AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 7: The Republican Era—Democratic Rights/Free Speech/Media

**Mutual Film Corp. v. Industrial Commission of Ohio, 236 U.S. 230** (1915)

*In 1912, the Mutual Film Corporation was formed to produce and distribute motion pictures, and gained a few years later when it began producing the films of Charlie Chaplin. In 1913, the state of Ohio adopted a statute that created a board of censors of motion picture films under the supervision of the state’s Industrial Commission. The board was authorized to allow only films that were “in the judgment and discretion of the board of censors, of a moral, educational, or amusing and harmless character” to be publicly exhibited in the state. Mutual Film sought an injunction in federal district court blocking the operation of the state’s censor board on a variety of constitutional grounds, including the First Amendment. The district court declined, and on appeal the U.S. Supreme Court unanimously affirmed that ruling. The Court held that motion pictures were not protected by the freedom of the press. They were a “spectacle” and a “business, pure and simple,” and the state had ample police powers to regulate them so as to prevent the “evils” that might arise from the exhibition of inappropriate films.*

JUSTICE MCKENNA delivered the opinion of the Court.

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The next contention is that the statute violates the freedom of speech and publication guaranteed by the Ohio Constitution. In its discussion, counsel have gone into a very elaborate description of moving picture exhibitions and their many useful purposes as graphic expressions of opinion and sentiments, as exponents of policies, as teachers of science and history, as useful, interesting, amusing, educational, and moral. And a list of the "campaigns," as counsel call them, which may be carried on, is given. We may concede the praise. It is not questioned by the Ohio statute, and under its comprehensive description, "campaigns" of an infinite variety may be conducted. Films of a "moral, educational, or amusing and harmless character shall be passed and approved," are the words of the statute. No exhibition, therefore, or "campaign" of complainant will be prevented if its pictures have those qualities. Therefore, however missionary of opinion films are or may become, however educational or entertaining, there is no impediment to their value or effect in the Ohio statute. But they may be used for evil, and against that possibility the statute was enacted. Their power of amusement, and, it may be, education, the audiences they assemble, not of women alone nor of men alone, but together, not of adults only, but of children, make them the more insidious in corruption by a pretense of worthy purpose or if they should degenerate from worthy purpose. Indeed, we may go beyond that possibility. They take their attraction from the general interest, eager and wholesome it may be, in their subjects, but a prurient interest may be excited and appealed to. Besides, there are some things which should not have pictorial representation in public places and to all audiences. And not only the State of Ohio, but other states, have considered it to be in the interest of the public morals and welfare to supervise moving picture exhibitions. We would have to shut our eyes to the facts of the world to regard the precaution unreasonable or the legislation to effect it a mere wanton interference with personal liberty.

We do not understand that a possibility of an evil employment of films is denied, but a freedom from the censorship of the law and a precedent right of exhibition are asserted, subsequent responsibility only, it is contended, being incurred for abuse. In other words, as we have seen, the Constitution of Ohio is invoked, and an exhibition of films is assimilated to the freedom of speech, writing, and publication assured by that instrument, and for the abuse of which only is there responsibility, and, it is insisted, that as no law may be passed "to restrain the liberty of speech or of the press," no law may be passed to subject moving pictures to censorship before their exhibition.

We need not pause to dilate upon the freedom of opinion and its expression, and whether by speech, writing, or printing. They are too certain to need discussion -- of such conceded value as to need no supporting praise. Nor can there be any doubt of their breadth, nor that their underlying safeguard is, to use the words of another, "that opinion is free, and that conduct alone is amenable to the law."

Are moving pictures within the principle, as it is contended they are? They indeed may be mediums of thought, but so are many things. So is the theater, the circus, and all other shows and spectacles, and their performances may be thus brought by the like reasoning under the same immunity from repression or supervision as the public press -- made the same agencies of civil liberty.

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The first impulse of the mind is to reject the contention. We immediately feel that the argument is wrong or strained which extends the guaranties of free opinion and speech to the multitudinous shows which are advertised on the billboards of our cities and towns, and which regards them as emblems of public safety, to use the words of Lord Camden, quoted by counsel, and which seeks to bring motion pictures and other spectacle into practical and legal similitude to a free press and liberty of opinion.

The judicial sense supporting the common sense of the country is against the contention. As pointed out by the district court, the police power is familiarly exercised in granting or withholding licenses for theatrical performances as a means of their regulation. *Marmet v. State* (OH 1887); *Commonwealth v. McGann* (MA 1913).

The exercise of the power upon moving picture exhibitions has been sustained. *State v. Loden* (MD 1912); *Block v. Chicago* (IL 1909); *Higgins v. Lacroix* (1912).

It seems not to have occurred to anybody in the cited cases that freedom of opinion was repressed in the exertion of the power which was illustrated. The rights of property were only considered as involved. It cannot be put out of view that the exhibition of moving pictures is a business, pure and simple, originated and conducted for profit, like other spectacles, not to be regarded, nor intended to be regarded by the Ohio Constitution, we think, as part of the press of the country, or as organs of public opinion. They are mere representations of events, of ideas and sentiments published and known; vivid, useful, and entertaining, no doubt, but, as we have said, capable of evil, having power for it, the greater because of their attractiveness and manner of exhibition. It was this capability and power, and it may be in experience of them, that induced the State of Ohio, in addition to prescribing penalties for immoral exhibitions, as it does in its Criminal Code, to require censorship before exhibition, as it does by the act under review. We cannot regard this as beyond the power of government.

It does not militate against the strength of these considerations that motion pictures may be used to amuse and instruct in other places than theaters -- in churches, for instance, and in Sunday schools and public schools. Nor are we called upon to say on this record whether such exceptions would be within the provisions of the statute, nor to anticipate that it will be so declared by the state courts, or so enforced by the state officers.

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*Affirmed*.