate conduct thought to be detrimental to the public interest or safety. Thus, a city has broad constitutional latitude to regulate the manner of expression, as long as such limitations are reasonable. However, a limitation will be considered unreasonable if it burdens expression that is otherwise constitutionally privileged.

The Court noted that the ordinance involved in this case broadly restricted all horn honking for any purpose at any time except as a warning. Thus, it would make unlawful honking a horn as a friendly greeting to a familiar passerby or as any other form of non-warning communication. The ordinance thus was not limited to those circumstances where, because of noise or abuse, the public interest or safety might be involved. Because of this, the ordinance was unconstitutionally overbroad.

While modern laws may impose reasonable and appropriate restrictions on motorists' honking, it is doubtful that any law can silence in our minds the historical harmony between old cars and their distinctive horns. Perhaps this is what inspired the French poet Guillaume Apollinaire to observe poignantly that "Memories are hunting horns whose sound dies on the wind."

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