

BETWEEN FREE SPEECH AND PROPAGANDA: DENATURING THE POLITICAL  
IN THE EARLY AMERICAN MOVIE INDUSTRY

by

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## DISSERTATION ABSTRACT

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Title: *Between Free Speech and Propaganda: Denaturing the Political in the Early American Movie Industry*

The American movie industry did not have to develop into the Hollywood dream factory. There were educative, religious, explicitly political, and other non-commercial alternative arrangements to America's film industry. These alternatives, along with principles such as film free speech and movie propaganda, had to be cast aside by the emerging moguls of Hollywood. Conflicts with the vanquished liquor industries, moral and economic regulatory concerns, Republican Party politics and the resurgent Klan all shaped the classic Hollywood system from 1906 to 1927, a 20-year period in which the American film industry depoliticized the Hollywood movie screen, shedding its democratic and propagandistic definitions for the politics of publicity and entertainment as a service to Americans. Developments in this infant industry also shaped the broader trajectory of American consumer capitalism toward big producer control and the self-regulation of the industry's social effects.

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## CHAPTER I

### THE POLITICS OF DEPOLITICIZATION

Motion pictures do more than just reflect our political life. If we take seriously the cultural construction of human identity—how social life forges the performative features of gender and sex, race and ethnicity—then American movies of the 20<sup>th</sup> century were more than a mirror onto a culture. They were dreams that made that culture. They were mass produced dreams for the most part, commercial products of a factory-based system in Hollywood. As much a reflection of the political, the cinema has always been productive of political identity, a medium of images that travel along our relations of power. These images are the products of an industry that shaped ideologies and institutions central to American political development. The specific ideologies produced are less central to the following study than the frames of ideological production—the politics of free speech for motion pictures, on the one hand, and the democracy of movie propaganda, on the other. But if the movies were economic products of social performance they were also, for much of the classic Hollywood era, a field of delimited political power. The story of the early American movie industry is the story of the triumph of commercialism over the social power of the cinema. What are the politics that lay behind the de-politicization of American movies?

Film free speech and movie propaganda were two ideological frames of American cinema in the 1910s. Both were to be cast aside in the creation of the classic Hollywood

system. Film free speech was legally defeated by the Supreme Court Case *Mutual Film Corporation v. Industrial Commission of Ohio* (1915) and somewhat ironically limited by Hollywood's first blockbuster and early symbol of film free speech, *The Birth of a Nation* (1915). The defeat of an explicitly propagandistic cinema came later, in the spasmodic paranoia of wartime America from 1917–18, in which propaganda itself was put on trial. Both film free speech and movie propaganda were severely limited by a commercial industry forced to navigate the demands of moral regulation. But in a sense, both of these limitations proved incomplete, hollow to the realities of an artistic medium with unique and pervasive social power. Commercialism may have triumphed in America's most powerful entertainment industry, but it could never fully eliminate the social power of movies.

As America entered the 1920s, one part of the American film industry—big producers in Southern California—set about mastering an industry denatured of political meaning, casting aside the free speech argument for film and eliminating the propagandistic power of the screen. The process of denaturing the political from the American movie industry coincided with other processes: the decline of exhibitor power and the rise of producer power in the industry; the decline of progressive era moralism; and the destruction of legal liquor. These three developments reinforced the depoliticization of American movies, creating opportunities for the future moguls of the industry to define the economic arrangements of entertainment and to shape the foundations of consumer capitalism. There were a series of strategies, alignments, and

conflicts that shaped what we know today as the classic Hollywood system, all of which threaded through the main institutional threat—regulation of the industry and censorship of the screen.

Far from the end of politics in the industry, the de-politicization of the movie screen necessitated thick political negotiation, beginning with an industry centered on the site of consumption—the moving picture theater—and its battles with a powerful economic competitor, liquor and the saloon. The movie industry relied on the propagandistic spirit of the screen in the progressive era, intimately binding together the value of deliberative democracy and the commercial imperative of motion pictures. This industry-sanctioned political power of propaganda helped defeat liquor interests and the ubiquitous saloon. Attacking the saloon through movies could conveniently make movies respectable by cutting against liquor's immoral and deleterious social effects. As war raged between these two industries, both were developing unique conceptions of personal liberty that tied consumption to individual freedom. For the liquor interests, particularly the brewers, this discursive formulation of modern liberty often centered on the notion of liberal identity and liberal action, attenuating the negative conceptions of liberal consumption (as excessive and immoderate) by infusing it with temperate freedom and the distinction between liberty and license. These discursive formations were failures in the immediate term, but they fertilized the cultural ground in which modern liberty becomes more than political and propertied freedom.

For the movie exhibitors of early American film, liberty was formulated through the democratic value of free speech welded to the realities of influence and persuasion. This meant propaganda, but not simply as an inevitable feature of politics and power, rather propaganda as a desirable instrument of democratic will. The motion picture theater could embody the democratic arena of deliberation, in this conception, revitalizing the machinery of self-government so central to the anxieties and hopes of progressivism. Along these lines, American cinema was developing a robust capacity for an explicitly political, if still commercial, medium. Legal conceptions of the cinema curtailed this political function. In the Mutual case, lawyers for the film distributors argued that film was entitled to First Amendment protection on grounds that it was both speech and publications, protection that would render state and municipal film censorship boards unconstitutional. The Court answered by denying this conception of the cinema, ruling instead that film was not speech nor a publication of the press, but simply an economic product subject to interstate commerce regulation.

The relationship between the commercial industry and political cinema were further troubled by the release and exhibition of D. W. Griffith's *The Birth of a Nation* (1915). Sold out shows, protests, and censorship agitation followed the film's exhibition at nearly every stop. Legal challenges were raised in Chicago, Boston, and New York, and while lawyers for the film argued for free speech protection, these arguments failed to advance the cause of film free speech. Defenders of the film did win in these legal challenges for the most part, but only by advancing the argument of property protection



under the 14<sup>th</sup> Amendment Due Process clause. Although Griffith and his producers denied that the film was explicit propaganda, it was viewed by many at the time as an incitement toward racial demagoguery and white terror. Defenders of the film attempted to parse the conceptions of cinema as propaganda and speech, arguing that *Birth* hardly constituted the former but demanded legal protection as the latter. More broadly speaking, *Birth* mobilized conflicting social movements that defined the early configurations of modern liberalism at the progressive turn—a political call for free speech articulated through the propagandistic powers of cinema on the one hand, and a liberalism grounded in civil rights and racial justice on the other. Such a distinction rests along traditional legal lines of civil liberty (in this case, to engage in the free speech of racist demagoguery) and civil right (to suppress such exhibitions of racist propaganda as harmful to the public). *The Birth of a Nation* so often appears at the nexus of this complex cultural formation, determining not just what American cinema becomes, but what it does not become, and limiting the development not just of an industry but of a political culture in the throes of a crisis over the modernization of democracy. As a powerful symbol of film speech, *Birth* was the well spring of modern liberalism’s civil libertarian form, but it also provided conditions for the fruitful generation of social justice in twentieth century American culture, a conception of justice that cut powerfully against the film’s racist paranoia.

Griffith’s epic was not the birth of an industry indelibly tied to propaganda, but precisely the opposite—it was the first articulation of a crisis in the propagandistic power

of the medium, the beginning of the end for explicitly political cinema. Here it is important to note that most of the men who would eventually become moguls of classic Hollywood started out in exhibition. For the first era of American silent film, power shifted in varying degrees from the owners of raw production material and industry patents to the point of purchase and site of consumption: the motion picture theater. Exhibitors were motivated by economic interests, of course, but often understood this interest through the theater's social binds to the community. Exhibitors had an economic interest in democracy, or, at least, the revolution in democracy the motion picture theater promised to be. Such a spirited conception of political cinema was fully amplified in World War One, when the American motion picture theater fashioned itself a civic institution capable of mobilizing wartime will and patriotism, both through propaganda movies and the Four Minute Men, who articulated the war's progressive cause in the time it took to change a movie reel. The war was the apotheosis of progressivism, exhibitor power in the movie industry, and propagandistic power in American cinema.

Propaganda as a functional part of democracy necessitates the doctrine of free speech. The competition of persuasion and influence relies on conditions fostered through open and fair opportunity for communication. But the art of persuasion is often most effective when closing off the potential for persuasive speech among competing and alternate options. Propaganda necessitates free speech, but one of the imminent challenges to free speech is the social power of propaganda itself. The tension between

a principle and form of communication was rarely more manifest than in World War I. The Committee on Public Information, headed by George Creel, sought to harness the powers of propaganda to sell America and the world on progressivism, but they also sought to stifle, and at times prosecute, speech they felt harmful to the war effort. The ideological force of propaganda severely undermined the ideological principle of free speech, a conflict often articulated through the movies.

For the movie men consolidating the industry around the power center of Hollywood, propaganda and film free speech were both threats to the system they were trying to create. Propaganda threatened the inevitability of state regulation and political contestation over the method and content of the cinema. If the movies were to become the arena of democracy, politics would have to be its spectacle and story—the wood, brick, and mortar of its visual expression. The process undertaken to ward off this threat of propaganda was the depoliticization of the movie screen, a process most visible in the entanglements, and later disentanglements, between liquor and the movies. As the movies harnessed the social power of propaganda to defeat legal liquor in the 1910s, it sought in remarkable degrees to denature this very power when the federal authorities pressured Hollywood to aid prohibition enforcement in the 1920s. Liquor wasn't the only cultural force that made visible this process of American cinema shedding its explicitly political function: the rise and fall of the second wave Klan, party politics, and educative cinema had to be negotiated by the commercial interests of Hollywood. The process was

the depoliticization of American movies. The outcome of this process was the dream factory of Hollywood's narrative-based cinema.

The big producers in Hollywood also had little use for film free speech. The principled call of speech protection that animated the defense of *The Birth of a Nation* was an idealistic and utopian vision that, in this case, was grounded in images of white supremacy and racial demagoguery. Despite its huge financial success, *Birth's* controversies revealed the perils of the industry's future, not its promise. Coordinating acceptable and unacceptable guidelines for Hollywood movies required a more limited ground. Film free speech, in principle, created a more open field of film expression, in which independents and proponents of non-commercial cinema could present alternatives to Hollywood's consolidated vision for the industry. With film free speech more a danger than a principle with which to defend their interests, the big producers embarked on a process of internal self-regulation of movie content. To condition regulatory principles and build the capacity of an institutionalized self-regulatory regime required greater horizontal coordination among producers and control over the political environment surrounding the movie industry. Thus, when Will Hays and the MPPDA closed off film products that were used as recruitment materials by the burgeoning Ku Klux Klan in the 1920s, despite also working with Klan mobilizations to scuttle film censorship bills, the big producers sought to suppress the social power of movies to influence the public, limiting speech through coordinated business practices.

Internalizing movie regulation was, foremost, a psychological and pragmatic process for the big producers, Hays, and the MPPDA office. Unlike the arguments for propaganda and film free speech in the 1910s, they were not ideologically motivated. It was psychological in its accommodation to moral forces. Hays and MPPDA officers consistently talked about the right “psychological time” to engage the censorship issue, and that the work of the Association was “principally psychological.” “The people of this country must have their amusement or the country will go red,” Hays would warn. The movies could provide “a mood of relaxation, of reception—in precisely that state of mind and emotion in which a master psychologist would want them to come.” This public condition, of a “plastic state for the receiving and holding of impressions,” acknowledged the great fear of reformers—that the movies had tremendous influence over society—in order to make the case that a consolidated industry could limit film expressions to the morally safe and culturally acceptable.<sup>1</sup>

Developing the capacity for self-censorship was also pragmatic in its economic strategy and deployment. There was a trial-and-error process that slowly shaped acceptable and unacceptable parameters for movie content. The code developed through a series of applications, objections, revisions, and reapplications of social and political meaning in movie content throughout the 1920s. Broadly speaking, the self-regulation of the American movie industry required four overlapping and reinforcing steps:

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<sup>1</sup> Will H. Hays, speech at the Carnegie Institute, May 26, 1922. In: *WHH Papers*, vol. 1, reel 5.

horizontal coordination of business practices by big producers in Hollywood; moral control over the site of production by defining acceptable and unacceptable movie content; fully coordinated vertical integration of the industry in which big producers control the industry chain down to the movie theater; and, finally, moral mastery over screen content through the institutionalization of moral regulation. This four step process aided in the depoliticization of American film necessary to ward off external regulation without having to resort to a defense of film free speech, a defense that threatened to undue the industry's consolidated plutocracy. Self-regulation would not be fully institutionalized until 1933–34 with the establishment of the Production Code Administration. By then, educative and religious film interests were cast aside, the screen had been white-washed of explicit political meaning, exhibitor's power had been dismantled and scattered, and power in the industry had become synonymous with the power of Hollywood.

The depoliticization of the American movie screen was not motivated by ideational or cultural factors, but rather a more crudely political and economic negotiation that served the interests of the big producers in shaping the features of the classic Hollywood system. Along these lines, *The Birth of a Nation* became a template of what to avoid—propaganda, political controversy, psychological disruption, not psychological pacification. These limitations were already manifest in World War One, where Robert Goldstein's *The Spirit of '76* and Robert Cochrane's *The Yellow Dog* marked the incendiary limitations of propagandistic cinema. *Spirit* and *Yellow Dog* were both

propaganda films and failures—the persuasive war fever of progressivism and democracy created the conditions of its own demise. In the early 1920s, as Hays begins insisting that the American film industry never did propaganda, movies such as Thomas Ince’s *Those Who Dance* and Louis B. Mayer’s *One Clear Call* were important if subtler political limitations of the Hollywood screen. Casting aside film free speech and movie propaganda for a depoliticized and self-regulated movie industry necessitated economic coordination and consolidation. But for the blue nose reformers of the progressive era, consolidation invited the peril of a “movie trust” and its harmful effects on the social body.

### Economic Consolidation and Moral Regulation

The trust problem was viewed by many reformers as the source of the moral problem in movies, but no reformer so consistently attacked the movie trust as Canon William Sheafe Chase, leader of the Christ Episcopal Church in Brooklyn, New York. Chase assailed the movie trust as a “school of crime” that violated the personal liberty of the community to protect itself against the ideological forces of violence, decadence, desire, and excess. Chase spoke at a congressional hearing on federal film censorship in 1914, arguing that Congress had a duty not only to censor, but to smash the consolidated forces of the industry in order to restore competition. Competition, argued Chase, would better foster the conditions for a more righteous and Godly cinema:

Think of the money and governmental machinery which Congress and the States are using to conserve forests, to enrich the land, to improve rivers

and channels, protect harbors, and promote the welfare of cattle. Congress has found it necessary to control freight rates and restrain trusts in order to protect the small businesses of this country. Is not the mental and moral welfare of children worth more than all the property, lands, and animals of our Republic? The children are the lifeblood of the nation.<sup>2</sup>

Chase was still at it in 1927, leading the call for censorship and trust busting with scathing letters to federal officials and Hays. He was by this time the General Secretary of the Federal Motion Picture Council of America, a reform organization that lobbied for federal government regulation, both moral and economic, over the American movie industry. But was the “movie trust” a real monopoly? And could the restoration of competition protect the public from immoral movies?

As in the uproar over the “liquor trust,” there’s substantial evidence that the American film industry was not the insidious monopoly harmful to the public interest that reformers like Chase claimed. By the late 1920s, arbitration boards functioned relatively smoothly, adjudicating conflicts between exhibitors and distributors successfully enough that few cases required an impartial tiebreaker.<sup>3</sup> There were 11,197 disputes between exhibitors and distributors in 1924, for example. 5,697 of these disputes were settled before coming to arbitration. 4,875 went to arbitration, 332 were withdrawn by the complainants, and 293 were dismissed by the board. Only 15 cases out

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<sup>2</sup> Canon William Sheafe Chase, Motion Picture Commission Hearings Before the Committee on Education. House of Representatives, 63<sup>rd</sup> Congress, second session, March 20, 1914. In: National Board of Review Archive, New York Public Library, box 142.

<sup>3</sup> This tiebreaker was a seventh arbiter of the board who was chosen by the 6 original arbiters. Exhibitors and distributors had equal representation on the board—3 arbiters for the former and 3 for the latter.



of 11,197 went to the impartial tiebreaker.<sup>4</sup> Block booking, the practice of forcing upon exhibitors a slate of movies without much choice over what they could show on their screens, appeared to be less common in the 1920s than later historians would claim. Of the 47,000 contracts investigated in the 1927 *Federal Trade Commission, US vs. Famous Players Lasky* case, for instance, only 1,741 were block contracts. While the claim from big producers that block booking was “merely a case of quantity discount” is hardly accurate, it was not a widespread practice, at least in the 1920s.<sup>5</sup> Further, while producer-distributors would quietly admit that arbitration boards had been abused in the past in such a way as to be “a club against exhibitors,” Hays and the Association worked hard to standardize arbitration practices and ensure some level of fairness in the process.<sup>6</sup>

From a legal standpoint, the case against consolidated big producer control over the industry required proof of an unreasonable restraint of interstate trade and commerce in motion picture films. The pertinent question centered on whether standard exhibition contracts or practices such as block booking impose an undue and unreasonable restraint on interstate trade. In *Standard Oil Company of New Jersey vs. United States* (1911), the term restraint of trade was legally defined and narrowed to contracts that resulted in a monopoly or “the consequences of monopoly.” Without this narrowing, restraint of trade could be interpreted to fit any sort of contract regardless of

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<sup>4</sup> Pettijohn to Hays, MPPDA memo, March 19, 1925; Hays Speech at Vincent Astor’s house, March 19, 1925. Hays Papers, vol. 1, reel 21.

<sup>5</sup> *Morning Telegraph*, January 28, 1927. Clipping in: Hays Papers, vol. 1, reel 31.

<sup>6</sup> W. E. Wilkinson, Annual Report of MPPDA, April 1925. Hays Papers, vol. 1, reel 26.

whether it harms the public. The Association did work to suppress competition and shape the industry toward greater consolidation. The result, by the 1930s, certainly appeared to be the consequences of monopoly. Eight major companies dominated the field, with the largest five (Paramount, MGM, Warner Brothers, Twentieth Century-Fox, and RKO) having substantial interests in exhibition. These 8 major firms produced some 70% of American films, controlled 95% of distribution, and owned some 16% of the total motion pictures theaters in the country (but close to 80% of the first-run movie palaces in larger cities).<sup>7</sup> With this kind of control, big producers were certainly in a position to dictate terms and force independents (be they in production or exhibition) to do their bidding.

By 1935, more vocal antitrust agitation in the New Deal climate led to new congressional hearings and drafted legislation. Sponsored by Senator Matthew Neely and supported by the much of the same reformers, who argued that not only were big producer practices unfair, they also “compelled the showing of undesirable and immoral pictures,” the legislation garnered significant press attention, but was ultimately defeated by Hays.<sup>8</sup> This time, however, the Department of Justice renewed their investigations into the industry, culminating in the antitrust suit *United States vs. Paramount*, first filed in 1938. It would take a decade to resolve this case, and its resolution was unprecedented. It did not end in criminal prosecution but in an industry

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<sup>7</sup> Ellis Hawley. *The New Deal and the Problem with Monopoly*. Princeton: Princeton University Press, 1966, 365–66.

<sup>8</sup> *Ibid.*, 367.

apology and consent decree by the Association and its members in 1948, after which they agreed to sell off their exhibition holdings and end the practice of block booking.<sup>9</sup> The results of this momentous case were hardly what reformers had in mind. The industry thereafter was more decentralized and competitive, but in the context of numerous other changing conditions—such as the rise of television, shifting American demographics toward suburban lifestyles, changing movie tastes, and greater interest in other culture and leisure activities—there is little definitive proof that the *Paramount* case was the deciding factor.<sup>10</sup> Moreover, the case certainly did not bring about cheaper ticket prices, more moral movies, or higher quality films.<sup>11</sup> It took over a generation for the law to test the claim that antitrust action would solve the moral problem of American movies, but in the 1920s, for the time being, it was a question that was as much political and cultural as it was legal and economic.

Would greater competition bring about more moral movies? From a policy standpoint, the distrust of consolidation in the movie industry worked to antithetical ends for the progressive moralists. We see in the development of the Production Code a capacity for moral self-regulation remarkably cautious, if not conservative, that could have only happened through vertical integration and coordinated practices of the big

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<sup>9</sup> Legal review of Justice Department investigation into film boards of trade, Wickersham, Grosevnor, Hess, and Pettijohn, May 1926. Hays Papers, vol. 1, reel 26.

<sup>10</sup> “The movie industry was undoubtedly less centralized and more competitive than it had been in the past, whether the antitrust action had much to do with it is debatable.” Hawley, *The New Deal*, 451.

<sup>11</sup> *Ibid.*, 452.

producers. Moralists assailed big producer control as the source of movies “capable of evil,” animated by progressive-era fears of trusts and a nativist fear of a Jewish-dominated industry. Indeed, anti-Semitism appears to be a significant factor not only in the attacks on “immoral” Hollywood, but in the fight against its economic monopoly. Canon Chase, for instance, was publicly sympathetic to the Ku Klux Klan, and may have himself been a Klansman. Industry consolidation and coordination were greatly hampered by the nativist ideology of the era, but the discursive and ideological strategies that shaped the depoliticization of the American movie screen necessitated economic consolidation and cooperation—it did not necessitate greater competition, and certainly not film free speech.

Consolidation and scientific management actually fit with progressive thinking and ideals, and so it is hard to understand the moral concern over the big producer trust in the 1920s without a broader understanding of the cultural and political forces at work. The movies were an infant industry, dominated by Jewish immigrants—factors that severely curtailed its path toward consolidated self-regulation. Political conditions of nativism and anti-Semitism cut against the economic conditions of the 1920s that were conducive to consolidation. Hays and the MPPDA office could not facilitate the latter without controlling the cultural impulses of the former. The politics of depoliticizing the American movie screen were indelibly tied to economic imperatives.

Wither Ideology? Political Obscurity in *The Jazz Singer*

In *Blackface White Noise*, Michael Rogin writes of two “historiographical approaches” to the 1920s—one reactionary, nativist, and conservative, “which makes the 1920s the last decade of the nineteenth century,” and the other rebellious, youthful, ethnic, urban, and entertainment-centered, “which makes the 1920s the harbinger of the future.” In a sense, the triumph of the latter over the former, of modern America’s pluralism and movie world of self-fulfillment over its sober provincialism, was a triumph only for the future to write. In its present, the 1920s appeared to many to be an era of nativist triumph, of a reactionary turn to what was always a narrowed and mythic America. For Rogin, *The Jazz Singer* (1927) performs the optimism of America’s future, but, in the end, the movie “lets America off the hook and fragments Jewish community” by replacing ethnocultural conflict with intergenerational conflict: “Instead of pitting Jews against nativism, *The Jazz Singer* pits father against son.” Within the film’s “culture of consumption” is an implicit shoring up of mythic America—a hopeful abstraction of spiritual promise and preservation of the whole. Jake Robin rises up by overcoming not only his father but “radical, ethnic-based politics as well.”<sup>12</sup>

The process of depoliticizing American movie screens and internalizing the moral regulation of movie content were strategies that mitigated against both the threat of antitrust action and the threat of censorship. Somewhat ironically, this process of denaturing the political was one of cultural assimilation for the Jewish movie men of

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<sup>12</sup> Michael Rogin. *Blackface, White Noise: Jewish Immigrants in the Hollywood Melting Pot*. Berkeley: University of California Press, 87.

Hollywood, an attempt to accommodate the ideological and cultural modes of ethnic construction and deconstruction. It was, in other words, a cultural process that could not escape politicizing identity, even if it appeared to be an escape on the surface. Hollywood couldn't have written the story of Hollywood's ideological constitution any better. Or could it? Warner Brothers' *The Jazz Singer* (1927) seems to stand near the end of this transformation, a movie that signaled the twilight of the silent era and beginning of sound, the rise of the Warners to the status of big producers, and the embodiment of a cultural journey from Jewish ethnic to American whiteness. But it was also a movie that marked the end of a transformative era for the American movie industry, an era in which politicized film expressions and non-commercial alternatives were absconded away by Will Hays and the moguls in Hollywood. *The Jazz Singer* is at the end of this story, and so in mapping the politics and economic imperatives that denatured the American movie screen, Hollywood's first talking picture is both symbolic and a product of the completed transformation.

In *The Jazz Singer*, Al Jolson plays entertainer Jake Robin, who grew up as Jakie Rabinowitz in the Lower East Side of Manhattan. His father, a cantor, detests Jakie's Americanization and the godlessness of American entertainment. His hope is for Jakie to reject the decadence of jazz for the songs of his race. Jakie is cast out of the home, transforms himself into Jake Robin, falls in love with a gentile dancer, and becomes a successful entertainer on Broadway. He returns home to capture the heart of his mother, but is once again thrown out by his father. Just before the opening of his big break on

Broadway, Jake learns that the cantor is on his deathbed. He leaves Broadway for the synagogue, chanting the Kol Nidre on the eve of Yom Kippur. His father hears Jake's song and dies in bed with love in his heart. Jake returns to Broadway, singing "My Mammy" to his mother and girlfriend as the movie ends. As a biography of Jewish-American life, *The Jazz Singer* is a complex layering of cultural transformation. Jakie's passage into Jake marked the passage of Asa Yoelson into Al Jolson, of the Warners—first generation Jews whose father, Benjamin, was a cantor—into movie moguls, and the passage of many in the audience from ethnic, urban, and working class into all-American moviegoers. For Rogin, *The Jazz Singer* "displays the history of the men who made Hollywood," but does so to bid farewell to their Jewish past and "mostly [eliminate] Jewish life from the screen." It is a film remarkably candid in revealing the conflicts of Jewish-American identity in order to bury it, to move on from the ethnic identities of their past and become American.<sup>13</sup>

*The Jazz Singer* also signaled the ascendancy of big producer control over the industry. Before their acquisition of Vitagraph in April 1925, the Warners were small producers without a distribution arm. The Warner takeover of Vitagraph was deeply entrenched in movie industry politics. It pitted an up-and-coming studio against MPPDA defector in Vitagraph, one of the oldest studios and the last major production firm without any Jewish executives. The Vitagraph takeover came with Vitaphone, a unique

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<sup>13</sup> Rogin. *Blackface, White Noise*, 84–86.

sound synchronization technology that was thought to have little commercial appeal. The successful release of *Don Juan* in August, 1926, a movie with synchronized orchestral and operatic numbers, paved the way for production on *The Jazz Singer* with Al Jolson.<sup>14</sup> The success of *The Jazz Singer* helped further consolidate the industry, giving Warners a smashing box office hit that helped them acquire First National and their impressive exhibition chain.<sup>15</sup>

As Rogin writes, “[a]nti-Semitism is *The Jazz Singer*’s structuring absence.” The nativism of 1920s American political culture is the touchstone of the movie’s inner fear that required a rejection of Jewish identity, a “wishing away [of] anti-Semitism [that] required leaving Jewishness behind, looking forward to the disappearance of the Jews.” This rejection of identity is also a rejection of ideology—wishing away politicized film required leaving ideology behind. On both levels, these are inherently political processes—they are the theoretical ground of politics in Hollywood’s depoliticization. *The Jazz Singer*’s silence and sound reveal these cultural and political rejections with such power that the film’s service to history (socio-political history, not strictly film history) overshadows its service to entertainment. Both young Jakie and mature Jake personify

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<sup>14</sup> In a rather remarkable if overlooked footnote to history, Jolson had previously agreed to appear on film for the first time in a blackface comedy directed by D. W. Griffith called *His Darker Self* (1924). Jolson backed out of the agreement at the last minute, afraid that a movie might damage his earning potential on the stage, and Griffith replaced him with a lesser known comedian Lloyd Hamilton. Griffith, enraged by the slight, sued Jolson for damages, winning a paltry sum of \$2,671. See: Walter Gifford to Albert Grey, May 13, 1924. D. W. Griffith Papers, reel 12; and *His Darker Self*, New York Times review, 2010, <http://www.nytimes.com/movies/movie/95263/His-Darker-Self/overview> (accessed on March 23, 2016).

<sup>15</sup> For details on the rise of Warner Brothers, see Chapter 6.



the commercial and consolidated movie industry—indelibly modern, always in forward motion, stripped of the trappings of particular and ethnic identity. By bringing sound into the moving picture, Jakie/Jake signify the development of the movies from attractions through democratic expression and persuasion to domesticated entertainment. Mapped onto *The Jazz Singer*'s four musical and speaking scenes is the development of America's dream factory, where culture is made, shaped by the myth that it can be made outside the political.

In the first number, Jakie sings the “raggy-time” tunes in Muller's café-bar, an expression of the crude commercial form of the nickelodeon era, performed beside vaudeville and other attractions. This first number is a primitive rendering of sound—the words sung do not match up with the movement of Jakie's mouth. This lack of synchronization indicates a developmental process to both the story and its signification. The cinema, burgeoning and new at the dawn of the 20<sup>th</sup> century, is finding its commercial voice. Alternatives to this commercial conception of the movies—signified by the silent film aesthetic, old world traditions in the Lower East Side, and in particular by Cantor Rabinowitz—complicate Jakie's transformation into Jake, casting him out of his Jewish upbringing and into the world of entertainment. Here is the vision that American movies could have been something else—particular, pluralistic, open to a constellation of voices and forms, rooted in the exhibition of ideas, and, potentially, radical in its politics.

In the second musical number, this time at Coffee Dan's, Jake inaugurates the spoken word in cinema, warning the audience that "you ain't seen nothing yet!" It is a more polished performance, in which Jolson's mouth matches the words being heard. The number isolates Jolson the performer, casting out the multiplicity of attractions and interests. The cinema has found its focus. This number also begins the Jewish-Gentile love story that drives much of the narrative drama in the second half of the film, and signifies the ascendancy of an industry predicated on entertainment not just through spectacle and attractions but through drama and human interest as well. The shot-reverse-shot sequences bring together close ups of desire with the object of its gaze. In its structuration, the number reveals the wish fulfillment of human desires in commercial entertainment.

The third number returns to Jake's boyhood home, where he sings "Blue Skies" to his loving mother. It is a domestic scene, more intimate, and the first in movie history with dialog. Jake serenades his mother, steals a kiss, tells her he loves her and that he will buy her a pink dress. He plays "Blue Skies" jazzy, slapping the keys with joyful exuberance. Whereas the number at Coffee Dan's begins the love story, the romantic strain of the narrative, the number at Jake's home inaugurates the erotic, a sexual an oedipal expression of Hollywood's commercialism, all grown up and financially successful. As a door opens in the background and a small man occupies the space between mother and father, the musical number is violently interrupted by the old world—"Stop!" This, the cry of the father, the lament of the past, is the last spoken word

in the film. A painfully long silence fills the screen until the sorrowful music of Eastern Europe and the aesthetics of silent cinema return. If the history of American movies is laid over the passage of time in this film, this violent interruption occurs somewhere in the early 1920s, when erotic and unrestrained Hollywood was threatened with the righteous assault of moralism, nativism, and the mythic past.

The final number is actually two, a schizophrenia of accommodation and rebellion. Jake leaves behind Broadway and his girlfriend to take his father's place in the synagogue. In leading the Aramaic chant that begins the Day of Atonement, Jake returns the cinema to the particular in performance only, to ask for the forgiveness of sins through the form of cinematic climax. In many ways, it is the most stirring musical number in the film, and the only one that is not entertainment, at least diegetically. It seeks the accommodation of multiplicities—of non-commercial, religious, educative, and particular functions—into the grammar and film form of classic Hollywood. If American cinema could not be the pluralistic medium of expression, at least the movies could occasionally have pluralism as its subject.

The other half of this schizophrenia is frenetic expression of ethnic mobility and racial immobility through entertainment. Jake returns to the stage, this time with mother and lover in the audience. His final performance, the only one in blackface, exudes the confidence of a form that has cast off its challengers. The triumph of this form—the form of classic Hollywood—was carried forward by the symbols of those challenges: the political as performance, the racial paranoia of American political culture, the

assimilation of the particular into the mythic whole. It was a long road, but the story of classic Hollywood had only just begun.

CHAPTER II  
LIQUOR AND THE MOVIES: POLITICAL AND CULTURAL FORMATION IN THE  
PROGRESSIVE ERA

Progressive Reform and the Moral Sentiment

The progressive era has long been identified as a transformative moment for American capitalism and its regulation by the state. Out of the chaos of 19th century unrestrained industrial capitalism came the imperative of order and regulation. The key economic question of the progressive era was not whether the state should regulate capitalism, but rather how to regulate and under what conditions.<sup>1</sup> The common law restoration in the Sherman Anti-Trust Act—which codified a state conception of trusts predicated on anti-competitive behavior, not bigness itself—was the culmination of an answer to these economic questions. The common law restoration was a legal codification of several developments shaping modern state economic policy, developments that welded together the Darwinian energy of bigness to emerging conceptions of managerial expertise and the application of the scientific method to business management. But twentieth century development in two industries—one built around an ancient practice and the other around a new technology—throw this ordered history into disarray, for common law restoration is not easily reconciled with state

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<sup>1</sup> For an overview of economic development in the progressive era, see: Alfred D. Chandler Jr., *The Visible Hand: The Managerial Revolution in American Business*. Cambridge, Mass.: Harvard University Press, 1977; Naomi R. Lamoureaux, *The Great Merger Movement in American Business, 1895–1904*. Cambridge, Mass.: Harvard University Press, 1985; Morton Keller, *Regulating a New Economy: Public Policy and Economic Change in America, 1900–1933*. Cambridge, Mass.: Harvard University Press, 1990.

regulatory policy in liquor and the movies. This requires a deeper examination of public policy in economic development as one animated by the paramount anxiety of the progressive storm: the moral preservation of the social body and the individual.

Fears of the movie trust and the liquor trust were fears that economic consolidation would bring about social harms. And yet, consolidation appeared to be precisely what these culture industries needed to regulate the social effects of their product and its distribution and consumption. The liquor and movie industries were hardly trusts in the traditional sense. In the liquor industry, distillery and brewery interests clashed over numerous issues; regional associations fought with other regional associations; barriers to entry were low; and small firms flourished within local economies. For the movie industry, raw material suppliers tried to control the industry from the bottom up, but could never contain the disparate forces emerging in production, distribution, and especially exhibition, where motion picture entrepreneurs, with all their showmanship and civic pride, defined the early era of silent movies.

Both of these industries were, in effect, deeply politicized in the progressive era. Reformers and regulators consistently viewed economic concerns in liquor and movies through the lens of moral problems. From an industry perspective, survival necessitated a response to this politicization. The response from the liquor industry was to develop a moral conception of liberal consumption—in tying the freedom to consumer to individual freedom, brewers in particular articulated a moral defense of their product and industry. But if moralism was the language of progressive politics, it was also

exhausting itself in the throes of ideology. It is a great historical dichotomy of politics in culture that an ideology's fervent articulation is often the death knell of its very promise. The liquor men sought to use the moralism of the era in defense of their interests, but instead succumbed to the moral rages of the time.

In the world of early American film, the response to the politicization of the industry was to reorient the motion picture into a politicized arm of progressive social justice. In defending their industry against progressive moralism, the movie men sought to define motion pictures as, in part, propagandistic cinema essential to American democracy, and to define the motion picture theater as a cathedral to democracy. In creating this politicized conception of the movies, no better opportunity emerged than the fight against evil liquor. In attacking the movies on the screen, at the site of consumption, and in chambers of local and federal government, the movie industry helped redefine and unthread conceptions of moral justice as modern social justice. It was a perilous gamble, as the political forces could so easily be turned against the movies. As we shall see in subsequent chapters, the trajectory of the American movie industry's historical development was toward depoliticization of the screen, but in the 1910s, the political forces at work were temporarily harnessed, animated, and deployed by the emerging moguls of Hollywood, who had a useful antagonist in liquor.

Understanding the conflicts over policy and reform in this era requires us to look beyond political institutions. Political reforms were in response to a radically changing social environment. The familiar story is that political elites and institutions,

recognizing this social tumult, readied a variety of responses to negotiate and control the social environment. It is also necessary, however, to account for the ways in which cultural formation responded to and subsequently shaped American politics. Any account of American political development in the progressive era is incomplete without reordering the causal relationship in which these conflicts are too often cast. Rarely had cultural currents so powerfully shaped political change than in the progressive era. The cleavages of America's moral order from modern American liberalism are found in celluloid and alcohol.

#### Moralism and the Progressive Policy Paradox

From the early 1890s to 1916, these conflicts over state involvement in market forces coincided with a tumult of cultural change in labor, education, race relations, women's rights, immigration, and general social health and welfare. Scholarship in new institutionalism and American Political Development has further highlighted the significance of the progressive era both for building and professionalizing governmental capacity for regulation and for analyzing the anxieties of cultural upheaval. But too often these studies compartmentalize the economic and cultural currents of progressive politics in this era. Yet other scholarship, seeking an overarching reform impulse in the era, collapse together civil rights issues such as women's suffrage into the same reform agenda as economic and labor regulation, modernization of government in voting and civil service reform, and the institutionalization of democratic procedures of governance



such as the direct primary, ballot initiatives and so on. Such accounts of overarching reform are unconvincing in that they are tied together by nothing other than a broad conception of reform regardless of their motivations or effects.

Attempting to reconcile social and economic transformations, Eileen McDonagh identifies a policy paradox persistent in the progressive era, where the state created new regulatory welfare policies while at the same time allowing for reactionary civil rights policies—be it disenfranchisement, segregation, or prohibition—to expand at the state and federal levels.<sup>2</sup> The enduring political features of the progressive era were formed out of this paradox—federal institutions were conceived and refashioned as instruments to protect and expand economic welfare while advancing a program of negative civil rights. For McDonagh, the foundations of the modern American state were launched along these lines of disjuncture.

Disjunctures though there were, economic and social reform were viewed together as *moral* reform by many elites of the era, a particular conception of morality often antithetical to the increasingly urban and multiethnic cultural landscape. Social and economic reformers struggled to define state involvement within this imperative of moral reform. Labor laws and trust regulation were often articulated through the need to remedy social ill, to treat the social body and its cancer of immoral economic effects. Progressive thought reordered the notion that “sins causes economic ills”: in this new

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<sup>2</sup> Eileen McDonagh, “The ‘Welfare Rights State’ and the ‘Civil Rights State’: Policy Paradox and State Building in the Progressive Era,” *Studies in American Political Development* 7, no. 2 (Fall 1993): 225–74.

era, “economic ills cause sin.”<sup>3</sup> So too, reconceptualizing police power and refashioning the legal system to attenuate social ill was as much about the state confronting immorality as it was the state confronting crime and poverty. How can historians separate the impulses behind criminal, social, and economic justice, and how can we distinguish these impulses from moral sentiment? Can the conception of social justice stand apart from moral reform? These questions cast the policy paradox of the progressive era in a different light: progressive era reform bound together social and moral imperatives indistinguishably. Justice in this era was almost always articulated on moral terms, terms that made it possible for reformers to view social repression as the instrument of justice. “The fact that they were potentially or actively repressive,” wrote Arthur Link of the progressive reformer, “does not mean that they were not progressive.”<sup>4</sup>

The moral impulse of political elites clashed with cultural institutions and industries—in particular the film and alcohol industries—who responded by articulating conceptions of social justice severed from the prevailing logic of moral reform. The development of the American film industry, in particular, was a major force in unthreading moral politics from social politics. Progressive era cinema was often infected with progressive moralism, but movie interests frequently pushed back by understanding moralism through the inevitable social capacity of film to influence,

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<sup>3</sup> Ibid., 231.

<sup>4</sup> Daniel Okrent, *Last Call: The Rise and Fall of Prohibition*. New York: Scribner, 2010, 48.

reveal, and inform citizenry. By refashioning progressive moral justice into cinematic social justice, a politicized conception of American movies could defeat legal liquor, but not the film censors. Understanding progressive era politics in this way challenges much of progressive era historiography: the moral cause articulated through state action was as much a death knell of justice seen exclusively through religious moral code as it was a culmination. As much as it was an entrenchment of moral reform, it signified the beginning of a social politics divorced from moral code, clearing the way for social justice to be refashioned as a civil right with constitutional, not necessarily moral, grounding.

An overarching moral code helps us understand McDonagh's paradox as it was understood in its time—far from a paradox, it was a response to an incontrovertible welding together of America's social and economic realms. Moral imperatives ultimately failed to articulate a comprehensive state response to the new socio-economic tenor of America, but the development of a politicized cinema bound together social and economic spheres in ways that could endure outside the protestant moralism of the era. By the beginning of the 20th century, a transformation within American capitalism was well under way, from predominately producer-oriented market approaches to consumer-orientated market approaches. The political effects of consumer capitalism's development stem in large part from the moral impulse to regulate the social effects of both liquor and the movies. Progressives who looked upon an increasingly transformed society demanded a series of political and economic responses, many of which were repressive. The culture of consumption and consumptive industries were targeted by

these progressive reformers, for they often regarded consumption itself through moral terms, particularly public and working class consumption. But the culture industries pushed back, and in so doing shaped modern individual liberty in the American experience away from the imperative of property and toward an emphasis on freedom of choice, both in terms of consumption and expression. The unthreading of social justice from moral politics had lasting effect on the transformation of modern liberalism in both its political and economic senses.

### Why Did the Movies Succeed Where Drink Failed?

In *A Drunkard's Reformation* (Biograph, 1909) a father stumbles home from the saloon agitated and angry. None of the homely comforts soothe him—not the dinner his wife has prepared or the slippers his cowering daughter offers him. His lateness home, eruptive anger, and disheveled state mark “the same shameful story” of drunkenness tearing at the fabric of domestic tranquility in the progressive era. Reluctantly, the man takes his daughter to the theater. There, sitting in the dark among strangers, he watches intently as a story of intemperance unfolds: a hard-working and abstemious family man gradually succumbs to the lure of drink. Angry at his daughter’s attempts to stop him, he resorts to violence. The moral fall is dramatic. In the audience, the man clutches his daughter tighter as he witnesses “his own shortcomings mirrored in the stage play.”

Such mirroring extends beyond the frame. Cast as a stage play, this reformation of a drunkard is an early example of cinematic reflexivity—the images of stage and

audience mirror the experience of watching this film, casting the projection of social and political identity into the spectator of the movie house. Movie-goers could locate themselves within the frame, filling its images with their own hopes, fears, and experiences. This tremendous capacity for social and cultural formation in early American cinema necessitated, for progressive reformers, mastery and control over the images. *The Drunkard's Reformation* was itself hardly a threat to the existing order of society and politics, but it revealed powerful social tools that could be refashioned as grave challenges to that order. But how could elites master the threatening potential of visuality in what was a commercial product of entertainment? Economic approaches to regulating the private sphere—one of the pillars of progressive reform—could not reign in the disruptive potential of representation. That the commercial product of entertainment could be either a vehicle for moral uplift or a wrecking ball of moral code casts representation and its political intention as a key site of progressive era political, economic, and social formation.

The liquor and movie industries were economic competitors under attack by social reformers of the era. But these reformers were not concerned merely with social regulation—they sought anti-trust action as an economic remedy to a social ill. The “liquor trust” and the “movie trust” were charged with enabling the moral decay of America’s social body. Consequently, the formation of public policy in these consumptive industries—in both economic and social regulation—located the cause of moral decay in economic bigness, often regarding consolidation in and of itself as

unlawful. At the heart of this economic and moral binding of regulatory policy was the site of consumption: retail semi-public spaces. The exhibition space of movie theaters was seen as the main purveyor of the social power of the cinema—the ideas emanating from the screen and their potential to influence the spectator public. From 1906 to 1920, exhibitors faced the brunt of America’s moral anxiety, but they could not control of the morality of screen content. Likewise, the liquor industries faced a full on regulatory assault at the site of liquor consumption—the ubiquitous and notorious saloon.

In response, both industries and their interests argued that moral regulation was undemocratic, and both sought economic consolidation in order to ward off moral concern. These consumptive industries did not respond to moral attacks on strictly economic terms—they developed a unique moral language of their own, a conception of liberty, for both producers and consumers, that was about choice, expression, and the public production of culture from below. For the movie industry in particular, it was a cultural remaking of America that would shape the features of modern consumer capitalism. An economic system driven by consumer purchasing power, dominated by producers, consolidated at the production and distribution levels, and largely self-regulatory, were all in part outcomes of the political contests surrounding motion picture entertainment and its industry in the first three decades of the twentieth century. It is a story in which social anxiety fueled political conflict that ultimately determined, in part, the economic structure of American capitalism.

The movie industry succeeded in fighting off the onslaught of regulatory power whereas the liquor industry not only failed to defend itself against regulation but was dismantled by the force of a prohibitory state. Why did American cinema succeed where legal liquor failed? By 1912, the impulse to regulate both industries appeared to be on the increase. The controversies surrounding prize fight films, white slave traffic, and the visual representation of immoral behavior had various political bodies clamoring for censorship of a nascent, chaotic industry still largely rooted in urban working class districts. Federal legislation prohibited the interstate commerce of prize fight films with the Sims Act of 1912, and the Tariff Act of October 1913 prohibited the importation of “obscene and immoral films” with authority to confiscate such films given to the Treasury Department.<sup>5</sup> Local policing laws had authority to censor immoral films and several states began the process of institutionalizing censorship boards.

Prohibition advocates had by the 1910s adopted moderate gradualism of pushing local option laws over statewide or constitutional prohibition. This local and gradual political action necessitated acceptance on the part of state legislatures and state higher courts that legislative power could be exercised legitimately at the county, municipal, or township levels. With such an agreement coalescing in many states over the 1900s, prohibitionists were able to bypass opposition in larger urban areas and institute dry

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<sup>5</sup> *Motion Picture Hearings before the Committee on Education, 63rd Congress, Second Session, March 20, 1914*, quoted in: National Board of Review Archives, New York Public Library, Box 142; U. S. Treasury Department Document, NBRA, Box 46.

policies across large swaths of rural America. When positive effects of dry laws resulted, or when saloon and liquor interests unlawfully ignored regulations, moderates could be turned into prohibitionists. Through measured grassroots activism, prohibitionists turned local gradualism into nationwide prohibition.<sup>6</sup>

Local gradualism did not work in the political regulation of American movies. Municipal and local censorship boards could not translate regulatory principles or structures into a more consolidated state or national regulatory regime. Indeed, local censor boards or censoring activism often conflicted with state regulatory interests, as the controversies over *The Birth of a Nation* (1915) in Massachusetts and Illinois suggest.<sup>7</sup> But the lack of coordinated gradualism cannot fully explain the different pathways liquor and the movies take in navigating political regulation—film censor boards were established across the US in both local and state bodies. The *Mutual v. Ohio* Supreme Court decision fueled greater censorship agitation from 1915 on, and, while there were conflicts between municipalities and state governments, the devolution of legislative power was an agreement that effected both liquor and movies in roughly equal ways. What explains the success of the motion picture industry and the failure of the alcohol industry in responding to moral regulation in the decade leading up to nationwide prohibition?

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<sup>6</sup> Anne-Marie E. Szymanski. *Pathways to Prohibition: Radicals, Moderates, and Social Movement Outcomes*. Durham: Duke University Press, 2003.

<sup>7</sup> For details on these controversies, see Chapter 3.



It is certainly the case that the prohibition forces were more unified than social regulators of the cinema. The Anti-Saloon League, perhaps the first and most powerful single-issue interest group in American history, successfully cut across the notoriously entangled political lines of the progressive era and marshaled the will to eradicate the legality of alcohol production. Their focus was to attack the private businesses that enabled public acts of consumption—the saloons. The ASL built a modern bureaucratic organization that was able serve “the powers of righteousness” by adapting the corporate logic of hierarchy and departmentalization.<sup>8</sup> Unlike previous temperance organizations, the ASL was “bureaucratic and not democratic.” They attacked the political system at the margins with an “*all*-partisan approach,” swinging elections and cobbling together powerful voting blocks. Older temperance organizations like the Women’s Christian Temperance Union and the Prohibition Party approached the issue through the logic of 19th century party politics. They attempted to play in the partisan game, not exploit it.

The answer to the question of why the cinema succeeded where drink failed requires a closer look at both the cultural landscape in which these industries are embedded and the broader transformations of American capitalism taking place in the era. The ASL was not the only force that shaped regulatory power over alcohol, as *The Drunkard’s Reformation* suggests. The culture wars of the era were also fought between culture industries: competitors for leisure time isolated drink and the saloon,

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<sup>8</sup> K. Austin Kerr, *Organized for Prohibition: A New History of the Anti-Saloon League*. New Haven: Yale University Press, 1985, 76–82.

eliminating alcohol in sites of entertainment such as vaudeville, motion pictures, and even sports venues. Baseball, for example, long part of the beer drinking traditions developing in the 19th century, began to disassociate itself from beer drinking by the early 1900s, despite the fact that the baseball business and saloon business had common interests in fighting against Sunday closing laws.<sup>9</sup> But baseball was in a different league in terms of class. Throughout the 19th century and first two decades of the 20th century, ball games typically started at 2 or 3PM, far too early for the majority of working Americans to attend. Ticket prices, generally 50 cents for the National League, helped preserve baseball as an upper middle class form of leisure time, and ensure that professional ball players, the majority of whom were native born protestants, received salaries that put them in the upper middle income range.<sup>10</sup> Liquor did not sit well with the myths and perceptions of America's cherished pastime—clean, wholesome, democratic, ordered—that by the 1880s were already being constructed.

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<sup>9</sup> There is a paucity of information regarding beer and baseball spectatorship in the years leading up to prohibition. Although beer drinking was a prominent part of baseball culture and spectatorship during the so-called heyday of the “Beer and Whiskey League,” a competitor to the National League, there is very little history on beer consumption at the ballpark in the first two decades of the twentieth century. It is almost certainly the case that retail sales of beer were absent from the majority of major league ballparks by 1915. There is some evidence that the Polo Grounds, home of the New York Giants, operated one bar underneath the stands, but had no roving liquor sellers. From: interview with Seth Tannenbaum, April 16, 2015. For more on the history between beer and baseball, see: Daniel Merle Pearson, *Baseball in 1889: Players vs. Owners*. Bowling Green: Bowling Green State University Press, 1993; David Nemec, *The Beer and Whiskey League: The Illustrated History of the American Association—Baseball's Renegade Major League*. Guilford, CT: The Lyons Press, 2004.

<sup>10</sup> Steven Reiss, *Touching Base: Professional Baseball and American Culture in the Progressive Era*. Urbana-Champaign: University of Illinois Press, 1999.

Liquor interests tried desperately to marshal together a broader force of consumption industries against the reform impulse that threatened their trades. “The Prohibitionist frowns, scolds, knocks and hates,” wrote the brewers, “He wants to deprive us not only of the cup that cheers, but he also wants to take from us our pipe of tobacco, or our cigar. He wants to close our theaters and movies. Ball playing he hates, as he does hate dancing and a pack of playing cards. He wants our women to wear dresses that would hide their womanly charms. And all this to be able to rule and domineer over nations of knownothings and darenothings.”<sup>11</sup> Liquor interests desperately tried to bind the culture of drink to the broader practices of American culture, but in a nation modernizing from within the moralism of the progressive era, powerful countercurrents isolated saloon and drink.

Consumption and consumer choice were at the heart of a radically transforming American economy in the progressive era. The transformation of a producer-oriented to a consumer-oriented economy coincided with a broader movement toward consolidation in American capitalism, where vertical integration tied together industrial sectors of production, distribution, and retail. The social effects of liquor and the movies required a complex negotiation of regulatory politics. Though the regulatory impulse was directed at both social and economic features of these industries, they stemmed from the same moral concern, a concern that understood these processes causally: economic

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<sup>11</sup> *The Brewers' Journal* 41, no. 12 (October 1917): 481.

arrangements manifest social ill. Movies and liquor exploded open like few other industries in this new era of consumer-oriented and consolidated capitalism. The distilling industry had achieved vertical integration by 1880, and the brewing industry followed shortly thereafter. Only in the state of Louisiana was the vertical integration of the alcohol industry unlawful.<sup>12</sup> The first twenty years of the American film industry was marked by numerous attempts to consolidate production, distribution, and exhibition. Industry leaders in both liquor and movies looked upon consolidation as a solution to their social problems that emanated from the consumption of their respective products.

But, for state regulators, the solutions to these social problems were moral, political and repressive, not economic. Indeed, the state's moral concern over the cinema and drink often overshadowed economic considerations. The movie industry, in particular, was able to achieve economic consolidation was impossible without complex political arrangements and the depoliticization of the movie screen. The political conflicts over movies and alcohol helped articulate industry responses to moral reform on terms that defended consumer rights and individual choice in capitalism. Both economic and moral conflicts were most prominent in the industries' two sites of retail consumption—the saloon and the exhibition space.

### The Saloon and the Movie Theater: Conflicts at the Site of Consumption

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<sup>12</sup> *USBA Yearbook*, 1909, 25.

Saloons and movie theaters were both threatened with closure by reformers, but not equally. The saloon was the most heavily regulated institution in American life, and had a vastly greater presence on the streets of America's cities and towns. The presence of the saloon had undergone a remarkable proliferation since 1890, largely due to a "tied house" system whereby brewers could own such retail spaces, sell their beer exclusively, and offer attractive promotions such as a hot meal with the price of a beverage. "Public house" saloons thus became an ubiquitous feature of many urban neighborhoods—relatively cheap investments for producers that could raise the profile of their products at the point of purchase. The number of retail liquor dealers went from 90,000 in 1865 to nearly 200,000 by 1900, far outpacing population growth.<sup>13</sup> The consequence was a legitimate social crisis that fueled a new wave of temperance activism in America. Saloons quickly became a symbol of a new American society descending into urban disorder and crime. Brewers offered only nominal concessions to what was a problem of economic consolidation leading to excessive drinking in an oversaturated market. Too often they blamed clubs and off-license premises for the social ills of overconsumption. "It is a mistake to believe," wrote the *USBA Yearbook* of 1910, "that the commercial interest of the brewer stands back of the excessive multiplication of saloons." It was however hard for brewers to deny the obvious. In 1910, they published a report from the New York Committee of Fourteen that identified the business interest of the brewer as

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<sup>13</sup> Marni Davis, *Jews and Booze: Becoming American in the Age of Prohibition*. New York: NYU Press, 2014, 49.

“responsible for permitting the evil conditions” of the saloon, principally due to the fact that “the majority of saloons in the city [are] supported to a greater or lesser extent by the financial backing of the brewer.”<sup>14</sup>

The connections between the vertical integration of the industry, over-competition, and excessive consumption was commonly misunderstood at the time and often overlooked by the anti-liquor advocates, but in cities like New York—which had a much larger percentage of brewery-owned saloons than most cities—the problems were hard to ignore. Arthur Huntington Gleason, writing for *Collier's*, noted that “[t]he brewers’ pool is a failure as a pool.” He continued:

It does not hang together with that cohesion which would enable it to withstand the assaults of the public. Recently its members secretly and unanimously agreed, in raising the price of beer from between 50 cents and a \$1 a barrel, to hold their retail dealers to the new price, by refusing to take over a retailer who tried to jump from one brewer to another. Yet several of the pool brewers cut their rates and accepted other men’s dealers. This is the first point to be scored against the brewers—they have not as yet whipped their sinful brethren into line. They must either learn to combine for cleaning up their trade or prepare to meet the prohibition deluge. ... the brewer must make two clear cut decisions. He must decide to combine with the other brewers for a clean-up and force the weaker, erring brothers to join in the good work ... He has been driven to a fork in the road, and he must decide to take the responsibility as well as the profits in his retail trade, or else cut loose from the retailer.<sup>15</sup>

By 1915, brewers recognized the threat the tied house system represented to the overall health of the industry, but despite attempts to divest themselves of some of the more

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<sup>14</sup> *USBA Yearbook*, 1910, 144.

<sup>15</sup> Arthur Huntington Gleason, “The New York Saloon,” *Collier's* 41, no. 5 (1908): 16.

notorious saloons and saloon-saturated neighborhoods, the tied house system remained until prohibition.<sup>16</sup>

At the same time, brewers published numerous arguments on the unique social value of the saloon in working class society, a class consistently left out of traditional social institutions.<sup>17</sup> American working men, they argued, refused to be “patronized or supervised” by the “attitude of conscious superiority” on the part of elite reformers.<sup>18</sup> The saloons offered “the poor man the center and source of much of his social life.”<sup>19</sup> Cast in class terms, the saloon offered working men the same kind of social capacity gentlemen’s clubs offered the privileged class—camaraderie, networking, and the development of social consciousness. This awakening of class consciousness was unambiguously bound to a democratic spirit and freedom of expression. “The saloon itself [...] supplies a deeper and more subtle want than that of mere animal thirst,” wrote a committee of social reformers in 1901, “[t]his want is the demand for social expression” providing elements needed to foster “what we may call a ‘social center.’” Saloons were recognized, even by reformers such as the elite Committee of Fifty, as a site of social

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<sup>16</sup> After Prohibition was repealed, the federal government insisted on a strict three tiered distribution and licensing scheme in which production, distribution, and retail were kept “distinct and apart” in their operations. For a brief overview see: *California Beer Wholesalers Assn., Inc. v. Alcoholic Bev. Etc.* Appeals Bd. (1971), 5 Cal. 3d 402, 407–408. For more on licensing reform from the brewer’s perspective, see: “Licensing Reform: A New Policy,” *USBA Yearbook*, 1915, 292–97.

<sup>17</sup> “The church clubs and Y. M. C. A’s are doing fine work, in their way, and with a particular class—but that class as a rule does not include the workingman!” *USBA Yearbook*, 1910, pg. 268.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*, 264.

formation that provided “some stimulus to self-expression.” The saloon, a report by the committee concludes, “is the most democratic of institutions.”<sup>20</sup> The Committee of Fifty was an organization composed of businessmen and academics that sought to apply social science methods to the study of the liquor problem and to avoid the moralism of the era’s temperance agitation. Thus, the elite conception of a democracy for the masses in the saloon suggests impulses to control the liquor question that came from class and economic perceptions as much as moral or religious ones.

The rise of the nickelodeon took place in commercial spaces already populated with the saloon and drinking culture. Some saloons sought to exhibit motion pictures themselves. For saloonkeepers, exhibition of motion pictures provided an attractive draw that could edge out competitors in an oversaturated market. From a rudimentary picture sheet and a few benches back beyond the bar to the Mutoscopes and other visual amusements of Heinegabubeler’s national chain in Chicago, exhibition space of early cinema and the saloon shared a gray area of cultural consumption. “Indeed, it is often hard to tell whether we are dealing with a saloon or an amusement enterprise,” wrote by a report by the Committee of Fifty, “Is it a theatre saloon or a saloon theatre?”<sup>21</sup> One Chicago survey in 1910 identified saloonkeepers as the largest occupation of theatre owners entering the movie business. Although evidence is scattered, property held by

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<sup>20</sup> Raymond Calkins, *Substitutes for the Saloon: An Investigation Made for the Committee of Fifty*. Boston and New York: Houghton, Mifflin & Company, 1901, 2–3.

<sup>21</sup> Calkins, *Substitute for the Saloon*, 1901, 22–23.



saloon owners, either the saloon location itself or plots adjacent to saloons, often served as space for a nickelodeon start up, particularly in smaller commercial areas in working class neighborhoods. No systematic study has ever been done on the relationship between the saloon and moving picture exhibition in the years before and during the nickelodeon craze, but some examples may give an indication of national trends. Of the 49 motion picture theaters that opened in Dayton, Ohio before 1915, for example, three were opened by former saloonkeepers on the site of saloons. The Comet Theatre opened in 1913 by Homer Williams, who converted his pool room in the back of the Oasis Saloon into an exhibition space. The Comet only lasted two years, however, and after a change in ownership the theatre closed and the saloon continued to operate. Dayton's Majestic Theatre opened in 1911 from a converted saloon, and managed to last until 1925.<sup>22</sup> In Lexington, Kentucky, two of the black moving picture theaters—Foster's Pleasure Theater and the Fontenac Roof Garden—were located in and above saloons, respectively.<sup>23</sup>

Mixed saloon/nickelodeon commercial properties may have been more common in smaller cities and towns. *Moving Picture World* describes a Brooklyn motion picture theater above a saloon, where “one has to mount a flight of stairs” to see a movie, as “not an ordinary sight in large cities ... where most of the houses are of a picturesque and

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<sup>22</sup> Curt Dalton, “Dayton's Forgotten ‘Silent Movie’ Theaters” Dayton History Books Online, 2013. <http://www.daytonhistorybooks.com/page/page/1475782.htm> (accessed on 4/27/2015).

<sup>23</sup> Gregory Waller, “Another Audience: Black Moviegoing from 1907 to 1916,” in *Exhibition: The Film Reader*, edited by Ina Rae Hark. London and New York: Routledge, 2002, 35.

attractive appearance.<sup>24</sup> This understanding of the relationship between movies and liquor in larger urban areas is shaped by perspective, however, and does not account for the brewer-owned downtown saloons of cities like Chicago, which had significant capital to invest in a wide range of amusements. Chicago, with its powerful brewer interests and ubiquitous tied-house system, was more an anomaly than example of national trends. Nonetheless, Chicago brewers used motion pictures frequently and in consumptive environments far more sophisticated than storefront saloon-theaters. Heinegabubeler's, for example, was an impressive three-story saloon and restaurant in the heart of the city. A variety of amusements and social spaces kept patrons entertained, from reading rooms, gymnasiums, peep shows, museums, and a summertime rooftop garden.<sup>25</sup>

Motion picture interests were keen to stress exhibition as a sole enterprise, run by men with business acumen, commercial interest, and a “sentimental feeling towards the picture.”<sup>26</sup> Such an emphasis was intended to steer the industry away from entanglements with other consumptive practices and shape the motion picture theater as a unique and sole attraction. Keeping movies out of saloons was one of the first concerted efforts to preserve the self-defined theater's right to exclusive use of the film product. Exclusive authority over film exhibition helped legitimize both movie theaters and the movies themselves, in turn giving the film industry the necessary leverage to

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<sup>24</sup> *MPW* 5, no. 24, Dec. 11, 1909, 843.

<sup>25</sup> Calkins, *Substitutes for the Saloon*, 23–24; and Perry Duis. *The Saloon: Public Drinking in Chicago and Boston, 1880 to 1920*. Urbana-Champaign: University of Illinois Press, 1999.

<sup>26</sup> Thomas Bedding, “The Sentiment of the Picture.” *MPW* 7, no. 10, Sept. 3, 1910, 509.

achieve victory in later conflicts over non-theatrical exhibition in schools, churches, and sports venues. Saloonkeepers who went into the exhibition business as a side interest could be publicly attacked for “weaken[ing] the confidence of the people to the point of disgust” and handicapping “more intelligent and worthy managers” who sought to legitimize the industry.<sup>27</sup>

Commercial interests in motion pictures were threatened with free movie exhibitions intended to draw customers to other amusements or consumptive activities. In a trend that may have begun in Youngstown, Ohio, for example, saloonkeepers exhibited free motion pictures “for the benefit of patrons” as early as 1906. Exhibiting pictures for the price of a drink (or two) proved a strong incentive, but Ohio’s reformers and motion picture interests united to stop the practice under the assumption that a combination of beer and movies tended to attract “a class of men and women of low repute.” In response to the Youngstown situation, Akron’s mayor and police chief pushed through an ordinance making motion picture exhibition in saloons a misdemeanor punishable by a fine of no more than \$100.<sup>28</sup> Considering the fact that both liquor and movie interests often found it “cheaper to pay than object” it seems possible that the practice continued so long as the profits covered the fines on top of other expenses. The movie men realized the stakes were high, and that the fight was neither “a temperance proposition, nor ... a claim of illegality,” but strictly economic, “in the

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<sup>27</sup> *MPW* 13, no. 5, Aug. 3, 1912, 439.

<sup>28</sup> *MPW* 1, no. 7, April 20, 1907, 104.

interest of the picture business as a whole.” These economic interests had an admitted moral dimension, since “uplifting the general business would be practically useless” should saloons continue to show free movies.<sup>29</sup> Economic imperatives necessitated moral mastery, which in turn necessitated isolation of liquor and drinking culture.

One of the most visible conflicts between liquor and movies played out in Coney Island, where both products appeared simply as means to a particular end—amusement in the broader sense of the word. In economic terms, however, beer was hardly incidental. Most Coney Island attractions were “free”—revenue came largely from the park entrance fee and numerous food and drink stands. On hot summer days, beer proved a main draw for the hordes that escaped to Coney Island, and movies could occupy drinkers for several rounds. Free picture shows operated for an astonishingly long time on the Island, up until at least 1913. It seems likely that the practice died off not by licensing requirements for common shows but rather by the simple fact that the cinema had ceased to be a novelty suited for amusement park attractions. A glimpse of what the Coney Island motion picture experience was like is provided by Will K. Bradley, writing for *Moving*

*Picture World:*

A short walk through a dance-halled lane landed me on the “Bowery;” a place very familiar to “our own,” indeed. Right on the corner was situated one of the places to be “examined”—a so-called “family resort.” I entered. The El-Kalem, “Captured by Bedouins,” was in progress. No sooner than when I had procured an available seat, I was surrounded by a horde of inquiring waiters—who queried, simultaneously, my wants. I told one—a cup of coffee. [...] Somewhat reluctantly, I disposed of the coffee—and ordered another one. Not that I was thirsty—you know—but that was my

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<sup>29</sup> *MPW* 6, no. 22, June 4, 1910, 934.

admission. Edison's "A Little Bride of Heaven," with Mary Fuller in the lead, and an Essanay, "Billy Changes His Mind," completed the "show."

The pictures in this house were faultless,—but the "beer and—" murdered them! I exited, almost pleased.

A few doors away, I discovered another one. But the attractions—there were posters outside—could they possibly be exhibited in a "family resort?" "Attell-Kilbane 20 Round Boxing Exhibition," and the Burns-Johnson" affair at Melbourne, in 1909, were the reels in question. And was this the kind of a "free show" a tired family would desire watching, while partaking of their hot dogs and beverage?<sup>30</sup>

Bradley's reflections were intended to give a critical perspective on both free movies as "attractions" and alcohol consumption in movie spectatorship. These distractions to the allure of the photoplay situated film exhibition within other consumptive leisure time activities. The self-defined moving picture theatre sought to cut itself against a variety of exhibitions spaces and more varied uses of movies to create the perception of "a safe and wholesome place of amusement for young and old."<sup>31</sup> Municipal licensing for exhibition provided some leverage for the more established houses, and exhibitor's pushed municipal authorities to prohibit free movie exhibition without a license. Precedent had been set by an important but now forgotten New York Supreme Court case, *Weistblatt v Bingham*, heard in March 1908. The plaintiffs owned an "ice cream saloon" in the Bedford-Stuyvesant neighborhood of Brooklyn and sought a court order to restrain city police from stopping free movie exhibition in the back of the store. The question before the court was whether or not the plaintiffs required a license for exhibition, and if so, which license.

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<sup>30</sup> *MPW* 13, no. 7, Aug. 17, 1912, 658.

<sup>31</sup> *MPW* 6, no. 15, April 16, 1910, 592.

The “common license” requirement of New York City was intended for amusements and shows that included “Ferris wheel, gravity steeplechase, chute, scenic cave, bicycle carousel, scenic railway, striking machines, switchback, merry-go-round, puppet show, ball game, and all other shows of like character, but not to include baseball.” Did a free movie fit within this definition of common license? The court ruled that it did, as “[i]t is common knowledge that the moving picture shows are run in the summer time in conjunction with summer gardens and saloons, are very common at popular seashore resorts for drawing and gathering a crowd into drinking places.” The free movies shown at the Weistblatt’s ice cream saloon constituted a “public performance and given for the purpose of entertaining patrons of the place” and so required a common license.<sup>32</sup> This was a far cry from victory for the established exhibitors of the city, however, since the common license fee was well below the standard exhibition fee of \$500 for commercial moving picture theaters. But such rulings set an important precedent in legally situating free movie exhibition within a variety of common show amusements. Embedded into constellation of consumptive activities, the threat posed by free movies could be disarmed, allowing commercial exhibitors to build up the industry and capture audiences with a unique and respectable experience.

Though critics in the nascent film industry looked at Coney Island’s movie attractions with both fear and disdain, they generally conceded that these particular

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<sup>32</sup> *Weistblatt v Bingham* (1908), NY Supreme Court, 58 Misc. 328. <https://casetext.com/case/weistblatt-v-bingham> (accessed on 5/27/2015).

outfits hired good operators and provided high quality exhibition that did not “dish out a lot of junk such as the saloon-theaters in other parts of the boroughs.”<sup>33</sup> New York exhibitors also saw Coney Island as an ideal test case for fighting against Sunday closing laws, a convenient beachhead to “beat out the authorities” so that “city exhibitors will have no fighting to do ... as the precedent will be a strong one.”<sup>34</sup> It was less of an alliance between Coney Island operators and the city’s commercial exhibitors than a convenient point of agreement between competitors.

*Moving Picture World* noted important distinctions between the Island movie amusements and the saloon-theaters and tenement exhibition houses across the five boroughs. An exhibition license was not the only issue at hand—municipal fire and health authorities were particularly concerned with exhibition in “small, ill-fitted back rooms” where “there were but two means of exit, a narrow front door and a still smaller door at the rear which led to a small yard.”<sup>35</sup> Picture quality was extremely poor in these saloons and tenement houses. Alcohol sales, often without a liquor license, provided the necessary revenue for such operations. These spaces were often identical to the private groggeries that provided drink before the saloon emerged in working class neighborhoods sometime in the nineteenth century—environments of semi-public consumption in the domestic sphere, often existing along ethnic lines, and often spaces

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<sup>33</sup> *MPW* 6, no. 22, June 4, 1910, 934.

<sup>34</sup> *MPW* 4, no. 21, May 22, 1909, 669.

<sup>35</sup> *MPW* 6, no. 22, June 4, 1910, 934.

conducive to women running the operation. Political authorities developed various licensing strategies to force the domestic groggeries and tenement motion picture exhibition out into the open.

The contested definitions of the cinema, and what “movies” signified, is pulled into the conflict over beer. There is much scholarship in these discursive conflicts over acceptable and unacceptable terms for motion pictures—flickers and movies, photoplays and cinematographs—but none make mention of the relationship to beer.<sup>36</sup> Calling motion pictures *movies*, “this slang name being paraded in an unseemly way,” seemed uneasily bound up in baser consumptive practices, like drinking beer. As *Moving Picture*

*World* notes:

The latest and still more unseemly use of this offensive slang appears ... with the following heading:

“FREE MOVIES ARE O.K.  
IT IS NO CRIME IF THEY ACCOMPANY THE  
BEER AND HOT DOGS

It needed no prophet to predict that a slang name is soon connected with common and detracting associations.<sup>37</sup>

Such associations cut directly against the vision of Hollywood’s dream factory and its palaces—free movies, hot dogs, and beer. Baseball had vanquished beer in the years before prohibition, but stadium owners fully embraced the food experience at the ball park—hot dogs were widely available and popular, as were relatively recent “hamburger

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<sup>36</sup> For a history of the Essanay naming contest and other conflicts over the definition of cinema, see: Lee Grieveson, *Policing Cinema: Movies and Censorship in Early Twentieth Century America*. Berkeley: University of California Press, 2004, 1–9.

<sup>37</sup> *MPW* 12, no. 12, June 22, 1912, 1105.



sandwiches,” among a variety of sweet and savory items. Baseball could get away with these “detracting associations,” likely because it was already a respected pastime that attracted an upper middle class clientele, though a longer, more casual viewing experience might have also helped.

As noted above, the concern over more casual movie-watching experiences from established exhibitors was not legal or moral, but economic. Such a strictly economic conception, however, belies the entangled nature of moral purpose and economic gain—deploying moral associations aided in economic mastery, or, in other words, economic development in the unique social and political environment of the progressive era necessitated control over the instability of moral meaning and purpose. Politicizing the cinema as an arm of anti-liquor propaganda made good business sense. Exhibitors were more careful in treading the ground of sex and violence. Self-censorship of screen content by the exhibitor was crucial in this context: “Be careful in the choice of your views. Avoid anything which has the faintest sign of suggestion, touch not the lewd or the fragrantly sensual. Produce nothing upon your screen which would cause your mother to blush.”<sup>38</sup> Politicized cinema was okay, so long as it didn’t make the mothers blush. These were essential lessons for the early movie men, and as we shall see later, provided the key framework—moral control as the foundation for economic

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<sup>38</sup> *MPW* 12, no. 13, June 29, 1912, 1217.

development—that the MPPDA used to facilitate the consolidated and coordinated studio system in the 1920s. Economic mastery required a moral authority.

The moral crisis over liquor made it increasingly untenable for culture industries to provide alcoholic drinks at their retail sites. Nowhere was this process more telling than in the motion picture theater, a site of consumption that emerged from a working class cultural milieu populated by the saloon and drinking culture. Many entrepreneurs divested themselves of their saloon interests to attract more respectable middle class audiences or close their other venues and continue operating exclusively as a saloon-keeper. Municipal licensing regulations further encouraged the disentanglement of the theater and the saloon. A comparison of liquor and motion picture exhibition licenses from 1906–1916 in San Francisco, Portland, Oregon, Chicago, and New York shows very little cross ownership between enterprises.<sup>39</sup> In cases where theater and liquor licenses were issued by different bureaus, theater licenses were often only issued with promises that the proprietor will not apply for a liquor license, or, in some cases, required the liquor license bureau to request and be granted consent from the theatrical licensing bureau.<sup>40</sup> While there were certainly incentives for liquor interests to capitalize on motion pictures, there were equally strong incentives—both political and social—for early nickelodeon operators to distinguish their places of business from drink.

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<sup>39</sup> *San Francisco Municipal Reports for the Fiscal Year*, San Francisco Board of Supervisors, Cosmopolitan Printing Company, 1905–1914.

<sup>40</sup> Louis D. Frohlich and Charles Schwartz, *The Law of Motion Pictures*. Ann Arbor: Baker, Voorhis, 1918, 360–61.

In Portland, for example, of the 61 theater owners in 1915, only one, E. A. James, had any saloon interests. In this case, James, owner of the Majestic Theatre at 355 Washington Street, had a liquor license for his saloon down the block, at 271 Washington.<sup>41</sup> These locations, southeast of downtown Portland, were in the working class and industrial Burnside district, where large saloons, or working men “resorts,” catered to as many as 250 patrons at a time with a variety of movie shorts and even features. Portland’s film censors would conduct inspections of these premises, often with the city police in tow, to enforce compliance of the city ordinances. *Moving Picture World* noted that motion picture exhibition in these saloon-resorts were a problem throughout Oregon and Washington. “[W]hile the pictures were of a character that would pass in saloons,” Abraham Nelson of *Moving Picture World* wrote in November 1915, “the city ordinance was not being complied with ... George M. Harris, of the Burnside theater, and the Portland Amusement Company, operating the Casino and American theaters, located in the district where working men congregate, protested to the exchanges against supplying films to saloons.”<sup>42</sup> As producer-distributor consolidation grows in the 1920s, these acrimonious relationships between exhibitors and exchanges would only grow worse over issues such as block booking.

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<sup>41</sup> “List of Theatre and Exchange Owners,” June 4, 1915, City of Portland Archives and Records; “Liquor Dealers of the City of Portland entitled to licenses for six months ending Dec. 31, 1915,” City of Portland Archives, record number AF/77160.

<sup>42</sup> *MPW* 26, no. 9, Nov. 20, 1915, 1529.

Two competing forces are at play here: the pressure of over-competition and the need to attract patrons compelled many saloonkeepers to install projectors and screens, as well as a variety of other amusements, in their saloons; at the same time, nickelodeon proprietors who did not come from saloon backgrounds—men who came from the vaudeville and theatrical amusement traditions like Thomas Tally in Los Angeles and Harry Davis and John Harris in Pittsburgh, or men like Adolph Zukor, Marcus Loew, and William Fox, merchant-class Jewish immigrants from non-theatrical backgrounds—were entering a business field in which the isolation of drinking culture and the saloon was well under way. The development of vaudeville in the 1880s was itself a product of severing drink from entertainment. When Tony Pastor opened the first vaudeville theater in 1881, he borrowed the form of 19th century saloon hall shows that had existed for generations, banned alcohol on the premises and vulgarities on the stage, and repackaged an old entertainment for a new audience.<sup>43</sup>

From 1908 to 1915, saloons and motion picture exhibition underwent a gradual but nearly total segregation of their sites of consumption, at the same time that both spaces were under high-profile attacks from social reformers. Moving picture exhibition spaces across the country were under attack for poor lighting, danger of fire,<sup>44</sup> and

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<sup>43</sup> Armond Fields, *Tony Pastor: Father of Vaudeville*. Jefferson, NC: McFarland, 2007; Douglas Gilbert, *American Vaudeville, Its Life and Times*. New York: Whittlesey House, McGraw-Hill Book Co., 1940.

<sup>44</sup> The projection booth of early cinema was a particularly hazardous place to work. All film stock except for that produced by Pathé in France was nitrate cellulose and extremely flammable. The hot carbon arc lamp of the projector lighting system and the overall confined spaces of the booth added to the dangers.

unattended children. In New York City, Mayor George B. McClellan ordered all moving pictures houses—over 500 across the city—closed on Christmas Eve, 1908. The theaters were quickly reopened and the political furor did little to discourage demand, but it did encourage exhibition owners to coordinate responses to political reform. Theater owners underwent a massive campaign to “clean up” the exhibition space and make it more attractive to a middle class clientele.<sup>45</sup> A crucial part of the campaign was focusing public attention on their competitors—the alcohol retail space.

This social capacity of alcohol consumption was consistently undercut by the cinema, competitors for American working and middle class leisure time. Contemporary accounts from municipal authorities and police chiefs indicate that an increase in motion picture theaters coincided with a decrease in the presence of saloons.<sup>46</sup> The developing film industry—both at the exhibition and production levels—relentlessly attacked saloons and drink. Campaigning as a “substitute for the saloon,” the film industry sought middle class legitimacy by cutting itself against the social function of alcohol. The “cheap, democratic amusement” of the motion picture theater “possesses many of the virtues of the saloon and practically none of its vices,” wrote the Methodist *World*

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<sup>45</sup> Grieveson, *Policing Cinema*, chapter 3.

<sup>46</sup> Letters to NBR, National Board of Review archives, box 23; “The New ‘Poor Man’s Club’” *Collier’s* 53, no. 1 (Dec. 1915): 15. The *Collier’s* piece argued that working men could enjoy “pleasures without the usual foot rail and cycle of smutty stories [...] why not cut the saloon for the movies? They are doing it in Brooklyn N. Y. where 53 saloons failed last year, while the moving-picture theaters increased in twice the corresponding ratio.”

*Outlook*.<sup>47</sup> Exhibition spaces boarded up exits that led to saloon parlors and aggressively pursued legislation that prohibited saloons and restaurants from exhibiting motion pictures. Large film exchanges—the distribution sector of the industry—quickly determined that “the promiscuous showing of pictures is not to their advantage.”<sup>48</sup> Limiting the quantity of moving pictures in exhibition allowed distributors more control and discretion over their product, a key strategy in legitimating the cinema as a respectable form of leisure time. Potential exhibitors who would bring “discredit to the industry” were screened out of the trade by distribution, a practice focused on the saloon.

Brewers tried to fight back, but to no avail. They argued that licensed alcohol retailers were severely restricted in the entertainments they could offer patrons aside from drink, thus leading to overconsumption. “Music, dancing, cafe chantants, stage plays, cinematographs, and all games, save billiards, are either illegal or sternly discouraged,” wrote the USBA Yearbook of 1915, “[t]hus, in the absence of counter-attractions, the only diversion left is to drink.”<sup>49</sup> But much like the motion picture interests relative to the saloon, brewers needed a social practice to cut against in order

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<sup>47</sup> Charles Stelzle, “Instead of John Barleycorn” *World Outlook* 5 (1919): 12.

<sup>48</sup> “Roadhouses Want Films,” *Moving Picture World* 25, no. 8 (August, 1915): 1345; Jennie M. Kemp “Foes of Sunday Rest: The Liquor Saloon” in *Sunday the World's Rest Day: An Illustrated Story of the Fourteenth International Lord's Day Congress Held in Oakland, California, July 27th to August 1st, 1915, During the Panama-Pacific International Exposition*. New York Sabbath Committee, 1916, 12. Both sources focus on licensing conflicts in San Francisco, where multiple applications for motion picture exhibition in saloons were denied. Kemp writes that authorities denied applications for a “saloon keeper to use a ‘movie’ theater” because authorities determined that it would “lower the moving picture business, not elevate the saloon.”

<sup>49</sup> “Licensing Reform: A New Policy,” *USBA Yearbook* 1915, 295–96.

to legitimate their retail interests. Gambling was the most common scapegoat. The Clean-Up Movement in Ohio, led principally by the Vigilance Bureau, sought to limit licenses for retail sale by ridding the state of gambling houses. The Bureau was in effect an association established by the brewers to police their own. They worked closely with local elites in law, policing, and politics to focus their reform energies on gambling. Of the 14 letters from mayors, attorneys, and police chiefs published in the 1910 USBA Yearbook, most mention the elimination of gambling as the principal work of the Bureau.<sup>50</sup>

#### Liberal Re-Awakening in Liquor and Movies

Alcohol interests, better funded and more unified than the movie men of early cinema, consistently utilized arguments that defended the basic individual liberty they saw inherent in the right to drink and the unique social value of the saloon. These arguments levied against the ASL and competitors for working class leisure time emphasized the right of individual patrons, the customers, to consume the industry's product. While the motion picture industry assailed the evils of alcohol throughout the early 1900s and 1910s, they waged their own fight against Sunday closing laws that relied heavily on a discourse of liberal tolerance. The Liberal Sunday League, financed by the Motion Picture Patents Company and advanced through the *Moving Picture World*,

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<sup>50</sup> USBA Yearbook, 1910, 132–47.

agitated for a modern and liberal observance of the Sabbath that would keep theater doors open to the public.<sup>51</sup> Analyzing the use of the term liberal in *Moving Picture World* from 1907 to 1920 reveals that the great majority of instances conform to long-standing uses of the word, either immoderate, generous, or tolerant, but the fight for a Liberal Sunday necessarily implied a right to an individual liberty of consumption. Blue laws, argued *Moving Picture World*, are everywhere an embodiment of a “Puritanical idea, that the man was made for the Sabbath. In agitating for a proper moving picture exhibition on Sunday we must emphasize the contrary opinion ... that the Sabbath was made for man.”<sup>52</sup> In arguing for a Sunday that is liberal, the movie interests sought to advance their own commercial interests by defending individual liberty against institutional authority, in this case the church.

Exhibitors, exchange men, and trade industry interests pursued a variety of strategies in responding to political censorship, some of which were accommodating. The National Board of Censorship (later National Board of Review) and its volunteer censorship was in particular praised as liberal to both the industry and the public, but similar words were used at times to commend the work of the Ohio Board of Censors, various clergy members advocating for censorship, municipal censorship authorities, and Major M. L. C. Funkhouser, chief of the Chicago Film Censor Board, who *Moving*

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<sup>51</sup> “The Patents Company and the Liberal Sunday League.” *MPW* 2, no. 16, April 19, 1909, 472.

<sup>52</sup> W. Stephen Bush, “The Campaign for a Modern Sunday.” *MPW* 11, no. 8, Feb. 24, 1912, 658.



*Picture World* described as a “liberal and fair-minded man.”<sup>53</sup> “An enlightened and liberal-minded body of censors,” wrote *Moving Picture World*, “have every right to regard themselves as competent judges of what is shocking to the religious sensibilities of the American public.” At the center of this strategy was a discursive reorientation of the debate away from extremism and toward liberal and illiberal forms of political censorship. In arguing against prior restraint of moving picture content, trade journals upheld the work of municipal courts and judges in enforcing obscenity laws, legal authorities that can be “depended upon to arrive at the right conclusion in such matters, nine times out of ten. They will not be disposed toward puritanism or fanaticism, but will on the whole be more liable to err on the liberal than on the illiberal side.”<sup>54</sup> These discursive strategies helped shape the conflicts over film censorship on terms amenable to commercial interests by tethering liberal ideals to consumer capitalism, in effect aligning cultural norms to market forces within broad political limitations. Liberal morality were terms on which economic and political forces could work in harmony.

In the liquor wars, anti-prohibition forces consistently cast their struggle as one for personal liberty, even on moral terms. “Our religion is based on the freedom of choice,” wrote the *Anti-Prohibition Manual*, “[i]f we lose control of ourselves, the mind

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<sup>53</sup> On National Board of Censors, see: *MPW* 9, no. 4, Aug. 5, 1911, 268; and *MPW* 25, no. 10, Sept. 4, 1915, 1623; on Ohio Board, see: *MPW* 19, no. 1, Jan. 3, 1914, 26–27; on liberal-minded clergy, see *MPW* 14, no. 1, Oct. 5, 1912, 20; on municipal censors generally, see *MPW* 20, no. 11, April 2, 1914, 242; and on Major Funkhouser, see: *MPW* 18, no. 5, November 1, 1913, 481.

<sup>54</sup> *MPW* 19, no. 12, March 21, 1914, 1503.

and body run riot. Self-control, combined with temperance, in the individual, is the basis of society's moral success. Prohibition begins at the wrong end."<sup>55</sup> A self-conditioned moral code was a prominent feature of the movie and alcohol industries' defense against social reform from above. The development of consumerism in the progressive era inevitably brought with it moral concerns. Self-regulation by the consumer provided a political defense of public consumption that aided in the liberalization of society. Moral conditioning of the consumer's mind and body thus revealed the political effects upon economic development. Modern society and consumer capitalism needed self-regulation, and the moral conflicts in liquor and film would shape this developmental path.

Cleveland mayor Newton D. Baker, and future Secretary of War, argued that "dead letter" laws in American cities were the product of "the most law-abiding people in the world." This obedience to law was not an external power over the population, but rather a consequence of "the automatic self control of the people."<sup>56</sup> Pushing against the dominant social reform logic of the era, brewers emphasized that the solution to social ills was self-control through individual liberty. "Under the stress of modern competition, a man must be master of his faculties [...] in other words, self-control."<sup>57</sup> Temperance could only be realized through the internalized moral code of each individual. Internal

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<sup>55</sup> "The Freedom of Choice," *Anti-Prohibition Manual*, 1915.

<sup>56</sup> Newton D. Baker, "Law, Police and Social Problems," *Atlantic Monthly*, July 1915. Quoted from: *USBA Yearbook*, 1915, 298–99.

<sup>57</sup> *USBA Yearbook*, 1910, 266.

conditioning through persuasion characterized much of the temperance movements in the 19th century. Such persuasive temperance agitation was largely absent from the progressive era prohibition movements. Brewers, horrified by the bureaucratic power of the ASL and its goal of external coercion, adopted much of the temperance language of the 19th century. Individual freedom, they argued, is realized only through the internal power of temperance, from a self-chosen moral code of moderation. Such discursive strategies cast liberty of the self against political regulation of social morality, helping to define the terms on which civil liberties would consistently be cast throughout the 20th century. American cinema was also developing the complexities of moral internalization for regulating visual content—the long history of institutionalizing prior restraint and a self-regulating moral production code for the film industry required discursive shaping of the efficacy and justice of self-control. The modern liberal would have to be self-conditioned from within, a process made visible by the moral conflicts in liquor and movies of the progressive era.

The term “liberal” was itself reformulated within this conflict. In some cases, the use of liberal carried previous meanings, both as freedom from restraint (immoderate) and freedom from prejudice (tolerant). More common, however, are instances throughout anti-prohibition literature that articulate a liberal identity and liberal cause as a social struggle advancing consumer rights against the conservative moralism of the state. John Stuart Mill’s conception of liberty through free expression had been developed in an earlier generation, but these philosophical arguments tended to

circulate among the cultured elite. Mill's own concept of cultural value explicitly excluded mass entertainment and popular consumption—push pins and baseball could never have the social worth of something like poetry. But by the 20th century, discourse on freedom of expression and consumption was often shaped by culture industries themselves, namely liquor and movies.

The brewing industry in particular was keen to bend the concept of freedom from restraint toward new mass cultural conceptions of freedom of individual consumption. For brewers, to be a liberal meant both a liberal consumer and a defender of free expression. This reallocation of old ideas for new purposes is nowhere more visible than in their principal publication, *The Yearbook of the United States Brewers' Association*. The brewers first began publishing a yearbook of their annual convention in 1909, with the intention of providing comprehensive analysis of the industry and the political conflicts surrounding it. The yearbooks, which were published through 1921, are a unique series of volumes on the liquor question in that their intent was not solely for propaganda purposes despite being an official publication of the largest coordinating body of the alcohol interests. These were principally industry guides, intended to provide useful information for beer and bottling businessmen and their ancillary industries. While not without bias, the first 7 volumes show a remarkable amount of fair and objective information, particularly compared to the one-sided and often hysterical literature produced by prohibition advocates. In these volumes, the brewers develop a comprehensive account of individual rights in expression and consumption.

This discourse often tied together liberalism and union in unique ways. The Civil War bicentennial was a visible part of the public consciousness of the time, and brewers often articulated the value of their industry through patriotism and service to the union. “Anyone familiar with our country’s history,” wrote the USBA 1909 yearbook, “knows that many years before the war Know-nothingism and Prohibition were driven out of the arena by a mass of liberal voters who had so ardently devoted themselves to the Union cause.”<sup>58</sup> While the beer tax was a significant source of revenue for funding the union army, German-American brewers themselves were “ardent unionists” who saved “some of the more important border States” from the confederates.<sup>59</sup> This Civil War remembrance was authored by German immigrants in the early 20th century, looking back through the turmoil of their own time and casting the republic as a liberal union of tolerance and inclusiveness through individual liberty. For brewers, the “liberal cause” of individual freedom could be pursued by encouraging “the liberal elector to exercise his franchise.”<sup>60</sup> It was, for many, a fight for democracy. So-called Liberty Leagues were formed to carry on the fight “for the liberal side ... as a matter of principle,” by organizing voting drives in urban areas.<sup>61</sup> Such a “liberal re-wakening” had the brewers positively

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<sup>58</sup> *USBA Yearbook*, 1909, 14.

<sup>59</sup> *USBA Yearbook*, 1912, 233.

<sup>60</sup> *Ibid.*, 16–17.

<sup>61</sup> *Ibid.*, 18.

exuberant in the years leading up to 1912, as prohibition movements lost several crucial contests across the nation.

Abraham Lincoln had undergone a remarkable transformation in the biographies of popular magazines in the late 19th century—from a statesman over whom the nation was deeply divided to the universally loved “Great Heart” and father of the nation.<sup>62</sup> Anti-prohibition advocates sought to shape the legacy of Lincoln for the services of individual liberty in an increasingly consumer-oriented society. In “Abraham Lincoln, Liberal,” the 1916 *Anti-Prohibition Manual* boldly declared that “the greatest humanitarian and the broadest statesman the world has produced” was an early liberal due to his willingness to imbibe strong drink on occasion. This usage touches on the older meaning of liberal as immoderate or licentious, commonly a term of reproach.<sup>63</sup> Here, however, there is no negative connotation to the word but rather discursive practices that blend together immoderate and tolerant. Reading Lincoln as a liberal was, for the USBA, seeing in him both a capacity for social tolerance and defender of individual liberty and consumption.

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<sup>62</sup> “Great Heart” is a quote from *The Birth of a Nation* (1915), America’s first blockbuster film that assailed northern Republican carpetbaggers and their black allies but praised Lincoln as a protector of the south. For more on biographies, mass culture, and the emergence of the ten-cent magazine, principal forces in shaping the Lincoln image as the Great Emancipator, see: Cornelius Regier, *The Era of the Muckrakers*. Chapel Hill: University of North Carolina Press, 1932, 17; and Melvyn Stokes, *D. W. Griffith’s The Birth of a Nation*. Oxford: Oxford University Press, 2007.

<sup>63</sup> *USBA Yearbook*, 1909, pg. 117, has one instance in which liberal is used as a term of reproach, describing prohibition activists making “liberal use” of prosperity statistics to show a positive correlation between prohibition and individual prosperity. This instance shows brewers were well aware of the negative connotation of liberal as excessive but were nonetheless reformulating the concept within their fight against prohibition.

For anti-prohibition forces, there were limits to this new conception of liberalism. Women's suffrage, long identified with the temperance movement, was characterized as a victim of prohibition's political moralism. "Women's suffrage owes its defeat to the Anti-Saloon League," wrote the *Saturday Evening Post*, "which made of it a 'wet' and 'dry' issue, and thus alienated from it the sympathy of the liberal forces of the State."<sup>64</sup> The temperance movements of the 19th century were closely aligned with women's suffrage, led by the Women's Christian Temperance Union and their iconic leader Frances Willard, who advocated for prohibition through "internalized conversion, rather than externalized coercion."<sup>65</sup> A cursory glance at the confluence of women's suffrage and prohibition in the 1910s indicates the alliance was as strong as ever: 7 western states had adopted prohibition by 1916, and in all of them women had gained the right to vote.<sup>66</sup> The Brewers yearbook of 1913 admits that "liberal interests in Ohio cast their weight against women's suffrage."<sup>67</sup> But there were cracks emerging in the alliance between prohibitionists and suffragists. By the 20th century, the movements and tactics of prohibition politics had changed considerably. The Anti-Saloon League was led almost entirely by men who advocated for external coercion based on legal prohibition. Cultural elites weighed in on the "New Woman" of the 20th century, in some cases arguing that

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<sup>64</sup> Quoted from "Brewers and Woman Suffrage," *USBA Yearbook*, 1913, pg. 245–46.

<sup>65</sup> McDonagh, "The 'Welfare Rights State,'" 246.

<sup>66</sup> Okrent, *Last Call*, 88.

<sup>67</sup> *USBA Yearbook*, 1913, 245.

women prohibitionists “confuse a purely individual issue with a social issue,” bending society to the needs of women who “suffer from the curse of liquor as men do not.”<sup>68</sup> Such arguments muddled the brewers message, however, that the saloon had social value as much as the individual had the liberty to consume alcohol. More telling is that, from 1911 to 1913, referendums on prohibition in Michigan, Colorado, San Francisco, Los Angeles, and Phoenix all had women voting for the first time and all failed to legally prohibit alcohol. A closer look at county-by-county voting patterns in these crucial years shows no positive correlation between women’s suffrage and success for prohibition measures.<sup>69</sup> Anti-prohibition forces attempted to exploit the 20th century cleavage between the cause of temperance and the cause of women’s suffrage, but could never successfully weld together the cause of individual liberty and women’s rights. For the brewers, women were merely hapless victims of the teetotalers, not a similar group of individuals fighting for liberty against conservative moralism.

Another crucial—and for the anti-prohibition movement—devastating limitation to this new conception of liberty centered on enduring white supremacy. Prohibition forces of the south were both stronger than any other region in the country and powerfully animated by the threat of black men consuming alcohol. Brewers were unwilling to extend their conception of individual liberty and rights to blacks, even when

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<sup>68</sup> Margaret Deland, “The Change in the Feminine Ideal.” *Atlantic Monthly* (March, 1910), quoted in *USBA Yearbook*, 1910, 178.

<sup>69</sup> “Report of the Vigilance Committee,” *YUSBA*, 1913, 22–66.



acknowledging that repressive liquor laws of the south were often solely animated by the anxieties of whiteness. White voters animated by “the race question,” wrote Fritz Rudolf, “decided in favor of the prohibition laws,” admitting that while blacks in the South would likely not vote for prohibition, “the colored population is without civil rights in those States”<sup>70</sup> They also proved unwilling to develop alliances with distilleries who were under fierce attack from Southern moralists. By the opening years of the 20th century, the distillery industry was largely controlled by Jewish Americans.<sup>71</sup> Southern politicians like John Newton Tillman from Arkansas consistently made the connection between black violence and Jewish enterprise in attacking alcohol. “I am not attacking an American institution,” Tillman said, “I am attacking mainly a foreign enterprise.”<sup>72</sup> A series of sensational articles in *Collier’s* on the rape and murder of fourteen-year-old Margaret Lear in Louisiana shocked the nation and galvanized southern prohibition, insinuating that a cheap gin distilled by Lee Levy & Company, the bottle “vile and obscenely labeled” with a scantily dressed white woman, incited a local black man, Charles Coleman, to commit the crime. After a four hour trial and 3 minutes to deliver a guilty verdict, Coleman was hung in the county jail.<sup>73</sup> The “Black Cock Vigor Gin,” distilled by a Jewish businessman, crystallized many of the fears and anxieties of southern whiteness.<sup>74</sup> The

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<sup>70</sup> “The Race Question,” *YUSBA*, 1912, 172–73.

<sup>71</sup> For more on Jewish-owned distilleries, see: Okrent, *Last Call*, 42–45, and Davis, *Jews and Booze*.

<sup>72</sup> Quoted in Okrent, *Last Call*, 44.

<sup>73</sup> *Ibid.*, 45.

<sup>74</sup> “Who Killed Margaret Lear?” *Collier’s* 41 (May 1908), 10. See also: Okrent, *Last Call*, 42–45.

case bore resemblance to the Leo Frank controversy: it bound Jewish and immigrant otherness to the threat of black masculinity and the defilement of southern white women. Levy's company was kicked out of the Model License League—an association of distilleries intended to police retail sales and limit licenses to prevent over-competition—but the damage had been done.<sup>75</sup> By 1915, anti-prohibition forces had all but given up on the south.

With few alliances and increasingly isolated in industry and culture, the United States Brewer's Association, the principal trade group of brewers and the most forceful advocate of the right to drink, continued to shape an argument for freedom of consumption as a constitutive feature of individual liberty. They argued for a nationwide referendum on prohibition, confident in their belief that “the liberal voters, who are, for the most part massed in the industrial states, would be able to defeat it.”<sup>76</sup> Such discursive strategies helped reshape the public conception of liberalism, tying together liberal identity and the right of consumption. Like the term propaganda in the struggle to regulate film content, “liberal” in anti-prohibition literature signified a discursive shift in American political culture, broadening the classical conceptions of propertied liberalism into its modern and social iterations.<sup>77</sup>

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<sup>75</sup> Okrent, *Last Call*, 48.

<sup>76</sup> Louis N. Hammerling, “How a Minority May Rule,” *The American Leader*, Dec. 28, 1916. Quoted in: *USBA Yearbook*, 1916, pg. 208.

<sup>77</sup> For a discussion on the contested term of propaganda in the struggle to regulate film, see Chapter 4.

Industrialism and labor issues were crucial for anti-prohibition advocates, who cast the right to individual liberty against both puritan mores and the consequences of modern industrialization in which “all human beings should be machines whose wheels must revolve despite considerable grating.”<sup>78</sup> Workers demand contact, wrote James E. Freeman, “not with mechanisms, but with life itself. He is the victim of a system of modern life that is so strenuous in its tendency that it threatens to make his labor one of large isolation.”<sup>79</sup> Prohibition forces were consistently attacked as socialist and radical responses to individual consumption and choice. Labor leader Samuel Gompers argued that “[i]ncreasing wages, establishing a shorter workday, affording better tastes, better aspirations, higher ideals” could more effectively establish temperance in the populace “than to inaugurate prohibition by law.”<sup>80</sup> Alcohol interests allied themselves with trade unions and big labor against more radical labor influences. Brewers and other employers “who treat their employees liberally” hailed government action against the IWW in the Paterson silk strikes of 1913. “The decline of the Industrial Worker’s of the World,” wrote the USBA yearbook of 1913, “must be a source of real satisfaction alike to all employers and wage-earners who recognize in the preacher of revolution the worst enemy of both.”<sup>81</sup> Labor and liquor were not without conflict, but the brewing industry in particular

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<sup>78</sup> “A Few Thoughts and a Superfluity of Words,” Editorial, *Interstate Medical Journal*, June 1916. Quoted in: *USBA Yearbook*, 1916, pg. 204.

<sup>79</sup> James E. Freeman, *If Not the Saloon—What?* New York: The Baker & Taylor Company, 1908.

<sup>80</sup> “Samuel Gompers on Prohibition” *The Anti-Prohibition Manual*, 1916, pg.

<sup>81</sup> “Report of the Labor Committee,” *USBA Yearbook*, 1913, pg. 76–77.

paid better wages than most industries in America,<sup>82</sup> and publicly recognized that unions were “the natural means for securing justice” for workers.<sup>83</sup> Certain conflicts with labor revealed the extent to which the brewers struggled to coordinate industry practice and policy, however. A nationwide compensation plan for injured workers did not materialize largely because the brewing association’s members “failed to comply” and showed themselves “curiously indifferent to the importance of the Labor question in our industry.”<sup>84</sup> A fractured industry proved unable to deal with an increasingly unified and national labor movement, despite the fact that labor was more or less staunchly anti-prohibition.

Both the alcohol and film arguments for liberty failed in their own ways. The landmark Supreme Court Case *Mutual Film Co. v. Ohio* (1915) ruled that the cinema was not art or speech but a commercial product like bacon, baseballs, and railroads, to be regulated through the interstate commerce clause. From 1908 to 1918, political censorship of the movies was institutionalized in a handful of states and in numerous local and municipal bodies. The strictly economic definition of cinema offered by the *Mutual* decision, however, gave little guidance on how to regulate the social capacity of the movies. Political censorship bodies were on the whole mired in

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<sup>82</sup> According to the 1905 United States Census of Manufacturers, workers in the brewing industry received one dollar out of every \$5.50 produced, placing sixth out of 300 industries listed. Quoted in: *USBA Yearbook*, 1910, 279.

<sup>83</sup> *USBA Yearbook*, 1912, 67.

<sup>84</sup> *Ibid.*, 65–67.

corruption, disorganization, conflict over what was acceptable and what was obscene, and a deluge of film products in need of review. The social capacity of the cinema—the power of ideas and their potential influence over the public—did not rest easily within the economic definition of motion pictures. The liberty to drink, on the other hand, was swept up in the prohibition wave—neither the defense of individual liberty nor the inefficacy of political prohibition could hold back the moral force of policy formation in this era. But, in another way, these arguments for individual right to expression and consumption helped shaped a modern discourse of liberty that outlasted both political censorship of movies and prohibition of drink.

### Consolidation and the Reform Sentiment

The film and alcohol industries both struggled to consolidate the industry by incorporating sites of consumption into a vertically integrated combine. These sites of consumption—the exhibition space and the saloon—were the most difficult sectors to consolidate. They were widely dispersed throughout the country, tied to traditional and more local property holdings, closer to the public, and subject to greater scrutiny by police and municipal power. Where the alcohol industry's tied house system failed, producing over-competition and social crisis, the movie industry successfully integrated the exhibition space into the vertical monopoly of the studio system. The consequences of consolidating these retail spaces go a long way toward explaining the success of the

movie industry in warding off regulation and the inability of the alcohol industry to survive progressive moral reform.

As prohibition became a reality, movie exhibitors had little love lost for their dying competitors, but the temperance fervor among movie men had begun to wane after 1916. From 1917–1919, there is a visible drop off in temperance agitation in the film trade journals like *Moving Picture World*, which stated, rather remarkably, that “prohibition is too closely akin to censorship to make it good medicine for a theater management to take up actively.”<sup>85</sup> This was likely due to the combined effects of America’s entry into the Great War, the increasing inevitability of nationwide prohibition, and the threat of theater admittance taxes to replace lost liquor revenue.<sup>86</sup> Another cause may have been the American film industry’s broader turn away from “propaganda pictures,” as discussed in chapter four. Though the hammer of the state’s regulatory power could pound the nails of both censorship and prohibition, exhibitors tried to leverage the failures of legal liquor to their benefit. “[I]f the screen is denatured,” wrote the *Exhibitor’s Trade Review*, “its ability to take the place of the saloon will disappear ... humanity is going to have its stimulants—in one form or another.”<sup>87</sup> Even the familiar

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<sup>85</sup> *MPW* 28, no. 13, June 24, 1916, 2228.

<sup>86</sup> Complaints of theater taxes levied in lieu of liquor revenue was common in the aftermath of local prohibition, from Seattle to Atlanta to Winnipeg, Manitoba. See: *MPW* 26, no. 9, Nov. 27, 1915, 1700; *MPW* 28, no. 13, June 24, 1916, 2278; and *MPW* 28, no. 13, June 24, 1916, 2283.

<sup>87</sup> “A Warning and a Prophecy,” *Exhibitor’s Trade Review* 5, no. 14, March 8, 1919, 1041. Denaturing alcohol was a process in which various chemicals are added to make the alcohol unpalatable and potentially harmful for consumption and thus suitable only for industrial purposes.

film fight against drink could be recast in depoliticized terms, an argument not for prohibition films but rather for entertainment, pure and simple, that can stimulate the public without the effects of alcohol.

A survey of exhibitors published in the April 12, 1919 issue of the *Exhibitor's Trade Review* showed that 72% of motion picture theater owners were in favor of prohibition, 23% were indifferent, and only 3% were against.<sup>88</sup> The majority of exhibitor's reported that business had improved in their houses, particularly from the family and working class trade, by an average of 22% over receipts from 1918.<sup>89</sup> The phenomenal change within the motion picture industry from 1906 to 1918 coincided with and was reinforced by conflict between liquor and movies. In the early years of the nickelodeon craze, the fluidity of consumptive spaces for working class leisure time created opportunities for drinking culture to be a part of movie-watching practices, influencing the character and form of a growing, infant industry. But the imperatives of class, aided by state regulatory action, necessitated a clear demarcation between the saloon and movie exhibition, a divorce that freed the movies toward greater profits, respectability, and ultimately artistic recognition for the masters of 20th century popular culture.

These parallel histories of integration show that, more broadly, the development of consolidated capitalism in America did not produce uniform results. Consolidation in

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<sup>88</sup> "Exhibitors Throughout the Nation are Called Upon to Express an Opinion with Regard to How the 'Dry' Law will Effect Them," *Exhibitor's Trade Review* 5, no. 19, April 12, 1919, 1418.

<sup>89</sup> "Business Increased an Average 22% After Saloons Closed," *Exhibitor's Trade Review* 5, no. 20, April 19, 1919, 1494.

the alcohol and motion picture industries was intended to correct the greatest economic danger to the industry: over-competition. The tied-house system in the alcohol industries was intended to check against over-competition at the level of production, as the barriers to entry in the industry were always very minimal, but this policy unwittingly fostered even greater over-competition at the level of retail consumption as brewers and distillers capitalized on the bargain of backing numerous saloons to give the public exclusive product offerings. For the motion picture industry, vertical integration was, by the 1920s, eventually able to successfully check over-competition at all levels, partly due to higher barriers to entry, but also due to a more coordinated economic policy among industry leaders. Nonetheless, for the American film industry, the first two decades of the twentieth century was marked by fierce competition, great economic successes, and spectacular failures. Conflict was ever present in the nascent motion picture industry, but so too, even at the very beginning, was coordination and cooperation, however rudimentary. Producers and distributors had from the origins of the industry developed coordinated practices that standardized the industry's flow of product, but the relationship between distributors and exhibitors was famously toxic, the former too often in a position to impose unfavorable terms on the latter, particularly block-booking.<sup>90</sup> One of the first steps of industry reform for the Motion Picture Producers and

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<sup>90</sup> An industry practice that became widespread by the early 1920s where exhibition owners were forced to rent a slate of poor quality films alongside the higher quality films they primarily desired. It effectively tied the hands of theater owners and limited competition for better films.



Distributors of America, formed in the spring of 1922, was to establish uniform contracts between distributors and exhibitors. This was not an immediate success, and the MPPDA precipitated an all-out war with the organized independent exhibitors, but increasing horizontal coordination by producers and distributors finally overcame the independents in exhibition and, by the late 1920s, the industry achieved near total vertical integration.

Distilleries and breweries were thrown into internecine competition following the Civil War-era introduction of taxes on alcohol, as productive capacity was significantly greater than demand. The industries struggled to consolidate horizontally, but regional differences and the ease of entry meant that competitors could easily undercut prices. Vertical integration, while relatively easy for the brewers, brought about a social crisis at the retail level. Growth and consolidation in the liquor business was effectively checked at every turn. The horizontal fracture between liquor and beer could never be effectively managed. Internal dissension and conflict had long characterized the relationship between brewers and distillers, and as the 20th century temperance movement flourished into a full blown nationwide campaign for prohibition, the alcohol industry was unable to coordinate a response. Brewers were too often quick to criticize liquor as the real instigator of the social crisis surrounding alcohol, while singing the praises of beer as a health drink that aids in temperance. The lack of horizontal coordination, coupled with the inability to effectively make vertical integration in beer more responsive to public concern, lay at the heart of the moral crisis destroying the industry. The motion picture industry, on the other hand, was able to utilize economic

coordination in moral politics—both in keeping social reformers at bay and in using the screen to integrate the industry within the broader reform impulse of the era by turning the power of movie propaganda against liquor. Temperance films situated the medium within a culture war against drink and the saloon from the earliest years of the medium. A number of film shorts on Carrie Nation—the axe-wielding temperance warrior—were released on 1901.<sup>91</sup> From 1907 to 1912, producers increasingly utilized the evils of drink and the saloon as the moral foundation of fictional melodrama. These films often used longstanding temperance narratives that date back to the first movement in the 1850s.

### The Drunkards on the Screen: Conflict and Social Power

Film producers visualized the horrors of drink in their high-profile temperance films, but portraying the saloon as a den of iniquity was a common narrative device across a wide range of movies. A look at movie plots during the fall season of 1915 indicates the extent to which the anti-saloon message saturated the movies. The Universal film *Renunciation* (1915) centers on the story of two factions in a small town who “become embroiled in a gun fight in the biggest building of the settlement, a combination dance hall, gambling saloon and cafe. A stray bullet strikes a lantern which explodes. The saloon is instantly ablaze and soon the entire street is a roaring mass of

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<sup>91</sup> Michael Aronson, *Nickelodeon City: Pittsburgh at the Movies, 1905–1929*. Pittsburgh: Pittsburgh University Press, 2008, 173–74.

flames.”<sup>92</sup> From *Kids and Corsets* (1915): “Hubby has gone to a saloon nearby to drown his troubles. The two men meet and hubby offers to fight a duel.”<sup>93</sup> The thieves of *Weighed in the Balance* (Mutual, 1915) “took the money to the billiard saloon”<sup>94</sup> and in *Salvation Nell* (California, 1915): “... her father in a drunken rage brutally murders her mother, and a few moments later at the saloon, the murderer meets his death at the hands of his associates.”<sup>95</sup> These films used saloons as a stock narrative device to convey social evil, violence, and moral fall, an element of the *mise-en-scène* that helped to “sever cinema’s associations with ‘vice’ and reposition cinema as ‘respectable.’”<sup>96</sup> Brewers tried to push back against such images of the evil saloon, claiming misrepresentation in the movies. Brewers in Wisconsin wrote lengthy letters to film producers deploring the anti-saloon crusade in the cinema, claiming that “producers have shown a tendency to associate every dive scene, every human derelict, wayward son, or ruined home with a beer sign or a mug of beer, and nowhere in the productions have the producers ever associated beer with a decent atmosphere.”<sup>97</sup>

That movies could be formidable artillery in the social reformer’s fight against the pernicious liquor interests underscores the tension between propaganda and film free

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<sup>92</sup> *Moving Picture World* 25, no. 8 (August 1915): 1331.

<sup>93</sup> *Ibid.*, 1227.

<sup>94</sup> *Ibid.*, 1383.

<sup>95</sup> *Ibid.*, 1493.

<sup>96</sup> Grieveson, *Policing Cinema*, 80.

<sup>97</sup> *American Brewers’ Review* 30, no. 6 (June 1916): 208.

speech. The movies were hardly a neutral medium for the dissemination and deliberation of ideas. By the 1910s, the movies were already showing a tremendous capacity to shape and influence public debate and perceptions of social and political issues. As an open and contested field of social and political formation, the cinema was malleable enough to be fashioned for numerous and sometimes conflicting purposes. This open and contested field of ideological formation is precisely what constituted the social liberalism of cinema's free expression, but economic interests and class considerations narrowed this field toward prohibition and against the liquor trade. For brewers, despite the fact that "there is noticeable a counter-current of greater liberalism in social intercourse and greater tolerance of alcoholic drink in private life ... [i]t is extremely difficult to get a hearing for our side of the question."<sup>98</sup>

American cinema was a powerful tool for shaping public imagination of drink's destructive capacity, but it was not without conflict over such images. Liquor interests were accused of infiltrating film censorship boards to control visual representations of drink. The center of much of this controversy was Pennsylvania, a state known for its powerful wet politics and uncompromising film censor board. The Pennsylvania State Board of Censors, composed of three quintessentially progressive interests—lawyer, mother, and educator—made liberal use of the scissors, and temperance pictures with moral uplift were often not given the benefit of the doubt.<sup>99</sup> "The direful rum interests of

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<sup>98</sup> Ibid., 216.

<sup>99</sup> Aronson, *Nickelodeon City*, 157–72.

the country are credited with a desire to get control of the various moving picture censors,” wrote the Johnstown (Pa.) *Democrat* of the film *John Barleycorn*, “a great many films that depict the sad fate of the drunkard have been suppressed ... [t]he movie has, to some extent, become part of the temperance propaganda.”<sup>100</sup>

The film adaptation of Jack London’s *John Barleycorn* (Bosworth, 1914) is the most visible conflict over drink on the screen in Pennsylvania. The censor board demanded the elimination of barroom scenes and acts of intemperance in *John Barleycorn*, arguing that these images incite the young and impressionable to mimic observed behavior.<sup>101</sup> J. Louis Breitinger, chief censor of the board and political ally of U.S. Senator Boise Penrose, provided legal representation to brewers and distillers in Pennsylvania and kept the inciting images of intemperance at bay with the power of the scissors. The extent to which Breitinger’s liquor connections influenced his position of censoring *John Barleycorn* is impossible to know, but it is perhaps no coincidence that less than a few months before *Barleycorn*’s release the Pennsylvania state legislature drafted a bill to “prohibit cabarets, dancing and moving pictures in places where beer and liquors are for sale,” thus segregating and sharpening the competition between liquor and movie interests.<sup>102</sup> The controversy was also an opportunity for temperance reformers to build

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<sup>100</sup> “A Doubled-Edged Sword.” *Johnstown (Pa.) Democrat*, May 18, 1917. Quoted in: *The Public* 20, no. 999, May 25, 1917, 510.

<sup>101</sup> “Censors Authority Defied by Film Men,” *Philadelphia Ledger*, July 30, 1914. Quoted from National Board of Review of Motion Pictures records, New York Public Library, Box 23.

<sup>102</sup> *The Brewers’ Journal* 41, no. 7 (October 1, 1917): 285

strong alliances with movie men. William E. Smith, producer of *Barleycorn*, organized a free exhibition at the Philadelphia YMCA, thus maneuvering around the Pennsylvania censor board since non-commercial exhibition did not require the board's approval. The Anti-Saloon League was one of the principle sponsors of the event.<sup>103</sup> The film received valuable free advertising from the political controversy. Non-commercial exhibition—itsself a threat to the interests of the film industry—provided a useful strategy for turning public sentiment against film censorship. As we shall see in later chapters, free motion picture exhibition would be a source of conflict that shaped industry consolidation in the 1920s.

The attacks on *John Barleycorn* pushed Pennsylvania movie men into organizing the Moving Picture Protection Association to better coordinate efforts against legal censorship in the state.<sup>104</sup> Although these efforts failed to overthrow state censorship following the Supreme Court ruling in *Mutual v. Ohio*, the fight in Pennsylvania is an example of how moral conflicts in cinema and liquor cuts across much of our historical understanding of the progressive reform impulse: the “newfound morality of cinema” that attacked the social evil of drink was itself the target of progressive state action that sought to limit such expression.<sup>105</sup> To fight against this educative and moral cinema, alcohol interests filled the coffers of their political allies. “Movie censors of 27 states

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<sup>103</sup> *MPW* 21, n0. 5, Aug. 1, 1914, 707.

<sup>104</sup> Aronson, *Nickelodeon City*, 173–81.

<sup>105</sup> Grieveson, *Policing Cinema*, 80.

[are] ruled by rum ring,” wrote *The North American*. Alcohol’s control over state film censorship enabled the suppression of “pictures displaying the demoralizing effects of beer and rum, and even pictures teaching temperance lessons.”<sup>106</sup> In effect, what the case of *John Barleycorn* shows is that social reformers were hardly unified over how and what to regulate within the mass culture industries. This conflict also revealed how the politicization of early American movies was geared toward legitimizing the industry and its product, a strategy that would change considerably in the 1920s.

The Anti-Saloon League and other prohibitionists made ample use of *John Barleycorn* to advance the anti-drink cause. The ASL bought the rights to *Barleycorn* in Massachusetts, making it the official film of the Bay State chapter.<sup>107</sup> “It is the first time that an entire moving picture show has been installed to promote interest in a saloonless nation,” commented *Moving Picture World*. The Personal Liberty League, an anti-prohibition group, offered Bosworth \$25,000 to keep *Barleycorn* from the screens in six states until after the 1914 elections, only serving to give the movie men and their prohibitionist allies yet more terrific advertising.<sup>108</sup> The producers followed an identical strategy in Texas in the spring of 1917. Free screenings were held in both theatrical and non-theatrical venues. They distributed numerous copies throughout the state and

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<sup>106</sup> “Movie Censors of 27 States Ruled by Rum Ring,” *The North American*, April 10, 1914. In NBRMP, Box 23.

<sup>107</sup> *MPW* 23, no. 13, March 27, 1915, 1914d.

<sup>108</sup> *MPW* 23, no. 8, Feb. 20, 1915, 1168

advertised aggressively.<sup>109</sup> By November, 1917, after *Barleycorn* and other temperance pictures had played throughout the summer and autumn, Dallas, Austin, Waco, and several counties that were “heretofore distinctly ‘wet’” had gone dry.<sup>110</sup> Advertising for *John Barleycorn* appealed to class consciousness by identifying liquor as the destroyer of working class economic well-being: “The saloon always offers a warm welcome to the workingman. The liquor bill of the American nation is \$1,500,000,000 annually. What per cent. of this does the wage earner pay?” Such appeals could situate the cinema as both a medium for working class expression and, perhaps more visibly, as a “protector” of the interests of workingmen by sounding the familiar call of moral reform. “The saloon has always exercised a great social power over the workers,” commented *Moving Picture World*, “[t]he picture trade is the only heir to this social leadership and has the power to cultivate it to an unlimited degree.”<sup>111</sup> The movies could take up the cause of both the working class and progressive reform sentiment. To push back against censorship, the commercial film industry allied itself with core progressive causes.

*Barleycorn* also factored heavily in the prohibition war for Ohio, home state of the Anti-Saloon League and one of the few with a state film censor board. When Ohio’s film censors sought to cut *Barleycorn*’s drinking scenes to a “flash,” Wayne Wheeler and the ASL went into action. They protested the board’s decision and publicly attacked the

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<sup>109</sup> *MPW* 31, no. 9, March 3, 1917, 1392.

<sup>110</sup> *MPW* 34, no. 7, November 17, 1917, 1066.

<sup>111</sup> *MPW* 32, no. 8, May 26, 1917, 1275.



board's members as duplicitous lackeys of the liquor interests, a rather ironic charge coming from Wheeler, the man who turned political control of special interests into an art form. The board bristled at the charges but held firm. The cut were made, despite claims that "liberals are attempting to suppress the film because they fear its effect on public sentiment."<sup>112</sup> Nonetheless, it seems possible the combined prohibitionist-film

**BOSWORTH'S**  
NEXT RELEASE

*John Barleycorn -*  
**Some Experiences of Jack London's Life**  
—Written by Himself

*The Saloon Always Offers a Warm Welcome to the Workingman*

The Liquor Bill of the American Nation is \$1,500,000,000 annually.

What per cent. of this does the Wage Earner Pay?

John Barleycorn Gives Tragic, Realistic Answer.

*A Compelling Plea for Temperance*  
**Don't Fail to Book This Picture**  
—it will surely bring crowds to your theatre

*Make Application Immediately to*

American Feature Film Co., 162 Tremont St., Boston, Mass.—New England States; Massachusetts, Connecticut, Maine, Rhode Island, New Hampshire and Vermont.	Famous Players Exchange, 1331 Vine Street, Philadelphia, Pa., and 71 West 23rd Street, New York City—New Jersey and Eastern Pennsylvania.	Famous Players Star Feature Film Service, Temple Court Building, Minneapolis, Minn.—North and South Dakota, Minnesota and Wisconsin.
Win. L. Sherry Feature Film Co., Inc., 136 West 84th Street, New York City—Greater New York and New York State.	Famous Players Feature Co., 28 West Lexington Street, Baltimore, Md.—Delaware, Maryland, Washington, D.C., and Virginia.	Notable Feature Film Co., Salt Lake City, Utah—Utah, Colorado, Montana, Wyoming and Idaho.
Famous Players Film Service, Inc., 424 Ferry Street, Pittsburgh, Pa., and 37 South Wabash Avenue, Chicago, Ill.—Western Pennsylvania, West Virginia, Ohio, Indiana, Illinois and Kentucky.	Casino Feature Film Co., Detroit, Mich.—Michigan.	Progressive Motion Pictures Co., three offices—Head office: 162 Pacific Building, San Francisco, Cal.; Central Building, Seattle, Wash.; Mark-Strong Building, Los Angeles, Cal.—California, Oregon, Washington, Nevada, Arizona and New Mexico.
	Kansas City Feature Film Co., Kansas City, Mo.—Missouri, Kansas, Nebraska and Iowa.	

**BOSWORTH, Inc., 648 Olive Street, Los Angeles, Cal.**  
William W. Hodkinson, Distributor, 110 W. 40th St., New York City  
*After September 1st All Bosworth Releases Handled Through Paramount Program*

Fig. 1. Advertisement for *John Barleycorn* in *MPW*, July 13, 1914

### Censor on Rampage

Breitinger, of Pennsylvania, Objects to John Barleycorn—Film Men's Defiance—Show Picture at Y. M. C. A.

**J.** LOUIS BREITINGER, one of the censors of the Keystone State, has come out as an opponent of "John Barleycorn," believing, it appears, that "John Barleycorn" is not quite as black as the films have painted him. The representative of the Bosworth Co., which produced the picture, is William E. Smith. He and C. E. Pierce, who staged the moving picture story, have endeavored for several days to overcome Breitinger's objection thereto, but Breitinger has been obdurate.

In despair, Smith and Pierce gave a free exhibition of the picture at the Young Men's Christian Association of Philadelphia to an audience of ministers and temperance workers. The audience pronounced the picture a strong moral lesson.

"Mr. Breitinger's chief clerk threatened me with arrest if we dare show the film here this afternoon," said Mr. Smith. "That was a mere foolish threat, however, as the law clearly permits us to give private exhibitions of a picture of a chartered association without the approval of the board of State censors. We gave this exhibition merely to demonstrate that there is nothing in the slightest degree objectionable in the picture and that there is no sound reason whatever for its rejection by Mr. Breitinger.

"Of course, we understand well enough what interests object to this picture. In California we were offered \$25,000 to suppress it until after the November election. But the picture went on in California, and it will go on here as sure as there is justice in the land.

"We told Mr. Breiting-er that he could not have

J. Louis Breitinger.

Fig. 2. Breitinger on the rampage in *MPW*, Aug. 1 1914

<sup>112</sup> *MPW* 21, no. 6, Aug. 8, 1914, 856.

industry assault on the Ohio board had some effect in softening the actions of censorship. Mrs. Maude Murray Miller, the “dominating spirit” of the Ohio censor board, was accused in January 1914 of directing a “tyranny of censorship ... [t]hat is the Russian way of dealing with mediums of expression.”<sup>113</sup> By 1917, however, after a public onslaught of temperance film agitation that included non-commercial screenings of *John Barleycorn*, *Prohibition*, *The Spender*, and *Battle of Ballots*, *Moving Picture World* regarding Mrs. Miller as “more or less liberal in her views toward censoring,” and that the board overall had “become liberal,” adopting “a more lenient policy and will treat the film business in a broader way than they have in the past.”<sup>114</sup>

1915 was a watershed year for the film industry and the liquor wars. Throughout the spring and summer of that year, as movie-goers flocked to see America’s first blockbuster feature film, *The Birth of a Nation*, several heavily publicized prohibition movies were also making the rounds, among them was Robert T. Kane’s production of *Prohibition*, produced by the Prohibition Film Company of California of which Kane was president. *Prohibition* was a typical melodrama and love triangle in which two brothers—one an alcoholic and the other temperate—fall in love with the same woman. The very visible advertising campaign for the film sought to create a high profile bidding war for state’s rights distribution, with trade journals noting that territorial rights are “going fast” and that the Prohibition Film Company has “gone the limit in the handling of the

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<sup>113</sup> *MPW* 19, no. 2, Jan. 10, 1914, 152.

<sup>114</sup> “Ohio Censors Becoming Liberal,” *MPW* 31, no. 9, March 3, 1917, 1357

big feature.”<sup>115</sup> The film was shown to Ford Motor Company employees at the plant, and drew well in places like Chicago and Ohio.<sup>116</sup> The film also acted as a “government agent,” drawing interest from officials in Russia, France, and Great Britain who hoped that the movie could help weld prohibition efforts, and the cinema, to the war effort.<sup>117</sup> Back in America, *Prohibition* waded right into the conflicts over visual representation and political meaning that had been laid bare by the release of *John Barleycorn* the year earlier. Breitinger and the Pennsylvania censor board took exception to some scenes in *Prohibition* and demanded cuts. Kane was ready for them, however, and spent considerable time and money giving private exhibitions in Philadelphia to well-known temperance and prohibition advocates. Film interests were quick to note that “[t]here is no mistaking the meaning of the scenes nor the motives which actuate the characters. He who looks may understand.”<sup>118</sup> Breitinger made no reply to this public pressure, but the latest conflict cast further doubt on the effectiveness of the board and gave yet another anti-liquor movie valuable free publicity.<sup>119</sup> Whether Breitinger was influenced by liquor interests or had legitimate concerns about the representation of drunkards on the screen and the attendant threat of mimicry, in either case the censor board’s responses to both *John Barleycorn* and *Prohibition* reveal the ineffectiveness of state

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<sup>115</sup> *MPW* 24, no. 7, May 15, 1915, 1095.

<sup>116</sup> *MPW* 24, no. 10, June 5, 1915, 1612; *MPW* 25, no. 2, July 10, 1915.

<sup>117</sup> “‘Prohibition’ May Be Government Agent,” *MPW* 24, no. 8, May 22, 1915, 1280.

<sup>118</sup> “Prohibition” review, *MPW* 24, no. 3, April 17, 1915, 399.

<sup>119</sup> “Those Queer Pennsylvania Censors,” *MPW* 27, no. 12, March 25, 1916, 2044.

regulation of screen content. Political authorities had grossly miscalculated the social capacity of the cinema.

The movies would take the fight against liquor straight to Washington. The Anti-Saloon League teamed with Kane to make *Prohibition* a key component of the 1915 “white ribbon” march on the capitol. The goal was to project *Prohibition* on the white wall of the U.S. Congress, “spreading a sheet over the classic marble and projecting through the dark of night by agency of a powerful and giant lens.”<sup>120</sup> Projecting the anti-liquor crusade on the wall of government symbolizes the intertwined nature of economic, political, and social forces in shaping early 20th century American democracy—film exhibition was the medium through which public interest cast a commercial product onto the institution of federal legislative government. The audience in this case was not comprised of political authorities—instead, government becomes the screen itself, part of the medium of public expression and commercial exploitation. “‘Prohibition’ is intended for the masses,” wrote *Moving Picture World*, “for the public that once supported the most inexpensive grade of melodrama. It fulfils its mission.”<sup>121</sup> In Kane’s *Prohibition*, government provided the picture sheet for a commercial product that intended both mass consumption and political agitation. Such a remarkable vision troubles our historical understanding of the distinctions between commercial and non-commercial cinema, entertainment and

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<sup>120</sup> “‘Prohibition’ in Politics,” *MPW* 24, no. 5, May 1, 1915, 747.

<sup>121</sup> *MPW* 24, no. 3, April 17, 399.

propaganda, public interest and political authority, as well as our understanding of the contests over democracy in the progressive era.



Fig. 3. Scene from *Prohibition*, April 17, 1915

Another conflict centered around the Spokane, Washington premiere of D. W. Griffith's blockbuster, *The Birth of a Nation*, in August, 1915. Municipal authorities declined to censor much of the virulent racism of the film, including the sexualized convulsions of the character Lydia, images that were heavily censored elsewhere. But the saloon sequence of *Birth*, where a young Wallace Reid plays a hard working white man who raids a saloon full of black patrons to track down the infamous Gus, was cut entirely from the positive prints in Spokane.<sup>122</sup> This scene reveals many of the common southern

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<sup>122</sup> *MPW* 25, no. 8 (August 1915): 1344.

white fears of the saloon—a site of black violence and inebriety, it is a safe house for Gus after his foaming-at-the-mouth pursuit and subsequent death of the youngest Cameron daughter.<sup>123</sup> The saloon, in *Birth*, offers protection from the black violators of southern female innocence, but such images were simply too unacceptable to local censors in Spokane, necessitating that such racially charged moralism be expunged. A few months after the premiere of *Birth* in Washington, the state ordered all saloons closed, outlawing retail alcohol 4 years before nationwide prohibition.

If Griffith's *Birth* and his earlier temperance pictures for Biograph cast him as cinema's most influential social reformer, his next production—the epic *Intolerance* (1917)—criticized the very reform moment that he had so powerfully given visual expression. The brewers, unsurprisingly, celebrated the message of *Intolerance*. “[I]t is estimated that perhaps 80,000,000 persons had the futility of prohibition revealed to them in ... the stupendous spectacle ‘Intolerance,’” wrote the *American Brewers’ Review*.<sup>124</sup> That 80 million people saw *Intolerance* is a gross overestimate, but the liquor men were nonetheless overjoyed that such an “effective means of education and enlightenment” was finally being “used by the organized brewers of this country in their campaign against ignorance and systematic falsification.”<sup>125</sup> The brewers quoted Griffith at length:

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<sup>123</sup> Quite literally foaming at the mouth, has Griffith instructed the actor, Walter Long, to drink hydrogen peroxide before shooting. See: Stokes, *D. W. Griffith's The Birth of a Nation*, 88.

<sup>124</sup> *American Brewers’ Review* 30, no. 12 (December 1916): 359.

<sup>125</sup> *The Brewers’ Journal* 41, no. 1 (November 1916): 14.

I believe what I'm preaching in this picture. We have too many laws—too many professional reformers. They have tried to tell the whole people what they shall do. It's time the public told the reformers what is to be done. "Intolerance" brings up the liquor question. For myself, I have no doubt whiskey and strong liquors are bad for the system, but here's a fact to be considered: the study of history indicates that not a single race not addicted to liquor has shown itself a strong people.<sup>126</sup>

Brewers also made note of other movies that undermined the prohibition crusade—*A Temperance Town*, a film satire of prohibition life adapted from the successful play penned by Charles Hale Hoyt; *The American Sahara*, which illustrated the "evasions and violations of law in such regions"; and *The Story of a Glass of Beer*, a movie "much in demand by public exhibitions and by a number of higher educational institutions."<sup>127</sup> These three movies are no longer extant, and so it is hard to evaluate their content and meaning, but judging from the brewers' praise and free advertising it seems plausible they presented satirical and critical views of dry culture that aligned with broader anti-prohibition arguments. The use of comedic satire is interesting to note here—stuffy blue nose reformers and their pious righteousness were an easy target for mass cultural expression at the time, animating the chasm that existed between America's protestant and elite traditions and a radically transforming modern society. But political satire in progressive era cinema appears to be far less numerous and visible than the reform-minded uplift movies that are so present among histories of the era, from temperance

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<sup>126</sup> Quoted in: *Ibid.*, 14.

<sup>127</sup> *American Brewers' Review* 30, no. 12 (December 1916): 359.

and white slave movies to exposés on economic greed and unreasonable trusts. Although research on the topic is almost non-existent, the tension between satire and realism in progressive era screen content was no doubt a powerful force in determining what influence the political meaning of visual expression had over the public.

Social conditioning, economic interest, and political conflict converged in the realism of motion pictures and their potential to instigate mimicry. Such conflicts were fueled by the instability of visual meaning and intention in what was still an emerging technology. Were the drunkards of the screen reinforcing learned and patterned behavior? Or did they reveal the “dark side of wrong, that we may illuminate the bright side of virtue”?<sup>128</sup> How could audiences and social reformers distinguish an immoral film from a moral one? How could political authority in this era, so consumed by assaults on the traditions of America, read the codes of screen morality? For critics of the movies, a heightened level of realism only signified a more destructive potential than that found in the more crudely produced images. But for defenders of the screen, the same terms led to different conclusions. “It is their very realism which makes them moral,” wrote the *New York Tribune*, an argument aggressively advanced by the National Board of Censorship, a volunteer organization funded by the Motion Picture Patents Company—Edison’s combine—and largely run by the People’s Institute, a civic reform group that reflected elite protestant anxiety over urban American life. One of the first films

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<sup>128</sup> This quote comes from the opening intertitle of D. W. Griffith’s *Birth of a Nation*. For more on Birth and its role in free speech for film and the fight against censorship, see Chapter 3.



reviewed by the National Board was *A Drunkard's Reformation*. According to the *New York Herald*, the Board would seemingly “have reason to object” to the drunkard’s excess illuminated on the screen, but the moral fall and reformation of the man was “so sudden and complete” it passed unanimously and praised as a film of educative uplift.<sup>129</sup>

By 1915, the economics of the movie business had undergone dramatic transformation. The Edison Trust—the first attempt at a monopoly in the film business, finally succumbed to anti-trust action and by 1917 was all but destroyed. Regulation of the Trust proved possible because government action rested on strictly economic terms—monopolistic control by the Edison combine was built around property and patent protection as instruments in limiting competition. This was familiar ground for the state to pursue anti-trust action. As the progressive era gave way to World War I, the state found it increasingly unable to regulate the social capacity of cinema as it had the Edison Trust. The captains of the American film industry were increasingly exhibitors and showmen concerned with the software of the movies—the production of images—not the patent holders and property owners of the old era. The social capacity of the cinema required a greater importance be placed on the regulation of morality, not regulation of property. Because of the necessity of moral regulation, industry leaders were able to consolidate and coordinate the industry free from economic regulation. For

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<sup>129</sup> Quoted in: Grieveson, *Policing Cinema*, 79; National Board of Review archives, box 103, film card file for *Drunkard's Reformation*.

the resurgent film industry in the early 1920s, the suppression of the liquor trade provided valuable lessons in how to deal with the regulatory powers of the state.

Ironically, as the MPPDA analyzed the failures of legal liquor for lessons in their own fight against prohibitory regulation, the inability to create broader inter- and intra-industry alliances was deemed a crucial mistake. The movie industry that had helped crush legal liquor was now decrying the inability to foster ties across other culture and consumptive industries. The American Development Foundation, in a memo to Hays dated September 11, 1922, compared the film industry's resistance to non-theatrical production and exhibition (both educative cinema for schools and religious cinema for churches) to the "opposition on the part of saloon keepers and brewers to prohibition." The memo goes on to say that "if saloon keepers and brewers had made concessions to conciliate the less radical prohibition advocates they might have continued to operate with profit under temperance instead of bringing absolute prohibition upon themselves. While there is no idea that any such fate awaits the motion picture industry there is a parallel in the two situations."<sup>130</sup> Vertical consolidation needed coordinated development because such coordination was crucial in the social value of motion pictures. Coordination was also effective in building relationships across industries. The path to prohibition was aided by the liquor industries' inability to foster social alliances that could have integrated alcohol consumption into the social fabric of America.

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<sup>130</sup> American Development Foundation to Hays, September 11, 1922. *WHHP*, vol. 1, reel 6.

Perhaps it was a losing game for liquor from the start—baseball, vaudeville, motion pictures, amusements of a wide variety, all conspicuously eliminated drink from their consumptive practices in order to protect the economic viability of their businesses. Conversely, the saloons were emptied of nearly any other diversion except drink. The isolation and destruction of legal liquor in American life was as much a cultural and economic processes as it was political and moral. What comes out most visibly in the history of the movie and liquor war of the progressive era are the foundational lessons in the development of consumer capitalism—identifying and fostering the social value of a culture industry was necessary for its survival, and so required a high degree of coordinated practices and consolidation by producers. Early consumer capitalism required a moral and social dimension to its consumption.

Such a social capacity to drink and the saloon was powerfully undermined by the cinema and its interests. Brewers responded by clinging to the argument of property, increasingly an antiquated defense in the new environment of liberal corporate capitalism. The state responses to capitalism were changing, away from a basic right to property and patent protection to an expanded right of consumption and expression. The American movie industry developed at the very center of this change, as Edison's Trust dissolved and the moguls rose to power. Edison's powerful combine, so exclusively focused on property and patent protection, could not properly attend to the moral controversies of the screen. The marriage of social and economic spheres necessitated a different set of industry interests and pressures, and in so doing influenced a

fundamental reworking of both American capitalism and American liberalism. As the movie men realized vertical integration and horizontal coordination were necessary to stave off moral regulation of the screen, they looked back at the vanquished liquor industries for lessons. The American film industry thus shaped its contours out of the ruins of legal alcohol, contours that ultimately bore little resemblance to the liberal corporate capitalism political economists agree is the dominate economic structure of America. Instead, Hollywood developed a unique alternative to the dominant structure American capitalism, far more cooperative and coordinated, that continues to define the film industry today.

## CHAPTER III

### *THE BIRTH OF A NATION* AND THE CRISIS OF MODERN LIBERALISM

Scholarship on America's liberal tradition has long ignored American movies, not just as a visible marker of liberal thought and anxieties, but as a spring to its flow. In the previous chapter, we saw how both the liquor and film industries articulated unique conceptions of liberty and liberal identity, tying individual freedom to freedom of consumption and expression. These political expressions by culture industries were severely limited by elites and authorities who were concerned over their social effects. In the film industry in particular, this freedom of expression created both perils and promises for the politics of free speech in America. Free speech had a long development from colonial America to the First World War, but postwar historical scholarship—particularly Zechariah Chafee's formative work *Freedom of Speech* in 1920—significantly narrowed the historical perspective of free speech politics. But in limiting the history of free speech in America, Chafee's seminal work sought to maximize free speech protections. Although heavily criticized in its time, *Freedom of Speech* laid the modern foundations of First Amendment civil libertarianism in the United States.<sup>1</sup>

The political conflicts surrounding movies as speech coincided with the broader development of modern free speech in America. In the first half of the twentieth century,

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<sup>1</sup> Zechariah Chafee, Jr., *Freedom of Speech*. Cambridge: Harvard University Press, 1920. For a historical perspective on Chafee's work and its influence on modern free speech, see: John Wertheimer, "Freedom of Speech: Zechariah Chafee and Free-Speech History," *Reviews in American History* 22, no. 2 (June 1994): 365–77.

concerns over public health and safety, as well as national security, created political climates in which free speech rights were limited. By the end of World War Two, the civil libertarianism of modern free speech began to flourish. By 1952, the Supreme Court ruled that motion pictures were in fact speech, to be constitutionally protected by the First Amendment. The politics of free speech, both in and out of the movies, had come a long way since the 1910s. Such a development belies an intriguing historical paradox, however—while film free speech was championed in the 1910s, it was, by the early 1920s, explicitly cast aside by the MPPDA and the emerging moguls in Hollywood. The development of classical Hollywood had no use for film free speech; indeed, such a conception of free cinematic expression cut against the big producer control of the Hollywood dream factory, a self-regulated and consolidated industry that sought to keep both independent producers and non-commercial cinema at bay. The story of how film speech became narrowed, to be buried and rendered dormant for a generation, is not the familiar story of reformist elites and political authorities clamping down on the business of movie-making—that story runs parallel to another, in which the movie industry itself absconded away the film free speech cause in the service of consolidation and coordination. But to fully capture this story requires going back further, before the 1920s, into the failures of film free speech in the progressive era.

1915 was a watershed year in the politics of film free speech—the failure to censor the insidious racism of D. W. Griffith’s *The Birth of a Nation* and the Supreme Court decision of *Mutual Film Co. v. Ohio* seemed to heighten the conflict over cinematic

expression: Where *Birth* forcefully articulated the cause of free speech through the terrorism of white supremacy (and thus casting anti-*Birth* protesters as censors and opponents of free speech), *Mutual v. Ohio* narrowly defined the definition of cinema as neither speech nor art, but as an economic product “pure and simple.” These two developments—one a movie that defended film free speech through racist propaganda and the other a court case that denied the constitutionality of film free speech—were in fact not as contradictory as they may appear. Both marked the beginning of the end of film free speech in America. The *Mutual* decision debilitated any legal grounding for the cinema’s social and political capacity in an era in which propaganda, democracy, and the movies were closely intertwined. The censorship fights over *The Birth of a Nation* fractured the cause of free speech from the politics of social justice in nascent modern liberalism, a fracture that remains to this day.

In *Freeing the First Amendment*, David S. Allen writes that “[t]oday’s talk of free speech often reflects the desire to protect private interests—increasingly that seems to mean corporate interests—at the expense of understanding what the purpose and mission of the First Amendment is all about.” From cross burnings in St. Paul to Neo-Nazis in Skokie, the development of free speech in 20<sup>th</sup> century America too often appears antagonistic to the parallel development of modern liberalism. Such antagonisms rest upon a particular ideological interpretation of the First Amendment, in which “hurtful speech might conceivably be of some value to society and therefore the proper answer to that speech is not censorship, but more speech.” This narrowed

conception of free speech rights fails to attend to inequalities of gender, race, sexual orientation, and economic status, but existing scholarship on the politics of American free speech, dominated by legal cases and constitutional interpretation, also leaves out the cultural conflicts over speech and inequality. To “free the First Amendment” requires us to look back into history at where and how these currents of free expression were narrowed.

The American film industry emerged at a transformative moment for liberalism in American political culture. The politics of race, gender, and economic equality increasingly overlaid propertied individualism as the nexus of American liberalism, but it was no coordinated advance of revision—modern liberalism was built on a series of fractures: the tension between racial justice and free speech, between democracy and propaganda, and between commercial cinema’s war fever and a war-making state. As an infant industry and medium of democratic propaganda, the movies were well positioned to shape the tumultuous currents of this political and economic reorganization of liberalism. Hollywood’s first blockbuster—D. W. Griffith’s *The Birth of a Nation*—is a crucial starting point for this historical trajectory.

Stephen Skowronek’s “The Reassociation of Ideas and Purposes: Racism, Liberalism, and the American Political Tradition” traces the apparent contradictions between President Wilson’s pro-segregationist racism and his liberal idealism of self-determination. An erudite Southerner and father of modern liberalism, Wilson was both a liberator and a racist. Highlighting these contradictions, Skowronek writes that “[t]his



is the liberator who arranged an early screening of D. W. Griffith's *Birth of a Nation* at the White House (the first White House screening ever) and pronounced its incendiary celebration of national redemption by the Ku Klux Klan 'all so terribly true.'"<sup>2</sup> But what if these three historical footnotes of Wilson—that *Birth* was the first movie shown at the White House, that Wilson had arranged it, and that he pronounced it "all so terribly true"—were actually fictions of history? How does it change the reassociation of reactionary ideas toward antithetical ends?

These historical inaccuracies do not so much trouble the apparent contradictions of the racist liberator—he was indeed both—as it calls into question why historians, social scientists, and film scholars have been carrying these myths for the past one hundred years despite evidence to the contrary. In some ways, it speaks of a desire to push Wilson and America's first blockbuster together, to shape the story beyond the historical record, to see fire where one only saw smoke. This very tendency to force the events of the past to be consistent with our understanding of political thought is the tendency Skowronek cautions against. "Often one of these Wilsons is discounted," writes Skowronek, "but to highlight his reactionary racism or lionize his liberal idealism is simply to submerge uncomfortable facts on the other side."<sup>3</sup> If evidence does not elide

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<sup>2</sup> Stephen Skowronek. "The Reassociation of Ideas and Purposes: Racism, Liberalism, and the American Political Tradition." *American Political Science Review* 100 no. 3 (August 2006), 389. Even Melvyn Stokes' recent history of *Birth*, which clarifies much of the innumerable ambiguities surrounding the film's exhibition and reception, carries the oft-stated claim that this was the first motion picture shown in the White House. See: Melvyn Stokes, *D. W. Griffith's The Birth of a Nation*, Oxford: Oxford University Press, 2007, 111.

<sup>3</sup> *Ibid.*, 387.

with what we imagine to be a racist Wilson cheering on the hooded Klan at *Birth's* climax, we quietly ignore the evidence.

If this was not the first film shown at the White House, if Wilson hadn't arranged it and hadn't call it a "terribly true" history "written with lightning," the oversight is both historically meaningful and indicative of a story far more fascinating, for it is the starting point of a crisis in liberalism, in which emerging politics of free speech collide with emerging politics of racial justice, two sites of cultural formation that defined in part the contours of modern liberalism. These currents of power in the years leading up to America's entry into war did indeed shape the Wilsonian features of modern liberalism—the association between Wilson and *Birth* reveals a contest of power, political meaning, and new media in American government's highest office that sets the stage for a wartime administration deeply concerned with the preservation of a democracy that it was simultaneously threatening to imperil.

The birth of modern free speech politics can be located in the reactions to *The Birth of a Nation*. Supporters of the movie formed a vanguard of reactionary democracy that was also, in Richard Hofstadter's view of this era, populist in its heightened expression of nativism and racial anxiety. A populist conception of *Birth* makes sense, not least of which because D. W. Griffith himself was a prominent articulator of populism in many of his early Biograph movies,<sup>4</sup> but *Birth* also strikes the tenor of populism's

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<sup>4</sup> *A Corner in Wheat* (1909), *A Drunkard's Reformation* (1909), and *The Usurer* (1910) are among the most prominent.

anachronistic place in 1915 American culture—the economic success of *Birth* had a significant effect on making movies seem more respectable, cultured, and prepared to move beyond the storefront nickelodeons in working class districts that had so defined the first era of American movies. *Birth* simultaneously shaped and destroyed cinematic populism at a defining moment in which progressive liberalism “turned sour, became illiberal and ill-tempered.”<sup>5</sup> With American agrarian radicalism long in decline, populism of this era was left with little more than nativist reaction and racial anxiety. Elite progressive reformers, for their part, were confronted with a film that stoked racial anxiety and enmity and aided in the separation of populism from progressivism. The politics of free speech was left to the populists, whereas the nascent and half-formed foundations of modern liberalism were left to the progressives, who in many cases understood little of the meaning and scope of this fracture.

### The Movies Come to Wilson

On February 3, 1915, Thomas Dixon, Jr. met President Woodrow Wilson at the White House in Washington. Dixon—the author of two works of sensational racism, *The Clansman* and *The Leopard’s Spots*—had come to ask his old Johns Hopkins University friend for a favor. A motion picture production based off his work had just been completed in Southern California and he wanted Wilson to see it, “not as President, but

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<sup>5</sup> Richard Hofstadter, *The Age of Reform: From Bryan to FDR*. New York: Alfred A. Knopf, 1955, 17–21.

as a scholar and student of history.”<sup>6</sup> Dixon thought it better to give as few details as possible. Dixon later wrote to Wilson aide Joseph Patrick Tumulty that:

I didn't dare allow the President to know *the real big purpose back of my film—which was to revolutionize Northern sentiments by a presentation of history that would transform every man in my audience into a good Democrat!* ... What I told the President was that I would show him the birth of a new art—the launching of the mightiest engine for moulding public opinion in the history of the world.<sup>7</sup>

This would not be the first time Wilson had watched a movie at the White House. Some seven months previous, the president and his first wife had entertained 40 cabinet members and distinguished guests for an exhibition of *Cabiria* (1914), the epic production of Italian imperial glory that was drawing fairly well in America. It was an outdoor affair, and the screen, “set in the rose gardens behind the west terrace,” had a grand piano providing accompaniment below.<sup>8</sup> It wasn't entirely unusual, then, for D. W. Griffith's *The Birth of a Nation*—a film that, in its monumental and historical form, owed some debt to *Cabiria*—to get a hearing with the chief executive. Wilson agreed to Dixon's wishes on two conditions: that the film be screened at the White House since he was still officially in mourning; and that the press should not in any way be informed of the event.<sup>9</sup> That Dixon hid his motives—to reveal the power of film propaganda, “the

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<sup>6</sup> *The Papers of Woodrow Wilson*, vol. 32, 142, n1.

<sup>7</sup> *Ibid.*

<sup>8</sup> Taft and even Roosevelt watched movies in the presidential palace. *Moving Picture World* notes that the *Cabiria* exhibition was the first outdoor screening at the White House. See: *Moving Picture World* 21, n3, July 18, 1914, 461–62; Stokes, *D. W. Griffith's The Birth of a Nation*, 111.

<sup>9</sup> *WWP* 32, 142, n1.

mightiest engine for moulding public opinion”—and that Wilson wanted to hide this screening from public knowledge, is telling. Both intentions indicate that Wilson was sensitive to the tension between propaganda and democracy, between the social power of the cinema and the political power of the presidency. Is propaganda an expression of democratic will, or a manipulation of it? Could censorship cut propaganda out of the democratic organism and still preserve the virtues of free expression? For Wilson, these questions—surfacing in the White House screening of *Birth* and carried into the subsequent controversies over the film’s exhibition—lay the ground for the political contests of preparedness and neutrality, and ultimately the World War itself, in which the struggle of preserving democracy is situated within the push and pull of propaganda and censorship.

A few weeks after Dixon’s meeting, on the evening of February 18, two simplex projectors were set up in the East Room. Cast on the white wooden panels was a stunning three-hour film on American myth, history, and race paranoia that was as captivating as it was contradictory. Heroic battle sequences of the Civil War were imbued with a powerful pacifist message; racial masquerade of white fear and demonized black identity carried with it the undeniable moralism of national unity; “historical facsimiles”—veritable copies of the past—reinforced the myths of Reconstruction, the frontier, Lincoln as “the great heart,” and the righteousness of the Ku Klux Klan’s terror campaign in the south. There were also moments in the film of deeper, emotional contradictions, an ambiguity of fear and desire, as when Flora Cameron, hiding in the cellar, appears to

be overwhelmed with glee as her family's home is pillaged by "an irregular force of guerillas."



Fig. 4. An "irregular force of guerillas"



Fig. 5. Flora can barely contain her excitement

Wilson's reactions to *Birth* have sparked an ongoing historical debate, particularly the claim that Wilson had remarked upon the film's completion that it was "like writing history with lightning. And my only regret is that it is all so terribly true." This statement has no contemporary source. While it may be true, there is plenty of evidence that the remark is apocryphal. In a 1977 interview, the last survivor of the White House *Birth* screening indicated that Wilson "seemed lost in thought during the showing," and as the movie ended, Wilson "walked out of the room without saying a word."<sup>10</sup> As for the film striking Wilson as "terribly true," there are indications that Wilson distrusted the "truth" of the moving image more generally, as his speech to the Film Board of Trade a year later seems to indicate.

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<sup>10</sup> *WWP* 32, 267, n1.

In these remarks, made at the Biltmore Hotel in New York on January 27, 1916, Wilson made no mention of censorship or the growth of the motion picture industry—he focused solely on the inability of moving pictures to reveal human truth. Describing his astonishment and annoyance at seeing himself on film, Wilson concluded that “the external appearances of things are very superficial, indeed. I am very much more interested in what my fellow men are thinking about than in the motions through which they are going. While we unconsciously display a great deal of human nature in our visible actions, there are some very deep waters which no picture can sound.”<sup>11</sup> For Wilson, a “great nation” is not a “visible thing” but a “spiritual thing,” beset by the lies and half-truths of self-interest and superficial appearances. As a select group of powerful movie men looked on, Wilson mused: “I wonder how men venture to try to deceive a great nation.”<sup>12</sup> One can only speculate on whether Wilson’s thoughts on moving images were at all formed by *The Birth of a Nation*, but the speech is an unusual rebuke of the truth-revealing power of the cinema, a power that was commented on and celebrated almost ceaselessly in Wilson’s time. His subsequent time in office, through America’s entry into World War I and after, was marked by noticeable trepidation and concern over the social power of commercial cinema.

Melvyn Stokes has noted that the *Birth’s* historical account of Reconstruction and the Civil War were not very different from Wilson’s own views, that quotes of Wilson’s A

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<sup>11</sup> *WWP* 36, 16.

<sup>12</sup> *Ibid.*, 17.

*History of the American People* are shown in some of the film's inter titles, and that it was unlikely for the Southern-born Wilson to be "bothered by the film's rampant racism." But the idea that Wilson would not be bothered by *Birth's* racism glosses over some of the complexities of Wilson's views on segregation, miscegenation, and his relationship with Dixon. Dixon had clashed with Wilson previously on the former's obsession with racial intermixing. On July 27, 1913, Dixon wrote to Wilson protesting a decision to appoint a black Register in the Treasury Department, an appointment that put a black man in a position to "boss white girls." For Dixon, this was "a serious offense against the cleanliness of our social life." In Wilson's pointed response, he tells Dixon he is well aware of the "considerations," and that they "do not need to be pointed out to me." Furthermore, Dixon did not understand what was going on at Treasury: "We are trying—and by degrees succeeding—a plan of concentration which will put them all together and will not in any one bureau mix the two races."<sup>13</sup>

Although they agreed on the principle of segregation, they came at the issue from differing perspectives: for Dixon, segregation was a response to a social and historical reality, that race violence, riots, and the "infamy" of miscegenation needed to be met with segregation; for Wilson, segregation was preventative, it kept the undesired racial ferment at bay. With segregation Wilson sought stability, Dixon a righteous vengeance. This distinction does not absolve Wilson of racist sentiment but it does indicate the

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<sup>13</sup> *WWP* 28, 94.



possibility that the “rampant racism” of *Birth* could have disturbed Wilson greatly—that he saw *Birth*’s opprobrium of black desire for white women and the subsequent white terror of vigilantism as precisely the kind of violence he thought institutionalized segregation would resolve. Throughout his public career, Wilson sought to avoid any entanglements with race—his support of segregation, then, can be seen as a strategy for insulating himself from any potential and more inflammatory racial incidents. A naive and sad point of view, to be certain, but qualitatively different from Dixon’s paranoid proselytizing.

Wilson’s policies of segregating federal government could not insulate him from William Monroe Trotter, a Harvard-educated black newspaper editor, businessman, and political activist from Boston. Trotter, well known as strong-willed and opinionated, confronted Wilson in November, 1914, to protest against segregation. Wilson was shocked that Trotter had treated him as merely a man blind to racial injustice, not a revered president. In the encounter, the famously austere Wilson lost his self-control, surrendering “to the ‘passion’ he accused Trotter of bringing into the president’s office.”<sup>14</sup> He later expressed regret over how he handled the incident, that he was “a damn fool,” not for recognizing the injustice of segregation, but for letting his emotions control his behavior. In his unparalleled biography of Wilson, John Milton Cooper Jr. put the encounter into context:

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<sup>14</sup> John Milton Cooper Jr., *Woodrow Wilson, A Biography*. New York: Alfred A. Knopf, 2009, 270–1.

More was involved here than Wilson's usual desire to avoid issues involving race. It was revealing that he suffered this breakdown of self-control not long after Ellen's death. Nothing like it would happen again while he was president, except in smaller, less conspicuous ways after he suffered his stroke.<sup>15</sup>

A little more than 3 months later, the widowed Wilson sat in the White House East Room watching *The Birth of a Nation*. If Wilson was troubled over the race paranoia of *Birth*, it helps explain his embarrassment over the film's subsequent controversy— and attempts to distance himself as much as possible from the production. When his secretary recommended he draft a letter stating clearly he did not approve of the film, Wilson replied with an affirmative, so long as he would not be seen as supporting Trotter, who had spearheaded the campaign against *Birth* in Boston.<sup>16</sup> When revival screenings of *Birth* were planned during World War I, he expressed his disapproval of this “unfortunate production” and sought to have it suppressed.<sup>17</sup>

The evening that followed the White House screening saw another private exhibition of *Birth*, this time in the grand ballroom of the Raleigh Hotel in Washington. In attendance was a distinguished group of political elites—perhaps the most impressive group of political-power-players-turned-movie-spectators yet assembled—that included Supreme Court Justice Edward Douglass White and Secretary of Navy Josephus

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<sup>15</sup> Ibid., 271.

<sup>16</sup> *WWP* 33, 68; *Moving Picture World* 24, no. 7, April 15, 1915, 1122.

<sup>17</sup> Arthur Link, *Wilson: The New Freedom*. Princeton: Princeton University Press, 1956, 252–54.

Daniels, along with 38 U.S. senators and 50 members of the House of Representatives.<sup>18</sup> Press accounts of this screening placed both Griffith and Dixon in attendance, with the director in particular lavishly praised by the audience at the film's completion. These private Washington exhibitions were intended to shore up political support for the film before its premiere in New York.

Political support from Washington, however, proved disappointing for the producers. Justice White—a Southerner and former Klansman who had sided with the majority in *Plessy v. Ferguson* (1896), a case that affirmed the constitutionality of “separate but equal” state segregation—also attempted to distance himself from *Birth*. In April, 1915, he threatened to denounce the film publicly if the producers did not stop using his name in its promotions, and suggested Wilson do the same.<sup>19</sup> White was at this time busy drafting the majority opinion for *Guinn v. U.S* (1915), a case that struck down the grandfather clauses of the South, recognizing the “direct and positive language” of Fifteenth Amendment’s suffrage rights.<sup>20</sup> His wariness of *Birth*, like Wilson, may have been politically motivated, belying his own personal opinions on the question of race.

That Southerners Wilson and White were wary of *Birth* and the controversies surrounding its exhibition is remarkable: though the film was not universally praised, it had substantial critical and popular backing; moreover, there are few examples in

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<sup>18</sup> Stokes, *Birth*, 112–13.

<sup>19</sup> *WWP*, 32, 486.

<sup>20</sup> *Guinn v. U. S.* (1915), caselaw, <http://caselaw.findlaw.com/us-supreme-court/238/347.html> (accessed on 6/19/2015).

American film history of a production that courted political allies so aggressively, allies whose careers had indicated at least a similar sentiment to the political meaning of the film itself, and whose very works of political history would appear in the film, to be so publicly and unequivocally shunned by those very allies. Wilson and White's decisions to distance themselves from the production indicate ambivalent if not antagonistic political responses to the power of commercial moving pictures.

Historians have yet to question this ambivalence directly. Wilson and White's reactions reveal the constitutive entanglements of liberalism and America's white supremacy present from the origins of the American experiment. Griffith was able to harness a new technology for the vision of America's historical myths of racial demise through racial integration, but, in so doing, it could not help but envision the realities of race terror and paranoia. Did *The Birth of a Nation* undermine the antiquated paranoias of whiteness? If the reactions of Justice White—a former Klansman and architect of segregation—and President Wilson—an ardent Southern apologist who segregated the White House—are any indication, the political meaning of *Birth* cut both ways: it was a fascist spectacle that revealed as much as celebrated its racist logic. In laying bare the foundation of white supremacy and its racial terror, the movie imperiled the development of film free speech, the liberty on which it defended its vision.

Democracy Imperiled: *Birth* and the National Board of Censorship

The political reactions to *Birth* were mixed, but on the whole state and municipal censors who approved the film found mayors, governors, and a few police chiefs willing to overstep the censor's authority in suppressing exhibition, in some cases using old "master and slave" laws designed to control racial ferment and violence. In turn, municipal and state courts on the whole were willing to overturn these executive decisions, sometimes using the 14th Amendment in protecting the film producers' property. These ironic instruments of fighting for and against the film—slave laws used to censor the racism of *Birth* and Civil War Amendments used to defend its exhibition—are examples of the kind of "reassociation of ideas and purposes" or "ideational drift" that were often at the center of the progressive era's political entanglements. American law itself formed the basis of some of the contradictions through which the history of the film would unfold. If the ideas deployed to fight for and against the film were contradictory, the purposes fell along fairly predictably political lines: *Birth* was more often suppressed by executive authority, reflecting that branch's immediate concern with public peace and order; such orders were in some cases overturned by judicial rulings concerned with protecting private property from government seizure without just cause.

The fight began in New York, and almost immediately threatened to tear apart the quintessential progressive institution of motion picture regulation, the democratic National Board of Censorship. This Board, founded by the progressive People's Institute and funded in part by the Motion Picture Patents Company, agitated against political

ensorship by local, state, and federal authorities and advocated for so-called “volunteer censorship,” that is, the voluntary submission of films by producers and distributors to a board of voluntary censors for review, suggested changes, and approval. By 1915, the Board had gained much respect in the industry, in some government circles, and among the more sympathetic reformers. The Board, which later in 1915 would change its name to the National Board of Review to reflect its more advisory role, was exemplary of regulatory authority in the progressive era—a quintessential progressive organization composed of a citizen body of white, well-educated protestant elites, many of whom were women. Political authorities often looked to the Board as a guide for how and what to censor. Further, producers and distributors would often use the Board’s approvals as leverage in pushing back against political censorship. The Board was active nationwide, sending representatives to state capitols at the first hint of censorship agitation. Though it was consistently criticized as being bankrolled by the very commercial interests it was charged with regulating, financial records of the Board show that operating funds were quite modest, and executives earned salaries commensurate with middle to upper middle class wage earners.<sup>21</sup>

A democratic middle way toward regulating the social effects of the cinema—a mediator between the reform sentiment and commercial interests that bypassed state

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<sup>21</sup> A January 1914 financial report shows that the Board had \$1,295.16 of expenses and \$1,200.00 in revenue. A balance sheet from August 1915 shows that the Board was \$204. 78 in the red. W. D. McGuire’s salary was \$208.00 a month in 1914. See: *NBRMP* records, Box 118 and 120.

authority—had taken hold in an era conducive to moral volunteerism. For the members of the Board and other progressive elites, political reform often entailed reorienting the mechanisms of democracy toward moral control and conditioning that was administrative, not coercive. As John Collier put it, the Board intended to create a new kind of censorship for public morality, which would be “radically *administrative* in character rather than *statutory*, and would eliminate the courts as far as possible from the problem of morally regulating [public] performances.”<sup>22</sup> For Collier and others, this moral regulatory power would emerge from the public will, in effect, the public regulating its own morality through the administration of elite progressives—“collective control must be exercised over the morals of public performances.”<sup>23</sup> Such a notion of voluntary censorship, as we will see below, would be deployed as guiding principles, if not in administrative practice, by the Committee of Public Information after America’s entry in the war, and, in part, laid some of the conceptual groundwork for self-regulation in the industry. This last point is more than a bit ironic, since the NBR had come out publicly against so-called trade industry censorship—self-censorship of the movies—by 1919, arguing that the only effective censorship should be democratic and voluntary, not political and not wholly controlled by commercial interests.<sup>24</sup>

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<sup>22</sup> John Collier, “Movies and the Law,” January 20, 1912. *NBRMP* records, Box 143, 1.

<sup>23</sup> *Ibid.*, 2.

<sup>24</sup> NBR Statement, April 30, 1919, *NBRMP* records, Box 9.

Critics of political censorship defended the Board and its mission, arguing that such a voluntarily administrative process would bring about good citizens and a healthy society. Although the film industry was developing its own self-regulatory capacity, it used the existence of the Board to push back against agitation for political censorship. The link between propaganda and film free speech was explicit in this conception. “The essence of free speech and a free press is the power of propaganda as the media of intelligence,” wrote members of the House Education Committee who were opposed to federal censorship of the movies.<sup>25</sup> Propaganda was the essence of free speech, and what better body to “review” and evaluate this propaganda than progressive moralists at the National Board of Review.

But what kind of propaganda would be deemed acceptable by the Board? Propaganda for whom and for what? The *Birth* controversy struck at the heart of the Board’s main weakness—there was simply no universal agreement on how a democratic censor board should adjudicate the political meaning of the screen. The Board was hopelessly divided on the question of *Birth*. Although it initially passed the film on January 20, 1915, a unanimous vote without much controversy, the National Association for the Advancement of Colored People pressured the Board’s chairman, Frederic C. Howe, to reconsider the film. The NAACP was at this time a rather small organization with a minimal and scattered presence across the nation. *The Birth of a Nation* would do

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<sup>25</sup> *MPW* 28, n. 10, June 3, 1916, 1665–66.



much to change that, galvanizing the organization into a more national and prominent role in the fight for racial justice. Howe, who had already been making plans to leave the chairmanship and take the post of Commissioner of Immigration at Ellis Island, was a liberal-minded reformer from Ohio who considered Griffith's epic feature an unfortunate and hopelessly racist film.

The confusion over the Board's views stemmed at least in part from the fact that W. D. McGuire, the executive secretary of the Board, personally saw nothing wrong with the film. Much of the executive leadership agreed with McGuire, though in a confidential letter to J. W. Binder, McGuire admitted that "I expect we will have several resignations from the Advisory Committee on account of [passing the film]."<sup>26</sup> It seems as though Howe, by his own admission, did not leave the National Board because of the *Birth* controversy, as some historians had later claimed. In a letter to McGuire, Howe stated acknowledged that the Board "must feel embarrassed at my protest against "The Birth of a Nation" but that his decision to resign was not "in a spirit of protest ... for I tendered my resignation a long time ago."<sup>27</sup>

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<sup>26</sup> McGuire to Binder, March 13, 1915. *NBRMP* records, Box 16, Binder correspondence. McGuire orders Binder to destroy the letter after reading it, but, unlike much of the Board's correspondence on *Birth*, this letter survives, likely because it was tucked away in the Binder correspondence papers, not in the general film files. The film file on *The Birth of a Nation* in the NBR archives contains just 3 documents totaling 4 sheets of paper, surprisingly little on such a prominent and controversial film. For comparison, the film file on *The Black Stork*—a rather obscure program feature—is more than 100 times larger than the one on *Birth*. Of the documents that survive, many are labeled confidential or indicate that the information is for the recipient only, suggesting that there was interest in white washing the *Birth* files before archiving the Board's papers.

<sup>27</sup> Howe to McGuire, undated. *NBRMP* records, Box 29.

Howe nonetheless asked that the film be reviewed by the Board's General Committee, which occurred on March 1, 1915. J. E. Spingarn, chairman of the NAACP, was given a few minutes to present the case against the film's exhibition. Howe spoke as well, arguing that "the picture portrayed the Negro in such a brutal and degrading way that half of it, or the second part, should either be eliminated or cut so completely but that little of it would be left."<sup>28</sup> The NAACP took Howe's message as a condemnation of the last half of the film by the entire Board. May Childs Nerney, national secretary of the NAACP, wrote to the Los Angeles branch that the Board had disapproved of the entire second half of the film.<sup>29</sup> According to Board documents that survive, the Board resolved to "condemn in the second part of the picture *certain incidents* which it felt might create race hatred and prejudice, and which constituted a reflection on ten million citizens" (emphasis mine).<sup>30</sup> The NAACP wanted to believe that Howe spoke for the entire Board, and that their justifiable grievances would be heard by the democratic body. The Board itself gave the appearance that—whatever the actual outcome over reviewing the film—the process was fair, liberal-minded, and reflected the will of the majority. The reality it seems, is that the Board was faced with a crisis that called into question the very democratic values the Board claimed to embody—that they represented not the public

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<sup>28</sup> Quoted in Stokes, *Birth*, 135.

<sup>29</sup> Ibid.

<sup>30</sup> Undated and unauthored document, *NBRMP* records, *The Birth of a Nation* film file, Box 103.

will but commercial interests squarely aligned with the dominant racial order of white supremacy.

A final meeting was called on March 12, where the Board approved the film by a vote of 15 to 8, subject to two additional changes: that the inter title reading “Having profiting by the trade and having no use for slaves themselves, the traders of the Seventeenth Century became the Abolitionists of the Nineteenth” be changed to “The Nineteenth Century Abolitionists demanding the freeing of the slaves”; and that one additional subtitle be added, stating the ridiculous claim that “This is an historical presentation of the Civil War and Reconstruction period and is not meant to reflect in any way upon any race or people of today.”<sup>31</sup> These changes were made and remain in the surviving versions of the film today. With Howe now resigned and working at Ellis Island, the Board set about rehabilitating *Birth*<sup>32</sup>—it made several mentions of the fact that the Ohio State Board of Censorship had approved the film (which, as we will see, is not true) and that a “member of the Supreme Court ... and the President’s Cabinet” had sent “letters of recommendation regarding the film.”<sup>33</sup> Fifteen years later, in a review of *Birth* for the NBR magazine, the Board wrote that it “has always considered ... “The Birth of a Nation” which it reviewed in 1914 [sic], as one of the most outstanding pictures ever to come before it ... the “Nation” is not dead. It’s subject is too vital to ever let it die, and

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<sup>31</sup> Ibid.

<sup>32</sup> And, presumably, decided to destroy much of the details of the controversy from its files.

<sup>33</sup> Ibid.

it is probably regarded with more sentiment within the industry than any other film ever made.”<sup>34</sup>

From 1917 to 1920, the Board’s power began to wane—assailed by reformers as an industry-funded lackey and looked upon by movie men as a regulatory annoyance, the Board simply had few allies in its mission of voluntary censorship. By 1921–22, as the Motion Picture Producers and Distributors of America was formed in New York, the National Board of Review was already well on its way to becoming an antiquated organization. Will Hays, MPPDA president, was not very receptive to the National Board, refusing to attend its functions and at times failing to respond to the Board’s requests for cooperation and collaboration. By March 1923, an internal memo to Hays recommended that “we should at once move to abolish the National Board of Review.”<sup>35</sup> Though the Board managed to hold on and survive into the 1960s, by the early 1920s its days as an important administrative body for the social regulation of American cinema had long since passed. The coming of sound in 1927 was the final nail in the coffin to any relevancy for the Board. Talking pictures necessitated the institutionalization of prior restraint—censorship at the script development and production stages—while the Board’s censorship had always been a post-production process. The quintessential

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<sup>34</sup> Review of *The Birth of a Nation* sound version, *NBR Magazine*, January 1931, v. 6, no. 1. Quoted from: *NBRMP records, The Birth of a Nation* film file, Box 103.

<sup>35</sup> Unauthored Memo to Hays, March 22, 1923, *WHH Papers*, vol. 1, Reel 9.

progressive organization was able to carry on in muted form, but only as a powerless bystander to the development of American film in the sound era.

### Boston and Chicago: Racism and the Limits of Moral Justice

Meanwhile, *Birth* was thrown into the urban conflicts over machine party politics, democracy, and the reform sentiment with exhibitions in Boston and Chicago. Boston—with its long abolitionist history—was the site of the most contentious battles over the exhibition of *Birth*. Democratic mayor James Michael Curley, who had managed to cobble together a powerful voting block from the city's minorities and disadvantaged, was sensitive to the calls to censor *Birth* but insisted he was powerless to stop its exhibition.<sup>36</sup> It was in Boston that Griffith's representatives began an aggressive appeal to authority—the names of numerous political and cultural elites, who presumably had seen and approved of *Birth*, were published in a Boston *Herald* editorial written by Griffith's manager, J. J. McCarthy. The same editorial offered \$10,000 to anyone who could find a single historical inaccuracy in the film—a preposterous claim in hindsight, but a testament to the racism that characterized much of America's sanctioned historical record up to that time.<sup>37</sup>

After a public hearing and some minor changes to the film (changes that were recommended but not required), the Boston premiere began at the Tremont Theatre on

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<sup>36</sup> Stokes, *Birth*, 141–50.

<sup>37</sup> *Ibid.*

April 10, 1915. Ushers dressed in military blues and grays escorted patrons to their seats, and Griffith—with his usual combination of humility and eagerness to bask in praise—emerged from the wing after the screening to address the audience and receive their applause.<sup>38</sup> In the coming days, critical and popular praise of the film swelled in the Boston press. William Trotter—who had spoken at the public hearing to remind the mayor that he relied on black votes to stay in office—continued to pressure Curley for the film’s suppression, but the mayor feigned powerless, despite the fact that he did have the legal power to stop an exhibition of a film that threatened “to injure the morals of the community” or that could be deemed “immoral or obscene.”<sup>39</sup>

As the Boston exhibition was under way, Griffith followed a two-pronged offensive: he hired detectives to trail and watch black leaders of the anti-*Birth* protests and attacked them in the local press; he also sought an addendum to *Birth* that he thought would defuse the racial outrage: during some screenings, a 5 to 6 minute short film on black progress at the Hampton Institute in Virginia directly followed the feature.<sup>40</sup> The so-called “Hampton Epilogue” of *Birth* was only sporadically screened, and while the film does not survive, it does not take much to imagine the sad hypocrisy this epilogue must have appeared to many: At the end of *The Birth of a Nation*, the Klan rides victoriously through the town of Piedmont and black residents flee in terror. “Dixie”

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<sup>38</sup> Ibid., 143–44; Dick Lehr, *The Birth of a Nation: How a Legendary Filmmaker and a Crusading Editor Reignited America’s Civil War*. New York: PublicAffairs, 2014, 183–203.

<sup>39</sup> Quoted in: Stokes, *Birth*, 143.

<sup>40</sup> Ibid., 144.

plays as the “next election” is shown, where Klansmen on horseback and with guns drawn intimidate black residents to return to their homes and stay away from the polls. The film culminates in the consummation of love between the Camerons and Stonemans, as visions of heaven and hell at the “sea’s edge” give way to an eternal city on a hill. Griffith thought it wise to follow this fever dream of white paranoia and utopian racism with a short newsreel on black progress.

A week after the Boston premiere, Trotter had had enough. He led a group of black men to the Tremont on April 17 and tried to purchase tickets for the *Birth* exhibition that evening. When refused, Trotter and his group remained in the lobby, accusing management of instituting Southern-style segregation in Boston. The police arrived and attacked the group—Trotter was assaulted with a club and ten men were arrested.<sup>41</sup> Despite this, several “agitators” managed to get into the theater for the screening, where, during the infamous Gus–Flora rape sequence, someone threw an egg that hit the center of the screen.<sup>42</sup> Stink bombs were ignited and the theater was cleared. Sporadic fighting, including physical altercations and more arrests, spilled out into the

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<sup>41</sup> Ibid., 145–46; Lehr, *Birth*, 214–24.

<sup>42</sup> This was not the first time someone launched an egg at the Gus–Flora rape sequence: Howard Schaeffle, a white worker and member of the Industrial Workers of the World, who after the incident identified himself as a Southerner and libertarian, threw more than one egg at the screen during the New York screenings at the Liberty Theater. For a deeper analysis of this incident, see Jane Gaines, *Fire and Desire: Mixed Race Movies in the Silent Era*, Chicago: University of Chicago Press, 2000. In this important work, Gaines writes that “an egg that is directed at race hatred in the world hits the motion picture screen instead.”

lobby and the street. It proved to be some of the worst racial violence Boston had seen since the Civil War.

The following day a mass meeting took place at Faneuil Hall where a majority black audience heard Trotter and others speak out against the film. This was one of at least 18 mass meetings held by black Bostonians over suppressing *Birth of a Nation*. Most of these meetings had hundreds, and sometimes thousands, of concerned citizens in attendance. Unlike other *Birth* fights in New York and Chicago, the Boston campaign was waged mainly by black citizens. According to Stokes, direct agitation, lobbying, and organizing against *Birth* proved to have a lasting effect on racial solidarity in the Boston area. But, ultimately, they would not find success fighting against this vicious film—the machinery of democracy proved both cumbersome and ineffective in being dominated by indifferent white elites.<sup>43</sup> Realizing that Curley’s sympathies were not translating into action, the meeting resolved to carry the fight to the governor’s office to push for a statewide censorship bill. Governor David I. Walsh—also a Democrat and with hopes to pry black votes from the Republican Party—proved equally as sympathetic as Curley, but with some resolve to act: he instructed the state attorney general to prosecute the Tremont management for violating a 1910 law prohibiting obscene and immoral performances; he also called on the Massachusetts legislature to pass legislation on state censorship.<sup>44</sup>

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<sup>43</sup> Ibid., 148–50.

<sup>44</sup> Lehr, *Birth*, 225–39.



Prosecuting the Tremont Theater for exhibiting immoral pictures proved telling, not just for the *Birth* controversy but for the relationship between the progressive era and race. Municipal Court Judge Thomas H. Dowd stated in his judgment that the 1910 law did not apply to *The Birth of a Nation* because “the arousal of racial prejudice” did not apply to expressions of immorality. In other words, racism is not immoral in the logic of the progressive era. It would require a new normative grounding to create the political conditions for racial justice in America—a grounding not in moral justice but in social justice. The antiquated framework of good and evil in a white and protestant dominated society could not capture the social complexities of racial inequality and prejudice. Although some attempts to suppress *Birth* on grounds that it incited racial violence and unrest proved successful, nowhere in the fight against this film did censorship prevail on the reasoning of morality—an overlooked but crucial aspect of *Birth’s* history, if only because film censorship generally was almost always articulated through moral precepts. The exception of *Birth* underscored the exception of race in the political projects of progressive moral reform.

Censorship legislation was the last option in stopping *Birth* screenings in Boston. The NAACP and black leaders threw themselves fully into the legislative process, lobbying state representatives directly and keeping public interest in the process high. Though several competing bills were submitted, the Sullivan bill was eventually passed with the NAACP amendment that only a majority of the censor board—not a unanimous decision—was needed to suppress a film. Governor Walsh signed the bill into law on May

21, 1915. That day Trotter pressed Mayor Curley to act. As Stokes writes that the Boston mayor was “interested in including as many blacks as possible in his coalition of supporters. Yet he can hardly have been unaware that by the end of May, 100,000 or so white Bostonians had watched (and often expressed enthusiasm for) the movie and that African Americans still made up only a small percentage of the total population of the city.”<sup>45</sup> A public hearing was held on June 2, in which more speakers were invited to present their case for and against *Birth*. The newly empowered Boston censor board closed the hearing with an announcement that the Tremont Theater would not have their license revoked for screening *Birth*.<sup>46</sup> The Boston fight over Hollywood’s first blockbuster was now over.

In Chicago, the fight over *Birth* was less protracted than in Boston. Outgoing mayor Carter H. Harrison made the unusual move of ordering the chair of the Chicago Board of Censors, Major Lucius C. Funkhouser, to approve the film before the Chicago board or the deputy police superintendent could review and pass it.<sup>47</sup> This effectively cut out potential trouble for the film by limiting the number of political authorities involved. But Mayor Harrison was a lame duck—newly-elected Republican machine politician William H. (Big Bill) Thompson was about to begin his long tenure as one of Chicago’s most notorious mayors. Thompson—indebted to the black voters of the city who had

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<sup>45</sup> Stokes, *Birth*, 149.

<sup>46</sup> *Ibid.*, 149–50.

<sup>47</sup> *Ibid.*, 151.

voted overwhelmingly for him in the Republican primary and general election—rescinded the approval of *Birth* in mid-May, before any public exhibition of the film in Chicago. While Thompson did not cite any legal justification for rescinding the permit, the NAACP—who had turned their energies to Chicago even before Harrison’s decision—cited the city’s “Ordinances Governing the Exhibition of Motion Pictures” in defending the ban, which prevented the issuance of a license to any film that created “contempt for any class of law-abiding citizens.”<sup>48</sup>

The producers of *Birth* quietly followed the same strategy they had developed in the east—private exhibitions to the city’s political and economic elite in order to influence the public perception of the film from the top down. Chicago fight against *Birth* was unusual, however, in that this all took place before any public screening of the film. In Boston and New York, where public exhibitions had created substantial white public support for the film while the fight to suppress it was taking place, defenders of the film maximized public sentiment and kept censors on the defensive. In Chicago, however, the lack of public approval only necessitated a political struggle in which public will and pressure played a more minor role. One aspect of that struggle pitted city officials against state government. Upon hearing that Mayor Thompson had revoked the film’s license, the Griffith interests began pushing for a censorship bill in the Illinois state legislature.

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<sup>48</sup> Quoted in: *Ibid.*, 151; See also: “City Ordinances Governing the Exhibition of Motion Pictures,” Undated pamphlet, in: *The Chicago Municipal Code of 1922*, 506–08; and Donald Ramsey Young, *Motion Pictures: A Study in Social Legislation*. Westbrook, ME: Westbrook Publishing Company, 1922, 60–64.

The threat of statewide censorship from Springfield might put pressure on Chicago to be more amendable to Griffith's film.<sup>49</sup> That Griffith—an ardent defender of film's free speech rights and soon to be a prominent figure in the fight against the reform sentiment—pushed for state censorship over municipal censorship indicates that, unsurprisingly, his financial interest was greater than his political interest. More noteworthy, however, is the indication that, like in Boston, *Birth* stirred up censorship agitation. "Censor Bills Aplenty," warned a headline from *Moving Picture World*, which noted renewed interest in censorship in almost every location where *Birth* was exhibited.<sup>50</sup> A film that masqueraded as a principled call for free speech stoked the calls for censorship at nearly every stop of its roadshow tour. The question of a statewide city board put the Chicago censors in an awkward position. City officials argued that a statewide board could not "properly express the wishes of the people in each community" whereas "Home Rule in subjects of this kind is of utmost importance and is most desirable."<sup>51</sup> This protracted struggle would not be resolved until well after *Birth* had left town. The fight over *Birth* would have to be taken up in the courts.

On June 2, just as the fight against *Birth* was unraveling in Boston, J. J. McCarthy filed a petition seeking an injunction against Mayor Thompson's order at the Superior Court of Cook County. It took a mere 20 hours for the petition to force a hearing, much

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<sup>49</sup> The NAACP was certainly under the impression that it was Griffith and his interests who were pushing for a state censorship board. See: Stokes, *Birth*, 152.

<sup>50</sup> *Moving Picture World* 24, no. 7, May 15, 1915, 1124.

<sup>51</sup> *Chicago City Manual*. Chicago: Bureau of Statistics and Municipal Library, May 17, 1915, 224.

to the dismay of the NAACP and others who needed time to prepare a case against *Birth*. Scheduled for June 4 and presided over by Judge William Fenimore Cooper, the hearing was a disaster for the film's opponents. No one who spoke out against the film at this hearing had actually seen it.<sup>52</sup> Judge Cooper's decision agreed that the producers of the film had property rights from which they could not be deprived without due process of law. In relying on the 14th Amendment, Cooper's decision was not unique in the sense that private economic power was consistently upheld on the basis of the 14th Amendment throughout the progressive era. What makes this decision unique, however, was the way in which race prejudice was cast as the antagonist to this private power, reassociating the purposes of the slave-era amendment. The ascriptive hierarchy of white supremacy was articulated through landmark legal precedents that sought to protect individual liberty. Judge Cooper went further in his decision: he remarkably reoriented the racial inequalities so powerfully formative in *Birth* toward the film's protesters, arguing in effect that to censor the film would amount to racial prejudice against whites. "No one race or nationality," wrote Cooper in his decision, "has greater right under the law than any other has ... the law should be the same for black and white alike."<sup>53</sup> With this decision, *Birth* was freed for commercial exploitation throughout Chicago, where it played to packed houses through the summer and into the fall.

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<sup>52</sup> Stokes, *Birth*, 151–53.

<sup>53</sup> *Joseph J. McCarthy v. City of Chicago, a Municipal Corporation, etc., et al*, Superior Court of Cook County Decision, General No. 316146, quoted in: *NBRP*, Box 103.

Both Boston and Chicago's *Birth* controversy revealed the barriers to racial justice in America's democratic system, and indeed, the ways in which the very mechanisms of democracy function through and strengthen the durable hegemony of white superiority. Boston's celebrated tradition of town hall meetings and direct democracy at the municipal level could not stop the racist propaganda of *Birth* even as it succeeded in bringing agitation for censorship to the Bay State. This agitation for censorship continued to be a crucial aspect of Massachusetts politics until a statewide referendum at last settled the issue in November, 1922, when residents voted overwhelmingly against censorship. Likewise, in Chicago, mayoral power was checked by the courts, which affirmed the right of private property over public welfare, a ruling highly unusual for a film exhibition case against censorship. As the *Mutual v. Ohio* ruling of 1915 seemed to indicate, property rights were superseded by the state's legal right to protect the morals and safety of the public. *Birth* proved an exception to these legal justifications for censorship simply because white America did not see racism as a moral issue. As we saw in the previous chapter, the concerns over liquor were undeniably moral in the progressive era, to the extent that anti-liquor movies were subject to intense censorship scrutiny. The threats of the social capacity of the cinema—the ideas emanating from the screen and their potential to influence the public—so potent in the exhibition of almost any movie, even so-called morality plays, could not attend to the entrenched racism of American culture.

There were several municipal battles over *Birth* that showed Chicago was no anomaly—sympathetic mayors or censor boards in Oakland, Gary, St. Louis, Minneapolis, Louisville, Pittsburgh, Philadelphia, and Springfield, Massachusetts, all had orders to ban the film overturned in the courts. In Louisville, an arrest was made of theater owner Anson O. Bigelow on charges that he had violated the city’s old “master and slave” law that forbid any public performance tending to incite racial prejudice. This, too, was thrown out in the courts.<sup>54</sup> Outrage and protest could at least be heard through party politics and elected executive authority, but the legal system held firm to the pillars of white supremacy.

#### State Censor Boards and the Fight Against *Birth*

In 1915, there were three states in which legislatures passed bills for the establishment of motion picture censorship: Kansas, Ohio, and Pennsylvania. Kansas and Ohio both initially denied the license to exhibit *Birth*, whereas Pennsylvania’s censor board approved the film without much controversy. The controversies over the film in New York, Boston, and Chicago indicated that initial resistance to the film could be weakened with pressure on political elites, public approval through aggressive exploitation, and ultimately the courts’ propensity to protect property rights over public welfare. Despite initial refusals to license the exhibition of *Birth* in Kansas and Ohio, both

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<sup>54</sup> Stokes, *Birth*, 158–160.

states eventually relented and exhibited the film. But the censorship history of *Birth* also showed countervailing forces of increased resistance to the film after wide exploitation. In Pennsylvania, for instance, after the state board unceremoniously approved the film and months of exploitation across the state, censorship agitation stiffened, particularly in Pittsburgh and Philadelphia. Pittsburgh followed an almost identical course to that of Chicago—Mayor Joseph G. Armstrong initially banned the film only to have it overturned by the courts. The Allegheny County Court of Common Pleas ruled that the film “is in character and tone, highly educational, moral, and instructive, as well as emotional.”<sup>55</sup>

Likewise, in Philadelphia, initial actions to ban the film by the mayor were overturned in the courts. A few weeks later, with the film set to premiere in the city, anti-*Birth* protesters were ready. 500 black men and women assembled outside the Forrest Theater on September 20, 1915, with 150 police blocking the front of the theatre. The protest was initially peaceful, but after a brick went through a window of the theatre, the police moved forward, breaking up the demonstration by force. A firearm was discharged and several protesters were badly beaten by police. Many of the protesters were leaders of the community, people from “the educated classes, a lawyer, two ministers and several doctors and institutional heads being among the number.”<sup>56</sup> A handful appeared the next day at the mayor’s office to demand action. Despite the violence at the Forrest Theatre

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<sup>55</sup> *Nixon Theatre Company v. Joseph G. Armstrong, mayor of Pittsburgh, W. N. Mathews, Pittsburgh superintendent of police, and the city of Pittsburgh*, October, 1915, in: *DWGP*, Reel 2.

<sup>56</sup> “Colored Mob Starts a Riot over Film Play,” *Press* [Philadelphia], September 21, 1915, in: *DWGP*, Reel 2.



and the significant outcry over the film, the controversy over *Birth* abruptly ended in Philadelphia and the movie continued its run.

In “Bleeding Kansas”—a state with a violent and formative anti-slavery struggle—*Birth*’s denigration of blacks and pleasant portrayals of Southern slavery warranted an immediate ban on exhibition in the state. Their decision was based on four reasons: that the film was historically inaccurate; that it was “full of with race hatred”; that the film was sexually immoral; and that the film “could inspire sectional bitterness between the North and the South.”<sup>57</sup> There were several reasons why Kansas was probably the most outspoken critic of the film: the anti-slavery tradition was unique in the state—the unmitigated violence of the “Border Wars” contributed to a deep-seeded hostility to Southern views of the Civil War; the governor, Republican Arthur Capper, had developed strong ties to black Kansans and held racially progressive political beliefs for his time; lastly, Union veterans had a powerful and visible presence in the state (Kansas contributed more men per capita to the Union cause than any other state) and representatives of The Grand Army of the Republic protested the film directly, calling for a statewide ban.

Kansas was the first instance in which censors directly challenged the historical inaccuracy of *Birth*. During the Appeal Board hearing on January 24, 1916, a hostile board grilled the Epoch Producing Company manager H. A. Sherman, who seemed genuinely

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<sup>57</sup> Gerald Butters, *Banned in Kansas: Motion Picture Censorship, 1915–1966*. Columbia: University of Missouri Press, 2007, 85–86.

surprised over the charges that the film distorted history.<sup>58</sup> Sherman countered that Sardius Brewster, Kansas attorney general, was the first living man to ever question the film's historical accuracy, and offered to attach a short production to the film—the “Hampton Epilogue”—that showed the advances of black Americans since Reconstruction.<sup>59</sup> Brewster replied with a valid rejoinder, something that went unmentioned in all of the numerous hearings and meetings on *Birth* in Boston—why does *Birth* need an extra film showing black progress if its intentions are “not prejudicial”? In response, Sherman simply lied, stating that Booker T. Washington had seen and approved of the film. The Kansas appeals process was complete; the film was banned in the state, a ban later upheld by the state supreme court. It took a Democratic governor, the rise of the KKK, and 8 years to pass before *Birth* was commercially exhibited in the state of Kansas.<sup>60</sup>

The Ohio censor board also banned *The Birth of a Nation*, and through two appeals processes and two state supreme court cases, the ban was upheld. The fight over *Birth* was preceded in Ohio by another film on miscegenation, *The Nigger* (1915), which was initially banned outright in the state. *The Nigger*, a Fox Film release, cast the progressive era anxieties over liquor and race into a political drama: Philip Morrow, a Southern aristocrat, is elected governor of his state with the help of liquor interests. When the

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<sup>58</sup> Ibid., 86.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid., 94–100.

governor tries to enact a statewide prohibition bill, the liquor interests turn on their ally, revealing in the press that the governor “has negro blood in him. Morrow, undaunted, makes the Prohibition Bill a law, and resigns his office and sacrifices his love to devote his life to the uplift of the Negro.”<sup>61</sup>

The conflict around this film was centered along familiar lines of screen morality: several censorship bodies including the National Board of Censorship approved the film on the basis that moral tone of the film was uplifting and positive, whereas there were instances in Minnesota, Maine, and Ohio in which censors or public authorities objected both to the name of the film and the story.<sup>62</sup> After two rounds of cuts in Ohio, the film was subsequently approved with a new title, *The Mystery of Morrow's Rest. Birth* came to Ohio just as the fight against *The Nigger* subsided, and in the context of this, it made sense for the Ohio board to take a particularly strong stand against Griffith's film, which could not in any way be regarded as racially progressive. Despite Griffith's attempts to overcome censorship of *Birth* with an aggressive strategy of dividing black Ohioans—several prominent black citizens were offered money in exchange for their public approval—the Ohio ban on *Birth* held.<sup>63</sup>

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<sup>61</sup> *MPW* 25, no. 4, July 24, 1915, 734.

<sup>62</sup> On Minnesota see: “Against Federal Censorship,” *MPW* 24, no. 5, May 1, 1915, 761; On Maine, see: “Picture Offends Negros,” *MPW* 24, no. 3, April 17, 1915, 428; and on Ohio, see: “Re-Censors ‘The Nigger,’” *MPW* 24, no. 5, May 1, 1915, 760.

<sup>63</sup> Stokes, *Birth*, 157.

## The Crisis in Liberalism and the Limitations of Moral Reform

The praise of *The Birth of a Nation*—both among the public and the press—was far from universal, but it was far less divided than the reception among elected officials whose fortunes required a tenuous balancing of competing public interests. 1915 was a high watermark for governmental reform—to rejuvenate and evolve the institutions of government toward a more democratic mechanism responsive to public will. Public calls for equal rights and free speech—aided by the accelerating women’s suffrage movement—were vanguards of this democratization. The racist incitements of *Birth* drove a wedge between equal rights and free speech rights, triggering a crisis within liberalism. Political controversies in American cinema did not begin with *Birth*—boxing, white-slave, and prohibition films had all helped redefine the movie landscape as a political field of public contestation—but Griffith’s blockbuster had sharpened the contrast between key liberal ideas of equality and freedom of expression, thereby setting the purposes of censorship, for a time, toward very different political ends. In this context a heightened anxiety of war was already present, forcing the tension between democracy and propaganda to be reconciled within an environment of national security and preparedness.

However briefly, the fight against *The Birth of a Nation* aligned the moral reform sentiment with an emerging civil rights movement—blue nose progressives were suddenly in the same camp as various, and often competing, anti-racist movements. Liberals of the era—at least that variant of a liberal identity indebted to equal rights—

were now confronted with the unsavory politics of censorship that undermined often deeply held convictions on the right to free speech. “Liberals are torn between two desires,” wrote William L. Cheney of the *Chicago Record Herald* on the *Birth* controversy in that city, “They hate injustice to the negro and they hate a bureaucratic control of thought.”<sup>64</sup> This crisis in liberalism is at the heart of the policy paradoxes of the progressive era, complicating the already entangled relationship between economic reform, moral reform, and civil rights. From the Chaffee view, free speech politics in the United States really locates World War I as the turning point in the modern free speech movement in America, in which repressive government censorship by the Wilson administration ruthlessly harassed hyphenated Americans and anyone who did not exhibit unflinching support for the American war cause. Such a view cleanly aligns free speech rights with emerging modern liberalism, ignoring the fractures caused by the exhibition of America’s first blockbuster. *Birth of a Nation* cast free speech proponents on one side and proponents of social justice on the other. It turned liberals into censors and racists into civil libertarians.

Moreover, free speech rights were highly visible and publicly contested before the war, both in the controversies associated with *The Birth of a Nation*, and in the activism of Margaret Sanger, whose birth control advocacy became a crucial free speech contest. In January 1915, just as *Birth* was playing in Washington to Wilson and other political

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<sup>64</sup> Quoted in: Lehr, *Birth*, 174.

luminaries, Sanger's husband, the artist William Sanger, was arraigned on charges of violating the Comstock Law by distributing obscene materials. He was, in a sense, the victim of a trap (not unlike Wilson vis-a-vis *Birth*). A man posing as a family friend of Margaret's showed up at William's apartment in Lower Manhattan asking for a copy of her pamphlet on birth control, *Family Limitation*. Authorities arrested Sanger shortly thereafter, and a highly publicized trial ensued in which radicals such as Emma Goldman and Alexander Berkman took up the Sanger cause, publicly lambasting Comstock and the repressive moralism of the era.<sup>65</sup> Satire and sarcasm proved effective weapons for these leftists—one political cartoon published in *The Masses* showed a fattened Comstock holding a frightened woman before a judge. "Your honor," bellows Comstock, "this woman gave birth to a naked child!"<sup>66</sup> This early free speech agitation was, coincidentally playing out just as the *Birth* controversy was capturing the attention of the American public.

In a sense, both of these causes for free speech were failures—Sanger was found guilty and sentenced to 30 days in jail; and while Griffith and his backers succeeded in fending off the calls for censorship, none of the legal arguments rested on free speech, a right explicitly denied film in *Mutual v. Ohio*. But both of these issues laid important political groundwork for the free speech movements of the 20th century. They also revealed some of the cross purposes and conflicting uses of free speech liberties—where

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<sup>65</sup> Lehr, *Birth*, 159–60.

<sup>66</sup> Peter C. Engelman, *A History of the Birth Control Movement*. ABC-CLIO, 2011, 56–57.

*Birth's* free speech cause was in support of a racist, ascriptive and mythologized vision of the nation's union under white supremacy, the Sanger trial espoused a cause of free speech in support of civil rights and women's equality. In short, the two pre-WWI beachheads of the modern free speech movement worked toward contradictory political ends, revealing the ways in which the struggles of race equality and women's equality operated very differently in the progressive era. As for *Birth*, with free speech liberals and equal rights liberals either internally conflicted or working at cross purposes, the conception of moral reform—the emotional lynchpin of the progressive moment—proved limited to an implicit reliance on whiteness.

White popular reception of the film was overwhelmingly positive in almost every corner of America. Many whites simply saw nothing racist in the film—a pervasive racial blindness of white popular culture that went public in remarkably revealing ways. As *Birth* became a symbol of the emerging politics of free speech, these foundations of white supremacy, advanced by the armies of popular culture, shaped the character and contradictions of modern liberalism. Griffith, emboldened by the protests of *Birth* as well as the Supreme Court ruling against film free speech in *Mutual v Ohio*, fashioned his film into a weapon for free expression, a visual call to “demand, as a right, the liberty to show the dark side of wrong, so that we may illuminate the bright side of virtue.”<sup>67</sup> In the next few years, Griffith was to become “perhaps the leading publicist for the motion picture

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<sup>67</sup> From an inter title placed directly after the title card of *The Birth of a Nation*. Griffith inserted this title card after the premiere in Los Angeles, upon hearing of the *Mutual v. Ohio* ruling. See: Stokes, *Birth*, 133.

industry in its struggle against censorship,” speaking for the art of cinema and its speech rights across the country and publishing a short history on the politics of free speech in 1916—“The Rise and Fall of Free Speech in America.”<sup>68</sup> The consequences of *Birth* revealed the strands of liberalism in American political culture deeply wedded to, and indeed constituted by, a racist, ascriptive hierarchy that remained salient through the 20th century.

Censoring the economic product of *Birth* proved to be a failure precisely because the instruments of democratic will, fashioned within the conditions of an ascriptive white supremacy, were remarkably ineffective when oriented toward racial justice. Where suppression of the film was at least initially effective, judicial limitations on the grounds of basic property rights were enough to overcome executive and legislative censoring authority. The NAACP—which was to emerge from the *Birth* fight a more cohesive, visible, and national organization—was forced to acknowledge the strategic failure of advancing racial justice solely through legal action and existing democratic institutions, later abandoning the exclusive use of these tactics for more direct and militant resistance that would do much to shape the character of America’s civil rights movement in the 20th century. This delimited conception of democratic response is all the more striking when compared to the anti-liquor crusades of the era, in which a concurrent majority of reformers deftly and effectively captured the margins of the

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<sup>68</sup> Ibid. See also: “The Rise and Fall of Free Speech in America,” undated pamphlet, NBRP, Box 28.



democratic process, forcing prohibition on what was at best a nation deeply divided over the liquor question. So whose democracy was America's? And what character would commercial cinema play in the story of America's democracy?

Griffith, who took control of the censorship fight for NAMPI, was increasingly absent and distracted by his work. In late April 1917 Griffith set sail for Europe, having in mind an epic war film—with scenes from the front lines—as a follow up to the extravagant productions of *Intolerance* and *The Birth of a Nation*. The resulting picture, *Hearts of the World*, was produced in collaboration with the British government. Though *Hearts* was a minor success at the box office and some of Griffith's finest work was yet to come (such as *Broken Blossoms* and *Way Down East*) it was already the beginning of a long professional decline for Griffith. In the early 1920s, he made the disastrous mistake of building a studio from scratch at isolated Mamaroneck Point, New York. He struggled economically for much of the 1920s and was far from California, essential years for the development of Hollywood.

In the meantime, Griffith's *Birth* was still in its peak earning years and had successfully fought off censorship throughout 1915. But postwar America was an entirely different environment for Griffith's race melodrama. Exhibitions were planned in 1920 and 21 in Boston, New York, and other cities. The NAACP made a renewed effort to fight the film, this time with more pressure on political elites and peaceful street protests in front of theaters—but little in the way of direct calls for censorship. The protests were highly successful, in part because many black veterans protested in uniform, in some

cases wearing foreign medals of valor. Commercial exhibitions of *Birth* were cancelled throughout the country, declining rapidly throughout the 1920s as private exhibitions by the resurgent Klan grew. The movie, a mainstream blockbuster success in 1915, had evolved into a shameful piece of Klan propaganda by the early 20s, absconded away to private screenings. While the film was repeatedly mentioned on lists of classic American pictures and great historical works, such mentions were empty signifiers of an increasingly forgotten era. Plans to synchronize sound to *Birth* in 1929 proved a financial failure, and planned remakes in the 1940s and 50s fell flat.<sup>69</sup> The environment of progressive propaganda that had nurtured and helped bring about America's most racist feature film had stunningly, almost instantaneously, evaporated in the horrors of the Great War, just as it had reached its peak.

Unable to devote his energies and attention to the censorship issue, Griffith's free speech argument of cinema largely receded from the industry's view. As a vanguard of film's right to free expression, *The Birth of a Nation* proved to be a colossal disappointment. The war was in many ways a death knell for film's free speech arguments. If American citizens' First Amendment liberties could be so easily undermined by the Espionage Act of 1917 and the Sedition Act of 1918, the movies didn't have a chance. The MPPDA, an association of producers and distributors that formed in early 1922, made little mention of the right to free speech or free expression for the

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<sup>69</sup> For an extended discussion of the postwar *Birth* protests, see: Stokes, *Birth*, 227–49.

movies throughout the 1920s. It would take a generation for the fight of film speech to reach its successful end, culminating in the Supreme Court case *Joseph Burstyn, Inc. v. Wilson* (1952), which ruled that the movies were indeed protected by the First Amendment.

## CHAPTER IV AMERICAN MOVIES AND THE TRIAL ON PROPAGANDA

Vachel Lindsay, the itinerant poet and early film theorist, argued that the movies were “such a good natural medium for architectural propaganda that architects could use it to stimulate the rebuilding of America into a sort of perpetual World’s Fair.” Mass culture’s new visual medium could stimulate the rebuilding of the world from the true pulpit of the people—the motion picture theater. What Lindsay envisioned was an instrument of democracy—the movie and movie theater—that could uniquely realize “the destiny of America.”<sup>1</sup> From 1900 to 1920, American progressivism was fostered in the age of propaganda. It was through propaganda that the anxieties of immigration, industrialization, and urbanization were given voice and made visible. The movies, an infant industry growing up in urban centers and increasingly dominated by immigrant entrepreneurs, became the medium through which the ubiquitous spirit of persuasion could shape American culture. Propaganda defined progressive era cinema, but it also determined the boundaries and limitations of a transforming American liberalism, in which conceptions of liberty through property were increasingly in conflict with new and expanded conceptions of liberty through equality. The demand for democratic reform emerged from this crisis in liberalism.

In his unparalleled history of propaganda, Philip M. Taylor identifies it as “a *process* for the sowing, germination and cultivation of ideas” and is therefore neutral as

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<sup>1</sup> Vachel Lindsay, *The Art of the Moving Picture*. New York: The MacMillan Company, 1915, 6–7.

a political concept.<sup>2</sup> This process describes well the everyday practice of politics in the first two decades of twentieth century America. Mass persuasion was seen as a revitalizing mechanism of democracy itself. From the early origins of American film to the end of World War I, the persuasive powers of the motion picture were often the terms on which early movie men—both producers and exhibitors—sought respectability for their industry, arguing that persuasion was part and parcel of the democratic value of free expression. Prohibitionists, suffragists, child welfare advocates, and reformers of all stripes “can bring their propaganda before 5,000,000 people—mostly young people [...] Think of it! Probably neither the churches of the country nor the theatres of the country; nor any other institution of the country [can] reach as many people as these in a week, and appeal to them through that most effective of all agencies in attracting the understanding, the human eye.”<sup>3</sup>

The terms of propaganda were also the terms on which the industry shaped educational cinema—film for use in classroom instruction—which was useful in making movies more respectable but cut against the interests of commercial cinema. Progressive era propaganda helped temper this uneasy relationship between the educational and commercial functions of motion pictures. The social power of motion pictures could

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<sup>2</sup> Philip M. Taylor, *Munitions of the Mind: A History of Propaganda from the Ancient World to the Present Day*. Manchester: Manchester University Press, 2003, 2. The alternative school of thought on propaganda, best exemplified by the work of George Orwell and Jacques Ellul, takes as its starting point the inherent immorality of propaganda as a necessarily malevolent instrument of political manipulation.

<sup>3</sup> *MPW* 8, n. 7, February 18, 1911, 347.

“drive away much prejudice, increase true sympathy, secure greater encouragement and so raise the standard of public sentiment, by the propaganda of such an educational nature [...] you must not be a ‘stand pater,’ but a ‘progressivist’ in everything pertaining to cinematography and its educational advancement.”<sup>4</sup>

This conception of propaganda as a force against prejudice seems counterintuitive to our modern senses, but it was integral to American progressive culture, and the American movie industry was its most visible advocate. “The motion picture screen is no place for the airing of sectional or sectarian prejudice,” wrote *Moving Picture World* one month before *The Birth of a Nation* screened at the White House, “no matter how good the story may be. This does not mean that you cannot write propaganda stuff of a certain sort, but that it must not be written in such a way as to make enemies.”<sup>5</sup> Institutions as diverse as the U.S. Postal Service and the Oral Hygiene Association— who campaigned to eliminate “existing prejudice against dental examination in the public schools”—used the instruments of movie propaganda to combat prejudice.<sup>6</sup> Even the blue nose reformers who sought movie censorship used movie propaganda in their cause—reels were developed from the condemned cuts of numerous films into a “greatest hits” of objectionable material, a propaganda movie composed of censored images used in the service of greater censorship. Apparently the subversive possibilities of reorienting the

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<sup>4</sup> *MPW* 8, n. 18, May 6, 1911, 1000.

<sup>5</sup> *MPW* 22, n. 11, December 12, 1914, 1517.

<sup>6</sup> *MPW* 9, n. 11, September 23, 1911, 883; *MPW* 7, n. 26, December 24, 1910, 1458.

methods of this remarkable irony toward satirical, pro-movie arguments was lost on the industry, who could only comment with apoplectic disgust: “Could anything be more unfair and more contemptible ... [than] this sort of garbage?”<sup>7</sup> From the moral sentiments of film censorship, women’s suffrage, prohibition, child labor, and the trusts, there was hardly a progressive cause that was not articulated through a widely embraced and celebrated spirit of propaganda.

Propaganda defined progressive era cinema as a burgeoning, expressive field of democratic contestation. The state’s limited economic conception of the cinema, articulated through *Mutual Film Co. v. Ohio* decision in 1915, ironically aided in the formation of this democratic propaganda of the screen. This Supreme Court decision ruled that the state’s interest in censoring movies was constitutional, but in so doing it bound commercial cinema closer to progressive government and its contestations over democracy: it gave state authority over regulating the movies at a time when the propagandistic power of cinema was at its height. The limited economic definition of the movies in *Mutual v. Ohio* ultimately proved a foundational failure for legal censorship, for it affirmed the states’ censoring authority over an economic product “pure and simple” with no indication as to how to regulate its social or moral functions. The ruling gave justification for regulating the social capacity of the screen, but provided no

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<sup>7</sup> *MPW* 25, n. 3, July 17, 1915, 461. The Hays office in the early 1920s considered these reels of objectionable footage a great help in developing the “Do’s, Dont’s and Be Careful’s” that was the foundational architecture of the Production Code. Studio executives were enthusiastic about the use of such reels: “without exception they feel they at last have concrete evidence of what not to make.” Fred Beetsen to Will Hays, April 30, 1925, *WHHP* Vol. 1, Reel 21.

direction for how that legal authority should be used. Such direction would come from progressivism itself, and this explains in part why legal censorship was so ineffective over time—progressive thought proved difficult to sustain in any substantial form beyond World War I, but the progressive regulatory machinery of the movie screen lived on in muted, anachronistic form through the 1920s.

This relationship between a particular kind of industry—the movies—and a particular kind of government—progressive—determined the legacy of modern liberalism: the movies helped give voice to progressivism and propaganda, but ultimately became the primary instrument in the politically-motivated destruction of both. The war was the central turning point in this political transformation—the progressive cause, in both commercial cinema and the political state, reached its zenith and exhaust point, culminating in the prosecution of Robert Goldstein under the Espionage Act for his production *The Spirit of 76* and in the war fever paranoia of Robert Cochrane's *Kaiser: The Beast of Berlin* and *The Yellow Dog*. Early modern liberalism in American political culture was both progressive and propagandistic, but this was only its nascent form—both were to be cut out and cut against the later stages of modern liberalism's development.

America's trial on propaganda was a contest over democracy between commercial cinema and liberal state authority. A reluctant Wilson was pushed into the propaganda movie wars, torn between the preservation of democracy and the imperative to control it. Though democratic will was welded to war, President Wilson, George Creel, and the Committee on Public Information spent much political energy controlling and mastering



these democratic outbursts. They were not able to control or master democracy, however. The liberal articulators of democratic will ultimately became prosecutors of America's undemocratic witch hunt during the Great War. The progressives who fought World War I for America destroyed progressivism through that war. Political imperatives in wartime ran contrary to modern liberal ideals, limiting speech and censoring thought. America's war effort was the apotheosis of progressivism, both in its more hopeful guises—articulating the spirit of democracy, unity, and strength—and its repressive underside, in its anxieties of democracy imperiled, in 100% Americanness, in prohibiting liquor, and standing by the entrenched racial divide.

For the state, over the long haul of the development of American silent cinema, regulating the social functions of the screen entailed regulating democracy itself, thus the delimited economic definitions of the cinema served an opening of democratic expression through commercial images. Wartime commercial cinema decoupled the movie–propaganda relationship that so characterized progressive film, reorienting itself away from explicit political persuasion toward publicity, both for the industry and for the American democratic ideal. The movie industry would refashion itself as the prosecution in American political culture's trial on propaganda, which would ultimately render a postwar verdict of guilty that would be indelibly tied to state authority.

### Unity, Nationalism, and the Power of Propaganda

*The Birth of a Nation* changed American propaganda. The film industry's efforts to combat censorship now had to reconcile their efforts with a contentious and racist film that seemed to stoke the flames of the censors at nearly every stop along its roadshow tour. If Griffith and his producers realized short term profits and success with *Birth*, over time censorship efforts and national embarrassment over the movie would grow stronger, turning the movie into something of an unspoken pariah in the American commercial film industry, a touchstone of the racial anxieties Hollywood would spend decades trying to white wash from the screen. As Ruth Vasey has shown, the American film industry's interest in pushing their products into foreign markets created strong incentives to police their racial and ethnic representations on the screen, offering unprejudiced views of national identities in exchange for commercial access. This made good business sense for Hollywood, but movie screen villains there had to be. Could Mexican villains could be changed to Japanese villains? As the controversies over *Patria* suggest below, it would not be easy.

If Hollywood was sensitive to the way in which it produced racial and ethnic identities for consumption abroad, what about black Americans at home? Racial segregation in both the north and the south not only institutionalized separate movie audiences but also separate movie products. The race film industry—movies often produced by black Americans for black American audiences—was a parallel culture industry not unlike segregated professional baseball, lasting from the 1910s to the late 1940s. The segregated race film industry limited the black American audience share for

mainstream studio product, thereby mitigating against the commercial incentive of representing black Americans in a respectable manner. Black identities were constructed almost exclusively as servants fixed to the background of the Hollywood screen, if they were constructed at all.<sup>8</sup> By the late 1920s, Hollywood began to tap into the black movie-going audience with the all-black musical *Hallelujah!* (1929), but these were exceptions to the norm. Hollywood had a vested interest in whitewashing the screen, keeping black characters to a minimum and only in minor roles. The intense and highly visible racialization in *The Birth of a Nation* was simply something most producers did not want to touch. The racial blindness of Hollywood movies between the wars was not borne out of shame over the racism of Griffith's seminal film, nor any vague sense of social responsibility—it was an economically motivated decision reproduced out of the structure of American segregation.

In the years following its release, *The Birth of a Nation* influenced a number of subsequent film productions, from movies that protested the racism of *Birth* to movies that sought to copy its narrative structure or cinematic form. The first of these film responses was probably *The Fall of a Nation* (1916), Thomas Dixon's war preparedness sequel which, unusual for the time, had an original orchestral score composed by Victor Herbert. An anti-pacifist drama, the film was, in the words of Dixon, "a study of the

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<sup>8</sup> There are examples of more subversive uses of black identity, as in *Baby Face* (1932) where the character Chico (in a great performance by Theresa Harris) is afforded some agency and autonomy as a sidekick to Barbara Stanwyck's Lily Powers. Though Chico is Lily's maid, their relationship is playfully subversive and open to changing roles.

origin, meaning and destiny of American Democracy” through an urgent call for military preparedness.<sup>9</sup> The picture was a commercial success, bringing Dixon \$120,000 in profits. *The Fall of a Nation* welded the propagandistic strategies of *Birth* to the war itself—the movie was fashioned as a “super-production” or special feature with a roadshow exhibition strategy designed to incrementally build public awareness and publicity for the film as it traveled America’s theaters. Through 1916 and into early 1917, Dixon was building America’s war fever on the *Birth* template, an example he followed to the finest detail, filming battle scenes on the same ground as *Birth*’s Civil War reenactments,<sup>10</sup> opening in Los Angeles at Clune’s Auditorium, and booking the New York premiere at the Liberty Theater.<sup>11</sup> Dixon also sought help from President Wilson, this time to grant an exception to a ban on filming the country’s naval forces. Wilson responded with incredulity, calling the film itself “a great mistake.” “[The public] is already soberly and earnestly aware of its possible perils and of its duty,” wrote Wilson to Dixon, “and I should deeply regret seeing any sort of excitement stirred in so grave a manner.”<sup>12</sup>

The reluctant Wilson again fretted over popular film’s influence on the American people, seeing Dixon’s *Fall* as a threat to the country’s commitment to neutrality.

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<sup>9</sup> *WWP* 34, 427, n. 1.

<sup>10</sup> On the north slope of the Hollywood Hills overlooking the San Fernando Valley. The area is now part of Universal City and the Forest Lawn Memorial Park. In an ironic footnote of history, the park is home to *The Birth of Liberty*, the largest mosaic in the United States, depicting scenes of early American history and flanked by statues of George Washington and Thomas Jefferson. See: Forest Lawn Memorial Park Association, <http://forestlawn.com/hollywood-hills/> (accessed on July 7, 2015).

<sup>11</sup> Stokes, *Birth*, 268–69.

<sup>12</sup> *WWP* 34, 427.

Although Dixon's film conflicted with Wilson's stance on the war, the president's concern over commercial cinema did not wane with America's entry in the war in April, 1917. In fact, Wilson and George Creel, Chairman of the Committee on Public Information, spent much of the war deeply concerned over the way in which commercial cinema could excite the public "in so grave a manner." That Creel and Wilson were both reluctant censors is an under-appreciated aspect of the history of propaganda in World War I. Though they fell short of their ideals as America's war effort developed, the liberals in the Wilson administration were more concerned about political suppression and censorship than later historians give them credit.

At the same time, commercial cinema was "ablaze with propaganda for the people (not for politicians) in the great struggle for the establishment of universal democracy." The industry was beginning to shape the political power of cinema away from "politicians" and toward the "people."<sup>13</sup> These discursive changes placed the movies at the center of a populist skepticism of government authority, long an American tradition, that was to be revitalized and modernized in the years after the war. Underpinning this discursive transformation was the reassociation of propaganda as the voice of state authority. Writing in *Moving Picture World*, W. Stephen Bush declared that, despite the inevitability of propaganda being crafted in more subtle and sophisticated ways, "[n]o man will want to turn his temple of amusements into a political pagoda."<sup>14</sup> If Progressive

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<sup>13</sup> *MPW* 36, n. 5, May 4, 1918, 670.

<sup>14</sup> *MPW* 30, n. 1, October 7, 1916, 49.

Era cinema was defined by the utility and celebration of movie propaganda, the war created the conditions of a fever dream that exhausted those resources. Propaganda as an explicit definition and goal of the cinema was to be lambasted and shunned, as the methods of political influence were tamped down into the ground of “mere entertainment.” For the wartime Wilson administration, they were left holding the propaganda bag as the ground of America’s political culture began to shift underneath them.

### The Reluctant Censor

George Creel, a liberal muckracker from middle America, was a firm believer in the democratization of American politics through ballot initiative, direct election of senators, and women’s suffrage. While he rejected Marxism for what he saw as an unwavering conviction in materialism, he nonetheless believed in a “high degree of socialization,” falling short of eradicating monetary incentive and stifling “initiative, industry, and ability.”<sup>15</sup> He saw his chairmanship of the CPI as a platform to produce and express the democratic will of Americans during wartime through the typically progressive language of reform. The CPI acted as a “veritable magnet, attracting intellectuals, muckrackers, socialists, and other reformers.”<sup>16</sup> Creel and the reformers

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<sup>15</sup> Quoted in: Stephen Vaughn, *Holding Fast the Inner Lines: Democracy, Nationalism, and the Committee on Public Information*. Chapel Hill: University of North Carolina Press, 1980, 20.

<sup>16</sup> *Ibid.*, 23.

who worked under him in the CPI saw themselves as crusaders of a new kind of liberalism, to “weld the people into ‘one white-hot mass’” that could demonstrate the virtues of American democratic ideals and institutions. Taking pains to avoid censorship, Creel argued that the CPI’s mission was productive as opposed to suppressive, a policy of publicity that, with the aid of popular support, could sell American ideals to the world.

Creel was a believer in using the tactics of propaganda to better inform the public on the ideals of democracy. The danger, as he saw it, was a democratic government that tended to “operate through the emotions rather than the intellectual processes. [...] To feel is instinctive: to think is laborious.”<sup>17</sup> Propaganda, Creel believed, could grease the wheels of intellectual engagement so crucial to democratic governance. Propaganda was, for Creel and many liberal progressives, the foundation of the constitutional right to free expression, a necessary component to open and contested public deliberation. As the American war effort developed, Creel and the CPI grew more emboldened both in their use of “expressive” propaganda and in the inclination to censor dangerous speech.

Although stressing that the nation’s press had agreed to submit themselves to “voluntary censorship” he nonetheless applied the pressure of censorship where he could, and with increasing regularity as 1917 turned into 1918. Creel and the progressives working under him at the CPI did not believe in an absolute right to free speech and some of the literature published by the CPI reflects this belief. America had “never had

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<sup>17</sup> George Creel, *The War, The World, and Wilson*. New York: Harper and Brothers Publishers, 1920, 14.

absolute freedom of speech” but, maintained Creel, “there is a difference free speech and seditious speech.”<sup>18</sup> Edward S. Corwin, a Princeton scholar widely regarded at the time as an authority on the Constitution, argued that the “clear and present danger” doctrine of free speech should be amended to give government power to censor speech that merely showed “a bad tendency.” This First Amendment reading was upheld in *Abrams v. United States* (1919) which affirmed the constitutionality of the Sedition Act (1918).<sup>19</sup> Thus, Creel pursued dual aims for America at war: to censor “bad tendencies” that threatened the country, and to publicize the propaganda of America’s democratic ideals.

Creel did not need to convince the American public of much—scholars of American society in World War I have shown that the explosive war fever that had captured the American public’s imagination was spontaneous, ubiquitous, and in many ways remarkably self-directed. Citizens Defense Leagues, composed of community leaders, were formed in towns and cities large and small. These citizen leagues were often guilty of the worst kinds of political suppression, forming vigilante groups to root out German sympathizers and terrorizing anyone who appeared less than 100% American. Though the CPI provided some direction and funding, Creel was hopeful that such grassroots wartime movements could largely run their own affairs and in particular produce their own propaganda tailored to the specifics of the community.

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<sup>18</sup> Vaughn,  *Holding Fast*, 227–28.

<sup>19</sup> *Ibid.*, 230.



Motion picture exhibition was in an ideal position to be a liaison between government-directed propaganda and the democratic war fever of the American public. With the nickelodeon era all but over and the rise of more “respectable” motion picture theaters, the movies had by 1917 become the shared site of cultural consumption across economic classes that contemporaries had long celebrated as the future of the medium. The movie theater was an essential cog in the war effort, providing venues for the direct dissemination of war propaganda through the Four Minute Men—locals of the community who wrote their own speeches on patriotism and war sacrifice to be delivered in four minutes, the amount of time it took to change a movie reel. Pamphlets for the Four Minute Men produced by the CPI give advice on how to prepare and deliver an effective speech, but left the specific content up to the individual speakers. One can imagine the effectiveness of such speeches in unifying nation and community to the cause of war. Some fifteen to twenty minutes into a picture, the reel would spin out as the screen went white. The lights would come on and a community member would walk to the front of the audience, standing between them and the picture sheet. For Creel, this was the essence of the CPI’s propaganda mission—to direct private business (the movie theater) and individual Americans to give a venue for and produce their own expressions of the nation’s cause and ideals.

With exhibition houses doing their part, film producers sought to aid the war effort through the production of war-themed patriotic films. The history of American film in World War I, however, has suffered from an overemphasis on the most sensational

pictures, such as *The Kaiser*, *the Beast of Berlin*, *To Hell with the Kaiser*, and *The Prussian Cur*. But as Leslie Midkiff DeBauche points out in her illuminating study of American cinema in the era, only around 14% of the available 568 movies were war-related, with most of these films appearing in 1918 and in the latter months of the war. Production schedules in the era were organized around a roughly 3- to 6-month process for feature films. Although producers sought to accommodate the country's immediate wartime needs within their own commercial interests, for the most part the war "did not alter producers' long term strategies" or the need for a variety of film topics.

Nevertheless, worried about the fate of democracy in wartime, Wilson and Creel sought to control and tamp down the growing excesses of commercial cinema. On March 27, 1917, a few weeks before America's entry into the war, Wilson took in a part-vaudeville, part-feature film presentation with Colonel Edward M. House. The film was called *Patria* (1917) a serial produced by a William Randolph Hearst company that portrayed an invasion of America by Japanese and Mexican troops. As Colonel House wrote of the event, "I could not fail to observe how easy it would be to assassinate [Wilson] should anyone desire to do so."<sup>20</sup> Wilson was less concerned with his own safety than with the "extremely unfair" portrayals of Japanese and Mexican villains that was bound to "stir up a great deal of hostility which will be far from beneficial to the country."<sup>21</sup> He wrote to Jacques A. Berst, vice president and general manager of the film's

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<sup>20</sup> *WWP* 41, 483.

<sup>21</sup> *WWP* 42, 447.

distributor, Pathé Exchange, Inc., asking that he withdraw the serial from exhibition. Berst replied that Pathé could not bury the serial entirely, with the considerable sum of money already tied up in the project and the threat of lawsuits from exhibitors seeking damages if there contracts for the film were violated. Berst offered to make numerous changes to the film, eliminating any reference to Japan.<sup>22</sup> Wilson was unmoved, believing that it would be impossible “to cut out the offensive parts without changing the whole motive and action of the story.”<sup>23</sup> Wilson sought aid from Frank Lyon Polk, State Department legal counsel, who advised the president that there was simply no Federal legislation available that would “make the production of this play in any way unlawful” and that the “suppression of improper motion pictures is a matter entirely within the control of State and local authorities.”<sup>24</sup>

The matter dragged on through the summer and into the fall of 1917. Wilson had taken an active interest in the issue and arranged for State Department officials and members of the Embassy of Japan in Washington to view a new revised version of the serial in late August, 1917. They found the changes, according to Wilson, “entirely inadequate.” The Japanese villain had been changed into a Mexican villain “but the producer neglected to remove his Japanese kimono and substitute therefor suitable Mexican dress.” Japanese themed interiors and soldiers remained unchanged. Wilson

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<sup>22</sup> *WWP* 42, 467, n. 1.

<sup>23</sup> *Ibid.*

<sup>24</sup> *WWP* 42, 490.

requested that the producers remove these scenes or reconsider “whether you are not prepared to withdraw the film entirely from exhibition.”<sup>25</sup> After another round of cuts, Wilson was still unsatisfied. The whole ordeal proved frustrating to the president, for while he believed that “no instrumentalities which create international ill feeling should be permitted to affect the feelings and the opinions of the people of the country,” he nonetheless confessed to Tumulty that he was “very much mixed up about it. I am afraid there are a number of things still in the film which are objectionable, but it is true that they could hardly be eliminated now without destroying the whole thing, and I am inclined to think we cannot insist upon more than has been done.”<sup>26</sup> In the end, Wilson and the CPI were relatively powerless to stop the exhibition of *Patria*.

Towards the end of the war, the CPI began producing its own movies for domestic and foreign consumption. Most of these were newsreels and documentary shorts, but perhaps the best known was the feature film *Pershing’s Crusaders*, which opened in large cities across America in April and May of 1918. Roughly an hour in length and photographed by the Signal Corps and the US Navy, *Pershing’s Crusaders* received a great deal of free publicity and played to enthusiastic audiences.<sup>27</sup> But such CPI-produced films, with their long lines of marching soldiers, close-ups of waving flags, and practical

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<sup>25</sup> *WWP* 43, 431–32.

<sup>26</sup> *WWP* 43, 13 and 231–32.

<sup>27</sup> Profits from *Pershing’s Crusaders* helped edge the overall expenses of the CPI’s Film Division, meticulously recorded by Creel, near the breakeven point. This in itself is an astonishing fact of the CPI’s work: in mobilizing millions of Americans as well as millions abroad through film, the Film Division recovered \$850,000 out of the total expenditures of \$1,077,730.59. See: Vaughn,  *Holding Fast*, 210.

advice such as best hygiene or farming practices, were simply no match in terms of audience draw to the barbarizing war pictures from the commercial film industry. Creel and the CPI spent some time worrying about the effects of such pictures, as they cut against the kind of positive publicity of America's ideals the committee tried to foster. *The Kaiser, the Beast of Berlin* was in particular condemned by the CPI's Film Division secretary and Wilson privately expressed his reservations of such bloodthirsty films.<sup>28</sup>

### The Yellow Dog Campaign

Wartime paranoia was the theme of a Jewel Productions Inc. campaign for boy detectives to hunt down yellow dog traitors in cities across America. These Yellow Dog Detective Agencies or Anti-Yellow Dog Clubs were organized by motion picture theater owners, who distributed badges, ribbons, and circulars for young moviegoers, bringing together the drum of detective movie thrills with patriotic espionage, harassment, and rooting out Hun sympathizers. In the summer of 1918 an advance publicity campaign appeared for *The Yellow Dog*, a film based off of the sensationalist story of anti-Americans and the struggle of patriotic fervor by Henry Irving Dodge. The movie, which would not be in production for another month, was "so practical an idea for the elimination of a dangerous form of enemy influence that the Jewel company decided to abandon all regular forms of advance publicity and devote its energies to making a reality

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<sup>28</sup> Vaughn,  *Holding Fast*, 210.

of Mr. Dodge's fictional campaign against 'yellow dogism.'"<sup>29</sup> Publicity had turned film illusions of war paranoia into a reality. The idea had gone viral—it was to be the last spasmodic display of war fever and paranoia



Fig. 6. Ad for *The Yellow Dog* in *MPW*, July 27, 1918

before the influenza outbreak that swept across the country killing a half a million Americans.

The Yellow Dog movement was a highly effective publicity stunt that would be described today as a kind of guerrilla marketing campaign for the right kind of commercial product—an action-packed, patriotic, and intensely xenophobic movie with a then-substantial budget of \$500,000.<sup>30</sup> The campaign, in place nearly a half a year before exhibition of the film, was designed both to “serve the Government in the elimination of insidious German propaganda” and “to publicize the picture by the

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<sup>29</sup> *MPW*, July 27, 1918, 536.

<sup>30</sup> For production cost, see: *MPW*, October 12, 1918, 260.

indirect method of making the ‘yellow dog’ [...] as intensely hated as the Kaiser himself.”<sup>31</sup> This reorientation away from American *propaganda* to American *publicity* in the Yellow Dog campaign allows us to pinpoint discursive shifts in the broader formations of modern liberalism—fixing propaganda to state authority and fashioning commercial influence of political thought as “going public.” Industry trade journals show a decided shift away from propaganda and toward publicity:

... when we sell American films to a foreign land we are selling American publicity, too. We are selling American idealism, American physical prowess, American grit and stick-to-itiveness. ... Do not misunderstand me to infer that American films in the foreign lands are American propaganda in foreign lands. We are not using our position to “propagand.” But we can’t help publicize America with our films—publicize the splendid things she champions. There is a difference between propaganda and publicity, you see.<sup>32</sup>

The Yellow Dog campaign was the perfect vehicle to combine the newfound virtues of publicity to the movie industry. An ad angle in *Moving Picture World* offers some strategies for theater owners in developing an Anti-Yellow Dog Club for the film’s exposure and publicity:

Don’t book this story unless you are willing to go the limit. Leave it to your opposition. It must be circused, **plus**. Form the boys into a Yellow Dog Club, if you have not already done so. Hold a morning Yellow Dog meeting for grownups. Get the papers working with you, they’ll be willing to give you extra space for the patriotic angle. Use as a keynote the line from the story, “He realized that many yellow dogs might be yellow without knowing it.” Work from that angle. Get employers of labor to buy blocks of tickets. Work the schools and churches, and begin not less than two weeks in advance. It will all come back in box office returns.<sup>33</sup>

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<sup>31</sup> *MPW*, July 27, 1918, 536.

<sup>32</sup> *MPW*, July 20, 1918, 331.

<sup>33</sup> *MPW*, October 12, 1918, 284.

With posters warning Americans not to be “a Tool of [the] Hun By Spreading Kultur’s Propaganda” and to put “a Curb on Fool Tongues Wagging for the Kaiser,” binding propaganda to an enemy state made good business sense, but they were also the tactics that served the reassociation of these new conceptions of propaganda, a target of malicious persuasion aimed at the CPI and American government authority. As early as May, 1917, industry trade journals were warning exhibitors against showing “Moral Propaganda” movies: “It is just as reasonable to expect pure water from the sewer as to find a film of this sort that will give good, clean, wholesome entertainment. If you want to kill your theater and disgust your patrons and outrage public decency, we can think of no better way than the showing of films of this class.”<sup>34</sup> If the Great War was both the “apotheosis and liquidation” of progressive thought, the same could be said about the conception of propaganda in American political culture. While Creel and the CPI were busy extolling the virtues of American propaganda, commercial cinema, in particular the Yellow Dog campaign, was busy tearing it down.

With millions of Americans already members of various Yellow Dog clubs, production of the film finally began in late August and finished on September 21. It was directed by Colin Campbell and starred Ralph Graves and Antrim Short as the leader of

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<sup>34</sup> *MPW* 32, n. 6, May 12, 1917, 931.



the Boy Detectives.<sup>35</sup> *Moving Picture World* describes the production as a “great win the war” story but not a real war film:

There are no battle scenes or troops introduced in any part of the story and but one uniform is seen, that of a single recruit who is the victim of subtle Hun propaganda.

In its entirety the story deals with the malignant influence exerted by the fireside propagandists of the Kaiser and the disastrous effect of circulating lying rumors manufactured by our secret enemies. Unlike most stories pointing to an evil, “The Yellow Dog” develops a cure, and the practical solution of the problem of suppressing enemy propaganda has already been taken up seriously and made a reality in practically every municipality in the United States.<sup>36</sup>

It was not unusual to see the idea of propaganda tied to the enemy during the war and even before, but the number of instances and the almost obsessive focus on the propagandistic power of the enemy was unusual in the Yellow Dog campaign. In the above quote, the word propaganda, tied to the German enemy, is used three times in three sentences. Other Yellow Dog articles are similar, and in no instance is propaganda used positively.

By late August, the war paranoia stoked by the Yellow Dog fever had reached its peak. More than a million boys in New York City alone were enrolled in detective squads. Rules of proper patriotic behavior, written up as the “Ten Demandments” were sent out to local chapters along with buttons, badges, and report cards. The report cards, which had a condensed list of offenses, allowed the detectives to fill out a report on yellow dogs caught in the net of the “Catcher’s Association.” These publicity devices were well suited

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<sup>35</sup> Short was a 17-year-old who began as a child actor for Biograph 1912. His parents and siblings were also actors in Hollywood and his cousin was Blanche Sweet.

<sup>36</sup> *MPW*, September 21, 1918, 1747.

to motion picture exhibition houses, who had long developed “chase and catch” gimmicks for children such as the “fly catcher” campaign in Pittsburgh.<sup>37</sup> Though community exhibitors took the lead, the Rotary Club, Masons, local chambers of

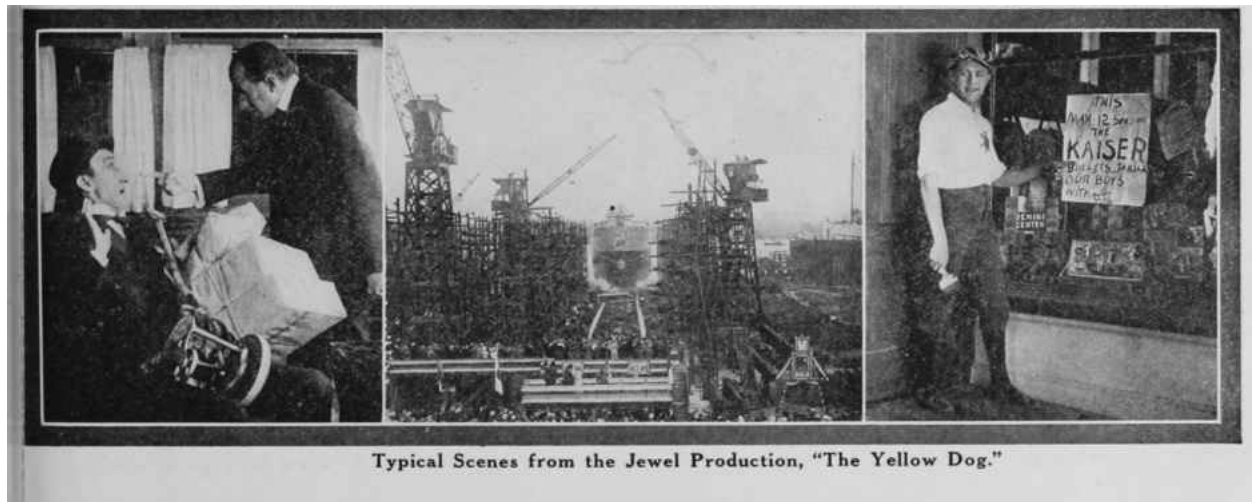


Fig. 7. Scenes from *The Yellow Dog* in *MPW* Sept. 21, 1918

commerce, and private businesses—mostly manufacturers in Ohio, Wisconsin, Michigan, and West Virginia—were all heavily involved.<sup>38</sup> “The infectious spirit of Americanism” had turned a movie ad campaign into a national movement:

men and women in all walks of life have stepped forward and are leading campaigns that are stamping out enemy propaganda, and it is safe to predict that when the Jewel Productions fires the last gun in the campaign to suppress Prussian propaganda by presenting the film version of the “Yellow Dog” the public will view the production to look upon the mongrel patriot as a bygone species.<sup>39</sup>

<sup>37</sup> Aronson, *Nickelodeon City*, 104–7.

<sup>38</sup> *MPW*, August 10, 1918, 865.

<sup>39</sup> *MPW*, August 31, 1918, 1282.

A parade honoring the Yellow Dog detectives was held in Dallas, with more than one thousand members being presented badges by Mayor Joseph E. Lawther and local leaders of the Council of Defense, after which the boys were treated to a free movie at the Old Mill Theatre.<sup>40</sup> In Cleveland another big Yellow Dog parade was held with the city's mayor in attendance, this time with help from the Boy Scouts of America and the Red Cross. The Cleveland school board announced cooperation with the campaign, agreeing to write out excerpts of the original Dodge story on chalkboards while encouraging students to see the movie.<sup>41</sup> To the movie men, this must have seemed a stunning victory—that school teachers and administrators were encouraging students to attend a local motion picture theater would have been unthinkable before the war.

The movie premiered at the Superba Theatre in Los Angeles before a September 29 booking at the Broadway Theatre in New York City. “Clothed in a strong vein of humor,” wrote a *Moving Picture World* review, “‘The Yellow Dog’ points to a double enemy—the secret agent of the Hohenzollerns and the incontinent tongue of the headstrong, thoughtless American.”<sup>42</sup> Part comedy and part wartime paranoia, *The Yellow Dog* was a children's movie produced and distributed entirely by the commercial film industry with no direction from the CPI. War patriotism had found its most convenient ally in profit-motivated publicity: “Every theater owner is asked to help make

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<sup>40</sup> *MPW*, August 24, 1918, 1137.

<sup>41</sup> *MPW*, October 12, 1918, 256.

<sup>42</sup> *MPW*, October 5, 1918, 97.

his particular neighborhood 100 per cent. American.”<sup>43</sup> By October, Creel and the CPI, while not involved in the campaign, nonetheless gave it a hearty approval, noting that the successful campaign “sounds a note of robust Americanism that is vitally needed at this time when destructive gossip and petty unfaith are so calculated to sap the foundation of courage.”<sup>44</sup>

Also in October, Robert Cochrane, vice president of Universal, came out publicly as the man behind Jewel Productions and the Yellow Dog campaign. Cochrane, who had also headed *The Kaiser, the Beast of Berlin* project, had received criticism at Universal for both films. Cochrane rejected the criticism and pushed through *Kaiser*, “[t]he result was a crackerjack picture that has won acclaim far and wide.” The success of *Kaiser* helped Cochrane launch the even more ambitious Yellow Dog campaign, which he described as “a tremendous power for good in America.” “I believe it will be a mighty help,” Cochrane told reporters, “in guiding the public against the Huns and the real ‘Yellow Dogs’ that lurk about the country.”<sup>45</sup>

Sensing the war itself was drawing to a close, and with many Yellow Dog clubs already in place, the distributors quickly put *The Yellow Dog* into general release, where it showed across the country in early October. But the second wave of the influenza outbreak had already begun on the east coast. This new deadlier strain of the virus

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<sup>43</sup> *MPW*, July 27, 1918, 536.

<sup>44</sup> *MPW*, September 7, 1918, 1436.

<sup>45</sup> *MPW*, October 19, 1918, 406.

devastated American communities as it moved to the west, from September to December, 1918, shutting down motion picture theaters for weeks and in some places months. The outbreak happened just as the Yellow Dog movement had reached its peak, with the movie and the virus arriving in towns and cities at the same time. *The Yellow Dog* likely made little of its substantial investment back in return. With the war and war fever now subsiding, with over 100,000 dead Americans in Europe and another half a million dead from influenza, America looked a different place in December 1918 as the moving picture houses began opening up for business.



Fig. 8. Universal's drive against the Yellow Dogs, Aug. 10, 1918

The war had been the “apotheosis as well as the liquidation” of the progressive era.<sup>46</sup> The ideal of democracy was welded to a propaganda fever that imperiled conceptions of both. Discursive shifts in conceptions of propaganda were also aligned with major changes in the tactics of propaganda—ever more subtextual and embedded with commercial entertainment. Propaganda did not dissipate so much as become less visible, serviced by commercial interests of entertainment. The Yellow Dog campaign served as a decisive moment in the ideological shift of propaganda in American political culture, an advanced publicity campaign for a movie on the dangers of propaganda that changed the way publicity and propaganda were understood in America. Indeed, publicity had created reality out of movie dreams, dreams that hadn't yet manifested themselves into a commercial product. Once the film completed the production process and was ready for exhibition, a deluge of death and sickness had descended upon America.

Robert Goldstein and the *United States v. The Spirit of '76*

Robert Goldstein was not the only person convicted of violating the Espionage Act during the Great War, but he was the only person convicted for producing a patriotic feature film. An American-born German-Jewish owner of a costume company from San

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<sup>46</sup> Quoted in: Vaughn,  *Holding Fast*, 23.

Francisco, Goldstein used money from the economic success of *The Birth of a Nation* to finance and produce a wartime movie, *The Spirit of '76*, that triggered a transformative indictment on movie propaganda and a political controversy that revealed strict limitations on speech. The rise and spectacular crash of Goldstein's only movie is also the beginning of America's trial on propaganda. *The United States v. The Spirit of '76* was the first criminal case against a movie—moving images that caused insubordination, disloyalty, and mutiny. This particular property was a feature-length film on the American revolution modeled after *The Birth of a Nation* and accused of being pro-German propaganda. Did Goldstein intend to make such propaganda, or did the courts convict an innocent man? Was Goldstein the victim of a conspiracy?

In August 1914, the production of D. W. Griffith's *The Birth of a Nation* was in full swing. Griffith's lot at the intersection of Hollywood and Sunset boulevards teemed with extras, carpenters, production personnel, and investors—the energy of a film of great importance, both economically and artistically, was undeniably in the air. But money was drying up at an alarming rate, and Griffith and his producers, the Aiken brothers, often had to scramble to meet payroll at the end of the day. Griffith had hired Robert Goldstein's company to costume extras and regulars in the production—a monumental effort that required outfitting hundreds if not thousands of individuals in Civil War uniforms, period dress, and Klan regalia.<sup>47</sup> An agreement between Griffith and Goldstein

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<sup>47</sup> Richard Schickel, *D. W. Griffith: An American Life*. New York: Simon and Schuster, 1984, 241.

was drafted on August 3, in which the filmmaker agreed to pay costumer \$1,500.00, with an additional \$3,000 to be paid on completion of the negative.<sup>48</sup> But with funds chronically short, Goldstein later agreed to a percentage of the box office instead of the remainder of his fee. This was a fortuitous decision on Goldstein's part, as the economic success of Epoch Producing Company's racist epic instantly made a small fortune for Goldstein.<sup>49</sup> Goldstein admired Griffith and considered him a friend. For Christmas in 1915, Goldstein had presented Griffith with a silver statue of a clansman on horseback. Things quickly turned sour, however, once Goldstein made the decision to follow in the great director's footsteps.<sup>50</sup>

Griffith knew a competitor when he saw one, and Goldstein was a very ambitious man. By his own account, Goldstein began preparations in early 1916 for the production of a motion picture using the *Birth* template—an over two-hour-long historical feature on the American Revolution. Griffith, of course, had his own plans for a motion picture on the Revolutionary War, and so pursued ruthless tactics to slow Goldstein down—spying, harassment, and sabotage—the same tactics Griffith used against *Birth* protesters. Goldstein's account of these years, written in his own hand while exiled in Germany, is a remarkably frantic and paranoid third person narrative, a 93-page manuscript Goldstein sent to the Academy of Motion Picture Arts and Sciences in

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<sup>48</sup> "Agreement Between D. W. Griffith and Goldstein Co., LA," August 3, 1914. In: *DWGP*, Reel 2.

<sup>49</sup> Stokes, *D. W. Griffith's The Birth of a Nation*, 272–73.

<sup>50</sup> Anthony Slide, ed., *Robert Goldstein and the Spirit of '76*. Metuchen, NJ: The Scarecrow Press, 1993, 22.



August, 1927, and first discovered in the early 1990s. In this manuscript, Goldstein depicts himself as a wandering, confused, and hopeless man beset by enemies on all sides, not least of which was D. W. Griffith. It's impossible to prove the veracity of his claims, but there exists evidence that Griffith had engaged in such tactics before, against either his ex-wife, *Birth* protesters, or competitors in the movie business. Griffith certainly had a motive to ruin Goldstein and the means to do it.

Two years later, with profits from *Birth* rolling in and Griffith's next great masterwork, *Intolerance*, set to be released, the director drafted the following letter to Goldstein:

For the sum of \$1.00 paid in hand to me at this date [August 7, 1916] and other valuable consideration, I hereby agree that I will not produce, or any company that I am connected with will produce, or caused to have produced, or prepare for the production of, a motion picture on the subject of the American Revolutionary War, or period, for at least one year from date.<sup>51</sup>

This letter appears to have been sent, but whether or not Griffith truly intended to keep this agreement or if this was another Griffith ruse cannot be known, but by August 1916, Goldstein's production of *The Spirit of 76* was well under way, and it seems conceivable that Griffith, who was preparing to sail for France and begin production on his Great War feature *Hearts of the World*, had conceded that Goldstein was first to the Revolution.

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<sup>51</sup> Letter from Griffith to Goldstein, August 7, 1916. *DWGP*, Reel 2.

Goldstein produced *Spirit* in Hollywood, with some of the same actors Griffith had used in *Birth*.<sup>52</sup> Actors remembered Goldstein as spirited, affable, and always gentle on the set. Although funds were chronically short, Goldstein continued to pour his own money into the project. He struggled with editing in postproduction for months, and by April, 1917, just as America was entering World War I, Goldstein took out full page advertisements in *Moving Picture World* announcing the completion of his film.<sup>53</sup> Goldstein chose May 7 at Orchestra Hall in Chicago for the premiere of his film, with prices ranging from 50 cents to two dollars.<sup>54</sup>

But wartime America was not ready for Goldstein's Revolutionary War epic. Major Funkhouser, head of the Chicago Censor Board, halted exhibition upon receiving word that the film "contains scenes that disparage England, now an American ally." Funkhouser asked the Department of Justice for a recommendation, and the Bureau of Investigation chief of Chicago wired Washington for advice. Justice officials contemplated federal action under the Interstate Commerce law.<sup>55</sup> Goldstein responded based off of the *Birth* template: he insisted that every element of his film was historically accurate and "founded on recognized authority." The city would have to remove all textbooks from public schools, Goldstein argued, to have equal justice.<sup>56</sup>

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<sup>52</sup> Slide, *Robert Goldstein*, xiv.


<sup>53</sup> *MPW*, April 7, 1917, 47.

<sup>54</sup> *MPW*, May 5, 1917, 800.

<sup>55</sup> *MPW*, May 26, 1917, 1291.

<sup>56</sup> *Ibid.*

The scene at the center of the controversy depicted atrocities committed by English troops at the Cherry Valley massacre. Babies and old Quakers are stabbed with bayonets; a woman is dragged across the screen by her hair; and an English officer drags a young woman into his bedchamber. Based on photographic stills of some of these images (there is currently no known surviving print of *The Spirit of '76*), the construction of these scenes in terms of framing and mise-en-scène is notably similar to scenes from *The Birth of a Nation*, showing massacres committed by “irregular troops” in the Southern town of Piedmont.



ROBERT GOLDSTEIN  
*wishes to announce  
the completion of his*  
**TWELVE REEL  
PRODUCTION**  
Entitled  
**THE SPIRIT of '76**  
A Historical Romance Dealing with the  
AMERICAN REVOLUTION and its CAUSES  
This film has been in production for over a year  
and is happily completed at this time to help  
rouse the patriotism of the country.  
CONTINENTAL PRODUCING CO.  
650 South Broadway  
Los Angeles, California

Fig. 9. Full-page advertisement for *The Spirit of '76* in *MPW*, April 7, 1917

Goldstein sought an injunction against Funkhouser and the city, restraining them from halting the exhibition on the same grounds that *Birth* had argued for exhibition in Chicago only two years before. But racial paranoia in 1915 was no match for potential treason in wartime America. The injunction was refused on May 17, and Mandamus proceedings held concurrently by the Chicago Superior Court also refused to intervene. After finally reviewing the film, Funkhouser demanded about 2,000 feet of cuts from fourteen reels. Goldstein agreed to the cuts and on June 15, 1917, *The Spirit of '76* finally had its premiere at Orchestra Hall without much controversy. Critics admired the costumes and detail of the period piece. Kitty Kelly in the *Examiner* called it a “costume triumph,” and a film that is “not anti-British, but anti-tyrannish: it breathes freedom, just as does the press of today, and one doesn’t cringe at a nationality in particular, but at the type of tyranny at present being Teutonically manifested.”<sup>57</sup> A movie that breathes freedom, that exposes Teutonic tyranny, was about to land its creator in federal prison.

With debts mounting, Goldstein was forced to return to Los Angeles for an opening at Clune’s Auditorium, the theater hall where *Birth*, still under the name *The Clansman*, had its world premiere. The exhibition at Clune’s was almost immediately a disaster for Goldstein. Tipped off that there was objectionable content in *Spirit* that could potentially damage relations between the United States and Great Britain, federal officials demanded to see the film in a private screening before the premiere. Assistant

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<sup>57</sup> *MPW*, June 16, 1917, 1783.

District Attorney Gordon Lawson and a representative from the American Protective League viewed Goldstein's film and insisted on several cuts, including the elimination of the entire Cherry Valley scene. Goldstein, by his own account, made the cuts two days before the public showing. But during the November 27 evening premiere, all of the cuts demanded by the Assistant District Attorney had been restored, including the Cherry Valley scene. The film played through the following day and a Thursday matinee. Press reactions were mixed on the movie, but several reviews noted there was little in the way of objectionable material. *Spirit* "contains nothing that would dampen the fervor of America at war now," wrote the *Exhibitor's Trade Review*, "instead, it inspires patriotism."<sup>58</sup> On charges that the film elicits "a feeling of resentment against England," *Motography* determined that "there is not the slightest danger of its doing so."<sup>59</sup>

The Los Angeles District Attorney's office and the Bureau of Investigation did not agree, however. They regarded the movie as a dangerous instrument of German propaganda with the power to turn the American public against its British allies by depicting British atrocities. The fact that the objectionable scenes were removed and then placed back in for the Clune's engagement was evidence enough for state authorities that Goldstein had acted in bad faith.<sup>60</sup> On November 29, 1917, two days after the premiere, federal agents seized the film and took Goldstein into custody. He was

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<sup>58</sup> *Exhibitor's Trade Review* II, no. 1, June 9, 1917, 56.

<sup>59</sup> Genevieve Harris, *Motography* XVII, no. 25, June 23, 1917, 1342.

<sup>60</sup> "Goldstein is Found Guilty," *MPW*, May 11, 1918, 865.

charged on three counts of violating the Espionage Act and was indicted on December 4. Goldstein was out on bail the next day, but was soon back in jail as the preliminary court hearing doubled the amount of bail. Goldstein would remain incarcerated for over three years.<sup>61</sup>

Was Goldstein the victim of sabotage? Historical scholarship on Goldstein and his only movie is scant, but none seems to suggest the possibility, despite the fact that Goldstein accused Griffith of masterminding a plot against him. Although there was no discernable outrage from the public or the press, everything seemed to be unraveling for Goldstein in Los Angeles. “Everything had gone fairly smoothly,” wrote Goldstein, “until Griffith arrived in town.” Griffith had returned to Southern California from Europe by early November, and was in Los Angeles during the premiere, but not in attendance. Griffith was personally close to William H. Clune, owner of Clune’s Auditorium, and so had the means to infiltrate the theater and restore the cuts to *Spirit*. By Goldstein’s account, Clune was less a collaborator with Griffith than one of his many victims. Goldstein describes his account in third person:

When he talked the matter over with Clune and told him his suspicions that Griffith had caused the opposition to the picture, Clune seemed to agree with him. Clune had also been one of the stockholders in *The Birth*, and after its success he also wanted to make a twelve-reel picture. So when Thomas Dixon, the author of *The Birth*, came out to Los Angeles and made *The Fall of a Nation*, which predicted the United States being conquered by the Germans, Griffith seemed to think that all the people connected with the production of *The Birth* were going to run him opposition in the twelve-reel film game.<sup>62</sup>

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<sup>61</sup> “Spirit of ‘76” Film Called Part of Plot,” *MPW* 34, n. 13, Dec. 29, 1917, 1947; Craig W. Campbell, *Reel America and World War I*. Jefferson NC: McFarland & Company, 1985, 73.

<sup>62</sup> Slide, *Robert Goldstein*, 80.

Goldstein's trial became one of many wartime sensations of domestic treason. By George Creel's count, over 1,500 American citizens were arrested under the Espionage Act, and some 908 were indicted. The movies were subject to a great deal of wartime suspicion, not only because of the social power of moving pictures, but because of the highly flammable nitrate film stock that was classified by the wartime government as an incendiary device capable of being used in domestic terrorism.<sup>63</sup> Describing the climate of fear and paranoia in late 1917, George Creel wrote:

Who does not remember the fears of 'wholesale disloyalty' that shook us daily? There were to be 'revolutions' in Milwaukee, St. Louis, Cincinnati; armed uprisings here, there, and everywhere; small armies herding thousands of rebellious enemy aliens into huge internment camps; incendiarism, sabotage, explosions, murder, domestic riot. No imagination was too meager to paint a picture of America's adopted children turning faces of hatred to the motherland.<sup>64</sup>

Creel provides this context in a defense of the CPI's work and an attack on the notion of "wholesale disloyalty," emphasizing German-American contributions to America's war effort. Republicans assailed Creel and the CPI in the postwar years, but Creel consistently stressed the fact that American democratic ideals could create political bonds stronger than ethnic nationality.

Robert Goldstein slipped through the cracks of this democratic ideal. He maintained throughout the trial that he was the victim of a conspiracy and that his

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<sup>63</sup> George Creel, *How We Advertised America*. New York: Harper and Brothers Publishers, 1920, 166–70.

<sup>64</sup> *Ibid.*, 167.

ethnicity was the real problem. “Fancy anyone getting sentimental over a man named Goldstein!’ ‘That is what is the matter,’” Goldstein told his third person self, “‘I should have taken a stage name like Reginald Scarborough and it might have been alright. The people who have made me all this trouble seem to think that *The Spirit of ’76* by Robert Goldstein does not sound good. Even if I wanted to bow to this prejudice, it is too late now.’” The years of the Goldstein controversy marked the bridge from *Birth* and the southern-based Klan revival to a nationalized Klan movement infiltrating the northern states and the Republican Party. From 1917 to 1921, America moved toward a new era of reactionary nativism and paranoia over the political power of propaganda.

The trial was held in the United States District Court for the Southern District of California, with Judge Benjamin Franklin Bledsoe presiding. The court labored over the details of the Cherry Valley massacre, both as historical reality and as movie reenactment. Judge Bledsoe consistently misidentified the actual historical event, however, referring to the Wyoming Massacre in northeastern Pennsylvania. Historical inaccuracies aside, the focus was on the “unspeakable atrocities” portrayed in the film, as when a British soldier is shown “impaling on a bayonet a baby lying in its cradle and then whirling it around his head so impaled.” Goldstein admitted in court that he had placed these scenes back into the film after its preview by the Assistant Attorney General. He claimed in court that restoring these sequences was necessary to “put ‘pep’ into the



show,” but in his memoir written years later, Goldstein claims that he was the victim of manipulation by his lawyers and that he did not understand the charges against him.<sup>65</sup>

Judge Bledsoe found Goldstein guilty on 2 of the 3 counts against him, and weeks later he was sentenced to 10 years in the federal penitentiary at McNeil Island along with a \$5,000 fine. Goldstein spent the next two years at McNeil in harrowing circumstances. He accused prison guards and outsider influences of inducing other prisoners into cocaine frenzies to attack him. He was isolated for long stretches, subject to hard physical labor, and received almost no visitors during this time. He considered himself not a political prisoner but a man imprisoned for being a Jew. His descriptions of incarceration on McNeil are a frightful premonition of the Holocaust era: “Was it possible to live here? He had seen a few of the trustees and they seemed to be well fed and clothed. But his own clothes were old and filthy, and three sizes too large for him. He felt his shaven head.”<sup>66</sup> Goldstein described his conviction as a “legal murder,” not because “his fate or the fate of the picture is of so much importance, but because the case involves the principles on which the United States Government is founded.”<sup>67</sup>

There were people interested in the Goldstein case, foremost among them was Zechariah Chafee Jr., a respected scholar on the First Amendment and Harvard law professor. Chafee was in the process of gathering articles into chapters for what would

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<sup>65</sup> *United States v. Motion Picture Film “The Spirit of ’76,”* District Court S. D. California, November 30, 1917, 252. *Federal Reporter* 946. Quoted in: Slide, *Robert Goldstein*, 207; Slide, *Robert Goldstein*, 95–101.

<sup>66</sup> Slide, *Robert Goldstein*, 136.

<sup>67</sup> *Ibid.*, 145.

be the seminal book on modern free speech liberties, *Freedom of Speech*, published in 1920. *Freedom of Speech* criticized the government's case against Goldstein and questioned whether there was any intention on the part of Goldstein to undermine America's war effort. A defender of free speech and critic of the Espionage Act, Chafee agreed with Justice Louis Brandeis on the US Supreme Court that the Espionage Act was "the beginning of a series of encroachments on civil rights of every kind, whose full consequence we are dimly beginning to realize."<sup>68</sup> The political force of the Espionage Act was directed at the dangers of propaganda itself. In drafting the legislation for the Espionage Act, there was an attempt by Chafee and others to incorporate a provision that exempted "anti-war utterances if made with good motives and for justifiable ends." This provision was attacked relentlessly by Attorney General Gregory, who argued to Congress that such a provision would "in effect destroy the value of the Espionage Act as a weapon against propaganda."<sup>69</sup> The trial on *The Spirit of '76* was a trial on propaganda in American political culture.

Chafee wrote a letter to D. W. Griffith on May 25, 1920, in which he asked for Griffith's opinion on Goldstein motivations: "Is he the sort of person who would deliberately produce anti-British scenes in order to embarrass this country in the

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<sup>68</sup> Quoted in: *Ibid.*, 145.

<sup>69</sup> *Ibid.*, 145.

prosecution of the war?”<sup>70</sup> It took Griffith nearly a month to reply to this letter with a short response:

My relations with Mr. Goldstein were impersonal and limited to business transactions with our organization. I have no reason to think he would willfully conceive a film plot to incite hostility toward a foreign country. I would be inclined to think his ambitions would be almost entirely commercial.<sup>71</sup>

But from the Attorney General’s perspective, intentions were not the determining factor in espionage. In referencing the case against Goldstein and *The Spirit of ’76*, Gregory informed Congress that “some of the most dangerous types of propaganda were either made from good motives or either the traitorous motive was not provable.”<sup>72</sup> No motive, profit or otherwise, was sufficient to justify movie propaganda and its threat to the health of American democracy.

It is true that American movies were simply incompatible with constitutional protections of free speech in 1915, but legal understanding of limitations on free speech was itself in its infancy. Chafee’s defense of speech liberties was not well received in the anxious postwar years of America. With communist labor agitation and race riots gripping the country, *Freedom of Speech* received hostile reactions in many corners of the academic and legal establishment.<sup>73</sup> It would take a generation for Chafee’s work to find broad acceptance and praise, and by the end of World War II, a revised and updated

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<sup>70</sup> Chafee to Griffith, May 25, 1920, *DWGP*, reel 4.

<sup>71</sup> Griffith to Chafee, June 20, 1920. *DWGP*, reel 4.

<sup>72</sup> Chafee, *Freedom of Speech*, 44.

<sup>73</sup> Wertheimer, “Freedom of Speech.”

edition of the work quickly became the pillar of the more-speech doctrine, the modern civil libertarianism of countering harmful speech with more speech. The development of film free speech followed a similar trajectory. Even Chafee seemed skeptical of speech protections for the cinema. Indeed, *Freedom of Speech* was in part a critique of the Blackstone interpretation of where censorship is applicable—that prior restraint be the dividing line in acceptable and unacceptable censorship. “The prohibition of previous restraint,” wrote Chafee, “would not allow the government to prevent ... the censorship of moving pictures before exhibition.”<sup>74</sup> In other words, restraining film product prior to exhibition, the most common censoring action, hardly conforms to the Blackstonian definition of constitutionally protected censorship.

The legal limitation of prior restraint was a poor fit for film speech interpretation, but Chafee seemed hardly aware that the case he cited as evidence—*Mutual v. Ohio*—could make no mention of prior restraint since the basis of the decision was that film was not entitled to speech at all. The movies were not speech ill-suited to the prohibition on prior restraint; they were economic products, subject to any form of interstate regulation. Why would Chafee overlook this basic legal reality? What now seems clear is that *Freedom of Speech* was built on a series of distorted truths. Chafee makes three influential claims in this work: that the founders talked often and broadly about the liberty of press and speech and banished seditious libel from the American republic; that

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<sup>74</sup> Chafee, *Freedom of Speech*, 10.

free speech jurisprudence was minimal in the long 19<sup>th</sup> century; and that Justice Oliver Wendell Holmes had fashioned his “clear and present danger” limitation not skeptical of speech rights but “with speech protective ends in mind.”<sup>75</sup> By the 1970s, legal scholarship on the First Amendment began uncovering the limitations of Chafee’s free speech gospel, chief among them was the myth that free speech legal battles were minimal leading up to 1915.<sup>76</sup> As more than one historian has since noted, Chafee was a great free speech activist but a poor free speech scholar and historian. It seems likely that Chafee overlooked the main point of *Mutual*—that the movies are not speech—in order to hold up the evidence of Goldstein’s prosecution as an example of the failures in Blackstonian adherence. Modern free speech was built on historical myths. Movies and their own visual mythmaking were at the center of these historical constructions.

In another sense, Chafee’s misreading of *Mutual* may be some indication that even legal scholars at the time had understood this important decision in very different ways than subsequent film historians. What is certain is that the decision gave speech scholars little direction in understanding exactly why movies were to be so limited in their definition other than the fact that movies were seemingly limitless in their use and impact. Ironically, the social power of the cinema necessitated legal grounding in the

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<sup>75</sup> Wertheimer, “Freedom of Speech,” 368.

<sup>76</sup> Alexis J. Anderson, “The Formative Period of First Amendment Theory, 1870-1915,” *American Journal of Legal History* 24 (1980), 56; Margaret A. Blanchard, “Filling in the Void: Speech and Press in State Courts prior to Gitlow,” in Bill F. Chamberlin and Charlene J. Brown, eds., *The First Amendment Reconsidered*. London: Longman, 1982, 14-61; David Rabban, *Free Speech in its Forgotten Years, 1870-1920*. Cambridge: Cambridge University Press, 1999.

“pure and simple” definition of an economic product. Its power necessitated a delimited legal understanding of that power. The controversies surrounding *The Birth of a Nation*, and its defense on grounds of film speech, clearly indicate highly visible and complex legal battles over the liberty of speech prior to America’s entry in WWI. Speech conflicts associated with *The Birth of a Nation* and *The Spirit of ’76* helped shaped this historical fiction by casting the pre-cinema past against a new and turbulent future. Motion pictures had become the vehicle through which constructions of American identity and American democracy found cultural meaning and political force. But they were, according to the finest judicial minds of the era, just economic products.

President Wilson commuted Goldstein’s sentence to 3 years in 1919, and in 1922, Goldstein was a free man. He would not give up his movie dream, however, and recut *Spirit* into a film called *Heart’s Aflame*, which showed in limited venues in New York City. This time the picture was accused of being a pro-Irish attack on Britain. Goldstein was assailed in the press as an ex-convict and Sinn Feiner, and the Ku Klux Klan—just becoming a visible presence in New York, may have been involved in some street agitation against the film.<sup>77</sup> Pro-German during the war and pro-Catholic in the anxious postwar years of nativist paranoia, Goldstein’s movie showed the trajectory of American political culture and its construction of national identity in the ruins of the progressive era. Goldstein and his movie were largely lost to the passage of time. Harassed by the

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<sup>77</sup> Slide, *Robert Goldstein*, 169.

only country he knew, Goldstein left America for Holland and eventually Germany. He corresponded with the Motion Picture Academy of Arts and Sciences through the 1920s, imploring them to help give him a new opportunity in the American film industry, but to no avail. He disappeared sometime in the 1930s, either in Hitler's Nazi Germany or in America.<sup>78</sup> As an exiled Jew in Nazi Germany, his fate was likely tragic, but as an American citizen "publicly murdered" by the federal government for making a patriotic motion picture, Goldstein's fate was already a tragic and deeply ironic one.

### The Postwar Years

From prohibition cinema through *The Birth of a Nation* and *The Yellow Dog*, commercial film articulated the exuberant propagandistic spirit of the progressive era to such an extent that it overshadowed the propaganda of state authority. For the reluctant censors of Wilsonian liberalism, they too often looked upon the burgeoning social power of American commercial movies with guarded caution. The reflective social power of commercial cinema proved a double edged sword, easily turned on American government. When the war ended, the industry was quick to shape an argument that the propaganda services of commercial cinema were not money makers. "Whenever we run propaganda films," stated one theater owner, "[i]t is a source of loss. [...] However, we

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<sup>78</sup> The Academy Library has preserved a letter from Goldstein written in the late 1930s that indicates he may have returned to America, but no other documentation supports this. Interview with Anthony Slide, January 15, 2016.

have learned the value of the screen as a medium for propaganda, and are now using it in our own interests [to fight censorship].”<sup>79</sup> Such efforts, ironically, entailed eliminating explicit propaganda from the commercial industry and reorienting the screens toward a seemingly depoliticized Hollywood dream factory of safe and clean entertainment. When the progressive reform sentiment had exhausted itself in the ruins of peace, the movies would come out clean and the progressive and liberal expressions of the American state would be left to the dust bin of history. America was to enter a period of reactionary nativism and social uncertainty as the citizen’s Councils of Defense were disbanded, replaced by a resurgent and national Klan and institutionalized prohibition.

For American movies, the Great War was also the high watermark of exhibition power in an industry still struggling to consolidate. As economic and political power moved from the patent holders and industrial raw material suppliers to the site of movie consumption—the moving picture theater—exhibition took on a central place in the social and cultural changes of the 1910s. The theater site was the face of the industry and the center of cultural exchange, climaxing in the patriotic service of exhibition houses in recruiting and propagandizing during the war. The National Association of the Motion Picture Industry (NAMPI), the trade association that emerged out of the Patent Trust wars, was largely led by exhibitors. William A. Brady, the head of NAMPI, was a theater owner and firm believer in harnessing the power of propaganda in cinema. Brady was

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<sup>79</sup> *MPW*, March 22, 1919, 1622.



also point man in the industry's War Cooperating Committee, working directly with the CPI's Film Division director, Charles S. Hunt, to coordinate wartime movie policies.<sup>80</sup> Brady's position helped exhibitors carve out a crucial role in the war. But such a conception of the cinema—exhibition power as democratic and inherently political—was too wedded to progressive propaganda and the war to provide the foundation of American film industry development.

If the struggles of the 1910s had taught the emerging movie moguls anything, it was that the moral anxieties of reform could only be checked by mastering the site of production. Moreover, this moral crisis surrounding film's social power was a major barrier to vertical consolidation in the industry, even if it spurred on greater horizontal coordination. To achieve viable consolidation necessary for the growth of what was still an infant industry, the movie men had to clean up the images on the picture sheet. Power in the industry would necessarily shift in the furtherance of this goal, from the exhibitors to the producer-distributors. But to achieve this economic reform and hold the censors at bay, the movie men needed the right leader. They found him in a conservative Republican politician from Indiana, the man who would steer the industry through the choppy waters of political censorship and oversee the great economic consolidation that would give birth to the era known as classic Hollywood. That man was William Harrison Hays.

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<sup>80</sup> Vaughn,  *Holding Fast*, 204 and 325, n. 72.



## CHAPTER V

### HOLLYWOOD, PROHIBITION, AND THE KLAN: POLITICAL CLEARING GROUND FOR THE RISE OF HOLLYWOOD

In wake of the Edison Trust's implosion, the National Association of the Motion Picture Industry was formed to coordinate industry action against both economic regulation and moral censorship. But this too proved a failure, collapsing under a distribution of power weighed in the favor of exhibitors who were unable to control the moral concerns over screen content and unwilling to curb explicitly political functions of the screen. As a July 1, 1922 press release from the Federal Council of Churches put it, "[a] great commercial amusement calls for some measure of social control [...] that places the responsibility squarely on those who produce pictures. And—since they produce for the whole nation—it ought to be national control."<sup>1</sup> By the beginning of the 1920s, members of NAMPI would dissolve their association and power in the industry would again shift, this time toward producer-distributors. The cause of this shift in power was a series of public scandals that struck an industry leader in the early 1920s. These scandals revolved principally around the production sector of the industry, in particular the newly empowered creative talent of the movies whose private lives had become symbols of a decadent and immoral Hollywood.

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<sup>1</sup> Federal Council of Churches Release, July 1, 1922, *WHHP*, vol. 1, reel 6.

As the liquor industry succumbed to prohibition and postwar America to an unpredictable reactionary nativism, the movies were threatened with the worst series of scandals to ever hit the industry, battering the highest echelons of Hollywood. The most prominent of these scandals—the early drug-related deaths of Olive Thomas and Wallace Reid, the William Desmond Taylor murder, and particularly the Fatty Arbuckle trials—did not come from the lower and marginal reaches of the industry: these were established stars and respected names who were all associated with the industry’s leading studio, Paramount. The moral scandals emanating from Paramount had set off a chain reaction of coordinated and consolidated economic maneuvers that would forever change the structure and organization of the American film industry. From 1920 to 1922, Adolph Zukor’s company spearheaded the formation of the Motion Picture Producers and Distributors of America to respond to Hollywood’s scandals. The newly formed Association tapped William Harrison Hays, key Republican insider and former Postmaster General under the Harding administration, to be president of the Association.<sup>2</sup> The agreement went public in January, 1922, and he began his tenure in March that year.

The coordinated practices of the major studios needed political cover to gain the moral control over the screen necessary for vertical integration of the industry, and Hays

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<sup>2</sup> For Hays, it was a fortuitous jump—leaving the Harding administration for a lucrative post in the private sector allowed Hays to avoid much of the public scrutiny over the Teapot Dome Scandal, in which Sinclair Oil provided kickbacks to federal employees in exchange for lucrative no-bid contracts. Hays was legal counsel for Harry Sinclair and the Sinclair Oil interests, and likely played a crucial role in the scandal.

was the kind of Washington insider who could provide this political cover. A conservative Hoosier and successful lawyer for oil and coal interests, Hays was a temperate, tiny mouse of a man who forged his political power through an affable and earnest conviction in organization and compromise. He earned praise from many of his Republican colleagues for rebuilding party unity by organizing opposition to President Wilson's attempts to bring the United States into the newly created League of Nations. He was trusted adviser to many powerful individuals of the time, and he was a master at pulling the levers of traditional party and political patronage, assembling an impressive array of contacts across the nation, most of whom were more than happy to provide a favor or two for the likeable Hoosier. Humble, effusive, and almost childlike, Hays rarely brandished this political power publicly, which perhaps explains the historical perspective that has constructed him as a mere publicist.

Publicity certainly was his great skill, but publicity requires political negotiation for advertising to be successful, and the movies—with all the moral and political anxieties it elicited—necessitated a supremely skilled politician. Consolidation, therefore, could not be pursued in strictly economic terms for the movie men in Hollywood and their financiers in New York—they needed political alliances that created enough breathing room to control the moral questions surrounding the industry. Hays provided this breathing room by aligning movie interests with the ascendant Republican Party who tended to dominate national politics throughout the 1920s. For Hays, this

work on behalf of Hollywood also meant smaller, more focused alliances with federal prohibition enforcement and the Ku Klux Klan.

### The Politics of Publicity

There is some disagreement among American film historians as to the relative success and mission of the Hays office in the 1920s. In influencing a generation of American film scholarship, Robert Sklar referred to Hays as a “glorified public relations man” whose office was responsible for “[cutting] the movies off from many of the most important moral and social themes of the contemporary world.”<sup>3</sup> The Hays office certainly looked the part of a publicity stunt hoodwinking blue nose moralists and government authorities with the ploy of better movies. With a closer analysis of MPPDA documents, Richard Maltby has shown that there was little possibility, or even expectation of, a non-commercial cinema, either educative or religious or politically propagandistic, that could prove to be a viable alternative to the commercial film product. For Maltby, there was little disagreement over the “consumable commodity” that was the movies’ “assigned location in American cultural topography.”<sup>4</sup>

Hays did oversee a depoliticization of the screen—a process by which the propagandistic powers of the cinema were to be denatured—but it is perhaps more

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<sup>3</sup> Robert Sklar, *Movie-Made America: A Cultural History of American Movies*. 2nd edition. New York: Vintage Books, 1994, 81–84; and Francis G. Couvares, ed. *Movie Censorship and American Culture*. Washington: Smithsonian Institution Press, 1996, 6–7.

<sup>4</sup> Couvares, ed., *Movie Censorship*, 6.

accurate to say that Hays shifted the function of politics and the movies away from the social function of cinema and toward the politics of publicity. The appointment of Hays elicited a great deal of concern over explicitly political influences on the movies, but nearly all of these concerns were expressed in terms of Hays influencing movies toward Republican Party bias. Republicans, for their part, sought to press political advantages in the movies through Hays. But operating below this public contestation over party politics in the movies, few seemed to consider the politics working from the industry on Washington: that Hays would provide important political cover for economic control of the industry by producers. Hays was no mere publicity man, but a shrewd political insider with the organizational skills to formalize and institutionalize the coordinated arrangements of the film industry. But there was no broad agreement on the function of cinema in American culture. Indeed, educative and non-commercial film interests—who showed a greater willingness to use the instruments of movie propaganda—pressured the industry for greater development and acceptance, sometimes holding out the threat of censorship as leverage. The MPPDA was constantly negotiating political conflict, tempering the propagandistic possibilities of the screen, and filtering the social and moral issues of the era into acceptable commercialism.

While Paramount and other majors were busy pursuing a robust consolidation of the industry by aggressively building theater chains and tightening the links between its production and distribution units, Hays publicly banned Arbuckle from the movies and began building a publicity campaign for the movie industry around a simple set of

principles: the movies must serve the public; the public does not call for censorship, but better and more moral movies; and so to defeat censorship, producers must eliminate the friction at its source and provide the public with wholesome, morally uplifting entertainment. These principles—embodied in the “better movie campaign,” “Saturday morning children’s movies,” and later in the “Do’s, Don’t, and Be Careful’s” moral movie formula—were constantly championed as the prominent work of the Association. But behind the cloak of “better movies” the Association’s work was messier and more explicitly political. It followed a two-pronged plan: to control any political action (censorship, taxation, Sunday blue laws, legislation against block booking, etc.) that public interests, politicians, or government regulators could direct against the industry; and, under this political cover, to oversee greater coordination and consolidation in the industry while preserving a certain idea of competition.

From 1922 to 1926, the MPPDA won nearly every major censorship battle for their producer-distributor members. It would begin in the fall of 1922 with an impressive landslide victory against a referendum to defeat the newly-established state censorship board in Massachusetts and would culminate in a successful defeat of a federal censorship bill in the first congressional session of 1926. It was by almost any measure a series of stunning successes for an infant industry developing in such anxious and turbulent times. Such successes relied on publicly visible strategies and campaigns to improve the image of the movie industry, but it also required political negotiation behind



the scenes by a skilled insider. The movie men had plenty of evidence that Hays was the right kind of insider.

Hays' political skills were put to good use by the so-called "Ohio Gang" of Republicans in healing the progressive-conservative fracture of the Republican Party (along conservative lines) and rebuilding party organization in the wake of Wilson's Democratic Party successes. Wilson's appropriation of progressive sentiment allowed for a conservative shift in Republican Party politics away from progressives like Robert La Follette and Hiram Johnson, both of whom were political opponents of Hays. Theodore Roosevelt had died in early 1919, removing the possibility of a revered national political figure solidifying the party platform in progressivism. In the place of party division, Hays and other conservative Republicans oversaw a solemn Republican Party memorialization of Roosevelt's public life. The consolidation and revitalization of the Republican Party in the 1920s was characterized by a rejection of an outdated progressivism, a stronger alliance with economic elites, and a turn toward reactionary nativism in which millions of loyal "Lincoln Party" voters joined in the national rebirth of the Ku Klux Klan. The sedimentation of Republican ideology in American nativism, social conservatism, and unflinching support for the economically powerful provided the fertile ground on which the modern Republican Party was built.

Hays was at the center of this party transformation when he first took the post of MPPDA president. Critical elements of the press and Democratic Party sympathizers openly worried about the political effects of the Hays appointment—as they saw it, the

Republican Party now had the instruments of film propaganda at its disposal. Hays took the job, wrote the *New York Evening World*, “to use the motion picture industry in propaganda to further the election of a Republican Congress in the November [1922] election.”<sup>5</sup> Hays did press Republican Party advantages when he could, but always through the strategy of eliminating propaganda from the screen. The Pathé/Tariff controversy was an early test of these newfound conceptions of propaganda and Hays’ political interest. Bert Green, a cartoonist employed by Pathé, had drawn a series of film animated shorts lambasting the Republican-sponsored Fordney-McCumber tariff bill pending in Congress, showing many Americans forced to pay higher prices for goods should the bill pass. In “Movies and Partisan Propaganda” the chairman of the Republican National Committee George Lockwood wrote that “Pathé films have gone into the party of propaganda business [...] The readiness of a great film distributing house to lend itself to such propaganda strengthens the sentiment in behalf of declaring moving pictures public utilities and putting them within strict government control.”<sup>6</sup>

Hays recognized the threat of being pulled by his party allegiance on the one hand and the imperative of representing the interests of his employers on the other. Hays was able to negotiate this early test successfully by focusing on the evils of propaganda itself. Responding to Lockwood, Hays wrote emphatically that “the screen must not be used for

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<sup>5</sup> Clipping in: *WHHP*, vol. 1, reel 5.

<sup>6</sup> Lockwood to Hays, July 7, 1922, *WHHP*, vol. 1, reel 6.

propaganda. That is fundamental.”<sup>7</sup> Lockwood chafed—as he saw it, the movies were awash in “anti-prohibition and anti-reform [sentiment] even of the most legitimate character.” He suggested Republicans could respond with their own movie arsenal, to “have the matter squared by getting some stuff put out by ourselves” despite the fact that “I am against propaganda in the movies from any source.” Lockwood continues:

The saloon people of this country kept up this sort of thing until the people rose up and drove them out ... they will do the same thing with the moving picture people unless they use more conservatively and sensibly their service ... I believe when I attack the prostitution of the movies to personal and party ends that I am doing them a service in helping to stave off the interference they will have unless certain practices are voluntarily eliminated.<sup>8</sup>

Lockwood’s warning was a fair summation of the work Hays was charged with doing, to steer the industry toward a voluntary elimination of “certain practices,” but such practices for Lockwood and Hays ironically turned the propagandistic power of movies on its head—the instruments of film propaganda were precisely the means through which national prohibition, and a measure of respect for the movie industry, were achieved. The insidious label of propagandists could be stuck on the vanquished liquor men, and the movies could come out clean. Hays maneuvered to put the industry “irrevocably on record” against propaganda by furthering Republican Party aims, but there were limitations to this course of action when the GOP went on the offensive. When

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<sup>7</sup> Hays to Lockwood, July 3, 1922, *WHHP*, vol. 1, reel 6

<sup>8</sup> “Movies and Partisan Propaganda,” National Republican Committee Release, July 3, 1922, *WHHP*, vol. 1, reel 6; Hays to Lockwood, July 3, 1922, *WHHP*, vol. 1, reel 6; Lockwood to Hays, July 7, 1922, *WHHP*, vol. 1, reel 6.

Senator Medill McCormick wrote to Hays asking for assistance in developing a movie on Republicanism that “could be used in a State campaign,” Hays responded that “[n]one of the Association members are engaged in propaganda production ... I am wondering if you could not get a good patriotic picture of some kind which would do for county fairs.”<sup>9</sup> Hays deftly substitutes “patriotic” for “propaganda” in this instance, steering political conceptions of the cinema toward patriotism.

### Republicans to Hollywood: The Monroe Doctrine Exposition

The Hays office in New York also managed an ever increasing flow of visitors to the Hollywood colony, much of it traditional 19th century party patronage of a strangely exhibitionist kind. It certainly was not the beginning of the tourist flood to Hollywood, but the formation of the Hays office in New York was perhaps the first institutionalization of Hollywood tourism for political leverage. Hays received innumerable requests from friends, wives, daughters, aunts and uncles of political and business elites “to see something of the studios.” Thomas G. Patten, a former congressman and Postmaster of New York City who had earned a law degree at Columbia in 1880, was the first MPPDA man in Hollywood. Patten proved ineffective and out of touch as a Hollywood point man—he was over 60 years old and found it difficult to keep up with the frenetic social pace of Hollywood. As Courtland Smith wrote confidentially

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<sup>9</sup> Hays to McCormick, July 8, 1922, *WHHP*, vol. 1, reel 6.

to Hays, “Tom [Patten] is a social success in a limited field. That field corresponds to the Player’s Club group in NY. In all other respects he is too old, too sick, and too slow. These are the kindest words I can use.”<sup>10</sup>

Throughout the busy summer of 1923, Patten escorted Washington power players and New York bankers around the movie colony. Secretary of War John W. Weeks and a party of 60 that included numerous senators and congressmen visited Hollywood in May, 1923, where they toured the Lasky set to watch Cecile B. De Mille shoot some scenes and the Universal set of *The Hunchback of Notre Dame*. This visit was something of a dress rehearsal for the biggest event of the summer—the Monroe Doctrine Exposition, an expo in Los Angeles commemorating the 100th anniversary of the Monroe Doctrine. President Warren G. Harding’s arrival for the expo was scheduled for the last week of August, at which time he would become the first sitting president to tour a motion picture studio.<sup>11</sup> The impending arrival of President Harding threw the New York and Hollywood offices of the MPPDA into sheer pandemonium. Hollywood wanted a full day with Harding, but his Washington handlers insisted that the president’s visit to the movie colony be limited to just one hour, with a tour of one studio to be chosen by Hays himself. Hays pressured his contacts for more time, but his biggest problem was negotiating the notoriously

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<sup>10</sup> Smith to Hays, July 15, 1923, *WHHP*, vol. 1, reel 11.

<sup>11</sup> It would not be the first official visit to the Hollywood colony by a sitting president. That honor went to President Taft on October 12, 1909. Taft stayed in Hollywood for only a few minutes. Steve Vaught, “The President Comes to Hollywood” Feb. 21, 2011, <https://paradiseleased.wordpress.com/2011/02/21/the-president-comes-to-hollywood-for-a-minute/> (accessed on 7/27/2015).

competitive and cutthroat executives in picking the lucky studio who was to receive the chief executive. Patten reported “considerable competition among the studios” and some executives privately expressed that it would be a “grave mistake” for Hays to pick the studio, a decision that would upset many to please a few.<sup>12</sup>

Hays had a lot riding on the Harding visit to Hollywood—it was to be the culmination of a publicity campaign that marked a new era in the American movie industry, an era in which Hollywood and the Republican Party forged an alliance that shaped as it limited the social functions of the screen. These social functions had served as a medium of political discourse in the 1910s, the screen as the exposition of propaganda and machinery of democracy. The LA Expo of 1923 was the expression of a different kind of politics—the outward appeal and publicity of going public. The Hays publicity operation was not a depoliticization of the movies, rather it was a shift in political function toward a “more manly and democratic process of *self-control* and *self-regulation*” in commercialization.<sup>13</sup>

The LA Expo proved a monumental disaster. Lack of coordination among city officials left events poorly planned and money extremely short. President Harding had arrived in San Francisco via Alaska, British Columbia, and Seattle on July 29, 1923 with his health declining rapidly. He would die in San Francisco of a cerebral hemorrhage on August 2, just weeks before his studio visit. For Hays, it would be a major political

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<sup>12</sup> Patten to Hays, July 5, 1923, *WHHP*, vol. 1, reel 11.

<sup>13</sup> Will Hays, *The Memoirs of Will H. Hays*, New York: Doubleday, 1955, 347.

setback—he would never again have such a close political ally in the White House. But the vows between Hollywood and the Republican Party had been exchanged. Their relationship would flourish through the 1920s, crucial years for the development of the classic studio era of American film. Under such an alliance, the industry was able to undergo the economic and social development to consolidate the industry and ward off political censorship. These moral and economic questions were not isolated—a certain level of unique coordination served as a precondition to moral control; in turn, economic consolidation was a precondition to moral mastery. Strategies that limited the power and use of propagandistic cinema were also fostered through the industry’s alliance with the Republican Party—this alliance provided political cover for discursive shifts that empowered private commercial enterprise at the expense of alternative visions of cinema, be they overtly political, religious, or educative functions. This discursive drift in American political culture served to limit political influence over private power by controlling the social power of the screen for economic ends. “The saloon people of this country” had spread the cancer of propaganda that infected the social body; for Hays, it was up to the movies to articulate a commercialized cure for these social ills.

#### The Friend of Your Enemies: Hollywood and Prohibition

Newly installed Prohibition Commissioner Roy Asa Haynes, in a letter to Will Hays, makes a familiar argument about the social capacity of the cinema, that, properly directed, movies “will be one of the most helpful of all agencies” and improperly directed,

it could be “one of the most dangerous.”<sup>14</sup> The movies had entered the age of prohibition with a powerful ally. Locked in an economic and social struggle throughout much of the progressive era, the movie and liquor industries collided over the social function of consumer capitalism and the state’s role in regulating those functions. The movie men in turn sought to align the industry with elements of the very reform sentiment that advocated political control over film morality. These alignments held throughout much of the 1920s, even as the movies gained in popularity and the ideals of prohibition crumbled in a wave of corruption, organized crime, and public disdain for the 18th Amendment and Volstead Act. Haynes, a political lackey of the Anti-Saloon League and their powerful Washington manipulator, Wayne Wheeler, had a keen personal interest in the movies. He pressed Hays to “do what he could” for his “very charming niece, aged about nineteen years, who for years has had an ambition for a try-out in the movies.” Margaret Faulconer, Haynes’ niece and daughter of a Presbyterian minister, did get a screen test with First National, and subsequently appeared in the Richard Barthelmess vehicle *Sonny* (1922).<sup>15</sup>

Less than a year later, in January, 1923, Haynes traveled to Hollywood to investigate rumors of a growing narcotics trade in the movie colony. Although he was in Hollywood for no more than 24 hours, and did not meet with Thomas Patten, Hays’ point man in Southern California, he nonetheless wrote glowingly of the movie colony’s

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<sup>14</sup> R. A. Haynes to Hays to McCormick, July 8, 1922, *WHHP*, vol. 1, reel 1.

<sup>15</sup> *Motion Picture Magazine* 24, no. 8 (September 1922): 61.



cleanliness, at least with regards to illicit drugs. “[O]ur investigation,” Haynes wrote to Hays, “revealed a situation no worse than in other sections of the United States, population considered, and that the number of persons addicted to the use of narcotic drugs found by our operatives was surprisingly low, and absolutely refuted the impression prevailing in many quarters that moving picture artists are quite generally addicted to the use of narcotic drugs.”<sup>16</sup>

Six months later, the prohibition czar called in a favor. His latest book, *Prohibition Inside and Out*, gave all the dope on federal agents tracking down illicit liquor—boat chases, thrilling hijacks, the “capture of moonshiners in mountain fastness,” all the elements of a terrific action movie. Though Adolph Zukor showed little interest in the prohibition exploits, Haynes doubted that the matter had been “presented to him in such light as to arouse requisite interest.”<sup>17</sup> Hays had his men look into the matter. He had reason to tread lightly. Federal enforcement of prohibition was given to the Treasury Department under Andrew Mellon, whose final word presided over the wartime admissions tax on motion pictures. For its first seven years, prohibition enforcement duties were left to one unit in the bureau of internal revenue,<sup>18</sup> a small corner in an

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<sup>16</sup> R. A. Haynes to Will Hays, February 20, 1923. *WHHP*, Vol. 1, Reel 9.

<sup>17</sup> Haynes to Hays, August 7, 1923. *WHHP*, Vol. 1, Reel 11.

<sup>18</sup> That the IRS enforced prohibition underscores the state’s tendency to regulate cultural industries along traditional economic lines. Most federal film censorship legislation would have delegated enforcement authority to Treasury. The difficulty in imagining a film censor board run through the IRS gives some indication just how far the social capacity of the film product was from the economic logic of state regulatory policies.

otherwise vastly different bureaucracy. Mellon had little interest in prohibition enforcement, frequently clashing with Haynes and his thoroughly corrupt, underfunded, and ineffective unit. The principal concern for the movie czar was whether fellow Republican Mellon had been portrayed fairly in the book. In a memo to Hays, K. L. Russell writes that the book makes mention of “hinderance through prejudice of some judges, but this is entirely impersonal.” Russell concludes that Haynes’ book—packed with righteous bravado and dangerous rum raids—would “make inviting material for films.”<sup>19</sup> Thomas Ince thought so as well, struck a verbal agreement to adapt the prohibition czar’s exploits, and quickly began production on December 14, 1923.<sup>20</sup>

Haynes’ conception of a “properly directed” film industry would “lend itself to a great production which will include many features that might by certain critics be termed propaganda.” For Haynes, Hollywood’s service to the prohibition cause would be “a great American picture with a strong patriotic appeal” that might show “the peaks of society, where our chief difficulties are, and which presented our best opportunities for portrayal along a dignified and constructive line.” The upward appeal of class on the screen—both dignified and constructive—had long been present in American movies, but rarely were they expressed by government officials. Haynes saw a film adaptation of *Prohibition Inside Out* as a historical epic on a grand scale, with a production budget to match. “The figure of Lincoln,” Haynes wrote to Hays, “with various quotations from him delineating

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<sup>19</sup> Internal memo, Russell to Hays, August 2, 1923. *WHHP*, Vol. 1, Reel 11.

<sup>20</sup> Haynes to Hays, January 2, 1924. *WHHP*, Vol. 1, Reel 14.

his attitude, might be worked through the scenario.”<sup>21</sup> The tremendous success of the industry-changing blockbuster *The Birth of a Nation* seems not far from the picture Haynes had in mind—American cinema oriented firmly toward “100% Americanism” and the glorification of the past, only this time with direct oversight from Washington.

But the industry had shifted decisively from the instruments of propaganda that had been fashioned for the Great War.<sup>22</sup> Ince’s writers had stripped Haynes’ book of anything remotely propagandistic or even political, reworking *Prohibition Inside Out* into a “straight dramatic feature” retitled *Those Who Dance*. The speed at which Hollywood worked overwhelmed the bureaucrat. Production of *Those Who Dance* starring Blanche Sweet was well underway by the time Haynes had caught word. Incensed that Ince had gone ahead with production without his approval, Haynes worked his contacts in Washington. Using Hays as an intermediary, Haynes insisted Ince had been enthusiastic over the picture and had indicated that “there would be no trouble to put in all of the propaganda feature [sic] in the film that we felt necessary.”<sup>23</sup> Haynes demanded either changes to the story or a large cash settlement. Ince wrote to Hays in January, 1924, to explain his side of the issue, arguing that it would not be “practicable or safe” to produce and distribute “the production of a propaganda picture ... that told the true story of liquor

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<sup>21</sup> Haynes to Hays, December 15, 1923. *WHHP*, Vol. 1, Reel 13. Though this letter was sent one day after Ince already started production on what would become *Those Who Dance* (1924), Haynes was apparently unaware of this until January, 1924.

<sup>22</sup> For more on conflicts and alliances between Hollywood and Washington in World War I, see the preceding chapter.

<sup>23</sup> Haynes to Hays, January 26, 1924. *WHHP*, Vol. 1, Reel 14.

and that carried the sanction and endorsement of the official Washington Government.” Distributors were wary of a movie on such a divisive political issue, and, as Ince put it, a movie that advertised the prohibition commissioner as co-author “would seriously injure its popular reception.”<sup>24</sup> Moreover, the connection between a top government official and such a commercial venture “might precipitate Congressional action, not only to his serious embarrassment, but to my financial interest as well.”<sup>25</sup>

In the end, the movie adaptation of the prohibition czar’s thrilling exploits was reworked into a safer, fictionalized product of the Hollywood dream factory, not the instrument of propaganda Haynes had hoped for. Haynes continued to press for financial remuneration, threatening to bring the Ince interests to court after the unexpected death of the producer in November 1924. *Liquor evil* on the screen showed the limitations of a state-directed cinema in the early 1920s. First National released *Those Who Dance*, first in Des Moines, and then in New York, but the movie failed to return its investment.<sup>26</sup> Despite positive reviews, the public found it a little too propagandistic.

Haynes’ days as the top federal enforcer were numbered. Public outcry over the incompetence of prohibition enforcement led to a major shakeup of the Treasury Department unit in 1924 and 25. Enforcement was reorganized into its own bureau and a concerted effort was made to turn back the corruption and organized crime that swirled

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<sup>24</sup> Ince to Hays, January 8, 1924. *WHHP*, Vol. 1, Reel 14, Pg. 1–4.

<sup>25</sup> *Ibid.*, 3.

<sup>26</sup> Hays to Haynes, June 7, 1924. *WHHP*, Vol. 1, Reel 16.

around illegal liquor. The relationship Hays had cultivated with Haynes proved to be a waste of time—the personal patronage given to Haynes meant nothing to the new prohibition officials, who regarded the movies as an instigator of wet sentiment. The situation came to a head during the spring congressional session of 1926, when, for the first time in 10 years, Congress weighed two bills on the establishment of federal film censorship. The Upshaw bill, authored by dry champion and Georgia representative William David Upshaw, called for nearly total government control over the film industry, establishing a film board of six commissioners under the Bureau of Education to oversee film content and control distribution prices to exhibitors. It was as one observer commented “the apex of the blue-nose philosophy.”<sup>27</sup>

The MPPDA’s Washington men—Jack Connolly and Charles Pettijohn—went to work, lobbying individual members of the House Education committee. Washington was at the same time overrun by prohibitionists and anti-prohibitionists in the spring of 1926, as Congress debated numerous bills over the fate of legal liquor. After testifying in favor of film censorship in front of the House Education Committee, Reverend Canon Chase and Maude Aldrich of the Women’s Christian Temperance Union made personal visits to the wet and dry hearings in the Senate, arguing that movie culture was just as responsible for the erosion of morality and rise in crime that afflicted America.

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<sup>27</sup> Unauthored editorial clipping, April 14, 1926, *WHHP*, vol. 1, reel 25.

Pettijohn—who personally had no patience for the dry cause—insisted Hays do something to reign in his “dry friends” in Washington. Pettijohn did not mince words:

In view of the splendid treatment the Dry forces have received from the motion picture industry, it is about time they “stop kicking our dog around.” If anybody wants to make this country wet just turn the news reels loose for sixty days and let them reach fifty to sixty million people each week with wet propaganda. These Drys ought to thank god you are sitting where you are.<sup>28</sup>

The Association could still wield the threat of propaganda, though it was no more than a bluff. Public opinion had begun to turn against the dry crusade, but the industry could not yet afford to take on the still powerful prohibitionists. Hays contacted Wheeler and Nicholson of the ASL for some assistance. Nicholson replied that the ASL cannot “take up any matter that is not directly concerned with the prohibition issue” but nonetheless requested that Hays send him “more direct information ... as to just what has been done in getting the motion picture concerns to eliminate anti-prohibition propaganda from the screens.” This no doubt frustrated Hays, an abstemious conservative, who firmly believed that the Association’s leadership had a tremendous effect on cleaning up the screens and incentivizing producers to make better movies.

Wet and dry forces were confronted with serious limitations in their conceptions of movie propaganda. How *Prohibition Inside Out* became *Those Who Dance* is a powerful indication that federal prohibition enforcement found it impossible to refashion the machinery of commercial cinema toward dry propaganda—state limitations of influence

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<sup>28</sup> Pettijohn to Hays memo, April 24, 1926, *WHHP*, vol. 1, reel 26.

that would have been hard to imagine in the progressive era or World War I. Dry crusaders outside government regarded commercial cinema as soaked in wet propaganda, despite a lack of evidence—the regulatory impulse of social reform was still working to link together liquor and the movies as sources of social ill. It was up to Hays and the Association to articulate an anti-propaganda position that could protect commercial interests but do so in way that signaled the industry was morally responsible.

On July 12, 1926, the MPPDA released the statement that “no picture be allowed to enter any shot of drinking scenes, manufacture or sale of liquor, or undue effects of liquor ... which can be construed as being brought in unnecessarily as a type of propaganda.”<sup>29</sup> The sympathetic movie press jumped on the news. “Goodbye, Bootleggers! The motion picture of the future is to be as dry as the Sahara,” wrote Louella Parsons for the *Baltimore American*.<sup>30</sup> “Film Act to Respect Dry Law Religiously,” wrote the *New York World*.<sup>31</sup> These gentlemen’s agreements between producers were never ironclad but they did serve to keep the reformers at arm’s length while the industry developed economically. Again, the essential component here was articulating a social function for the film industry that cut against any “type of propaganda” in screen content. The dry attacks of 1926 and 27 emphasized the antagonisms that remained

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<sup>29</sup> MPPDA Public Release, Jul 12, 1926, *WHHP*, vol. 1, reel 28.

<sup>30</sup> Clipping from *Baltimore American*, July 4, 1926, in: *WHHP*, vol. 1, reel 27.

<sup>31</sup> Clipping from *Ibid*.

between the reform sentiment and the American film industry. In some sense, the liquor and movie wars of the 1910s carried over into the 1920s through the politics of publicity.

The MPPDA pursued the familiar tactic of publicizing the movies as a substitute for the saloon, but headlines like “Motion Pictures fight the Saloon” from the *Cotton and Cotton Oil News* of Dallas, Texas, were not exactly earth shattering exposes from major sources<sup>32</sup> Hays also reassessed his political leverage in Washington, insinuating privately that Treasury Secretary Andrew Mellon had financial interests in illegal distillery operations, leverage that could be used both with regards to prohibition and to Treasury tax policies for the film industry.<sup>33</sup> Hays was also interested in stealing away rising legal star Mabel Walker Willebrandt from the federal prohibition enforcement office. Willebrandt, a Stanford trained lawyer who did eventually provide counsel for the film industry in the 1950s, would be a “distinct addition to any organization,” wrote Hays to interested parties, “[w]e have no opening now and if we had I would consider it very fortunate, indeed, if we could get her.”<sup>34</sup>

The real political work was, of course, done in Washington, where the House Education Committee debated the fate of the Upshaw bill. Pettijohn provided testimony

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<sup>32</sup> Clipping from: *WHHP*, vol. 1, reel 25.

<sup>33</sup> Hays to R. H. Ristine, April 9, 1925, *WHHP*, vol. 1, reel 26. The previous fall Secretary Mellon declined to give the film industry further tax relief, opting to give the auto industry relief instead: Jack Connolly to Hays, November 21, 1925, *WHHP*, vol. 1, reel 24. Connolly recommended to Hays that they take the tax relief concerns to the Senate and avoid the House, where the risk of Representatives coming out publicly against the film industry was too great.

<sup>34</sup> Hays to Howard P. Ingels, April 8, 1925, *WHHP*, vol. 1, reel 26.



to the committee while Connolly worked the back channels, moving from office to office shoring up allies, horse trading, and reminded friends of old favors. The Upshaw bill didn't stand a chance—it was defeated in committee by fourteen votes to one.<sup>35</sup> The dry attacks on the movies faded for the time being, only to reemerge in the last years of prohibition when liquor's presence was increasingly noticeable on American movie screens. But the movies were responding to a changing culture in America—the dry crusade had exhausted itself and proved a monumental failure. The American public, suffering in the economic free fall of the Great Depression, responded to the reform sentiment and state regulatory authority over liquor with “we want beer.” By then, the movies were listening.

### The Enemy of Your Friends: Hollywood and the KKK

In 1923, Julius Rosenwald, the Chicago millionaire and owner of Sears and Roebuck Company, wrote to Will Hays with a proposal to improve the image of American Jewish identity. Rosenwald described the increasingly intolerant political environment in America:

Five years ago, we were greeted with a friendly tolerance, and a spirit of equality. Today we find ourselves discriminated against, maligned in the public press ... Day by day we see this Anti-Semitic spirit grow ... Since Henry Ford kindled the flame, the conflagration had spread. The Ku Klux Klan is a natural corollary and we expect further and more vicious manifestations of this spirit of the insidious propaganda against us is permitted to gain force ... We must meet anti-Jewish propaganda with pro-Jewish propaganda—and here are the means.

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<sup>35</sup> McKenzie to Hays, telegram, April 17, 1925, *WHHP*, vol. 1, reel 26.

Rosenwald suggested coordinated efforts on the part of Jewish producers could ensure “a certain proportion of the productions ... will contain a likable Jewish character ... [in] otherwise American or Christian environs.” The plan called for producers to designate “one man best fitted for the purpose” of developing stories that included likable Jewish characters. Rosenwald believed that racial and ethnic appearances should not be eliminated but rather turned toward tolerance. “Racial types,” wrote Rosenwald, “as shown in the drama or photoplay, have always impressed upon the audiences certain characteristic features. Before the war, for instance, a German character was never, to the writer’s knowledge, shown upon the stage or screen in an uncomplimentary way. The German might have been hard-headed, stubborn, but always kindly and beneficent, so that one almost, through force of habit, would refer to a German as ‘a good-natured old German.’ Why can’t we do this much for the Jew?”<sup>36</sup>

Hays believed, however, that such a proposal could do great damage to the industry, as it would “inevitably be received as organized propaganda.” Hays responded to Rosenwald with telling words on the limitations of propaganda in the commercial film industry, writing that “I have no reason to think that, in the motion pictures, a Jewish character is handled on any prescribed basis, good or bad. [...] The motion picture must avoid all propaganda: benevolent or malevolent. To assist in seeing that it achieves that

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<sup>36</sup> Rosenwald and Felix Fantus to Hays, May 4, 1923, *WHHP*, vol. 1, reel 10.

... is my task.”<sup>37</sup> Eliminating racial and ethnic prescriptions in American movies was not only impossible, but a task that underscored a fundamental tension in screen representation: the inherent conflict between representation and production of racial and ethnic identities. How could the movies simply reflect such identities without “any prescribed basis”? What was the relationship between these unadulterated reflections of life and the productive reinforcement of cultural self-perception? For Hays, these questions were treated as merely academic—the screen’s racial and ethnic identities could be faithfully guided by an associational approach to market competition, the same economic strategies guiding screen morality. Bound together in this economic development are propaganda, race, and shifting definitions of moral code. Tolerance would emerge from trade industry agreements designed to white wash the screens of racial and ethnic identity, an overtly political function to cinema, and threats to the moral center. The movie industry’s attempts to delimit the political function of the screen must in itself be understood as a political strategy. In this white washing of American screens, conservative Republicans made the movies liberal.

Prohibition was the Frankenstein of the reform sentiment left to a 1920s American political culture ill-equipped to force America dry, something only a national spirit of progressivism could attain. That spirit seemed suddenly an anachronism, but effects of public mobilization—both from the war on the saloon and the war in Europe—remained

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<sup>37</sup> O’Neill to Hays, May 4, 1923, confidential memo, *WHHP*, vol. 1, reel 10; and Hays to Rosenwald and Fantus, undated and unpaginated, *WHHP*, vol. 1, reel 10.

in rural, small town, and urban America. A guiding principle of the ASL's crusade against liquor was a willingness to work with anyone—wet or dry, Republican or Democrat—who could line up the votes. This ruthless approach to political power was carried over as the guiding spirit behind Klan recruitment—white protestant men across both parties and both sides of the liquor question joined the hooded fraternity. As we will see in the Klan deals cut with Hollywood, the Klan was willing to compromise other principles for political gain.

The Indiana Anti-Saloon League was a highly active and visible organization through the 1910s, but members drifted even as early as 1916 when the dry crusade went national. By 1920, they were still a well-organized political force by the time the Klan started recruiting in the state in the early 1920s. Journalist R. L. Duffus, in writing of the Indiana's Klan emergence, notes that the IASL mobilized by “drilling their followers to take orders and to apply the single test of wetness or dryness to candidates for public office.” This “large group of voters” had become “accustomed to act en masse and to disregard incidental questions of right and wrong.”<sup>38</sup> Duffus was one of the few non-Klan outsiders to observe meetings, rallies, and marches, witnessing firsthand the ways in which dry mobilization could be reoriented toward the fraternal order of white supremacy's invisible empire that claimed unrivaled fidelity to the nation and flag.<sup>39</sup>

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<sup>38</sup> R. L. Duffus, “Behind the Strange Spectacle,” *New York Times*, October 2, 1927.

<sup>39</sup> Ann Gilliom Verbeek, “The League and the Law: Arthur L. Gillom and the Problem of Due Process in Prohibition-Era Indiana,” *Indiana Magazine of History* 104, no. 4, 289–326.

Nationally and in Indiana, prohibition and the Klan were left to a fractured Republican Party that nonetheless dominated politics for much of the 1920s. Despite continued electoral threats from La Follette, the progressive wing of the party had effectively been contained, but party in-fighting over the Klan had only just begun.

From 1915 to 1920, the Ku Klux Klan was not a powerful or national organization. Under its founder, William Simmons, the Klan was a small, Southern based fraternal organization that lacked a modern public relations office or a hierarchical and modernized bureaucracy. In 1920, Simmons hired two professional publicity agents—Edward Young Clark and Elizabeth Tyler—who set about reorganizing the Klan toward open recruitment and national exposure.<sup>40</sup> Crucial to this reorganization was a change in initiation fees, in which recruiters were awarded a portion of the money paid by each newly initiated member they brought into the order.<sup>41</sup> This Ponzi scheme of reactionary nativism was a phenomenal success, filling the Klan's coffers and encouraging Klan proselytizers to comb far and wide for sympathetic white protestants. Klan elites built small fortunes and armed fiefdoms; their excess became legendary. By the middle of the 1920s, millions of Americans had joined the movement, and two thirds of all Klan members came from Illinois, Indiana, and Ohio.<sup>42</sup>

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<sup>40</sup> M. William Lutholtz, *Grand Dragon: D. C. Stephenson and the Ku Klux Klan in Indiana*. West Lafayette: Purdue University Press, 1991, 22–27.

<sup>41</sup> David A. Horowitz, *Inside the Klavern: The Secret History of the Ku Klux Klan of the 1920s*. Carbondale: Southern Illinois University Press, 1999, 2–4.

<sup>42</sup> *Ibid.*, 3.

### Klan Recruitment and Movie Propaganda

William Simmons had been using his favorite movie, *The Birth of a Nation*, to recruit members to the hooded order as early as its Atlanta opening in December 1915. Though *Birth* did not yet make its Atlanta premiere when Simmons christened the new Klan at Stone Mountain in the fall of 1915, it had already played in Knoxville and Chattanooga, Tennessee; Spartanburg, South Carolina; Asheville, North Carolina and a dozen other cities of the South.<sup>43</sup> Simmons, moreover, was well aware of Dixon's play and the phenomenal run *Birth* was enjoying across the country. The spirit of Klan revival was in the air and Simmons, an unassuming ex-preacher and insurance salesman who lacked both charisma and organizing skill, sensed an opportunity. The *Atlanta Constitution* first published the arrival of *Birth* on December 4, 1915, and in the same edition Simmons placed an ad announcing the rebirth of the Klan as a "high class order for men of intelligence and character."<sup>44</sup> The December 6 premiere at the Atlanta Theater was a rousing success. Simmons' newly formed hooded order paraded down Peachtree Street, stopping in front of the theater and firing off rifle salutes in front of the large lines forming at the box office. *Birth* screenings continued to aid southern recruitment to the Klan for the next five years. Simmons himself returned again and again to watch the film

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<sup>43</sup> Stokes, *Birth*, 233.

<sup>44</sup> Stokes, *Birth*, 233.

in Atlanta, coaxing free admission out of the theater manager and often bringing along potential Klan recruits.<sup>45</sup>

Simmons considered Griffith's blockbuster an important tool of propaganda in Georgia and the rest of the Deep South, but it was only after Edward Young Clarke and Elizabeth Tyler signed on as publicists that the Klan pushed movie propaganda in the north, sometimes through private screening engagements and at other times through revival screenings at commercial movie theaters. Special return engagements of *Birth* to two New York City theaters aided recruiting efforts there in February 1922.<sup>46</sup> In December of 1922, *Birth* again returned, this time to the Selwyn Theater. New York censors, concerned about the relationship between the film and the growing Klan movement, reconsidered the film. Griffith, for his part, offered further modifications:

The two-day controversy between Griffith and the state picture commission, settled by the producer saying a title would be inserted to the effect that the management disavowed any connection with the present Klan, or an announcement would be made, concluded in the title being flashed. It was not a slide, but incorporated into the film. It stated that after the reconstruction of the South, following the Civil War, the originators of the Klan put away their uniforms and disbanded the organization forever.<sup>47</sup>

Exhibitors, however, had begun to worry about the Klan's connections to the film and the ongoing, increasingly successful, protests against its showing. "Aroused over the rumor" that *Birth* was rereleased through Klan pressure, exhibitors asked Griffith to

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<sup>45</sup> Kenneth Jackson, *The Ku Klux Klan in the City, 1915–1930*, Oxford: Oxford University Press, 1967, 3–4.

<sup>46</sup> Stokes, *Birth*, 234.

<sup>47</sup> "Griffith's 'Birth of a Nation' Remains 'The Daddy of 'Em All,'" *Variety* 69, no. 3, December 8, 1922, 33.

“withdraw the picture from general release.”<sup>48</sup> United Artists, who by this time had taken over the rights to the film from the Aitken Brothers and Epoch Producing, balked at such a suggestion. *Birth* was a masterpiece and blockbuster, not a Klan recruitment movie, they insisted. The idea that *Birth* aided the new Klan was unavoidable for the film industry press, who nonetheless suggested that Simmons’ Klan was merely “a little crowd of coin-getters in the south” who seized on the images of “spectacular and thrilling white masked costumed riding Klansmen” for their own personal gain.<sup>49</sup>

As film historian Melvyn Stokes as pointed out, from 1915 to 1920 the Klan was still a southern regional organization with moderate to slow growth during the peak earning years and availability of *Birth*.<sup>50</sup> This chronology tempers the notion that *Birth* was a crucial factor in the nationalization of the Klan after 1920. By the 1921, Klan incursions in almost every state in the north and west of the country used several propaganda films, including *Birth*, in their recruitment drives. In some cases these exhibitions were free, as when the Tillamook County Fair in Oregon provided free showings of *Birth* in September 1922.<sup>51</sup> Simmons would be ousted in November 1922 by Texan dentist Hiram Wesley Evans, spending the rest of his life in relative seclusion, obsessively watching and rewatching *The Birth of a Nation* in his private exhibition room.

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<sup>48</sup> “Exhibitors Say KKK Fosters ‘Birth,’” *Variety* 69, no. 4, December 22, 1922, 39.

<sup>49</sup> “Daddy of ‘Em All,” *Variety*.

<sup>50</sup> *Ibid.*, 230–35.

<sup>51</sup> Eckard Vance Toy, “Ku Klux Klan in Oregon,” Master’s Thesis, University of Oregon, 1959, 79–80.



Movie producers, vaudeville comedians, and the legitimate theater crowd all used the Klan as timely material for cultural commentary, often with biting, critical effect. Louis B. Mayer capitalized on the Klan with his picture *One Clear Call*, released in the summer of 1922, a “sure fire money getter at the box office” with “a touch of the Ku-Klux Klan that serves as a thrill.”<sup>52</sup>

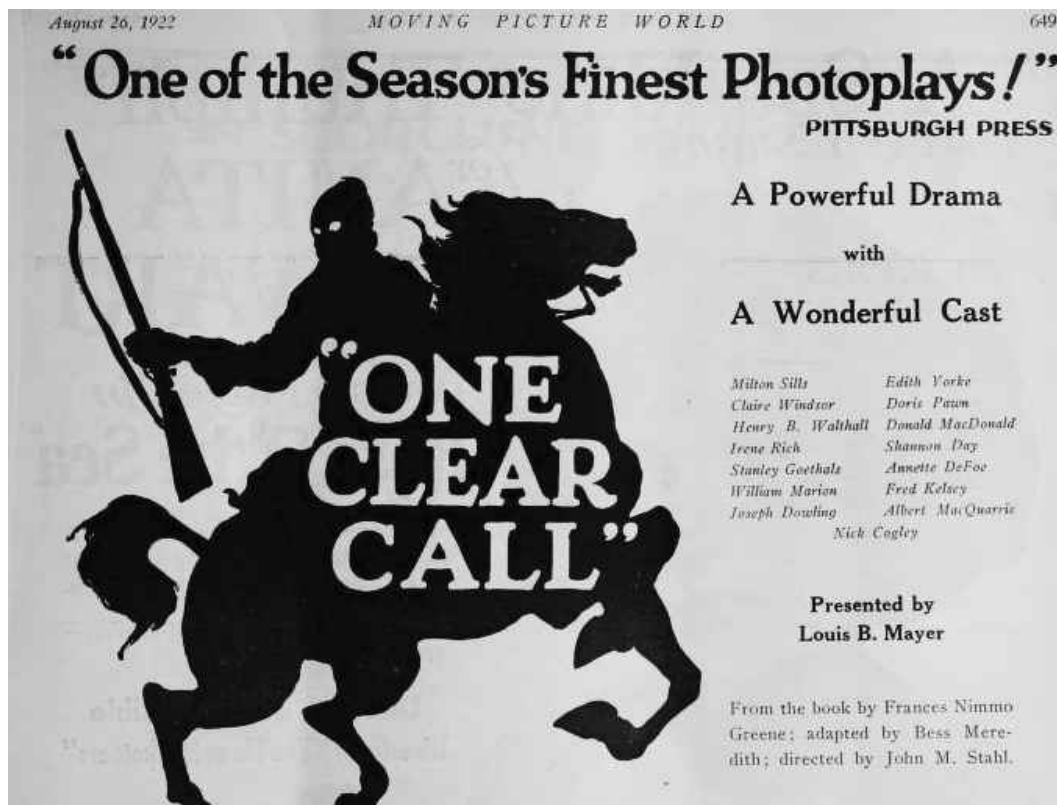


Fig. 10. Advertisement for Louis B. Mayer’s *One Clear Call* in *MPW*, Aug. 26, 1922

<sup>52</sup> *Variety* 67, no. 5, June 23, 1922, 34. It was not the first time Mayer sought to exploit “Klan thrills” for commercial gain—Mayer’s exclusive New England rights to *Birth* made the relatively unknown exhibitor his first fortune and set him off on the path to become the most powerful mogul of the studio era. See: Stokes, *Birth*, 118–19.

But “lukewarm reviews, plus a lack of drawing names” sunk *One Clear Call*, “despite the accentuation of the Ku Klux Klan episodes in the Stanley Co.’s ads.”<sup>53</sup> Some vaudeville performers complained that competitors were stealing their new Klan angles and jokes.<sup>54</sup> One escape artist performed his usual routine of breaking out of a suspended metal cage with a new twist: he did it dressed in the white robes of a Kluxer. Several anti-Klan plays were produced, but most failed miserably. One play, *Behind the Mask*, based off of the Klan exposé written by Major C. Anderson Wright, hoped to both capitalize on and expose the Klan phenomenon. The play broke records for the lowest box offices in Syracuse (total gate on opening night: \$14) and Montreal before shutting down.<sup>55</sup> Wright tried again in late 1922 with a new play called *Masked Men*, but this too proved a dismal failure in Wilmington, Delaware and Baltimore showings.<sup>56</sup>

In Atlanta, Clarke had his own plans for an epic Klan movie. Working with Clifford Slater Wheeler, a Klansman and president of Wheeler Productions, Inc., Clarke planned a \$400,000 “propaganda picture” called *Yesterday, To-day and Forever*, a pro-Klan spectacle “designed to rival *The Birth of a Nation* in splendor.”<sup>57</sup> But exhibitors again chafed at the prospect of more censorship and agitation such a movie would undoubtedly

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<sup>53</sup> *Variety* 68, no. 1, August 18, 1922, 45. The article states that Mayer and Stanley Company spent \$25,000 on publicity.

<sup>54</sup> *Variety* 64, no. 6, September 30, 1921, 11.

<sup>55</sup> *Variety* 65, no. 7, January 6, 1922, 14 and 19; *Variety* 65, no. 8, January 13, 1922, 31

<sup>56</sup> “Anti-Ku Klux Play Gives But One Show,” *Variety* 69, no. 4, December 15, 1922, 13.

<sup>57</sup> *Variety* 64, no. 6, September 30, 1921, 38.

bring. Queried on the prospects of showing the movie, exhibitors replied with “a surprising number of refusals to handle the subject.” Producer Mark Dintenfass was later attached to the project, but with distributors wary and exhibitors giving unequivocal signs they would not screen it, *Yesterday* was shelved.<sup>58</sup>

Perhaps an even more important film to the nationalization of the Klan was *The Face at Your Window* (1920), an anti-Bolshevik sensationalist movie produced by Fox. This currently-lost feature film told the story of two factory owners, one a ruthless capitalist who oppresses his workers and the other fair and labor-friendly. The son of the friendly owner falls in love with a factory worker and Russian immigrant who eventually decides to spy on her fellow Russian laborers. When “Comrade Kelvin” arrives in town to agitate the laborers for revolution, members of the American Legion ride horseback through town clad in bed sheets to quell the Bolshevik uprising.<sup>59</sup> The movie was released on November 14, 1920, and played in small cities and towns through the spring of 1921.<sup>60</sup> In Indiana, just as the Klan began a major campaign in the Hoosier state, *The Face at Your Window* was exhibited in towns such as Greencastle and South Bend.<sup>61</sup> For some observers, the film managed to be anti-capitalist and anti-labor at once, and ultimately

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<sup>58</sup> “No Great Demand for ‘Ku Klux’ Film,” *Variety* 64, no. 8, October 14, 1921, 47.

<sup>59</sup> *The Face at Your Window* synopsis, TCM, <http://www.tcm.com/tcmdb/title/493332/The-Face-at-Your-Window/> (accessed on 8/5/2015).

<sup>60</sup> *Film Daily* 14, no. 90, January 1, 1921, 26.

<sup>61</sup> *Green Castle Herald*, theater section, July 7 and July 8, 1921; *South Bend News-Times*, theater section, April 28, April 30, and May 1, 1921.

proved a failure at the box office, losing in excess of \$100,000 for Fox.<sup>62</sup> The pro-labor *Machinists' Monthly Journal* described the film as an “insidious viper ... void of reason.”<sup>63</sup> The poet Carl Sandburg wrote sardonically that the movie provides about as much enlightenment as “the physical results that follow the imbibing of wood alcohol. [...] As propaganda it fails as hysterics always fail. ‘Keep your shirt on,’ was not the slogan in making this picture.”<sup>64</sup> Two years after its release, *The Face at Your Window* returned to theaters with a new marketing campaign. The Regent of Kansas City, a 10 cent house, may have been one of the first to rerelease *Face* as a Klan film:

The management of the Regent, a ten-cent 12<sup>th</sup>-street house, put one over for a few days. An old thriller, “The Face at Your Window,” was dug up and advertised as “All About the Ku Klux Klan,” “The Invisible Empire.” The quoted titles were heavily displayed and created a sensation, as all films dealing with the Klan are under a ban. City Censor Larkin compelled all references to the Klan and the name on the electric sign to be taken out.<sup>65</sup>

Klan movies were the site of a minor controversy in Kansas City that summer. A pro-Klan three-reeler called *The Mysterious Eyes of the Ku Klux Klan*, which appeared to be nothing more than documentary footage of a Klan rally in Oklahoma, was banned by the city censor. The ban only incited Kansas City moviegoers to seek out treatments on the

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<sup>62</sup> Aubrey Solomon, *The Fox Film Corporation, 1915–1935: A History and Filmography*, Jefferson, NC: McFarland Press, 2011, 48–49; on anti-capitalist and anti-labor tones in the movie, see: William K. Everson, *American Silent Film*, Boston: Da Capo Press, 2009, 153.

<sup>63</sup> *Machinists' Monthly Journal*, International Association of Machinists, 1920, 1136.

<sup>64</sup> Carl Sandburg and Arnie Bernstein, *The Movies Are... Carl Sandburg's Movie Reviews and Essays, 1920–1928*, Chicago: Lake Claremont Press, 2000, 31–32.

<sup>65</sup> *Variety* 67, no. 8, July 14, 1922, 44.

controversial subject, as the surprising success of the “old thriller” *Face* suggests. Such bans, coupled with the inability of the Klan leadership to produce their own film, opened up the possibility of rebranding the anti-Bolshevik *Face* as a pro-Klan picture.

But it was the non-commercial Klan recruitment exhibitions of *The Face at Your Window* that gave the movie greater exposure and new political purpose. Luther Ivan Powell, a powerful Klan leader in the Pacific Northwest, had a copy of the film and exhibited it numerous times for would-be Klansmen at his Seattle headquarters. The Reverend Rueben H. Sawyer likely borrowed Powell’s copy for free exhibition at the municipal auditorium in Portland Oregon on December 22, 1921. Sawyer’s public speech “The Truth About the Ku Klux Klan” was attended by 6,000 Portlanders, creating a sensation. More lectures and exhibitions followed in Portland in the following months, proving so popular that “overflow crowds posed a serious civic problem.”<sup>66</sup> Sawyer’s Klan campaign headed south to Eugene on January 7, 1922, when hooded Kluxers paraded down Willamette Street before lighting a massive flaming cross on Skinner’s Butte, overlooking the city. The following day, crowds formed at the Eugene Theatre to pay 50 cents admission for Sawyer’s lecture and a double feature—“Eight Reels of Thrilling Pictures with a Message of Warning to American Manhood and Womanhood”—of *The Face at Your Window* and an obscure short titled *The Ku Klux Klan Rides Again*.<sup>67</sup> Powell’s

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<sup>66</sup> Jackson, *KKK in the City*, 194 and 198.

<sup>67</sup> Eckard Vance Toy, “Robe and Gown: The Ku Klux Klan in Eugene, Oregon, during the 1920s,” in Shawn Lay, ed., *The Invisible Empire in the West: Toward a New Historical Appraisal of the Ku Klux Klan of the 1920s*, Urbana: University of Illinois Press, 1992, 153. The Eugene Theater, where *Birth* was first screened to

print of *The Face at Your Window* was also projected in Roseburg, Oregon, on April 1, 1922. After the screening, a white mob formed outside the theater circulating the rumor that a local black man, Sam Jackson, had insulted white women while drunk. The mob marched through Roseburg looking for Jackson but could not locate him. The following day local law enforcement instructed him to leave town and never return.<sup>68</sup> The film was also used in recruitment drives in Minnesota, Wisconsin, and Michigan by Klan organizer Robert Lyons.<sup>69</sup>

As prints of *The Face at Your Window* began to wear down with repeated use, Fox distribution started refusing rentals. Klan recruiters requested a copy of the film from distribution exchanges in Chicago, Memphis, Rochester, and Minneapolis, only to be denied every time.<sup>70</sup> In January 1926, just as the Klan was completing its spectacular implosion, Klan organizer Paul J. Heedwohl sent a letter to Fox and Hays asking for assistance in securing a print. The movie, Heedwohl wrote, “is very good propaganda to rebuild the Klan organization, and which will ultimately benefit the Republican Party.” Heedwohl had led the Terre Haute Klavern and had spent the last year combining “stalwart Republicans with our organization” in a campaign against progressive Robert La Follette: “[H]ad it been possible to have had this film in the State of Wisconsin at that

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Eugenians in early 1916, was later renamed the Heilig Theater. With the central roof beam sagging, the structure was deemed unsafe by city officials and torn down in the early 1970s.

<sup>68</sup> Toy, KKK in Oregon, 70; *The Oregonian*, April 3, 1922.

<sup>69</sup> Lutholtz, *Grand Dragon*, 322-24.

<sup>70</sup> Paul Heedwohl to Noble Johnson, December 7, 1925, *WHHP*, vol. 1, reel 24.

particular time I am sure we would have cut down his plurality vote more than we did.” Such a film, wrote Heedwohl, could be part of an Indiana campaign to rebuild the fissures in the Republican Party since “the Klan came to the rescue of the Republican Party in the last National election.” According to Heedwohl, the Fox Film Corporation “is aware of the possibilities that there are with this film” and it would be “no doubt hard to induce [Fox] to release this film, for the fact that they are not in harmony with the Klan organization.”<sup>71</sup> Though Heedwohl didn’t ask directly, the letter clearly indicates his hope that Hays could pressure Fox into releasing a print to the Invisible Empire. Noble Johnson, U. S. congressman from Terre Haute, also wrote to Hays regarding the Heedwohl matter, urging the movie czar to help out his hometown friend.<sup>72</sup> Hays, unsurprisingly, rebuffed this request by positioning the movies against any form of propaganda. In a curt reply to Heedwohl drafted while he was bound for Hollywood by train, Hays wrote that “I am very sure ... that none of our companies would be interested in making a film for any definite propaganda or political purpose. They are very conscientious about this.”<sup>73</sup>

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<sup>71</sup> Heedwohl to Hays, Fox Film Company, Noble Johnson, and the KKK Atlanta headquarters, January 6, 1926, *WHHP*, vol. 1, reel 24. The date of the letter is January 6, 1925, but this is almost certainly a mistake. All other correspondence on the matter is dated December 1925 and January 1926.

<sup>72</sup> The Johnson to Hays letter is notable in that there is nothing in the historical scholarship on the Indiana Klan to indicate Noble Johnson was ever a member or sympathizer with the hooded order. Johnson to Hays, January 11, 1926, *WHHP*, vol. reel 24.

<sup>73</sup> Hays to Heedwohl, January 12, 1926, *WHHP*, vol. 1, reel 24.

### Riding the Fence: Hays and the Klan in Indiana

In the solid south, the Klan was a creature of the Democratic Party, but in the north, particularly in states like Indiana and Oregon, the Klan tended to be dominated by Republicans. In Indiana, Governor Ed Jackson and Senators James Watson and Arthur Robinson were Republicans and Klansmen. The state assemblies of 1922 and 1924 were dominated by the Republican Klan. Republicans accounted for 84 of the 100 members of the Indiana House and 32 of the 50 members of the Senate. L. W. “Jack” Henley, Hays’ former secretary, wrote to Hays that “[m]ore than 50 per cent of the Republicans who will be in that Assembly are either active members of the KKK or in full sympathy with its aims.”<sup>74</sup> By 1924, the Klan was nearing almost total control of the party in Indiana. “There is a real danger that the Republican Party in Indiana will be swallowed up by the Ku Klux Klan in the coming primary,” wrote Henley to his former boss Hays, “[i]f a Klansman is nominated for governor there will be 10,000 negroes in the state who will not vote for him.”<sup>75</sup> Historian William Giffin has shown how black voter realignments in 1920s Indiana presaged national realignments after 1932. The historical understanding of a sudden shift in black voters away from the GOP in President Franklin D. Roosevelt’s first term belies an earlier and more complex shift in voting patterns influenced by the

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<sup>74</sup> Henley to Hays, December 2, 1924, *WHHP*, vol. 1, reel 16. For more on the Republican Klan of Indiana, see: Lutholtz, *Grand Dragon*, 40–82; Robert K. Tucker, *The Dragon and The Cross: The Rise and Fall of the Ku Klux Klan in Middle America*, Hamden: Archon Books, 1992; and Verbeek, “The League and the Law.”

<sup>75</sup> Henley to Hays, April, 1924, *WHHP*, vol. 1, reel 16.



rise of the KKK.<sup>76</sup> The Republican principle of equality before the law had all but disappeared from the party platform by the 1920s, replaced with a more robust and corporate pro-business platform combined with low key social policy alignments in women's suffrage and prohibition. The Klan was by this time no regional, populist, vigilante organization, but an upwardly aspiring fraternal order for white protestant professionals and community leaders. The GOP-Klan union was both a marriage of kind and of convenience.

Will Hays was a conservative joiner: a leader in the Presbyterian church, he was a Mason, Shriner, Rotarian, and member of the Indiana Anti-Saloon League. These politically active and conservative upper middle class professionals were precisely the type of individuals who found the Klan appealing in the 1920s. As the organization grew, much of its populist flavor was submerged under a more conservative and economically privileged membership body and leadership. Was Will Hays a Klansman? It was certainly a question Zukor and other movie men thought about with the Klan at its peak. In January 1925, letters accusing Hays of encouraging "the growth and spread of this anti-Jewish organization throughout the northern states" were sent to Paramount and other studios from a man calling himself Joseph Zimmerman of Toledo Ohio. The letters were sent with an enclosed copy of a 1919 telegram from Edward Young Clark to Elizabeth Tyler

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<sup>76</sup> Willian W. Giffin, "The Political Realignment of Black Voters in Indianapolis, 1924," *Indiana Magazine of History* 79, no. 2, 133-66.

stating that the former had a “very satisfactory meeting” with Hays, who was in Atlanta developing Klan ties that could break the “Solid South” Democratic Party monopoly.<sup>77</sup>

The historical record provides no certainty either way, but despite a close private and public relationship with Walter Bossert—a prominent Indiana Klansman who deposed the notorious D. C. Stephenson as the state’s Grand Dragon—most of Hays’ important political contacts were men like Harry S. New, former governor James Goodrich, and the “Ohio Gang,” part of a dwindling Old Guard of conservative Republicans who tended to look upon the Klan with some measure of disdain. Moreover, Hays does not appear among the names of Indiana Klansman in previously undiscovered Klan documents that emerged in the mid-1960s.<sup>78</sup> Although the Klan gained many members from the professional Republican middle class, there were a number of men in the elite Republican establishment, particularly those connected to national politics, who saw the Klan as a threat to the existing order of patronage and privilege. It seems likely that the affable Hays, always loathe to find himself embroiled in party conflicts, negotiated a middle ground, aiding Bossert where he could, using Klan power when it aided the film industry, and otherwise quietly building up conservative Republicanism amidst America’s nativist reawakening.

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<sup>77</sup> Zimmerman to Zukor, January 14, 1925, *WHHP*, vol. 1, reel 20.

<sup>78</sup> Ku Klux Klan, “Ku Klux Klan Officers, Indiana Records, 1925,” Indiana Historical Society Library Manuscript Collection, 1965.

Bossert did most of his work for Hays in moving the Klan-dominated state legislatures of Indiana and Oregon away from Sunday blue laws and movie censorship. In Indiana, Hays successfully scuttled Sunday closing and film censorship bills in the House committees with the help of Bossert, who had a legal practice in Indianapolis. There is some indication that Hays in turn aided Bossert in his inter-Klan conflict with David Curtis Stephenson. Stephenson was a Texan-born self-promoter, who fashioned himself a socialist agitator, printer, or salesman in Oklahoma, Kansas, and Iowa before rising from obscurity to dominate the Indiana Klan. His main preoccupation—and ultimate downfall—was womanizing and liquor. An unauthored file on Stephenson sent to Hays, likely by Bossert, described Stephenson as a “dangerous element” who had two failed marriages, allegations of fraud, and several failed business ventures that left locals holding the bag while the charismatic Texan moved on to another town and life.<sup>79</sup> After a brief stint in wartime service, the twenty-nine-year-old Stephenson managed to marry for a third time and settle in Evansville, Indiana in 1920.

Oregon and Indiana follow a pattern in which the Klan “seemed to grow most rapidly in areas with the least cause for civic alarm and where opposition to its principles was slightest.”<sup>80</sup> This indicates an important spatial dimension to the rise of the 20s Klan, that the movement was most intense in places farthest removed from diversity shows a collapsing effect of social responses brought about by technological change, particularly

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<sup>79</sup> “Subject: D. C. Stephenson,” unauthored report from Chicago, January 19, 1925, *WHHP*, vol. 1, reel 19.

<sup>80</sup> Toy, *KKK in Oregon*, 33.

motion pictures and automobiles. Hamlets of “100% Americanism” were not threatened by an invasion of others, despite the hysteria—that invasion only appeared real because America’s previously more isolated networks of rural, small town, and urban communities were becoming more interconnected. Labor migration within the country had increased after World War I, but such patterns actually aided Klan recruitment in several instances, making it easier for Klan recruiters to infiltrate small towns and cities.

Within a chaotic social milieu still reeling from wartime mobilization and substantial labor migration, Stephenson was able to impress himself on community leaders almost immediately. The war and increasing automobile ridership had profoundly effected small town life in America, only a few generations removed from a time when the settlement of outsiders in a place like Evansville would have been more noticeable and unusual. Stephenson’s ability to remake himself and start anew was greatly aided by this social change. When Klan recruiter Joseph Huffington arrived in Evansville, Stephenson was quickly singled out for his charisma and political energy. Within a year, he was able to work his way into the inner circle of the rapidly growing Indiana Klan. His populist message was infused with a political paranoia that set disaffected white nativism against the “establishment.” From his palatial Indianapolis office on the third floor of the S.S. Kresge building, Stephenson claimed to have a direct line to the president of the United States, that snipers were stationed on the rooftops of nearby buildings hoping for a chance to assassinate him, and that with Indiana politics

in his firm grasp, the next stop would be the White House itself.<sup>81</sup> While Mussolini was rising to power in Italy and Hitler was writing *Mein Kampf* in a Landsberg prison cell, Stephenson was strategizing on his own All-American brand of fascism.

Stephenson had a powerful ally in Senator Watson and was a fierce rival of Hays' confidante Walter Bossert. These divisions fractured the Indiana GOP in the 1920s, with Governor Jackson, Watson, and Robinson in varying degrees of alliance against old guard Republicans like Hays, Goodrich, and New, more closely aligned with the national party and Coolidge.<sup>82</sup> Indiana was not the only state in which the Klan infiltrated the Republican Party. The 1924 electoral season was dominated by the Klan question. In October Hays sent out a telegram to 20 close Republican friends asking for updates on races and the political environment locally, particularly in relation to the Klan. Most of the responses show varying degrees of anti-Klan sentiment, giving some indication of the wider Republican circles Hays traveled in. Fred Miller of South Bend responded that "Indiana probably will have more split tickets than in any other election in its history due to the intense feeling against the Klan ... it looks as if the Klan influence is sufficient to elect the Republican gubernatorial nominee but his plurality will be greatly below the Republican national ticket."<sup>83</sup> "We have a bad Klan fight here," wrote Charles Rawson of

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<sup>81</sup> Lutholtz, *Grand Dragon*, 42, 149, and 171–72.

<sup>82</sup> It should be noted that Jackson and Watson were "never close politically" and this further split ran along the Bossert–Stephenson divisions within the Klan. Unauthored, undated memo to Hays, *WHHP*, vol. 1, reel 21. The letter is not from New, and likely not from Morgan or Henley. The content of the letter indicates someone at the highest level of Indiana politics.

<sup>83</sup> Miller to Hays, October 20, 1924, *WHHP*, vol. 1, reel 18.

Iowa, who noted that local papers were lining up Coolidge with the Klan, and that “consequently, some of our big merchants who had promised to contribute to the campaign are refusing.”<sup>84</sup> In Caspar, Wyoming, Patrick Sullivan wrote to Hays that “[t]here is an intensely bitter Ku Klux feeling in Denver. Notwithstanding that, it looks to me like the Republican Senators would be elected.”<sup>85</sup> In Indiana, Robert Tucker of Indianapolis wrote that “[p]olls taken in every city of the state indicate a loss to Jackson among the better class of people. This is due to the anti-Klan movement which is growing every day.” Tucker described the scene at the Indianapolis Republican Party headquarters:

The third floor is given over largely to the Jackson campaign. The Coolidge Campaign is conducted from the ninth floor. There is a strong Klan element on the third floor which is doing everything within its power to elect Jackson.<sup>86</sup>

Bert Morgan, Prohibition Commissioner of Indiana, cast the divisions in the GOP in socio-economic terms: “the business men as a class and a number of regular Republicans are against Jackson but when you go out into the factories and mills they are all for him. I was out in West Indianapolis recently, the Democratic stronghold, and it looked as though there was a Jackson picture in nearly every window.” Although recent scholarship on the KKK in the 20th century has convincingly troubled the traditional view that the

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<sup>84</sup> Rawson to Hays, October 20, 1924, *WHHP*, vol. 1, reel 18.

<sup>85</sup> Sullivan to Hays, October 22, 1924, *WHHP*, vol. 1, reel 18.

<sup>86</sup> Tucker to Hays, October 24, 1924, *WHHP*, vol. 1, reel 18.

Klan's rise was rooted in the rural-urban tensions of 1920s America, the relationship between the Invisible Empire and grassroots populism is still murky.<sup>87</sup> The Klan did have a populist element to its early recruiting successes, but it was without a doubt an upwardly aspiring fraternal order that attempted to cobble together an alliance between professionals, tradesmen, civil employees, and some workers. Stephenson was likely more politically connected than Bossert, at least with Indiana's presently serving politicians, but Bossert's Klan faction, aided in his alliance with Hays, Goodrich, and New, was more nationally connected and better aligned with the Old Guard of the GOP.

### The Klan in Detroit

Bossert worked Republican connections in Michigan with the help of Hays, who was asked to "quietly tip off" his connections to get in touch with a Klan recruiter living at the Statler Hotel in Detroit. Bossert's associates in Michigan were "quietly building the same kind of machine that we built in Indiana," but one that could be geared toward anti-labor agitation in the increasingly unionized auto industry.<sup>88</sup> Detroit, awash in bootleg liquor from Ontario and teeming with newly arrived blacks and foreign-born Catholics looking for work in the auto industry, was ripe for the Klan's racial hysteria and

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<sup>87</sup> For more on reassessing the history of the 20th century Klan, see: Shawn Lay, ed., *The Invisible Empire in the West: Toward a New Historical Appraisal of the Ku Klux Klan of the 1920s*, Urbana: University of Illinois Press, 1992; Leonard J. Moore, *Citizen Klansmen: The Ku Klux Klan in Indiana*, Chapel Hill: University of North Carolina Press, 1991; Jackson, *KKK in the City*.

<sup>88</sup> Bossert to Hays, March 18, 1925, *WHHP*, vol. 1, reel 21. Bossert identified the man living at the Statler was Robert Lyons, who had brought the Klan to Richmond, Indiana in 1922.

moral nativism. Membership grew to about 32,000 by 1924, but resistance to the hooded order was strong. The local press was almost entirely anti-Klan and Detroit police made a habit out of confiscating the Klan's own publication, *The Fiery Cross*, from street vendors.<sup>89</sup> Additionally, the Burns Law, passed in the summer of 1923, outlawed public meetings by masked men.<sup>90</sup>

But the Klan was to make their biggest move in the city by nearly seeing through a write-in candidate, Charles Bowles, for city mayor. Bossert was one of the financiers and organizers behind Bowles, who he regarded as a “good friend ... I would very much like to see put across.”<sup>91</sup> Bossert asked Hays to send out letters to Republican contacts in Michigan urging support for Bowles despite the fact that he had failed to secure the Republican nomination. Bowles finished an impressive second in what was intended to be a runoff election between John W. Smith and Joseph Martin, garnering over 20,000 votes ahead of Martin and less than 10,000 shy of the Democratic winner, Smith. The Klan whipped up a frenzy with accusations of voting fraud as the official canvass of the votes determined that some 17,000 write-in votes were discounted for numerous mistakes. Votes could be ruled invalid with the placement of a period after the name or an abbreviation of Charles. The *Detroit News* soon published a list of 120 ways to write Charles Bowles that had been discounted.

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<sup>89</sup> Jackson, *KKK in the City*, 131–32.

<sup>90</sup> *Ibid.*, 130.

<sup>91</sup> Bossert to Hays, September 2, 1925, *WHHP*, vol. 1, reel 23.



But Klan anger could not be translated into broader public outcry and mobilization, and the Bowles campaign proved the high water mark of the Detroit KKK. By 1927, harassed by the press and increasingly unable to keep members connected to their local Klaverns, the Klan in Detroit withered to a small band of loyalists. Nonetheless, national observers were shocked and dismayed by the relative success of the Klan in municipal politics. “In Detroit,” wrote *Christian Century*, “a Klan write-in candidate, almost totally unknown in the city, whose name was not even on the printed ballot ... came within a few thousand votes of being elected mayor of the fourth city in the United States.”<sup>92</sup>

### The Klan in Oregon

In the U.S. House, Republican gains in Indiana, Oklahoma, Oregon, and Colorado were aided by Klan mobilization within the Republican Party. Oregon’s history of white nativist exclusion stretches back to the first settlement of the state. Anti-Catholic sentiment was deeply engrained and reflected in Oregon’s Know Nothing and American Protective Association movements in the 19<sup>th</sup> century. The issues of slavery and free blacks were especially difficult for Oregon Territory, and in drafting the original constitution in 1857, it was decided that these issues would be referred directly to the voters. A surviving abstract of the votes in Polk County gives some indication of the

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<sup>92</sup> Quoted in: Jackson, *KKK in the City*, 134–40.

sentiment at the time—voters decided overwhelmingly against both slavery (484 to 231) and the settlement of free blacks (584 to 53). Oregon’s anti-slavery position was thus articulated through racial exclusion: “Most Oregonians equated the presence of blacks with the institution of slavery, and wanted no part of either.”<sup>93</sup> The final draft and approved constitution of the territory banned free blacks, affirmed equal rights of “white foreigners,” and granted power to the Oregon legislative assembly to “restrain and regulate the immigration to this State.”<sup>94</sup> The regulation and maintenance of whiteness was thus explicitly codified into Oregon state law.

The Oregon Klan grew rapidly following its introduction in Medford sometime in 1921, and by the 1922 gubernatorial election, the Klan had grown to be the dominant mobilizing force within the Republican Party. Klan infiltration in the north was often spearheaded through associations with Masonic and Scottish Rite bodies, but this is particularly prevalent in Oregon. The notorious public school bill, which sought to prohibit private elementary and secondary education, was originally drafted by a Portland Scottish Rite lodge. The incumbent governor, Benjamin W. Olcott, was vehemently and publicly anti-Klan, issuing an Executive Proclamation against the Klan in May, 1922, in which he wrote that “[t]he true spirit of Americanism resents bigotry, abhors secret machinations and terrorism and demands that those who speak for and in

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<sup>93</sup> “Abstract of Votes, 1857,” Oregon State Archives at Oregon Secretary of State Offices, <http://arcweb.sos.state.or.us/pages/echoes/link20.html> (accessed on 8/3/2015).

<sup>94</sup> “Original 1857 Constitution of Oregon,” Oregon Blue Book of the Oregon Secretary of State, <http://bluebook.state.or.us/state/constitution/orig/const.htm> (accessed on 8/3/2015).

her cause speak openly, with their faces to the sun.”<sup>95</sup> His call for public action against “masked riders or cloaked and disguised figures” was not well received. He barely survived the Republican primary against Klan-backed state senator Charles Hall, and when the Klan threw their support to the Democratic nominee Walter M. Pierce, the incumbent lost in a landslide. The new Democratic governor proved to be a major disappointment for the Republican-leaning Oregon Klan—by 1924, the Klan initiated an unsuccessful recall effort against Pierce, who subsequently lost re-election in 1926.

Walter Bossert worked his Klan connections in Oregon for the movie czar. The Hays office had initially encountered significant troubles in influencing the Oregon legislature against Sunday closing laws and state film censorship. Fred Beetson, Hays’ new point man in Hollywood, made a special trip up to Portland in early 1925 and employed a lobbyist aptly named Kaspar K. Kubli. Kubli was a former state legislator and speaker of the House who was recruited into the Klan by Oregon Grand Dragon Fred L. Gifford. He was, however, a “drunken low down type of politician” who, after being paid for his services, demanded 4 cases of liquor and more money from the Hollywood man. Kubli then attended a night session of the Oregon assembly and “was so drunk they had to remove him.” The pay offs threatened to be exposed by the incompetent Kubli, who proved loose lipped with regards to his Hollywood bag man.

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<sup>95</sup> “Executive Proclamation Against the Ku Klux Klan, 1922,” Oregon History Project, [http://www.ohs.org/education/oregonhistory/historical\\_records/dspDocument.cfm?doc\\_ID=CC091558-DB15-08CB-583F21043E8F36FF](http://www.ohs.org/education/oregonhistory/historical_records/dspDocument.cfm?doc_ID=CC091558-DB15-08CB-583F21043E8F36FF) (accessed on 8/3/2015).

The region's most powerful exhibitors—Claude C. Jensen and John G. von Herberg—were little help to the Association as well. They were men who, according to Beetson, enjoyed “the filthiest, foulest possible reputation. They are ex-saloon men of the lowest order ... They kill their bills, as did the saloon people, with wine, women, and money.” The dirty politics of nativist Oregon was threatening to spiral out of control, and Bossert was called in by Hays for damage control. Bossert quickly contacted Gifford, Oregon's Grand Dragon, who personally killed the Sunday closing bill in the committee and instructed his Klansmen to lay off the movies.<sup>96</sup> Gifford wanted the movie czar to know just who was responsible for killing the anti-movie bills in Oregon and who really controlled the state. “[T]he machine [here in Oregon] is entirely mine and [the bills] could have gone either way. I received no word of thanks nor anything else for my efforts there and expect in the future to be advised previous to the session of just what my status will be in this respect.”<sup>97</sup> While Bossert believed that Gifford could be a “very valuable contact” for Hays in the future, the movie czar coldly brushed off the Oregon Grand Dragon, writing to Bossert that “I never retain anyone anywhere and I cannot in this instance.” Hays likely was unaware of the fact that Klan power in Oregon was quickly

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<sup>96</sup> Gifford to Bossert, telegram, February 25, 1925, *WHHP*, vol. 1, reel 20. The telegram could not have put it more succinctly: “Bill killed today”; Bossert to Hays, February 26, 1925, *WHHP*, vol. 1, reel 20; Bossert acknowledges receipt of check for work in the “Oregon situation,” Bossert to Hays, March 17, 1925, *WHHP*, vol. 1, reel 21.

<sup>97</sup> Gifford to Bossert, quoted in Bossert to Hays, September 25, 1925, *WHHP*, vol. 1, reel 23. There is a subtle hostility present in Gifford's messages to Hays through Bossert—Gifford also wanted it known that the movie men in Portland “are not our kind of people” and that the work done for Hays would not be considered “past history.” Gifford to Bossert, undated copy of letter, *WHHP*, vol. 1, reel 20.

waning, and Gifford was largely powerless. He resigned as Grand Dragon of the Oregon Realm sometime in 1925. He briefly returned to the public light in a failed attempt to revitalize the Klan in the late 1930s, but largely faded into obscurity.

### The Downfall of the Klan in Indiana

Back in Indiana, Republicans increased their majority in the House (by 22 seats) and Senate (by 4 seats) following the 1924 elections. Black Indianans shifted heavily toward the Democratic Party—in some black Indianapolis precincts Democrats gained a majority for the first time in the history of the city. Ed Jackson, enjoying support from both factions of the Klan, was elected Indiana governor with a bigger margin in Indianapolis than the state as a whole.<sup>98</sup> He presided over a Klan-dominated legislature with a veto-proof Republican majority. But Klan glory would be short lived, even in Indiana. A significant factor was the inability to approve and sign into law Klan-backed legislation—efforts to close Sunday amusements, to prohibit private schooling, and to outlaw the wearing of religious garb by schoolteachers all failed. Hays made sure that allies such as Jackson, Bossert, and others knew where they should stand on the question of Sunday amusements. Hays wanted Bossert especially to have no doubts as to what

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<sup>98</sup> The Klan's greatest presence in Indiana, Colorado, and Oregon was in its largest cities—Indianapolis, Denver, and Portland respectively.

should be done with any anti-movie legislation, indicating he would bank roll any necessary expenses in such an endeavor.<sup>99</sup>

While Hays was busy with Klan-dominated state legislatures in early 1925, the Klan itself was beginning its quick and sudden implosion. Stephenson's brutal kidnapping, forced intoxication, rape, and murder of Madge Oberholtzer in March, 1925, set off a public outcry against the Klan and a highly publicized trial in which Stephenson was found guilty of second degree murder and sentenced to life in prison.<sup>100</sup> By 1926, Klan membership had plummeted, particularly in northern states like Indiana. The prominence of the Stephenson trial was a direct cause of a decisive shift in public opinion.<sup>101</sup> By 1926, the Klan had ceased to be a national organization with any political presence or power.

Hays and his Indiana Republican allies had a front row seat to the Klan's implosion: Hays knew Madge Oberholtzer personally; she was employed in the office of Bert Morgan along with Martha Hays, Hays' sister. In the summer of 1924, Morgan wrote to Hays informing him that Oberholtzer and her best friend Ermina Moore were making a cross country trip to Hollywood, intending to stay at the Hollywood Studio Club, a YWCA-sponsored boarding facility intended to provide safe lodging for the many young

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<sup>99</sup> Hays to Bossert, February 26, 1925, *WHHP*, vol. 1, reel 20.

<sup>100</sup> For details on the Stephenson trial, Oberholtzer, and their effect on the downfall of the Klan, see: Lutholtz, *Grand Dragon*.

<sup>101</sup> Lutholtz, *Grand Dragon*, 211–13.

women relocating to Hollywood with hopes of working in the movies.<sup>102</sup> Hays took an active interest in the Studio Club, which he regarded as a useful instrument in the clean up of (or the appearance of cleaning up) Hollywood and the publicity fight against reformers. Despite a ban on visitors to the studios, Hays asked Beetson to “have an exception made in this case.”<sup>103</sup> Six months after her trip to Hollywood, Oberholtzer met Stephenson for the first time at a Republican Party fundraiser, and three months after that, she would be dead. The forgotten Oberholtzer-Hollywood connection marks a tragic irony in America’s 1920s nativism: here was a single young woman driving across America to Sin City Hollywood, enjoying the freedom of travel and high society through Republican Party contacts, only to be raped and murdered back in small town Indiana by the leader of an organization that staked its virtue on the protection of white womanhood. But was there more to the story than an ironic coincidence?

Lutholtz’s account of the Stephenson trial raises some doubts about his guilt. Stephenson, by his own account, accused the Bossert faction of framing him to destroy his reputation. He later testified that another woman had been offered \$50,000 in the summer of 1925 by Bossert ally Robert Lyons to tell a similar story of a violent rape at the hands of Stephenson. Stephenson claimed that the woman refused the offer and

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<sup>102</sup> Morgan to Hays, July 23, 1924, *WHHP*, vol. 1, reel 17.

<sup>103</sup> Hays office to Morgan, July 25, 1924, *WHHP*, vol. 1, reel 17. By coincidence Hays happened to be in Hollywood at this time, and Julia Kelly (Hays’ secretary in New York) informed Morgan that the young women could meet Hays in person if they got to Hollywood in time. This seems unlikely, however, as Hays left Los Angeles by train on the morning of July 28.

contacted him and his lawyers with the story, visiting Stephenson in jail on July 3, 1925. That night, the woman, Edith Irene Dean, was found badly beaten and mutilated just off a rural road outside her hometown of Noblesville, Indiana. She died from her injuries the following morning and no arrests were ever made in her case, though Stephenson claimed that she had been followed after her visit to his cell and forced off the road by three men, Klan officials Robert McNay, Ray Huffington, and Lyons himself. Lutholtz writes that “nearly all of Stephenson’s story [on the murder of Dean] checks out” and that the story “goes a good distance toward explaining why Stephenson then, in August, was capable of being threatened out of testifying in his own defense.”<sup>104</sup> Did Bossert frame Stephenson, and if so, was Hays aware of this? Further, did Hays give some help to Bossert and Lyons in destroying Stephenson? Hays was in possession of a confidential report on Stephenson that focused on his womanizing, propensity for violence, and failed marriages. This report was sent to Hays exactly one week after Oberholtzer first met Stephenson. That Hays—Bossert’s most powerful political ally—knew Oberholtzer before she became a prominent figure in the downfall of Stephenson certainly compels one toward speculation, but it is almost certain that any clarity to these mysterious connections have been lost to the passage of time.

Historian Leonard Moore writes that the disgrace of Stephenson and increasing unpopularity of Governor Jackson “provided perfect openings for Indiana’s Republican

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<sup>104</sup> Lutholtz, *Grand Dragon*, 321.



establishment.” Conservative Republicans, in this view, repudiated Klan infiltration in the party just as they had the progressives. Moore continues:

Once the scandals erupted, Old Guard leaders began a two-year campaign to distance the party from the Klan movement and to explain the order’s political influence as a particularly insidious episode of political corruption. In 1926, an unidentified group of wealthy Republican businessmen financed a “secret investigation to find out on whose front door the crookedness could be hung.”<sup>105</sup>

There is no indication, however, that Hays—certainly a leader in Indiana’s GOP Old Guard—was actively involved in this campaign, a fact that troubles the historical view of a clean repudiation of the Klan by the traditional GOP. It seems very unlikely that Hays, now working in private industry, was simply not involved enough in politics back home to be a part of the GOP establishment’s reassertion of dominance—his personal papers give a clear indication of continued interest and active involvement in Indiana’s political affairs. Indeed, Hays continued a close personal relationship with Bossert well after the Klan’s demise.

Although Stephenson’s political power was destroyed and the Klan widely discredited, many prominent Klansmen, particularly those high up in the Bossert faction, simply buried their Klan affiliations and carried on with their professional careers. Robert Lyons earned a law degree at Indiana University in 1927 and worked as a lobbyist for national grocery chain stores in Washington. He lived a life of opulence in Indianapolis and kept a suite of offices at the Columbia Club where the most important

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<sup>105</sup> Moore, *Citizen Klansmen*, 187.

Indiana Republicans, including Hays, did business. By the 1940s, Lyons was regarded as a “kingmaker in Indiana politics” whose secretive dealings became legendary: “What he did, whom he talked with on those return trips was known to few—only those whom he contacted—although at times word ran like a prairie fire that ‘Bob’ Lyons was in town.”<sup>106</sup> Bossert downplayed his Klan connections after resigning as Grand Dragon in 1926. He returned to his legal practice in Indianapolis and remained active in Republican Party politics until his death in 1946.

The Hays office used its Republican contacts to steer America’s nativism away from movie regulation, attaining some measure of social control through political power that arose from the coordinated efforts of movie producers and distributors. This relationship in turn shaped the development of the Republican Party itself, particularly the sedimentation of a pro-business platform with a post-progressive social conservatism that emerged from the inter-party conflicts with the Klan. As early as 1927, there was talk in the press of a “revival of New-Hays-Beveridge Republicanism” that would “fight Klan rule.”<sup>107</sup> Hays played both sides of the Klan issue to great effect, using their mobilization where helpful and otherwise shaping a post-Klan GOP conservatism that remained durable if dormant for much of the 1930s and 40s. Hollywood’s negotiated relationship with the Klan helped clear the moral ground for the movie men to gain

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<sup>106</sup> *Indianapolis Star* obituary for Robert Lyons, quoted in: Lutholtz, *Grand Dragon*, 323.

<sup>107</sup> “Sanders May Seek Indiana Senatorship,” *Herald Tribune*, July 14, 1927, clipping from *WHHP*, vol. 1, reel 34.

leverage against blue nose reformers, refashioning the means of their nativist sentiment toward antithetical ends. Hays' strategies helped producers and distributors build the capacity for moral control necessary for greater vertical consolidation in the industry. Non-commercial educative cinema—both necessary and undesirable for the movie men—proved to be another negotiated political field that would give the industry the means of social control to achieve the ends economic consolidation.

## CHAPTER VI

### VERTICAL INTEGRATION TO MORAL MASTERY

The movies had emerged victorious in the liquor war and the Great War. Producers wrested power in the industry and under the MPPDA, forged complicated alliances with federal prohibition and the Klan. It was now time for producers to achieve lasting economic consolidation. The film industry had aligned itself with temperance agitation, progressive moralism, and the patriotic fight of war, both to make the industry more respectable as middle class leisure entertainment and to decouple the ready link between film censorship and the reform sentiment. These alignments were a necessary precondition for broader industry consolidation but they could not achieve lasting economic development and reform without greater moral control over screen content. This chapter takes a more detailed look at the entangled economic and moral issues surrounding the film industry after World War I, arguing that the concerns over the social power of movies spurred greater horizontal coordination among producers, which in turn gave the industry greater moral control over production to consolidate the industry vertically and ultimately achieve moral mastery of the screen with the institutionalization of the Production Code Administration.

Raw material suppliers, producers, distributors, and exhibitors had been struggling to find the right legal formula for vertical consolidation since the beginnings of commercial American film—to form the disparate branches of an infant industry into

an integrated and smoothly functioning machine. Some companies, such as the Fox Film Corporation, were vertically integrated at an early stage, but these consolidated enterprises tended to be on a limited scale and lacked industrywide coordination. Firms like Fox were also regarded as the worst offenders of American morality by industry insiders.<sup>1</sup> From roughly 1909 to 1915, the Motion Picture Patents Company had failed in structuring the industry along traditional lines of property and patent protection. State regulatory action looked upon the burgeoning movie industry with an unusually high level of scrutiny. The moral anxieties associated with the industry greatly hindered economic consolidation. Independent producers played a crucial role in bringing down the Edison Trust, but it was an industry war largely fought and won by exhibitors who had gained newfound power in the shifting sands of American capitalism in the 1910s. The consumer-orientated transformation of capitalism allowed movie men who controlled the point of purchase and site of consumption—the motion picture theater—to be at the center of the industry’s development in the 1910s. The essential services of the exhibition houses in the Great War further strengthened exhibitor power in the industry.<sup>2</sup>

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<sup>1</sup> “Fox made his money on pictures of [a suggestive] type.” Bob Cochrane to Will Hays, December 13, 1923, *WHHP*, vol. 1, reel 13. In this letter, Cochrane expresses concern that William Fox has been largely absent from MPPDA functions, and thinks regarding it as a sign he may be slipping back into making immoral pictures. These concerns were an indication that some members regarded the Association as a morally binding institution. See also: MPPDA minutes of members’ meeting, June 16, 1924, *WHHP*, vol. 1, reel 16, in which Fox admits he made a lot of salacious pictures: “I made them by a bird by the name of Theda Bara. I made them as rotten and vile as you can ... I changed my course and now we are trying to do what Zukor did several years ago.”

<sup>2</sup> For an account of this, see Chapter 4.

Exhibitors were powerless, however, in dealing with the tension between economic consolidation and the moral character of screen content. Although the history of consolidation in the American film industry has been well documented, too little attention has been paid to the relationship between economic consolidation and the moral questions of censorship and social regulation. Economic consolidation was consistently hampered by what reformers regarded as the moral threats of the screen, threats that were amplified, from their perspective, by the Hollywood monopoly or “movie trust.” The cinema’s social capacity for public influence created a high level of distrust from both reformers and state authorities over the goals and consequences of consolidation—would the “movie trust” threaten the moral fabric of America just as the “liquor trust” had?

#### Moral Clean Up and its Discontents: Educative and Religious Cinema

Canon William Sheafe Chase, pastor of Christ Episcopal Church in Brooklyn from 1905 to 1932, was perhaps the most visible and fervent campaigner for the regulation and censorship of the movies. Beginning in 1907, Chase advocated for the city of New York to regulate the motion picture industry and censor harmful film content. He was the primary author of New York state law for regulating motion pictures in 1921 and in 1925 became General Secretary of the Federal Motion Picture Council in America, Inc. He founded a series of reform organizations throughout the early years of American movies and consistently attacked the “lawless conduct of the motion picture industry.”

Canon Chase had always been a strong advocate of film censorship, but by the 1920s and with the rise of the Motion Picture Producers and Distributors of America, Chase reoriented his reform proposals away from censorship of film content and toward economic regulation of the industry. The call for censorship was replaced with the call for trust busting. With Will Hays and the MPPDA as his targets, Chase consistently tied together the notion of consolidation in the industry and the moral threat of movies, arguing in effect that control of motion pictures by a consolidated motion picture industry would degrade and imperil the moral fabric of America and the world. For Chase, censorship itself, particularly censorship that adhered to limitations of prior restraint, could not attend to the structural immorality of the industry as a whole, and so he and other reformers turned their attention to the economic control of the industry by producers in Southern California.

For Chase, the American movie industry's "school of crime" was created by the consolidating efforts of the MPPDA and its member producers and distributors. He sought a "restoration of competition in this industry as one of the means by which they can reasonably hope to obtain pictures which are better in a moral, educational, and cultural sense."<sup>3</sup> Canon Chase had a personal interest in motion pictures—he was one of the early advocates for the use of motion pictures as religious instruction in churches and schools. He exhibited movies in his church on Sunday, and led a fervent campaign

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<sup>3</sup> William Sheafe Chase to Will Hays, July 14, 1927. *WHHP*, Vol. 1, Reel 32.

to stop Sunday amusements and commercial movie theaters open on the Sabbath. Chase celebrated the power of moving pictures to inform and influence the public, but was deeply distrustful of commercial cinema. Among reformers, this put Chase in a unique position as a public figure who believed in the righteous power of movies while incessantly attacking its commercial control. There was also an implicit belief in the power of competition to uphold moral values in Canon Chase' reform activism. Chase attended numerous Congressional anti-trust hearings on the movie industry, advocating that anti-trust laws be enforced so that, through the "restoration of free competition" in the industry, "better pictures may be obtained from those ready, willing and able to make them as soon as market conditions permit their exhibition."<sup>4</sup> It is not hard to see how these arguments worked at cross-purposes for Chase—he envisioned a non-commercial arm of American cinema, both religious and educational, that would supplant commercial power in movies; but he saw this reorientation through the traditional market and commercial dynamic of competition. Through competition, base commercialism could be checked by the desire to make better and more moral movies.

Hays and the MPPDA responded to these challenges by situating themselves in a tenuous middle ground between moral uplift and a defense of private commercial enterprise. They kept regulators and reformers at bay by emphasizing the need for "better films" and the moral clean up of the industry by producers themselves. They

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<sup>4</sup> Ibid., pg. 2.



routinely articulated the social power of the cinema for shaping the moral capacity of the American public and argued that the commercial industry was the only force capable of doing this. Hays used his powerful connections in the Presbyterian church community to win over religious objections to motion pictures and the movie industry, situating himself as both reformer and defender of the movies. It was, to be sure, a very different era than the progressive years of the 1910s. The reform sentiment had taken a decidedly aggressive shift toward external coercive measures through state action rather than internal conditioning of reform. Two years into the prohibition era, and amidst an increasingly nativist and reactionary American sentiment, convincing the public and the state that the movie industry could reform internally was far from easy.

Educative cinema is as old as the movies themselves, but early attempts to align commercial interests with film as education were first pursued in the United States by French film companies— Pathé, Éclair, and Eclipse—who produced travel shorts and botanical and scientific films for American distribution and exhibition in 1912. The Motion Picture Patents Company (also known as the Edison Trust) used their massive distribution arm, the General Film Company, to organize a separate library of educational films called the Educational Department. Edison envisioned a commercially successful production and distribution of classroom instructional movies, and sought to develop a film series of 7 reels called Conquest Pictures. These efforts, predictably, failed to make any money, and Conquest Pictures went out of business in May 1917, one month after America entered the war. During the war, the entire library of the

Educational Department of the General Film Company was subsequently bought by The Community Motion Picture Bureau, an organization started in Boston in 1912 for the purposes of selecting and arranging programs for non-theatrical groups. The CMPB performed “a stupendous piece of work” during the war, exhibiting educational films in the dugouts of the frontlines in France and on the battleships and transports of the U.S. Navy. Edison’s commercial endeavor into educative cinema had failed, but non-commercial uses of the same materials flourished during the war.<sup>5</sup>

After the war, the potential of educative cinema seemed limitless, and the CMPB “were prepared, as no company had ever been, to organize the non-theatrical field and to supply the demand for pictures for any kind of community need.” But such potential quickly dissipated in America’s postwar environment and the CMPB faded into obscurity. Hays believed these efforts had failed because of “unbusinesslike methods,” a clear sign that educational film needed to be channeled through the commercial circuit and driven by profit motivation. The major stumbling block in this regard were the exhibitors, who protested any attempts to develop an educational film arm of the movie industry. Even a commercially oriented educative cinema was unacceptable to most organized exhibitors as they felt rightly that educational movies are not profitable. When Famous Players organized an educational motion picture department in early 1919, exhibitor’s organizations went on the war path, accusing producers of controlling and ultimately

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<sup>5</sup> Elizabeth Richey Dessez, “History of Educational Films,” Nov. 8, 1922, unpaginated. Prepared at the request of the Hays office. *WHHP*, vol. 1, reel 7.

decimating the cherished motion picture theater, that cathedral of democracy.<sup>6</sup> When Hays took charge of the MPPDA, he found in himself in the thick of a difficult political challenge with regards to educational cinema. William Jennings Bryan wrote to Hays in March 1922, pressing him to foster and develop the educational and religious picture trade, a field “that has been scarcely touched upon to the present time ... I can see in moving pictures a vehicle for the education of the young more potent than all the text books ever written.”<sup>7</sup>

The American Development Foundation also pressed Hays to develop educational cinema, framing the issue as one of industry survival for the movie men. While the ADF acknowledged that “almost all attempts to [develop educational films] have been met with financial disaster ... news weeklies, scenic, travelogues, animated drawings, industrials, and biological subjects ... have shown the possibilities for educational and propagandic purposes.” The educational field of the cinema, the ADF warned, “will continue to grow—whether or not the idea is sound from a commercial point of view.” In invoking the long tension between liquor and the movies, the ADF further warned that:

The present opposition within the industry to non-theatrical showings may be compared with the opposition on the part of saloon keepers and brewers to prohibition. Prohibition seemed too far off, or too impossible, to worry about; it was slow in starting, but it gathered speed and made a whirlwind finish almost before its opponents realized it was coming. If saloon keepers and brewers had made concessions to conciliate the less radical prohibition advocates they might have continued to operate with profit under temperance instead of bringing absolute prohibition down upon themselves.

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<sup>6</sup> Ibid.

<sup>7</sup> William Jennings Bryan to Hays, March 20, 1922. *WHHP*, vol. 1, reel 7.

The ADF warnings became even more dire when discussing religious pictures and the tension between churches and the movie industry: “The possibilities for political activity spreading from [churches] are unlimited. The motion picture industry often boasts of its 15,000 theatres but it is not hard to calculate what the answer would be if 150,000 churches were lined up against 15,000 theatres ... We must remember that these are Christian churches; that there is a certain amount of radicalism and intolerance among them; and that a great many of the ministers and members are convinced that the motion picture industry is dominated by Jews who have no regard for the Christian religion, if indeed they are not actively hostile to it.”

The solution for the ADF seemed obvious: the industry as a whole should produce religious and educational pictures for churches and schools, “taking whatever loss might be entailed,” and acknowledging that if the church or school comes into competition with commercial exhibition, “it will only be in the very small town or community where the theatre is unattractive and probably unprofitable.” Small town exhibitors could threaten the entire industry with opposition to non-theatrical showings: “Is the tail end of the industry going to wag the whole dog?” But this, for Hays, was an untenable proposition that threatened to undo the power shifts that had given producers and distributors control over the industry—in allowing small exhibitors to wither in the face of non-theatrical development of the cinema, the MPPDA would bring upon the industry open warfare between producers and organized exhibition interests, who praised and

celebrated the small town theatre as a cherished instrument of American democracy. War between producers and exhibitors would come soon enough, but the time was not ripe. Hays needed other tools and strategies for beating back non-commercial interests and keeping exhibitors from defining the fate of the motion picture industry.

Hays needed to turn a challenge into an opportunity, and the first step required sending signals to the nation's educational and religious leaders that he was on their page. In a speech to the National Educational Association in July 1922, Hays assured educators that the movie industry would "cooperate fully" with the NEA and other organizations in developing educational pictures. "I propose that we jointly study that demand and that we jointly find ways and means of supplying it," and in a familiar refrain, Hays reiterated that the movie industry had developed from the picture pioneers on the movie frontier into "an orderly business thoroughfare" run by the "sober business man. Of its own weight the industry has settled down commercially into a sanity and conservatism like that of the banking world."<sup>8</sup> But the more Hays looked into the issue, the more obvious it became that non-theatrical cinema was simply incompatible with the commercial aims of the industry. In a memo to the Hays office authored by May Ayres Burgess, the insurmountable problems were explicitly stated: the industry is too volatile to project future educative and religious content; production is too expensive to simply subsidize; the fire risk in schools and churches would be significant; and "the exchange

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<sup>8</sup> Will Hays, speech to the National Educational Association in Boston, July 6, 1922. *WHHP*, vol. 1, reel 6.

people do not know what the non-theatrical users wish ... [t]hey do not talk the non-theatrical language and they are not interested in the non-theatrical needs.” Analyzing the production problems, the memo highlighted the tension between movie entertainment and instructive film: “the classroom film does not need to be funny; it does not need to be cute; [and] it does not need to tell a story.” An example was made of Edison’s attempts to create lesson plans that taught schoolchildren multiplication tables using brownies, strategies that “actually diverts attention [and] is unpedagogical.”<sup>9</sup> Clearly, hopeful words and joint studies would not be enough to resolve these insurmountable problems, but one of these problems—fire risk—could be turned into opportunity for Hays and the movie men.

Non-commercial cinema, particularly educative and religious film, could not be cleanly severed from the elements of propaganda that had so afflicted the industry in the 1910s, and so these projects were severely limited in their development despite the fact that a non-commercial arm of the industry, subsidized by the movie men in Hollywood, could do much to appease the anxious moralists. Exhibitors were the most vocal opponents of non-commercial cinema for obvious reasons—their business at the motion picture theater could be greatly curtailed if every school and church had motion picture projection and distribution arrangements. As we will see below, the key to controlling this situation for producers and distributors was their decision to continue using

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<sup>9</sup> May Ayres Burgess to Ralph Hays, Oct. 19, 1922. *WHHP*, vol. 1, reel 7.

flammable nitrate-celluloid film stock, which kept exhibitors in line and limited the distribution channels available for non-commercial interests.

### Putting Out the Fires: Commercial Imperative in Nitrate Celluloid

Film stock requires a chemical base to support the photosensitive emulsion necessary for motion picture photography. In the early years of motion picture film, this film base or transparent substrate was made of nitrate celluloid, a highly flammable and explosive chemical composition that doesn't need oxygen to burn since the reaction itself produces oxygen. Nitrate celluloid was the first film stock and base of the American movie industry, developed by George Eastman in 1889. By 1909, Edison's Motion Picture Patents Company standardized 35mm nitrate celluloid film stock with a 1.33 aspect ratio<sup>10</sup> (standards that held through most of the classical Hollywood era), but the Edison combine also began developing a safer alternative—acetate celluloid that was slow burning when in reaction, causing it to melt as opposed to burn or explode. The French film company Pathé had already been producing 28mm acetate celluloid film stock for non-commercial use in schools, churches, homes, and community centers, and by 1912, safety acetate became the standard stock for film gauges less than 35mm.<sup>11</sup> The expectation was that non-theatrical film use would be limited to safety film stock in

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<sup>10</sup> The aspect ratio of film corresponds to the proportional relationship between the height and width of a projected image. 1.33 aspect ratio can be expressed as a set of integers separated by a colon: 4:3.

<sup>11</sup> Anthony Slide, *Nitrate Won't Wait: A History of Film Preservation in the United States*. Jefferson NC: McFarland & Company, 2000, pg. 3–4.

these narrower gauges, but the non-theatrical circuit, haphazard and multifaceted, could not enforce any standard for all schools, churches, YMCAs and YWCAs throughout the country.

Commercial film was almost entirely processed using nitrate celluloid. Fire hazards, particularly in film exchanges where release prints were stored and rented out to exhibitors, were a constant source of worry for the movie industry. Nitrate film fires totally destroyed exchanges in Toronto and Atlanta in 1915 and in Dallas in 1921. A Pittsburgh film fire killed 10 people in 1919 and numerous fires occurred in schools while projecting educational movies.<sup>12</sup> Installation of concrete projection booths and other safety devices were costly. Local regulations were haphazard and not standardized. In addition, commercial use of nitrate celluloid required higher insurance premiums. During World War I, much anxiety surrounded the numerous film exchanges scattered throughout the country as a potential site of terrorist acts. By the 1920s, the Hays office was faced with a potentially explosive political problem, as the National Fire Protection Association released a report recommending that the movie industry switch to acetate celluloid film stock. The National Fire Protection Association, founded in 1896 by a group of insurance underwriters, also began lobbying the federal government and state legislatures for legislation that would ban nitrate celluloid. In 1923, the New York State Assembly introduced the Sanders Bill, which would force all exchanges and theaters in

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<sup>12</sup> Ibid., 12–14.



the state to use the off-standard, narrow gauge stock with acetate celluloid film base. Some in the industry welcomed a change. A Hays office memo conceded that with “a rapid development of the manufacture and distribution of acetate stock ... will probably, in comparatively few years, result in placing the entire industry on an acetate basis, and thus permanently remove the fire hazard.”<sup>13</sup>

If the fire hazard of nitrate celluloid threatened the industry and its reputation, if it required costly protections and insurance, and if the technology of slow-burning film stock was already in place, why did the industry resist political pressure from the National Fire Protection Association and policymakers? It was widely acknowledged in the industry at the time that nitrate celluloid “wears longer, is easier to handle, and gives slightly better illumination.”<sup>14</sup> Tests showed acetate celluloid to have about an 85% efficiency rate compared to nitrocellulose. It was also claimed that acetate celluloid was costlier to produce, but this was likely due to company decision-making at Eastman Kodak, the company who had an almost complete monopoly on film stock production in the United States. By switching to acetate, Eastman Kodak might have opened up the market to other film stock manufacturers such as Pathé.

The most insurmountable problem transitioning to acetate celluloid, however, was as much an opportunity as a genuine problem. The paramount concern of the commercial film industry was a standardized film stock that could be used in both the

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<sup>13</sup> Internal Hays Office Memo, unauthored, unpaginated. *WHHP*, vol. 1, reel 9.

<sup>14</sup> *Ibid.*

theatrical and non-theatrical fields. With all motion picture film processed on the same film stock and base, little could be done to stop schools, churches, and community centers from installing projectors and showing commercial movies, undercutting the motion picture theatre as the site of mass entertainment. By sticking with nitrate celluloid and aggressively pushing back against any potential regulation, the Hays office could solidify the divide between the theatrical and non-theatrical fields in a way that could resolve the other problems educative and religious cinema presented to the commercial industry.<sup>15</sup>

The plan involved working closely with the National Fire Protection Association to implement standards of fire safety and prevention, such as building fall traps in projection rooms that would cut off potential fires from the rest of the theater, lining concrete walls with asbestos, mandating fire extinguishers in all motion picture theatres, and instituting regular fire safety drills at all exchanges. By keeping the divide between theatrical and non-theatrical fields, Hays and the moguls in Hollywood could also placate the exhibitors, whose animosity toward the producers and distributors seemed to increase with each passing week.<sup>16</sup> An internal memo to Hays stated that “exhibitors will approve our plan because it will then be impossible for any distributor to send nitrate

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<sup>15</sup> Lovejoy (Vice President, Eastman Kodak) to Hays, March 22, 1923; Newman Miller (State Fire Marshal of Indiana) to Lovejoy, March 20, 1923; Hays to Lovejoy, March 30, 1923. In: *WHHP*, vol. 1, reel 9.

<sup>16</sup> This favor to exhibitors could also be productively taken away if exhibitors continued to attack the MPPDA and the movie trust. Although no evidence exists that the Hays office contemplated such a “carrot and stick” strategy, it may well have been one of the factors in play during the open warfare between the MPPDA and exhibitor’s organizations in 1925–26.

celluloid stock for non-theatrical exhibitions. This will remove from the exhibitors that source of unfair competition,” further stating that “even the White House ... will have to get a booth and a permit.”<sup>17</sup>

Hays was the principle architect of this grand strategy. He aggressively institutionalized this “conservation campaign” and directed legal counsel for the MPPDA to draft the Model Film Bill, which sought to legally codify the separation of the non-theatrical and theatrical use of film. The bill would “relieve churches, schools, clubs, lodges, and business houses of unnecessary expense, red tape, and other burdensome restrictions in the use of safety film” while giving the commercial industry the right to use “motion pictures for educational and general cultural purposes.” Kansas was the first state to pass the bill, followed by Pennsylvania, West Virginia, Connecticut, Oklahoma, and South Carolina. The MPPDA began regular inspections of the exchanges in 35 U.S. cities and helped the Film Boards of Trade institute fire protection committees. Fire chiefs and marshals who were “more or less unfriendly” to exchanges before the MPPDA took up work, were by 1924 working directly with the industry. The U.S. Chamber of Commerce also started working with the film industry in implementing and publicizing the conservation campaign for fire protection. All of this resulted in a resounding political victory for Hays and the movie men, and it also brought about “big savings in new methods of routing film.” Hays had turned the film distribution sector of the

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<sup>17</sup> Memo to Hays, April 17, 1923. *WHHP*, vol. 1, reel 9.

industry into “one solid, smoothly working unit,” and it begged the question: how far could the industry go in developing distribution? Could the physical distribution of film be fully consolidated and centralized by the movie men of Hollywood?

### Turnkey Cinema: The Distribution Connection

Distribution in the film industry—sales transactions from producers, rental transactions to exhibitors, and the physical storage and transportation of film—is the crucial nexus in which images of film production become an economic product in the marketplace. There were early attempts to control the American movie industry from the site of distribution, most notably the Triangle Film Corporation, an integrated production and distribution firm founded by the Harry and Roy Aiken, producers of *The Birth of a Nation* (1915). Triangle was known as a prestige studio contracting high quality film productions from such early film giants as Thomas Ince, D. W. Griffith, and Mack Sennett, but the Aiken brothers developed Triangle’s powerful position in the industry through an impressive film library and extensive distribution network. They envisioned the Triangle exchange as a combine that purchased finished productions outright and assembled a massive film library that could undercut competitors and control the market for film rentals to theaters. The industry had settled into this particular practice—distributors buying film content from producers and renting to exhibitors—by the 1910s, but Triangle aimed to control the industry by mastering these exchanges. These prestige productions were very expensive, however, and assembling an impressive film library as

the source of industry power required significant financial overlays. The Aitken brothers quickly collapsed under the weight of enormous debt, finished off by the financial failures of D. W. Griffith's hugely ambitious *Intolerance* (1917). By the 1920s, with the decline of the state's rights model of booking and the withering of independent producers, distribution increasingly became a consolidated arm of big producers.

By 1922, Will Hays' first full year as head of the MPPDA, the industry was threatened by a series of scandals in Hollywood and poor box office numbers. There appeared to be multiple problems afflicting the industry, and for some observers, the biggest problem was mass production in an infant industry: "It isn't Hollywood scandals, it isn't the reformers bellowing, it isn't stupid censors, it's just poor average entertainment and too much money for it, that's the problem with the moving picture business."<sup>18</sup> Could the problem of "average entertainment" be solved through improvements and reforms in mass production, or was mass production itself the problem? No one could appreciate these problems, and their relationship to film distribution, better than William Wadsworth Hodkinson. Hodkinson had founded Paramount Pictures in 1914 by merging together several film rental bureaus. His innovative restructuring of distribution into centralized exchanges created enormous efficiencies and helped push the industry away from the old state's rights model, in which independents worked with regional buyers and sellers for securing exhibition rights in

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<sup>18</sup> Arthur James, "The Real Trouble with Business," *Moving Picture World*, June 10, 1922. In: Hodkinson to Hays, June 16, 1922, *WHHP*, vol. 1, reel 5.

individual states or geographic regions. He also revolutionized the industry by creating block-booking—bundling several film products together and selling these bundles to exhibitors (a process that severely limited theater owners in choosing movies with the greatest economic potential). Hodkinson’s Paramount had an exclusive arrangement with Adolph Zukor’s Famous Players Company and Jesse Lasky’s Feature Play Company, but when these firms merged in 1916 and bought Paramount outright as the distribution arm of their new parent company, Famous Players-Lasky, Hodkinson was pushed out of Paramount.

By 1922, Hodkinson—who had made his fortune and standing in the industry by building up the distribution sector through efficiencies of mass production—was disillusioned with both the commercial potential of distribution and mass production itself. In a long and revealing letter to Will Hays, Hodkinson laid into the industry, arguing for an “abolition of the present system and the establishment of neutral distribution.” “Poor pictures,” wrote Hodkinson, “are ... the product of the present system and that it is only when the Producer is relieved of the burden of supporting distribution machinery with his own product and is limited to the production of only such pictures as he can do well ... that the effect in the way of higher average grade of pictures can be secured.” For Hodkinson, mass production was not “an effect of deep-seated abuses” but the “cause of bad business” itself: “It is of course obvious that the large percentage of failures results from the factory system ... the present condition is the result of mass production.” In a striking bit of irony, the creator of industry block-

booking had become frustrated with the consequences of his innovation:

These Producers-Distributors who have the theatre market by the throat through insisting on loading up the exhibitor with poor pictures so that he may get their good ones, effectively block the efforts of competing and worthy independents to find a market for the better pictures.<sup>19</sup>

The solution, for Hodkinson, was a simple one, and one that only Hays could force upon the big producers: “Take out of the hands of all producers the distribution and other machinery whereby they can force the mass product on the market and the industry will correct itself automatically.”<sup>20</sup> But for Hays, there were great dangers in neutral distribution, namely in creating opportunities for non-commercial cinema—with neutral distributing machinery, educative and religious cinema could potentially compete more effectively with the commercial dream factory of Hollywood. Neutral distribution would also, inevitably, open up greater possibilities to independent producers, thereby threatening the big producers’ control over both the economic resources of the industry and the social and moral power of the screen. For Hays, any reorganization of the distribution sector would have to remain controlled by big producers in Hollywood. The answer was greater consolidation, not neutral disassociation.

Again, Hays located opportunity in what appeared to be a series of regulatory challenges from the federal government. Exhibitors had been pushing officials in the Bureau of Internal Revenue to revise or abolish the war-time admissions tax on movie theaters. One alternative entailed “sending up” (or “sending down,” depending on where

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<sup>19</sup> Hodkinson to Hays, June 16, 1922, *WHHP*, vol. 1, reel 5.

<sup>20</sup> *Ibid.*

one stood in the industry)<sup>21</sup> tax liabilities to the transactions between producers and distributors. If taxes could be imposed on transactions between producers and distributors, as well as between distributors and exhibitors, the burden to movie theaters could be lessened by spreading liability more equitably through the industry. Hays worked closely with movie industry lawyer Siegfried F. Hartman to craft a policy that could push back against this tax revision by using industry consolidation as leverage. Could it hardly be fair if certain firms, in which “all of the operations ... are carried on by the same company,” were subject to requirements that forced “a double, triple, or quadruple tax, as the case may be”?<sup>22</sup>

Hays had to tread carefully here, lest he rouse the fears of a consolidated movie trust forcing the weight of monopoly on independent producers and exhibitors alike. As Hartman advised Hays, any communication with the Commissioner of Internal Revenue should be carefully considered “in that they afford less possibility of being construed as if we intended to present merely a case where the producing company was one hundred percent owner of the exchange companies.” They had to speak for the industry at large but do so in a way that furthered big producer interests without “putting [our heads] out

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<sup>21</sup> Exhibitors consistently saw themselves at “the top” of the industry, a vertically hierarchy of the movie industry’s chain of command in which the peak was the consumer purchase and consumption of movie content. From this perspective, producers and distributors pushed film product up through the system “from below,” where the movie theater experience signified the heights and ultimate aims of the industry. Exhibitors consistently talked in this language through the 1920s. For producers, however, the hierarchy was precisely the opposite. The Hollywood site of production was the peak of the industry, and film product was ultimately distributed “down” to individual movie theaters, be they big picture palaces in downtown cities or small neighborhood and community theaters.

<sup>22</sup> Siegfried F. Hartman to Commissioner of Internal Revenue, September 9, 1922. *WHHP*, vol. 1, reel 6.



over the trench.”<sup>23</sup> Hartman’s letter to Internal Revenue stressed that, regardless of whether a distributor was owned by producers or not, “[e]very company ... distributes its pictures through distributors consisting of exchanges so-called ... None of the companies attempts to book its pictures from its home office.” All producing firms are “compelled by the exigencies and nature of the business to employ exchanges for the distribution of their pictures, whether these exchanges be owned by and embraced within the producing company or are separate corporations bound to and allied with the producing company.” Hartman concluded his carefully worded letter by arguing for a more simplified tax code, an argument that also smoothed out justification for greater industry consolidation:

I have already called attention to the fact that the plain language of the statute indicates an intention of the framers of this tax to cause it to be passed on to the public and included in the admission fees charged. Certainly Congress could not have intended a double, triple, or quadruple tax with respect to the same identical film, if the public was expected to bear the tax; surely the ultimate consumer would be required to pay only once.<sup>24</sup>

Hays was effectively able to use tax policy challenges to shape consolidation in the movie industry—the “ultimate consumer,” who should not be overly burdened with onerous tax liability, created a crucial point of leverage for the movie men to consolidate the industry and, more broadly, shape the currents of consumer capitalism’s development in the 1920s. With some political ground cleared, Hays and the MPPDA could consider unique forms of consolidation that might bring about even greater efficiencies in mass

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<sup>23</sup> Siegfried F. Hartman to Hays, September 9, 1922. *WHHP*, vol. 1, reel 6.

<sup>24</sup> Hartman to Commissioner of Internal Revenue, 2.

production and, thus, greater profits for the movie men of Hollywood. This unique consolidative arrangement was centralized physical distribution, a plan that would have forever changed the character of the American movie industry.

### The Limits of Consolidation: Centralized Physical Distribution

Hays and the MPPDA turned their attention to various alternatives to reorganizing distribution. On the one hand, coordinating the bidding and selling practices to exhibitors created opportunities for presenting a united producer-distributor front against exhibitor interests, but on the other hand such practices appeared in direct conflict with Sherman Anti-Trust laws, stretching Hays' notion of a "certain idea of competition" too far. Industry insiders nonetheless pressed the issue to Hays. Bob Cochrane at Universal put the matter bluntly: the MPPDA could "get us all together to put a stop to the frightful manner in which we are bidding against each other for legitimate theaters ... [exhibitors] are reaping a harvest out of us." This unprofitable situation "could be stopped by collective bargaining or whatever we choose to call it," in which "some method could be devised where all the bidding ... could be done by one man representing the Association."<sup>25</sup>

But "collective bargaining" by producer-distributors threatened federal scrutiny and anti-trust regulation. Hays would have to come out publicly against such proposals

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<sup>25</sup> Cochrane to Hays, September 6, 1923. *WHHP*, vol. 1, reel 12.

to placate anxious exhibitors, and in a letter to the *Exhibitor's Trade Review*, Hays stated the matter in unequivocal terms: "I desire to make it perfectly clear that MPPDA, Inc., of which I am president, is not interested directly or indirectly, in the question of film rentals." True, the MPPDA was formed "for the promotion of certain common interests ... but the fixing of prices, or even collective bargaining with exhibitors in relation to film rentals ... has never been ... among the purposes of this organization." Coordinated bidding practices by producer-distributors "is inconsistent with the fundamental economic law that prices of commodities in a free market, must be determined by the rule of supply and demand."<sup>26</sup>

With greater coordination among producers through the MPPDA, however, the way was paved for centralizing physical distribution of film to exhibitors, a process by which studios could create greater profits through efficiency while maintaining consistency with "fundamental economic law" by distinguishing selling from the logistics of storage and transportation of film. Universal mogul Carl Laemmle advocated for merging the physical handling of films. "Sixty exchanges, properly located," wrote Laemmle to Hays, "could do the work now done by several hundred ... Universal has its own complete set of exchanges, yet I would be perfectly willing to enter into an arrangement whereby the present overhead for physical distribution could be cut down. Pride of ownership would

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<sup>26</sup> Hays letter to *Exhibitor's Trade Review*, drafted by Siegfried F. Hartman, July 16, 1923. *WHHP*, vol. 1, reel 11.

not stand in my way of handling pictures through central shipping offices.”<sup>27</sup> The appeal of greater efficiency interested others, such as Rufus Cole, founder of R-C Pictures and a corporate manager in film distribution, who urged the MPPDA to coordinate “the physical distribution of all films,” freeing up exchanges so that they may “simply be a selling organization.” “When the contracts with theatres are signed,” explained Cole, “the work of the selling organization ended; the contracts being turned over to the combined physical distributing Company and they handle everything from then on.” Such a scheme could even consolidate these selling organizations into the same building while keeping company interests distinct.<sup>28</sup>

Centralizing physical distribution required management and operations distinct from any of the producing companies, as well as a transportation firm to actual carry out distribution to movie theaters. At Paramount, Zukor and Lasky were developing such a scheme with Lewis J. Selznick, onetime film producer and one of the innovators in the distribution sector. Selznick would form the Film Service Corporation, and with a capital investment of at least \$250,000 would acquire exchange facilities in 22 cities. A 20-year contract would be made with the American Railway Express Company for the physical distribution of all film, including independent producers, for a flat rate of 7 ½% of gross rental. Zukor estimated that physical distribution costs were currently from 12 to 15% of gross rentals, so a centralized and coordination distribution scheme could save half the

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<sup>27</sup> Laemmle to Hays, November 11, 1923. *WHHP*, vol. 1, reel 13.

<sup>28</sup> Rufus Cole, in memo to Hays, December 28, 1923. *WHHP*, vol. 1, reel 14.

cost of a significant expense.<sup>29</sup> Paramount's competitors balked at such a plan, however, as they pointed out it would be impossible for Selznick to keep his own film interests distinct from a disinterested plan of distribution for all producers. As Edward Bowes of Metro Goldwyn put it, any viable centralized distribution plan "can only succeed if there is a unanimous agreement among all producers and it is handled through the Hays office."<sup>30</sup> The MPPDA would have to be in charge.

Hays began working directly with E. M. Cowie, Vice President of the American Railway Express Company. Cowie assured Hays that little actual management and operations would have to be done by the MPPDA. With support of producers, Hays would provide oversight but leave the work of booking, bookkeeping, billing, shipping, and inspection of prints and advertising accessories to Cowie's firm. The cost would then be divided among producers by ratio of their respective number of prints out of the total.<sup>31</sup> These arrangements would provide a measure of economic stability in tumultuous times, such as the influenza outbreaks of World War One, giving the industry associational power to "shoulder the burden of any one of its members in times of stress." The "primary premise" of centralized physical distribution assumed:

... that the Producers, particularly the large ones, like all other business men, are willing to save money in operating details through their own cooperation, so long as such cooperation leaves them absolutely free and unrestricted in production and in initiative and resourcefulness in the presentation and sale of their products, so as to be able to win over their

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<sup>29</sup> Unauthored memo in letter from Hays to Zukor, August 28, 1923. *WHHP*, vol. 1, reel 12.

<sup>30</sup> Edward Bowes to E. M. Cowie, Chairman of Railway Express Film Transport Company, January 21, 1925. *WHHP*, vol. 1, reel 12.

<sup>31</sup> Memo to Hays from Gabriel Hess, January 21, 1925. *WHHP*, vol. 1, reel 12.

competitors in legal competition, or at least gain their fair share of the business.

The message, to some, was clear: big producers in Hollywood would gain the most from such consolidation, putting a definitive end to any alternative center of power in the American film industry.

Meanwhile, concerns were expressed by other producers. United Artists—led by Charlie Chaplin, Mary Pickford, Douglas Fairbanks, and D. W. Griffith—were deeply critical of the consolidated power of the big producers and regarded a joint distributive system as “only a further step in consolidating the position of the ‘Trust.’”<sup>32</sup> First National—an amalgamation of first run theater interests who had struck out in film production and provided a counterweight to Paramount’s power in the early 1920s—also expressed concern: booking would be done by Railway Express, but booking—“the hub of the entire exchange system”—necessitated close contact with the principal sales manager in distribution.<sup>33</sup> How could film bookings to theaters not be influenced by the point of sale, in which theater owners agreed to financial terms with the producer? Wouldn’t more lucrative sales, or bigger producers, inevitably receive favored booking and better releases? Cowie replied to Harry O. Schwalbe at First National through Hays:

commercial waste in the present joint system of selling and physical distribution, is the conduct of the salesmen and branch managers in shifting from their shoulders to the booker the responsibility of obtaining play dates from exhibitors. The average salesman or branch manager feels that when he has negotiated the sales terms, (except the play dates) that his job is finished, and that it is encumbent [sic] on the booking

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<sup>32</sup> *Film Daily*, November 16, 1923. *WHHP*, vol. 1, reel 14.

<sup>33</sup> Harry O. Schwalbe to Cowie, January 20, 1925. *WHHP*, vol. 1, reel 19.

department to do the rest.<sup>34</sup>

In other words, for Cowie, the booking department was merely a clerical department charged with impersonally scheduling play dates, not the hub of distribution operations. Cowie had a point, but in the cut throat and suspicious world of the early American movie industry, distrust ran high, and producers were suspicious of any industry arrangement that could potentially give bigger competitors an advantage. Cowie assured Hays that his company would “operate without favor ... and shall adhere to a straight line in the carrying out of its uniform contract with the Producers.”<sup>35</sup>

Producers met in the spring of 1925 at the MPPDA’s boardroom in New York. Preliminary plans were presented, and members agreed to hear a formal proposal by Cowie a week later. Experiments were already being conducted at Detroit exchanges, where distributors were working together to integrate “cartage, shipping, inspection and storage of film, paper and accessories.”<sup>36</sup> Proponents of the plan argued that centralized physical distribution was not “Utopian,” but rather a constructive and pragmatic strategy of consolidation that aligned directly with Herbert Hoover’s new economic ideas on associationalism as an instrument for the consolidation of distribution across industries.<sup>37</sup> Members voted on the deal in principle, and all but one agreed. The lone

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<sup>34</sup> Cowie to Schwalbe, January 24, 1925. *WHHP*, vol. 1, reel 19.

<sup>35</sup> Cowie to Hays, January 20, 1925. *WHHP*, vol. 1, reel 19.

<sup>36</sup> President’s Annual Report, MPPDA, March 30, 1925. *WHHP*, vol. 1, reel 21.

<sup>37</sup> W. W. Irwin to Bob Cochrane, February 16, 1925. *WHHP*, vol. 1, reel 20.

holdout, curiously, was George M. Spidell of Paramount, the biggest producer in Hollywood and one seeming to gain the most from consolidation in distribution. It's possible that Paramount objected to taking management of centralized physical distribution out of the hands of Lewis Selznick, whose own plans for consolidation would have kept the controlling firm a private, for-profit company and one allied with Paramount. But there were bigger, more threatening concerns on the horizon—federal government investigation into the industry.

While plans for centralizing distribution advanced to a critical stage, the US Justice Department was investigating exchanges in Cincinnati and the Cincinnati Film Board of Trade. The investigation arose from complaints by exhibitors in Kentucky that these exchanges had engaged in numerous violations—collusion in refusing to work with certain theater chains, fixing prices, and violating terms of the uniform contract. In writing to Will Hays, Assistant Attorney General William Donovan requested that a special agent named Martin be given total and unfettered access to distribution files, proceedings of the board of trade, and any other relevant documents. Hays informed Donovan that the film boards of trade, located in major cities across the country, were not part of the Association nor controlled by producers, but that he would communicate with them the importance of giving Martin anything he needed.

Film boards of trade were established as early as 1912, and by 1921, there were 20 in operation. These boards were intended to settle disputes in film rentals, and were made up of an even number of distributors and exhibitors who would hear and rule on



cases. In practice, the boards operated in “a more or less haphazard manner,” and some were used “more as a club against exhibitors.” Before the establishment of the MPPDA, the boards generally suffered from distrust and unfair business practices between distributors and exhibitors. C. D. Hill, president of the St. Louis Film Board of Trade, wrote to Hays that his board has been an “abject failure” for the past 5 years, blaming exhibitor interests such as the Exhibitor’s League of actively working “to make the Board’s work ineffective.” Distributors complained most about past due accounts and damaged prints. Exhibitors complained vociferously over block booking and other practices that made it difficult to choose and turn over product, in addition to non-theatrical films supplied by exchanges.<sup>38</sup> Hays and the MPPDA worked hard to institute fair and uniform practices across the boards. A uniform contract between distributors and exhibitors was in place by June, 1922, although exhibitors continued to fight for more agreeable terms.<sup>39</sup>

The Justice Department spent several weeks in Cincinnati investigating, and in late April of 1925 informed Hays that they would expand the investigation to film boards in Pittsburgh, Cleveland, Chicago, Indianapolis, and St. Louis. Producers and distributors were extremely nervous, and Hays sought to reassure them that “the formula for the operation of the Film Boards of Trade and Arbitration Boards is legal and proper.” “There is, therefore, nothing to conceal,” concluded Hays, “and we do not want anybody to get

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<sup>38</sup> C. D. Hill to Hays, December 20, 1923. *WHHP*, vol. 1, reel 13.

<sup>39</sup> Correspondence regarding uniform contracts. *WHHP*, vol. 1, reel 5.

an impression to the contrary.”<sup>40</sup> By June, Special Agent Martin’s complaints that he was being restricted access to board files were passed on to Attorney General John G. Sargent, who requested information from Hays. Exchange managers pushed back, insisting that “we have refused Martin absolutely nothing.” Charles C. Pettijohn, General Counsel to Hays and the MPPDA, suggested Martin was biased toward, and possibly corrupted by, exhibitor organizations, who seized on the investigation as proof of unfair practices by distributors and producers. Hays applied his usual political pressure on Attorney General Sargent, a Republican and close confidant of President Coolidge. Hays also pulled some publicity strings with reliable media—the *Weekly Film Review*, for example, published a series of articles on the film boards and the growing rancor between exhibitors and producer-distributors. After weeks of their own “disinterested” investigation, *Weekly* wrote that the film boards were functioning remarkably well and placed the bulk of criticism on the Motion Picture Theater Owners of America, the largest and most powerful exhibitor’s trade organization. The MPTOA was

nothing more than a seething mass of disorganization. And what a pity! What a chance it had! Consider the fact that the MPPDA and the MPTOA were started at approximately the same time. And now, one is functioning perfectly, like a well-oiled machine, and the other is enveloped in a maze of accusations and back-biting among its leaders ... [the MPPDA] has done more in legislative fights for the general betterment of conditions for exhibitors [than any exhibitor’s organization].<sup>41</sup>

While the MPPDA was far from a well-oiled machine, *Weekly* had a point—consolidation

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<sup>40</sup> Hays to Miss Schofield, St Louis Film Board of Trade. *WHHP* vol. 1, reel 21.

<sup>41</sup> *Weekly Film Review* 12, no. 2, September 5, 1925, 16.

and coordination spurred on by the Association was in direct response to disorganization in the industry, and did much to standardize industry practices. These practices, however, were largely determined by big producers, who sought to formalize an arrangement of power that found them at the top of the movie industry. Consolidation in the movie industry rankled some of the Association's own members, particularly smaller producers. Carl Laemmle at Universal, who had led the fight against the Edison Trust a decade earlier and who remained independently-minded despite cooperating with big producers, was deeply frustrated with emerging monopolistic practices, as he saw them. "I do not know of any business or any art that could suffer more from monopoly than this business," Laemmle wrote to Hays, "and yet, as sure as Fate, monopoly is coming to this business with giant strides." In a scathing rebuke of the Association's coordinated work in developing the industry, Laemmle minced no words:

A limited group of companies is trying to dominate the whole field ... I do not like publicly disagreeing with you but ... the public should know that its cheapest form of entertainment is rapidly falling into the hands of a monopoly ... Of what importance is it to me that censorship has been defeated by the Association in many states when my fellow members in the Association are rapidly crushing me in every state? What do I care about continuing to support film clubs when I can see but little business left to arbitrate?<sup>42</sup>

Laemmle was concerned over an industry willing to destroy smaller firms for the sake of consolidation in the hands of fewer and more powerful interests so that "the bigger companies survive and the others must perish." Laemmle then touched upon block-

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<sup>42</sup> Laemmle to Hays, June 1, 1925. *WHHP*, vol. 1, reel 22.

booking and producer-owned theater chains: “I have a feeling that you were pleased when Universal starting selling in block because it served as justification for the actions of other companies. I think you were glad when Universal bought some theaters because that, too, tended to justify what the other companies had done.” Laemmle threatened to fight these forces of monopoly with every means at his disposal, including “broadcasting the whole inside of this rotten story to the public.”<sup>43</sup> Hays had a serious problem—even some of the Association’s own members opposed producer-centered consolidation of the movie trust.

It is unclear what specific concessions, if any, Hays gave Laemmle, but he assured him that he has “a deep interest in Universal’s success and I would go to great lengths, indeed, to do everything that the Association could or should do or that I can do to help.” Hays referred to block booking and producer-owned theaters as “competitive practices that have existed for years,” and that the “legality of it was actually being considered by the Federal Trade Commission.” Hays further insinuated that he had seen some financial numbers from Universal, and that Laemmle had deliberately painted a gloomier outlook than was reality.<sup>44</sup> Laemmle never broadcasted the “rotten story” to the press, and stayed an Association member. Although a smaller studio, Universal was well integrated vertically and operated successfully through the 1920s. The company weathered the Great Depression better than others (including the most powerful studio of the silent

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<sup>43</sup> Ibid.

<sup>44</sup> Hays to Laemmle, June 30, 1925. *WHHP*, vol. 1, reel 22.

era—Paramount—who nearly fell into receivership in 1932–33) and emerged in the 1930s with several successes in profitable genres such as westerns and horror.

Meanwhile, in August 1926, the Justice Department concluded its investigation into the movie's industry's distribution practices. The investigation had lasted 18 months and covered a half a dozen cities in the Midwest. Federal officials in the Justice Department found no violations of Antitrust law by distributors. Hays assured the feds that minor infractions—particularly an uneven application of block-booking that eased such practices on big theater chains but were strictly applied on smaller houses—could be solved by pressure from the Association. But the investigations by the Justice department had been instrumental in discouraging the MPDDA from pursuing centralized physical distribution, consolidation that would have drawn serious scrutiny from Justice officials. The Association had already ruled on the fate of centralized distribution, well before the Justice Department reached its conclusions. At a member meeting in the New York City boardroom, the producers voted down the American Railway Express plan, but approved of a plan to centralized shipping rooms only, along the lines of the Detroit experiment.<sup>45</sup> Detroit's experiment proved a profitable success, allowing 9 distributors in the city to save a total 2.3 million dollars just in shipping. Distributors could realize savings without sticking their heads out above the trench.

In a memo to Hays, Carl E. Milliken—former Maine Governor and Executive

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<sup>45</sup> W. E. Wilkinson, Annual Report to the President, MPPDA, March 31, 1925. *WHHP*, vol. 1, reel 26.

Secretary of the MPPDA—wrote that centralized physical distribution “would greatly simplify the problem which the Religious Motion Picture Foundation and the producers of new pedagogic films will have in arranging their distribution.”<sup>46</sup> Unwittingly, it seems, Milliken had brought the issue full circle. Milliken was a progressive and believer in educational and religious cinema, and Hays gave him free reign to be the public spokesman and mediator between the Association and religious and educational interests. But Milliken was mere publicity—he did not set Association policy. There would be no centralization of physical distribution beyond basic coordinated practices in the shipping room. Nor would there be any transition to the safer acetate celluloid film stock. These political limitations were crucial building blocks for the development of the mogul system in the movie industry. Hays had soothed unhappy Association members such as Laemmle at Universal, had located policy leverage in nitrate celluloid and centralized physical distribution to limit non-commercial cinema, and attended to federal government scrutiny over industry practices by working Republican Party contacts. Exhibitor power in the industry—waning since the close of World War I—was now ready to be dealt a lasting blow by the big producers.

### Open War: The Exhibitor’s Last Stand

On March 16, 1922, Will Hays attended a dinner at the Hotel Astor organized by the

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<sup>46</sup> Carl E. Milliken to Hays, MPPDA memo, July 14, 1926. *WHHP*, vol. 1, reel 28.

new exhibitor's association, the Motion Picture Theatre Owners of America. Their president, Sydney S. Cohen, delivered the keynote speech, in which he extolled the "unlimited potential strength and importance" of exhibitor's across the country. Movie exhibitors are "governed by a certain ethics, by a high consideration of the rights of the people of all American communities, and their duty to their country and their neighbors." Cohen then took on the emerging Movie Trust—the consolidated forces of big producers in reshaping the power center of the American movie industry:

The Theatre Owner could not understand the alleged logic which lay back of this so-called trustification idea and permitting elements which had no direct contact with the people whatever to control the Motion Picture business ... we brought this feature of our work to the personal attention of President Harding at a meeting between [the MPTOA and the president] ... He commended our purposes very highly, declared he would bring it officially to the attention of the members of his cabinet so as to enable every department of National Government to take advantage of the Motion Picture Theatre in promoting all progressive official programs ... As Theatre Owners ... we are ready to serve ... The American people cannot and will not tolerate any centralized control of this wonderful medium of expression.<sup>47</sup>

Cohen's explicitly political role for the motion picture theatre—as servant of government, as promoter of "progressive official programs," and as powerful check on "centralized control" of a cultural medium—appeared remarkably anachronistic in 1922. Cohen did have powerful allies, and some producers, notably United Artists, chaffed at centralized power by the big producers. Free expression of the screen and theater was at risk in consolidation: "centralized control of the Motion Picture business ... menaces its

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<sup>47</sup> Sydney S. Cohen, speech delivered to the Motion Picture Theatre Owners of America, March 16, 1922. *WHHP*, vol. 1, reel 2.

future ... Art and genius must be guaranteed expression and certain processes now in vogue tend to curtail these necessary privileges.”<sup>48</sup>

Despite Cohen’s sharp words, Hays had reason to be content as he made his way to the podium that night. Producers in Hollywood had a key Republican insider at the helm of their competing producers and distributor’s association, a man close to Harding and the Ohio Gang of Five. The future lay with associational consolidation of the industry, not the localism of Wilsonian progressive economic thought. Crucial to this process was the depoliticization of American movies, not a continuation of a “National Government” that could “take advantage” of the screen and the industry. For Hays, a cinema denatured of politics was one that “is essentially, of course, a source of amusement.” The importance of such an industry, nationally and politically, “is measured only by the imperative necessity of entertainment for our people.” Hays touched on the non-commercial possibilities of the screen—long a source of friction with commercial theater owners—in ways that masked a warning but offered possible terms of reconciliation:

We have had competition of the fiercest kind. There has been no time for adequate reflection. The mere physical and mechanical expansion has been so great and so rapid that there has not been time ... to consider adequately the moral and educational responsibilities inherent in this great new thing, *which is primarily a source of entertainment* [emphasis added] ... the theatre owners of the country should be organized, and I am very hopeful that there will be the strongest possible organization of exhibitors. This organization should be entirely separate from the organization of producers and distributors, and in its management the producers’ and distributors’ organization can not in any way whatever

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<sup>48</sup> Sydney S. Cohen to William S. Hart, February 25, 1923. *WHHP*, vol. 1, reel 9. Hart—the silent western star and close confidant of Hays—surreptitiously passed this letter, marked confidential sender and private, to the MPPDA office. Hays, and Hays’ beloved son, were great admirers of Hart’s movies.



take any part.<sup>49</sup>

Hays tried to sell the notion of an industry centered on depoliticized amusement, an argument that cut to the heart of a conflict between commercial imperatives of the moving picture theater and its indelible link to the cultural formation of American democracy. Closing off non-commercial alternatives to American cinema necessitated movie exhibitors abandon their conception of the theater as site of democratic deliberation—rather, envisioned Hays, the theater and screen would serve the interests of entertainment, of commercial amusement pure and simple. Allies wrote to Hays that his speech had “[t]ook all the sting out” of the hostile reception Hays elicited from exhibitors.<sup>50</sup> Commercialism offered its heady rebuke to politicized American cinema.

Hays and exhibitor allies were already busy sidelining Cohen and aggressively developed contacts with more amenable power players in exhibition. One was Martin Quigley, devout Catholic and publisher of the *Exhibitor's Herald*. “Mr. Hays—Friend or Enemy?” wrote the headline of a Quigley editorial weeks after Cohen and Hays’ dueling speeches. “[W]e feel warranted in assuming the integrity of his declarations,” wrote Quigley, “and that he is not permitting himself to be used as a catspaw by predatory interests which are opposed to the advancement of the exhibitor’s welfare.” Over the years, Hays won over Quigley, as he had countless others, with a friendly and persistent effort to incorporate Quigley’s concerns and proposals into a framework of industry

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<sup>49</sup> Will Hays, Speech to the MPTOA, March 16, 1922. *WHHP*, vol. 1, reel 2.

<sup>50</sup> Purdy to Hays, April 13, 1922. *WHHP*, vol. 1, reel 7.

consolidation and coordination along terms most agreeable to the big producers. By the late 1920s, Quigley was a trusted adviser to Hays, and along with Daniel Lord, drafted some of the first iterations of what became the Production Code.

With a uniform contract in place by June 1922, Hays continued to press the MPTOA for an agreement of terms throughout the fall and winter of 1922. Several theater owners expressed their satisfaction with the uniform contract, but a few items proved to be sticking points, and Cohen's organization stalled. By February, 1923, the MPTOA had drafted a response to the MPPDA, claiming that "certain Producers and Distributors, and even a few theatre owners" regarded the uniform contract as "a finished proposition." The MPTOA accused the Hays of unscrupulous publicity, claiming there had been a broad agreement when in reality "you had no power other than to carry out [producers and distributors'] instructions." Cohen was particularly incensed that Hays championed the contract as a cost-saving measure that would bring about efficiencies to lower admissions charges. The cost of film to the theater owner, argued Cohen, was increasing, and exhibitors were in no shape to publicize lower admissions prices in a national trade magazine.<sup>51</sup> Hays was apoplectic—Cohen's letter had "made no impression on the industry" and Cohen himself was merely "the head of a paper national organization." Both New York state and New York City's exhibitor associations agreed to all the clauses of the uniform contract, wrote Hays, and "Cohen's own group agreed to 17 out of 20

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<sup>51</sup> MPTOA to Hays, February 27, 1923. *WHHP*, vol. 1, reel 9.

causes.”<sup>52</sup>

A significant worry for Hays was keeping a unified front, and that meant concessions to certain smaller and more independent producers, most of which did not own theater chains. Warner Brothers, for example, at that time a small outfit without a distribution arm, let alone theater chains, was pressured by exhibitor interests to fight against the Hays combine. “[I]s it your intention of remaining independent,” the Rialto Theatre interests put it bluntly to Warners, “or are you expecting the Hays organization to run your pictures?” Warners tried to ride the fence, asserting that “it is no secret that we are members of the Hays organization and friends of the motion picture theatre owners in fact of all exhibitors.” “[W]e are not a national organization and don’t operate our own exchanges therefore [we] do not see why the burden should fall on us.” Joe Philips, secretary of the Motion Picture Theatre Owners of Texas, pressed Warners further: “the film men are past masters at passing the buck, beginning at the film peddler and not even ending at the producer ... who is responsible for the millions of wasted money in production and the cost is all charged up to the exhibitor.” Smalltime Warners had a choice—side with their well-financed competitors—or strike out with exhibitors to fight against the movie trust.

Warners stuck with Hays and the Association, while another smaller production outfit—Vitagraph—distanced themselves from Hays and the MPPDA. Vitagraph’s origins

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<sup>52</sup> Hays to Patten, March 9, 1923. *WHHP*, vol. 1, reel 9.

stretched back to the 19<sup>th</sup> century, whose founders—Albert Edward Smith and James Stuart Blackton—were Englishmen who had both immigrated to America as children. Vitagraph was one of the 10 company members of Edison’s Motion Picture Patents Company, and so had a history of benefitting from monopolistic control in the industry. The company suffered in World War I as foreign distributors dried up, and by 1922, was in serious financial trouble.<sup>53</sup> Vitagraph sought to withdraw from the Association on October 11, 1922, but paid member dues all the way up to January 10, 1925. Exhibitor’s and the press seized on Vitagraph’s withdrawal from the MPPDA. “We congratulate President Smith and the Vitagraph Company of America on the position taken,” wrote an MPTOA release. The MPTOA went further, emphasizing the link between vertical integration in the industry and the preponderance of salacious and immoral pictures:

The Motion Picture Theatre is a community institution and the Theatre Owner a leader in thought and action in his or her own locality ... the complete coordination of the public mind is thus brought about and directed along constructive and progressive lines. This is one of the highest purposes of the Theatre Owner everywhere and can only be realized fully where the Exhibitor has some interest in the locality ... Large blocks of Theatres are now owned by Producing and Distributing companies. It is such a manufacturer’ monopoly of what may be termed the retail division of the business which encourages the presentation of objectionable pictures.<sup>54</sup>

This idea of independent production as a better source of “clean and wholesome” pictures may appear antithetical to our understanding of the film industry today, but in the mid-1920s, there were still alternatives to the big producer studio system, namely

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<sup>53</sup> Albert E. Smith and Phil A. Koury, *Two Reels and a Crank*. Garden City, NY: Doubleday & Company, 1952.

<sup>54</sup> MPTOA Press Release, January 29, 1925. *WHHP*, vol. 1, reel 20. Hays received this press release on February 2, 1925.

educational, religious, and industrial pictures, most of which were classified as independent films. But for many industry insiders, political observers, and even some reformers, consolidation along big producer lines gave the industry coordinated capacity to control the site of production, institutionalize a regulatory body, and solve the moral problem of American cinema.

Hays began studying the the anti-trust case against the Motion Picture Patents Company in the 1910s. As Courtland Smith wrote confidentially to Hays, “in the old days there was a film trust. A real film trust.” “Now Albert Smith claims to be champion of independents and clean pictures and of the small exhibitor,” but, Smith continued, “he was an important part of the cruelest, the most abusive, the most indecent trust that this industry has ever known or could ever know.” Wrote J. D. Williams of Paramount to Hays, “they [Vitagraph] are bolshevists at heart so don’t get discouraged ... they are too old to learn new ideas.” Henry Ford and other nativists also seized on the trust issue: “Independents Expose Corrupt Jew Movie Trust – Hays Organization charged with strangling competition—Oriental Jewish Immorality in Films, as analyzed by Henry Ford.” The article, from *The American Standard*, played on the old fear of organized liquor: “As soon as the Jew gained control of American liquor, we had a liquor problem with drastic consequences. As soon as the Jew gained control of the ‘movies,’ we had a movie problem.”<sup>55</sup> “What is there about the movie industry which requires a monopoly,”

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<sup>55</sup> “Independents Expose Corrupt Jew Movie Trust,” *The American Standard*, February 15, 1925. *WHHP*, vol. 1, reel 20.

wondered the *Worcester Telegram*, “[t]heir chief function is to entertain. Would not unlimited competition among the producers give us better entertainment?”<sup>56</sup> Amid the furor, which had turned noticeably political in its attacks on the “Jewish Movie Trust,” Vitagraph released a statement that it refused to believe that “justice to the distributors and to the public and to those independent producers who are not theater owning exhibitors can be obtained thru the labors of the MPPDA.”<sup>57</sup> To make matters worse, exhibitors Charles J. O’Reilly and Nathan Burkan threatened a suit under the Sherman Anti-Trust Act if their negotiations with the legal team of the MPPDA should fail, and during the January to March legislative sessions of 1925, 3 bills to prohibit block-booking were introduced in 3 different states.<sup>58</sup>

For Hays and his big producer members in Hollywood, everything seemed to be unraveling, exacerbated by a climate of nativism that saw the Ku Klux Klan at the peak of its state and local political power. The financial situation at Vitagraph, however, was worse than anyone realized. It lost credit at its bank, the Guaranty Trust, and failed to secure a \$200,000 loan to continue operations. With financial pressure mounting and the company in the middle of the war between the Association and exhibitors, Vitagraph was bought about by Warner Brothers in March 1925. It was a stunning move in the movie

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<sup>56</sup> “Editorial Comments on Vitagraph and Film Fight,” Undated press clippings from K. R. to Hays. *WHHP*, vol. 1, reel 20, pg. 3.

<sup>57</sup> Vitagraph Press Release, February 28, 1925. *WHHP*, vol. 1, reel 20.

<sup>58</sup> Undated internal MPPDA memo to Hays, end of February, 1925. *WHHP*, vol. 1, reel 20; Charles Pettijohn, “Report on state legislative sessions,” March 26, 1925. *WHHP*, vol. 1, reel 21, pg. 8–9.

world—one of the oldest studios had been swallowed up by smalltime producers from Youngstown, Ohio. For Warners, who would capitalize on Vitagraph's seldom-used sound synchronization technology, it was the beginning of a spectacular ascent into the highest levels of the industry. With the successful release of *The Jazz Singer*, Warners bought out First National, adding a first-class set of theater chains to its impressive distribution and sound- synchronized production outfits.

Meanwhile, exhibitors were organizing into combinations for block buying in an effort to break the stranglehold by big producers. Theater combines were formed in Oklahoma, two in Atlanta, in Portland under the name Multnomah Theatres, Inc., by Charles Kline in South Dakota and Wyoming, and by Sol Lesser on the West Coast.<sup>59</sup> Pittsburgh's *Moving Picture Bulletin* wrote that, since the uniform contract was not equitable, "make it a business principle to have an understanding with your competitor and work together." Gabriel Hess at Goldwyn Pictures passed this article off to Hays, who attributed the article to Fred Herrington of the Motion Picture Theatre Owners of Western Pennsylvania. Hess advised Hays to hold on to the article, as it "may be valuable at some future time for prosecution under the United States statutes." If exhibitors wanted to attack the producer trust, Hays and the Association could take on the combines in exhibition.

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<sup>59</sup> Saul Rodgers of Fox Films to Hays, September 13, 1923, reel 12; Unauthored memo to Hays, May 1924, reel 16; Metro Pictures to Hays, June 3, 1924, reel 16; and Courtland Smith to Hays, MPPDA memo, June 11, 1924, reel 16; in: *WHHP*, vol. 1.

Hays attempted to leverage the Association's publicity of developing the non-theatrical field against organized exhibitors. The Association developed an agreement that would give the non-theatrical circuit access to films after a one year exclusive "protection" for commercial exhibitors. This agreement was passed off to exhibitor's organizations, likely as both a warning and a signal that the Association will handle non-commercial interests without exhibitors input. "I think it is a mistake," wrote an unauthored Association memo, "to ask exhibitors for their opinion about the non-theatrical field. They will offer many wild suggestions and we will merely encourage them to go out, each with his own plan ..."<sup>60</sup> Big producers and organized exhibitors were heading for open warfare. "The showdown would be coming on the question of non-theatrical films," wrote Courtland Smith, after his meeting with William "Al" Steffes, a powerful Midwestern exhibitor. Hays had been "kidding the exhibitors all along," promising unity over the non-theatrical issue, but in reality encouraging non-commercial exhibitions such as a Famous Players movie shown at a baseball park in South Dakota, and free movies shown in Dallas, Texas area parks.<sup>61</sup>

Although the situation appeared bad for the big producers, censorship agitation, Klan mobilization, exhibitor power, anti-trust investigations, and non-theatrical interests were all at their peak, and all would begin to wane by 1926. With a strong financial position, effective publicity gained through industry coordination, and a

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<sup>60</sup> MPPDA memo to Hays, April 30, 1924. *WHHP*, vol. 1, reel 16.

<sup>61</sup> Smith to Hays, June 11, 1924. *WHHP*, vol. 1, reel 16.



powerful Republican insider at the helm of their Association, Hollywood's big producers could weather the storm. Publicly, Hays stressed the good work of the arbitration boards to defuse the situation with exhibitors. Arbitration through boards had been in place by October, 1923, and out of 11,197 cases, only 15 went to the seventh, impartial arbitrator for a tie break.<sup>62</sup> The system was working, argued Hays, and the Association had brought about much needed organization to the movie industry. Quietly, however, Hays and the Association knew that using non-commercial cinema to leverage cooperation with exhibitors (while using nitrate celluloid to leverage against non-commercial interests) were the necessary preconditions for industry development. Consolidation with big producers at the center of power was the ultimate goal. In a confidential memo, Courtland Smith suggested a far-sighted solution to the "serious fight ... breaking forth in this industry"—coordinated consolidation among the major producers:

Pot 1: Famous Players, First National, and MGM; Pot 2: Pathé Universal, Fox; Pot 3: Producers Dist., Educational, UA; Pot 4: Warner Bros., F. B. O., and Vitagraph. I list the three great companies, around which the industry should be built, in the first classification. In the second classification are the three companies that should be bought in the order named by the group. 1. Pathé should be bought by Famous because it would give them a great newsreel and the control of the short subject field which they may go into. Universal should be bought by First National because it would give them the great production plant they need. Fox should be bought by Metro Goldwyn because it would give them a newsreel and production for the smaller field, thus rounding out their product. The third classification should make distributing arrangements with the combination of classes one and two: Producers Distributing with Famous; Educational with First National; UA with Metro-Goldwyn. The fourth classification could be purchased reasonably or could be allowed to eliminate itself or could be allowed to head the independent movement that will certainly materialize, even if composed only of the rag-tag and bob-tail of the

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<sup>62</sup> Will Hays, speech before the arbitration committee at Vincent Astor's house, March 19, 1925. *WHHP*, vol. 1, reel 21.

industry.

If this plan were put through quietly and effectively it would clean up the entire situation and make it impossible to upset the industry by internal fights.<sup>63</sup>

Many of these mergers did not happen, but the memo shows how far-reaching the Association was in their attempts to coordinate the consolidation of the industry. Hays sent signals to favored producers just where and what was available for aggressive buyouts. Warner Brothers, for example, were able to buy up Vitagraph and First National while supporting Hays and the MPPDA against exhibitor-coordinated action, positioning themselves as a major studio in the 1930s and 40s.

Further opportunities arose over a new Connecticut state tax on motion picture exhibition in the late summer of 1925. Hays threatened to pull all movies out of Connecticut, using coordinated distribution to dry up the movie theaters in a political maneuver aimed both at defeating the tax and weakening exhibitors. “The motion picture industry does not propose to be longer the plaything of politics and professional reformers,” Hays stated emphatically, “we will withdraw entirely from the state.”<sup>64</sup> Hays met with Connecticut exhibitors at the MPPDA office in a testy and revealing exchange. “If we want to keep our theaters open,” stated Mr. Walsh, an exhibitor’s representative, “we have got to assume this tax ... [l]ots of the small fellows cannot afford to close up.” Hays spoke up: “The authority you have—whom do you represent?” Mr. Walsh stated

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<sup>63</sup> Smith to Hays, confidential MPPDA memo, April 15, 1925. *WHHP*, vol. 1, reel 21.

<sup>64</sup> Waterbury (CT) *Herald*, August 23, 1925; and MPPDA release, August 25, 1925. *WHHP*, vol. 1, reel 23.

that he represented 168 theaters in Connecticut, and that closing these theaters over a tax was simply not feasible. Walsh implied that theater owners would have to obtain films from somewhere. In the transcript of the meeting, someone identified only as “A VOICE” pressed Walsh: “If this Association cut off your pictures, would you solicit pictures from other sources?” MPPDA secretary Charles Pettijohn answered no first, immediately followed by Walsh, who also said no.<sup>65</sup> The Connecticut tax controversy revealed that, when push came to shove, exhibitors were largely powerless and the MPPDA could dictate terms.

Hays was clearly running the show. He instructed exhibitors on what to say and whom to say it to, and each successive victory over censorship, regulation, or taxation gave him a stronger hand in the industry to coordinate action and keep exhibitors in line. Hays ultimately agreed to let the contracts with distributors run their course in Connecticut, but instructed exchanges to make no new contracts. By winter, 1925, Connecticut’s movie theaters were gradually losing first run movie content. The state’s governor, John H. Trumbull, convened several conferences as a political fury erupted over the closing of some 160 movie theaters. Trumbull, a Republican, was also quietly worked on by Hays. The boycott would loom for several months, and with each passing day the Association seemed in a stronger bargaining position. “It seems to be the consensus of opinion generally,” stated Governor Trumbull in a long-awaited statement

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<sup>65</sup> Minutes of meeting between Connecticut theatre owners and the MPPDA, August, 1925. *WHHP*, vol. 1, reel 23.

to the press, “that this law works hardships on the Connecticut theatre owners not anticipated and that it should be amended or modified.”<sup>66</sup> By December, 1925, distribution to Connecticut theatres was restored. A standard contract between distributors and exhibitors was agreed to on February 5, 1926. Although anti-trust action was to remain in some capacity through the 1920s and 30s, the war with exhibitors was effectively over and big producer power, facilitated by the MPPDA, would reign for the next 22 years. It was not until the 1948 Supreme Court decision in *United States v. Paramount* that studio moguls agreed to sell off their theater chains and end block-booking.

#### Coda

The political fights of the 1910s and 20s laid the cornerstones of the classic studio system, and in so doing shaped much of the features of consumptive capitalism, orienting economic power toward consolidated forces of production and away from the more localized conceptions of retail and consumer power. Consumer purchasing power would drive economic growth, but not determine industry arrangements or regulatory concerns. In the movie industry, this shift necessitated a depoliticization of the screen that disarmed the democratic potential of propagandistic cinema. This process of depoliticization was necessarily political, however, and was threaded through anxieties

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<sup>66</sup> John H. Trumbull, statement to the press, March, 1925. *WHHP*, vol. 1, reel 25.

of progressivism, prohibition, the Ku Klux Klan, and contestations over the development of the modern Republican Party.

Early American exhibitors were motivated by their economic interests, of course, but saw much of this interest in its social binds to the community. Exhibitors had a public interest in democracy that furthered economic ends, a role amplified to remarkable degrees in the first World War. The motion picture theater was for many a social institution, an arena of democracy. Theatre owners sought various combinations, and often articulated film exhibition through discourse of localized, progressive, and political ideals. By the 1920s, this proved no match for big producer organization, which managed to shape the American film industry away from non-commercial cinema, exhibitor-centered interests, and federal/state regulation, all while battering and exploiting both nativist insurgencies and prohibition. In shifting the politics of propaganda to the politics of publicity, Hays was able to shape the trajectory of the movie industry in ways that opened cultural paths toward the development of modern liberalism—a depoliticized and commercial field of expression.

The liquor interests' use in personal liberty—binding the liberty of consumption to the liberty of free expression—was not a transformative moment for liberalism but a failure, a possibility closed off by the moral politics of progressivism. The controversies surrounding *The Birth of a Nation* deepened the cleavage between social justice and free expression, further limiting the development of modern liberalism in ways that cast the politics of speech to the realm of civil libertarianism and defined the path toward 20<sup>th</sup>

century liberalism along the lines of equal justice. These cleavages along moral, speech, and economic lines were movie-made social formations, but the social power of the cinema—its power to shape public thought through images on the screen—required a thick negotiation of politics. Propagandistic cinema was tested in America’s war effort, only to be tied to the fading progressive state.

These cultural and ideational conditions of the movie’s social power shift in the 1920s to more instrumental and operational work of depoliticization and economic consolidation. Producers installed Will Hays as president of their trade association, who set about clearing difficult political ground—negotiating Republican patronage, the ascendant Ku Klux Klan, federal prohibition, and the waning political activism of progressive reformers and pro-censorship figures in and out of government. Certain cultural and ideational conflicts are resolved, others simply absconded away, and a kind of political amnesia is explicitly constructed by Hays and the big producers (the movie industry has never done propaganda). Much of this political negotiation was furthered for economic ends, namely to provide breathing room for the coordinated activities of the big producers and the consolidation of the industry in ways that directly benefitted these emerging moguls of Hollywood.

From a policy stand point, the distrust of consolidation in the movie industry worked to antithetical ends of the progressive moralists, who consistently attacked the “movie trust” as the source of immoral and dangerous influence. But a trust—more specifically a big producer trust—was precisely what was needed to control and master

the social capacity of the screen. We see in the subsequent development of the production code a capacity for moral regulation, remarkably cautious, if not conservative, that could have only happened through vertical integration and coordinated practices of big producers. Moralists assailed big producer control as the source of movies “capable of evil” without much consideration of the way in which organizational and scientific management in industry development could effectively manage these moral anxieties. An industry dominated by Jewish immigrant entrepreneurs exacerbated the dissonance between consolidation and moral control. It might have been easier for the blue nose moralists to see consolidation as the solution to the moral problem of cinema had the industry remained in control of non-Jewish industrialists.

Consolidation and scientific management actually fit with late progressive-economic thinking, particularly in the Common Law restoration in anti-trust law, and a paradox emerges in the progressive-moralist concern over the big producer trust in the 1920s. but the movies were an infant industry quickly dominated by ethnic immigrants, and this is what limited its path toward consolidated regulation. Why did the MPPDA succeed in consolidation whereas the Edison Trust had failed a decade previous? Edison’s combine had a bottom-up hold on the manufacturing output of raw materials and the patents that protected those inventions. Controlling the materials of production was 19<sup>th</sup> century industrial thinking. It could not attend to the ideology and social power of moving images. But the masters of cinema—the moguls—could not embrace and foster

this social power. It had to be scuttled and buried, tamped into an industrial process of movie-making, of entertainment pure and simple. The social power of the cinema, in short, had to be controlled and institutionalized.

The dream factory was, in its ideal, an aesthetic attack on ideology itself—the triumph of style, spectacle, story, intrigue, and emotion over the raw power of ideas in their social form. The story of the depoliticization of American movies is, in one sense, the withering of a particular conception of ideology (cinematic, democratic, and overtly political) and the triumph of commercial entertainment in the American movie industry, a triumph that subsequently shaped some of the contours of modern liberalism and consumer capitalism. The MPPDA and the emerging movie moguls succeeded where Edison failed because they had negotiated the necessary path of economic coordination to moral control, and subsequently, economic consolidation to moral mastery.

The masters of cinema, Richard Schickel has suggested, were not those concerned with the hardware of the movie industry, but those concerned with the software of the movies themselves—the images and ideas reflected off the picture sheet. The moguls mastered the industry by controlling the ideational power of moving pictures, not by fostering an ideational medium of democratic expression. Control of this social power in movies emanated from the perception of moral authority and the institutionalization of moral self-regulation. Without such moral authority, the movies may have never risen to such a powerful position in American culture and economy. The consequences were not only felt by the movie industry—the moral authority necessary for the development



of American cinema also created the conditions for the triumph of consumer capitalism in the American economy.

Consumer spending today accounts for approximately 70% of the total U.S. economic output.<sup>67</sup> The rise of consumer spending as the economic engine of American capitalism has been traced to corporate decision-making in the 1920s and 30s, both as a strategy of economic survival and as an attempt to counter government policies of planning and managing the economy.<sup>68</sup> This history of consumerism necessarily touches on motion pictures as a powerful instrument of persuasion, one of the many mediums through which “image managers, spin doctors, and legions of ideological cosmeticians routinely package truth for public consumption.”<sup>69</sup> But little attention has been paid to the development of this industry and its relationship to the rise of retail and consumer capitalism. More than a medium of persuasion, the growth and consolidation of the motion picture industry, and the political contests that emerged from its development, shaped the contours of modern consumer capitalism.

Politics has been effectively denatured from today’s American consumer culture, a culture that traffics in ideals but often fails to provide a medium of ideas. But a system of denatured dreams is itself an ideology. Commercialism has reached its apotheosis in

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<sup>67</sup> Household final consumption expenditure (% of GDP), World Bank, <http://data.worldbank.org/indicator/NE.CON.PETC.ZS> (accessed on May 13, 2016).

<sup>68</sup> Stuart Ewen, *Captains of Consciousness: Advertising & the Social Roots of the Consumer Culture*. New York: Basic Books, 2001; Stuart Ewen, *PR!: A Social History of Spin*. New York: Basic Books, 1998.

<sup>69</sup> Ewen, *PR!*, 46.

American visual culture. The cinematic production value of entertainment is the currency of consumer capitalism. From the dream factory of classic Hollywood to the Super Bowl commercials of today, the optics of American culture have developed a profound celebration of commercialism that is cinematic, triumphant, and irrepressibly entertaining. Political meaning can be gleaned, but only through the recesses of identity. Gender, race/ethnicity, and sexuality are constructed from the screens of contemporary culture. It is not the realm of ideas or deliberation, but the realm of feeling and the story of personhood. Today's visual culture may have been radically different had the movie men of Hollywood not denatured the American movie screen. In the final account, the ideology that most visibly emerges from the political conflicts in the early twentieth century movie industry is the ideology that rests at the fault line between modern liberalism and civil libertarianism, between government as an instrument and the people as harbingers of expression, between a persuasive state and the will of consumers and culture-makers, between propaganda and free speech.

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