FILM AS A MEDIUM OF EXPRESSION: A CHOICE BETWEEN CENSORSHIP AND SOCIAL RESPONSIBILITY

Meor Zailan Sulaiman

Introduction

Freedom of expression is a basic human rights. Over the centuries the people of the world had undergone some difficult episodes of history to claim as well to defend this right. The pursuit of information-seeking and dissemination has reached the stage where man is not only able to communicate easily but extensively. Technological progress has provided him with reliable channels of communication such as the print and electronic media. The motion picture medium that this paper is concerned with, at its infancy regarded merely as a form of entertainment, has now become an instrument for social documentaries and has provided such an impact upon society. Its early existence was marked by various forms of restrictions until society itself gave it an overdue recognition as a means of propagating ideas and expression.

Motion Pictures - the Beginning

When moving pictures were invented, the inventors were unsure of its worth until D.W. Griffith manipulated it to tell a story as in "The Birth Of A Nation." Like other films of the period, it had to depend on sight and occasionally printed titles to enhance the audience's comprehension of the story. Nevertheless, its adoption as a popular cultural form was swift and the U.S. was literally transformed into a nation of moviegoers since the 1900 and by 1935 movie producing companies sprang up to fill the demands for films.

In 1980 the print media have begun to provide reviews of new films, and a great deal of attention was received from partisan groups, the accusers and defenders of the medium (Jowett 1976:101). Members from the different strata of society recognized that movies have an essential role to play in social life while realizing its intense pathological impact such as scenes of very pronounced eroticism, violence and killings (Koenigil, 1962:5).

Films like "The Birth Of A Nation" aroused strong protests and the National Association for the Advancement of Colored People even vigorously denounced it (Inglis 1947:3). The mayor of Minneapolis would not permit the film to be exhibited at the Shubert theater and its license would be revoke if the owner persisted in showing it. A motion for a temporary injunction was denied by the trial court. According to Justice Hallam, although the power of the mayor to revoke was not absolute and could not be used capriciously, arbitrarily or oppressively, but in this case it was apparently an honest effort on his part to determine the fitness of the photoplay.

> Based on opinions from people of diverse callings, the film was historically false, characterizing the Southern negro as lustful,

> brutal, inhumane and treacherous .... a humiliating caricature of the colored race, calculated to engender race hatred and animosity.
>
> (131 Minn. 195)

The order was affirmed in the interest of public welfare and the peace and good order of the city.

It was the first case in which the courts sustained the right of communities to censor films touching upon race questions (Randall 1968:211). This made a significant impact on the motion picture industry as a whole because it hinted to the need of defining its responsibilities in handling the medium under the watchful eyes of pressure groups of various denominations. Chief Justice White and his colleagues saw it at the Raleigh Hotel in Washington and this could have influenced their decision four days later in the *Mutual* (236 US 230, 1915) case in which the US Supreme Court perceived movies as just another commercial enterprise and as such were not entitled to constitutional guarantee of freedom of speech and press (De Grazia and Newman 1982:4).

In the *Mutual* case, prior censorship of the movies first came before the Supreme Court (Randall 1968:18). Mutual Film Corporation, the complainant, was engaged in the business of purchasing, selling and leasing films, the films being produced in states other than Ohio. It also had a film exchange or a distribution agency in Detroit, Michigan from which it rented or leased large quantities to exhibitors in the latter State and in Ohio.

The business of selling and leasing films from its offices outside the State of Ohio to purchasers and exhibitors within the State was defined as interstate commerce which would be burdened by the exaction of a fee for censorship. The censorship board had demanded the complainant that it submitted its films to censorship or be subjected to arrest (236 US 230, 1915).

The appellants argued their case by pointing out that the Censorship Law violated the provision in Section 11, Article I of the Ohio Constitution because it imposed a previous restraint upon freedom of publication which applied to all publications whether made through the medium of speech, writing, acting on the stage, motion pictures, or through any other mode of expression now known or which may hereafter be discovered or invented, and upon the liberty of the press (236 US 230). However, Justice McKenna declared that

> the exhibition of moving pictures is a business pure and simple, originating and conducted for profit, like other spectacles, not to be regarded as part of the press of that country or as organs of public opinion. They are mere representative of events, or ideas and sentiments published and known, vivid, useful and entertaining, capable of evil, having power for it, the greater because of their attractiveness and manner of exhibition (236 US 230).

That movies were merely a form of business originated and conducted for profit was clearly a poor distinction (Randall 1968:20). If taken literally it was irrelevant, since almost all newspapers and book publishing houses had also been run for profit. As for the belief that movies had a special capacity for evil, it was not detailed as to what this might be. However,

it left little doubt that it lay in the realm of sexual morality and not in that of political and social ideas. Although moralist pressure groups were worried about the effect of movies upon children and society generally, but no cities had yet regulated its motion picture shows in a scientific way. Thus, defects were encountered in the attempts to integrate a new mass medium of mass entertainment into the existing social and legal structure (Jowett 1976:115). The industry no doubt was alarmed by public indignation and consequent threats of boycott and as a method of fulfilling its obligations in safeguarding the moral content of films, selfregulation was a logical way. It was in this collective spirit that the Motion Picture Producers and Distributors of America came into being in 1922 (Koenigil 1962:192).

Meanwhile, the Supreme Court dealt with other cases related to non-motion picture media, notably among them was *Gitlow vs New York* (268 US 652) in 1952. The case proved to be the seed from which almost all of the constitutional rights that movies now enjoy would sprout. It was a step towards the position ultimately to be approved by the Court on the issue of movie censorhip. It also established the principle that the states must be mindful of the guarantees of free speech and press as set forth in the Constitution (Carmen 1966:16-19).

It took a decade from the *Mutual* case before the Supreme Court again dealt with the problems concerning the motion pictures. Known as the *Miracle* case (343 US 495, 1952), this involved the constitutionality, under the First and Fourteenth Amendments, of a New York statute which permitted the banning of motion pictures on the ground that they were "sacrilegious."

The "sacrilegious" motion picture in question refers to an Italian film entitled "The Miracle" which the New York education department had authorized its showing. But after eight weeks the Board of Regents received letters of protests against the exhibiton of the film.

What was most significant regarding this case was the Supreme Court's action in squarely dealing with the question of whether motion pictures were within the ambit of protection of the First Amendment. In the Court's opinion, delivered through Justice Tom Clark, it cannot be doubted that:

> motion pictures are a significant medium for the communication of ideas. They may affect public attitudes and behavior in a variety of ways, ranging from direct espousal of a political or social doctrine to the subtle shaping of thought which characterizes all artistic expression. The importance of motion pictures as a organ of public opinion is not lessened by the fact that they are designed to entertain as well as to inform... It is urged that motion pictures do not fall within the First Amendment's aegis because their production, distribution, and exhibition is a large-scale busines conducted for private profit. We cannot agree ... We fail to see why operation for profit should have any different effect in the case of motion pictures.
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> (343 US 495)

He concluded that expression by means of motion pictures was included within the free speech and free press guarantee of the First and Fourteenth Amendments, and ascertained that the language in the opinion in the *Mutual* case was out of harmony with the views set forth, and the Court no longer adhered to it. Following the unanimous decision in the Miracle case the Supreme Court began to hit hard at film censorship practice in a number of

controversial areas (Devol 1971: 177). The Court also lifted the bans against "Pinky" the interracial story of a girl who "passed for white" (Gelling vs Texas), "Native Son" which dealt with racial frictions, "La Ronde" which included the question of promiscuity (Superior Films, Inc. vs Ohio), and the "Game of Love" which dealt with sex in an explicit manner (Times Film, Corporation vs Chicago).

Based on the the above, it would seem that the Court's favorable attitude towards protecting motion pictures was firmly entrenched, but it was not to be the case as later cases appeared in the controversy.

Censorship cases lingered until the Sixtees. In the Freedman vs. Maryland case:

> the defendant was convicted for publicly exhibiting a film without submitting it to the board or censors. The Court of Appeals affirmed the Criminal Court of Baltimore's decision. On appeal, the Supreme Court through Justice Brennan, held that the procedural scheme of Maryland motion picture censorship statute failed to provide adequate safeguards against undue inhibition of protected expression since
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> 1) if censor disapproved film, exhibitor was required to assume burden of instituting judicial proceedings and persuading court that film was protected expression,
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> 2) once board had acted against film, exhibition thereof was prohibited pending judicial review, however protracted, and
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> 3) statute provided no assurance of prompt judical determination.
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> *(85 S.Ct. 734)*

In the above case, the Supreme Court, however, made no move toward declaring the Maryland statute unconstitutional. But it did reject the lack of procedural safeguards in the Maryland system, specifically the long period of time it would take to get a judicial determination as to whether the film is protected or unprotected expression. In any event, the censor has at least lost some of his teeth (Gilmor and Barron 1974: 352).

Self-Regulation and Motion Picture Codes

Government censorship of movies in the United States has for the most part always been instituted by the states. The Federal Government had been only peripherally involved through the Customs Bureau's censorship of foreign movies and the intervention of the executive branch. Self-regulation by the industry was instituted mainly to avert federal censorship which almost came into effect if a Bill concerning it were not defeated in 1915 (De Grazia and Newman 1982:20). Under the leadership of Will H. Hays, former Post-master General of the United States, the MPPDA introduced some drastic changes in order to gain the dignity, acceptability, and qualities which had been lacking in the industry (Inglis

1947:87). Hays, in association with religious bodies and other public interest groups established the Motion Picture Production Code which required production managers to submit in confidence a copy of each of any script to the Association of Motion Picture Producers, Inc. (Jowett 1976:242). It provided the film industry with the legitimate administrative mechanism to offset the continous threats of official political censorship. But critics within the industry took it as detrimental to the natural development of the American motion picture as public tastes kept on changing in the process of time. It was, therefore, pointed out that it was the duty of media of responsible public entertainment not to degrade public taste. There should be a constant effort to raise the level of entertainment and to widen the scope of the screen, for example.

Motion Picture Classifications

As the Sixtees emerged, the Code which had earlier been instituted was found to be an anachronistic device which existed only as a buffer to outside censorship. Movie audience had indicated a definite willingness, even desire, to accept controversial themes which would have created public outcries only ten years earlier. Inevitably, this led to a debate on "Classification."

In the opinion of Louis Nizer, the legal adviser of the MPAA, the move towards classification was to invite public notice that the industry was doing everything possible to distinguish between adult entertainment and films suitable for all ages (Jowett, 1976:440). Under such classification, there would be no restrictions on thematic content or treatment of any films, but the final result would be assigned one of four ratings:

G - suggested for general audience, including children of all ages;

PG - parental guidance suggested, as some material may not be suitable for pre-teenagers

R - restricted; persons under 17 are not admitted unless accompanied by parent or adult guardian;

X - persons under 17 not admitted

These ratings, according to the MPAA, are not qualitative but only inform the public of a picture's suitability for children (DeGrazia and Newman 1982:120).

The rating system proved to be a lasting alternative after seven decades of frustrating search. This led to decreasing pressure from interest groups and government. A religious group as of January 1, 1982 gave up classifying films; the Maryland censorship board disbanded after 65 years of service in June 1981 after the state legislature refused to renew its charter. In the words of Jack Valenti, the president of MPAA,

> "This removes a staining blot on the Constitution. It makes Maryland, the fabled Free State, a free state at last, along with the other 49.
> (De Grazia and Newman 1982:147)

Government, at all levels, finally was not licensing movies before they could be shown except for minors.

Conclusion

Thus the motion picture, despite its "glamorous" stereotype label, did not evolve through a smooth and uneventful path. It had to contend with criticisms from within and outside the industry. The complexities even extended to the marketing area whih had a history of its own.

Filmmaking is a difficult process and film types are not confined to entertainment and the erotic only. Even under the guise of entertaiment it is continually transmitting social, political and economic ideas. Whether the film is dealing with fact or fantasy, it cannot fail to assume ethical, moral and cultural standards (Ernst 1946: 183). Just as the print media, the motion picture is an equally effecient medium in presenting documentary accounts of events, instructional and educational contents, news coverage of current happenings, etc.

Thus, it should have the same rights as the other media. Its ability in presenting a wide spectrum of subjects to be perceived as true as one would see through the naked eye, makes it an even superior medium of mass communication.

The diversity of ideas it portrays cannot reach the public if the finished product cannot get to the market place for public appraisal. For these reasons, too, its positive worth should be weighed against its negative effects.

Film is a form as well as a channel of expression which deserves the freedom under the protection of society.

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