AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 8: The New Deal/Great Society Era – Democratic Rights/Free Speech

**Martin v. City of Struthers, 319 U.S. 141** (1943)

*In the 1930s, the Jehovah’s Witnesses were born out of the fragmentation of millenarian Christian sect that emerged out of Pennsylvania after the Civil War. The Witnesses were a fairly small group in the 1930s and 1940s, but they made a big impression. They were known to blanket towns in orchestrated door-to-door campaigns of aggressive proselytizing, offensive language, and heaps of literature, including their notorious* Watchtower *magazine. Many communities fought back by adopting ordinances designed to dampen the Witnesses’ efforts, and the group launched a largely successful legal campaign to overturn many of these laws as infringements on their freedom of speech and religion.*

*In the case of the city of Struthers, Ohio, the town council adopted an ordinance making it unlawful for any person distributing handbills to residences to ring the doorbell “or otherwise summon” the resident to the door. Literature could simply be left at the door. For an industrial town in which many of the residents worked night shifts, unwanted knocks on the door were regarded as a significant nuisance. No doubt many residents did not relish being called to their door in order to have a religious argument with a stranger. As one woman testified in this case, she did not “believe that anyone needs to be sent door to door to tell us how to worship.”*

*When Struthers enforced its ordinance and fined Witnesses who rang doorbells, they appealed their fines as violating their constitutional rights. The Ohio courts dismissed the case as raising no serious constitutional issues, but a 6-3 U.S. Supreme Court struck the ordinance down. The majority concluded that Struthers had not simply imposed a reasonable regulation on how door-to-door canvassing could be done, but had significantly obstructed the ability of the Witnesses to get their message out.*

JUSTICE BLACK delivered the opinion of the Court.

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The right of freedom of speech and press has broad scope. The authors of the First Amendment knew that novel and unconventional ideas might disturb the complacent, but they chose to encourage a freedom which they believed essential if vigorous enlightenment was ever to triumph over slothful ignorance. This freedom embraces the right to distribute literature, *Lovell* v. *Griffin* (38) and necessarily protects the right to receive it. The privilege may not be withdrawn even if it creates the minor nuisance for a community of cleaning litter from its streets. *Schneider* v. *State* (1939). Yet the peace, good order, and comfort of the community may imperatively require regulation of the time, place and manner of distribution. . . .

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Freedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to the preservation of a free society that, putting aside reasonable police and health regulations of time and manner of distribution, it must be fully preserved. The dangers of distribution can so easily be controlled by traditional legal methods, leaving to each householder the full right to decide whether he will receive strangers as visitors, that stringent prohibition can serve no purpose but that forbidden by the Constitution, the naked restriction of the dissemination of ideas.

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Traditionally the American law punishes persons who enter onto the property of another after having been warned by the owner to keep off. General trespass after warning statutes exist in at least twenty states, while similar statutes of narrower scope are on the books of at least twelve states more. We know of no state which, as does the Struthers ordinance in effect, makes a person a criminal trespasser if he enters the property of another for an innocent purpose without an explicit command from the owners to stay away. . . . In any case, the problem must be worked out by each community for itself with due respect for the constitutional rights of those desiring to distribute literature and those desiring to receive it, as well as those who choose to exclude such distributers from the home.

The Struthers ordinance does not safeguard these constitutional rights. . . . [T]he ordinance is invalid because in conflict with the freedom of speech and press.

*Reversed*.

JUSTICE MURPHY, with whom JUSTICE DOUGLAS and JUSTICE RUTLEDGE join, concurring.

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I believe that nothing enjoys a higher estate in our society than the right given by the First and Fourteenth Amendments freely to practice and proclaim one's religious convictions. The right extends to the aggressive and disputatious as well as to the meek and acquiescent. The lesson of experience is that — with the passage of time and the interchange of ideas — organizations, once turbulent, perfervid and intolerant in their origin, mellow into tolerance and acceptance by the community, or else sink into oblivion. . . . If a religious belief has substance, it can survive criticism, heated and abusive though it may be, with the aid of truth and reason alone. By the same method, those who follow false prophets are exposed. Repression has no place in this country. It is our proud achievement to have demonstrated that unity and strength are best accomplished, not by enforced orthodoxy of views, but by diversity of opinion through the fullest possible measure of freedom of conscience and thought.

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There can be no question but that appellant was engaged in a religious activity when she was going from house to house in the City of Struthers distributing circulars advertising a meeting of those of her belief. Distribution of such circulars on the streets cannot be prohibited. *Jamison* v. *Texas* (1943). Nor can their distribution on the streets or from house to house be conditioned upon obtaining a license which is subject to the uncontrolled discretion of municipal officials, *Lovell* v. *Griffin* (1938), or upon payment of a license tax for the privilege of so doing. Preaching from house to house is an age-old method of proselyting, and it must be remembered that "one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place."

No doubt there may be relevant considerations which justify considerable regulation of door to door canvassing, even for religious purposes, — regulation as to time, number and identification of canvassers, etc., which will protect the privacy and safety of the home and yet preserve the substance of religious freedom. And, if a householder does not desire visits from religious canvassers, he can make his wishes known in a suitable fashion. The fact that some regulation may be permissible, however, does not mean that the First Amendment may be abrogated. . . .

Prohibition may be more convenient to the law maker, and easier to fashion than a regulatory measure which adequately protects the peace and privacy of the home without suppressing legitimate religious activities. But that does not justify a repressive enactment like the one now before us. . . .

JUSTICE FRANKFURTER,

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The right to legislate implies the right to classify. We should not, however unwittingly, slip into the judgment seat of legislatures. I myself cannot say that those in whose keeping is the peace of the City of Struthers and the right of privacy of its home dwellers could not single out, in circumstances of which they may have knowledge and I certainly have not, this class of canvassers as the particular source of mischief. The Court's opinion leaves one in doubt whether prohibition of all bell-ringing and door-knocking would be deemed an infringement of the constitutional protection of speech. It would be fantastic to suggest that a city has power, in the circumstances of modern urban life, to forbid house-to-house canvassing generally, but that the Constitution prohibits the inclusion in such prohibition of door-to-door vending of phylacteries or rosaries or of any printed matter. If the scope of the Court's opinion, apart from some of its general observations, is that this ordinance is an invidious discrimination against distributors of what is politely called literature, and therefore is deemed an unjustifiable prohibition of freedom of utterance, the decision leaves untouched what are in my view controlling constitutional principles. . . .

JUSTICE REED, with whom JUSTICE ROBERTS and JUSTICE JACKSON join, dissenting.

While I appreciate the necessity of watchfulness to avoid abridgments of our freedom of expression, it is impossible for me to discover in this trivial town police regulation a violation of the First Amendment. No ideas are being suppressed. No censorship is involved. The freedom to teach or preach by word or book is unabridged, save only the right to call a householder to the door of his house to receive the summoner's message. I cannot expand this regulation to a violation of the First Amendment. . . .

Freedom to distribute publications is obviously a part of the general freedom guaranteed the expression of ideas by the First Amendment. It is trite to say that this freedom of expression is not unlimited. Obscenity, disloyalty and provocatives do not come within its protection. All agree that there may be reasonable regulation of the freedom of expression. . . .

. . . . If the ordinance, in my view, did prohibit the distribution of literature, while permitting all other canvassing, I should believe such an ordinance discriminatory. This ordinance is different. The most, it seems to me, that can be or has been read into the ordinance is a prohibition of free distribution of printed matter by summoning inmates to their doors. There are excellent reasons to support a determination of the city council that such distributors may not disturb householders while permitting salesmen and others to call them to the door. Practical experience may well convince the council that irritations arise frequently from this method of advertising. The classification is certainly not discriminatory.

If the citizens of Struthers desire to be protected from the annoyance of being called to their doors to receive printed matter, there is to my mind no constitutional provision which forbids their municipal council from modifying the rule that anyone may sound a call for the householder to attend his door. It is the council which is entrusted by the citizens with the power to declare and abate the myriad nuisances which develop in a community. Its determination should not be set aside by this Court unless clearly and patently unconstitutional.

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The First Amendment does not compel a pedestrian to pause on the street to listen to the argument supporting another's views of religion or politics. Once the door is opened, the visitor may not insert a foot and insist on a hearing. He certainly may not enter the home. To knock or ring, however, comes close to such invasions. To prohibit such a call leaves open distribution of the notice on the street or at the home without signal to announce its deposit. Such assurance of privacy falls far short of an abridgment of freedom of the press. The ordinance seems a fair adjustment of the privilege of distributors and the rights of householders.

JUSTICE JACKSON, with whom JUSTICE FRANFURTER joins, dissenting.

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Our difference of opinion cannot fairly be given the color of a disagreement as to whether the constitutional rights of Jehovah's Witnesses should be protected, insofar as they are rights. These Witnesses, in common with all others, have extensive rights to proselyte and propagandize. These, of course, include the right to oppose and criticize the Roman Catholic Church or any other denomination. These rights are, and should be held to be, as extensive as any orderly society can tolerate in religious disputation. The real question is where their rights end and the rights of others begin. The real task of determining the extent of their rights on balance with the rights of others is not met by pronouncement of general propositions with which there is no disagreement.

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In my view, the First Amendment assures the broadest tolerable exercise of free speech, free press, and free assembly, not merely for religious purposes, but for political, economic, scientific, news, or informational ends as well. When limits are reached which such communications must observe, can one go farther under the cloak of religious evangelism? Does what is obscene, or commercial, or abusive, or inciting become less so if employed to promote a religious ideology? I had not supposed that the rights of secular and non-religious communications were more narrow or in any way inferior to those of avowed religious groups.

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The First Amendment grew out of an experience which taught that society cannot trust the conscience of a majority to keep its religious zeal within the limits that a free society can tolerate. I do not think it any more intended to leave the conscience of a minority to fix its limits. Civil government cannot let any group ride rough-shod over others simply because their "consciences" tell them to do so.

A common sense test as to whether the Court has struck a proper balance of these rights is to ask what the effect would be if the right given to these Witnesses should be exercised by all sects and denominations. If each competing sect in the United States went after the householder by the same methods, I should think it intolerable. If a minority can put on this kind of drive in a community, what can a majority, resorting to the same tactics, do to individuals and minorities? Can we give to one sect a privilege that we could not give to all, merely in the hope that most of them will not resort to it? Religious freedom, in the long run, does not come from this kind of license to each sect to fix its own limits, but comes of hard-headed fixing of those limits by neutral authority with an eye to the widest freedom to proselyte compatible with the freedom of those subject to proselyting pressures.

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Neither can I think it an essential part of freedom that religious differences be aired in language that is obscene, abusive, or inciting to retaliation. We have held that a Jehovah's Witness may not call a public officer a "God damned racketeer" and a "damned Fascist," because that is to use "fighting words," and such are not privileged. Chaplinsky v. New Hampshire (1942). How, then, can the Court today hold it a "high constitutional privilege" to go to homes, including those of devout Catholic on Palm Sunday morning, and thrust upon them literature calling their church a "whore" and their faith a "racket"?

Nor am I convinced that we can have freedom of religion only by denying the American's deep-seated conviction that his home is a refuge from the pulling and hauling of the market place and the street. For a stranger to corner a man in his home, summon him to the door, and put him in the position either of arguing his religion or of ordering one of unknown disposition to leave is a questionable use of religious freedom.

. . . . I should think that the singular persistence of the turmoil about Jehovah's Witnesses, one which seems to result from the work of no other sect, would suggest to this Court a thorough examination of their methods to see if they impinge unduly on the rights of others. Instead of that, the Court has, in one way after another, tied the hands of all local authority, and made the aggressive methods of this group the law of the land.

This Court is forever adding new stories to the temples of constitutional law, and the temples have a way of collapsing when one story too many is added. So it was with liberty of contract, which was discredited by being overdone. The Court is adding a new privilege to override the rights of others to what has before been regarded as religious liberty. In so doing, it needlessly creates a risk of discrediting a wise provision of our Constitution which protects all -- those in homes as well as those out of them -- in the peaceful, orderly practice of the religion of their choice, but which gives no right to force it upon others.

Civil liberties had their origin, and must find their ultimate guaranty, in the faith of the people. If that faith should be lost, five or nine men in Washington could not long supply its want. Therefore we must do our utmost to make clear and easily understandable the reasons for deciding these cases as we do. Forthright observance of rights presupposes their forthright definition.