Can Moving Pictures Speak? Silent Film, Free Speech, and Social Science in Early 20th Century Law
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Abstract: When the Supreme Court was first confronted with a First Amendment case involving film, it was confronted with a difficult and fascinating question: were silent films speech? The decision in the case, Mutual v. Ohio (1915), famously answered no. The decision is usually understood to be part of a tradition of interpretations of the First Amendment as applying primarily to political opinion; in this reading, film was not protected because it was entertainment and/or commerce. However, Mutual also contains a set of arguments about the nature of film as more akin to action than to speech—arguments embedded in contemporaneous discussions of influence in the emerging social sciences. In order to highlight these ideas, the paper re-reads the Mutual and two other related decisions (Kalem Co. v. Harper Bros. [1911] and Pathé Exchange v. Cobb [1922]), contextualizing them within the history of ideas about communication, influence, and society in the United States. The cases all discuss film in terms of action, using the supposed physicality of the medium to distance it from opinion and expression. This discussion of film makes sense within the context of contemporaneous social scientific discourse on communication and technology.

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