

MARTIN v. CITY OF STRUTHERS
319 U.S. 141 (1943)

...

Mr. Justice FRANKFURTER.

From generation to generation fresh vindication is given to the prophetic wisdom of the framers of the Constitution in casting it in terms so broad that it has adaptable vitality for the drastic changes in our society which they knew to be inevitable, even though they could not foresee them. . . .

The habits and security of life in sparsely settled rural communities, or even in those few cities which a hundred and fifty years ago had a population of a few thousand, cannot be made the basis of judgment for determining the area of allowable self-protection by present-day industrial communities. The lack of privacy and the hazards to peace of mind and body caused by people living not in individual houses but crowded together in large human beehives, as they so widely do, are facts of modern living which cannot be ignored.

Concededly, the Due Process Clause of the Fourteenth Amendment did not abrogate the power of the states to recognize that homes are sanctuaries from intrusions upon privacy and of opportunities for leading lives in health and safety. . . . Acknowledgement is . . . made that the City of Struthers . . . is one of those industrial communities the residents of which have a working day consisting of twenty-four hours, so that for some portions of the city's inhabitants opportunities for sleep and refreshment require during day as well as night whatever peace and quiet is obtainable in a modern industrial town. It is further recognized that the modern multiple residences give opportunities for pseudo--canvassers to ply evil trades--dangers to the community pursued by the few but far reaching in their success and in the fears they arouse.

The Court's opinion apparently recognizes these factors as legitimate concerns for regulation by those whose business it is to legislate. But it finds . . . that . . . the ordinance before us merely penalizes the distribution of 'literature.' To be sure, the prohibition of this ordinance is within a small circle. But it is not our business to require legislatures to extend the area of prohibition or regulation beyond the demands of revealed abuses. And the greatest leeway must be given to the legislative judgment of what those demands are.

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. . . .