



***Hollywood's interwar trade practices
and their impact on screen content in a
political crisis***

by

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DECLARATION

“I certify that this thesis:

1. does not incorporate without acknowledgment any material previously submitted for a degree or diploma in any university; and
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ABSTRACT

The 1920s saw screen content concerns become perceived by Hollywood's public critics as a function of the monopoly structure which arose in the industry from 1919. Hollywood's peak trade body, the Motion Picture Producers and Distributors Association (MPPDA), used variable screen content as a bargaining chip to negotiate away from the one area it would not negotiate on, its oligopoly control. Independent exhibitors strengthened the morality campaigners by arguing that monopoly threatened local sovereignty by limiting peoples' choice in their communities.

During the Depression claims to strengthen localism and return to traditional values were elsewhere being articulated on a national scale by media savvy agitators promoting radical schemes risking regressive practices that would compromise the nationally scaled economy. Such atavism also underpinned European fascism, and by 1936 enabled links between the U. S. A. and Europe to be drawn in the first of several Hollywood film cycles tacitly addressing fascist behaviours and imagery. At this time the entrenched economic malaise drove a political turn by the White House against Big Business and monopoly structures, which energised the antitrust activities of the Department of Justice against Hollywood. The movie industry responded on several levels, including efforts to implement the associative state practices developed by Herbert Hoover for industrial self-regulation. In Europe, as Franco advanced in Spain middle class activists in America agitated for greater screen relevance through the rhetoric of Film Quality.

Concern for independent screen narratives that went beyond escapism was a central element of the Justice Department's landmark Hollywood antitrust litigation, the *Paramount* suit in July 1938. This threat drove internal moves within the MPPDA to rationalise its screen content management practices and reposition the industry for flexible responses, especially to future anti-fascist screen material. As the White House's priority moved away from the competition gains of antitrust in 1937-38 to national preparedness in 1939, the interests of Washington and Hollywood for a reliable, centrally managed national media in the geo-political emergency became strongly aligned. In the period between Poland's invasion of September 1939 and Pearl Harbor in December 1941 Hollywood and Washington continued to interact to balance public concerns, through adjustments on trade practices made by the Justice Department's Antitrust Division in the 1940 Consent Decree, and in the final major peacetime attack on Hollywood's management of the screen, the 1941 *Propaganda Hearings*.

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INTRODUCTION

When pre-war critics of Hollywood attacked monopoly they were, consciously or not, activating a trade practices discourse. Under the bland rubric of trade practices sat a highly imaginative industrial system for movie exhibition that recognised the values of geography, demographics, customer satisfaction and myriad other factors, all skilfully combined to maximise the profitability of every studio concoction aimed at the screen. Rigorously enforced by contractual instruments, order was imposed, and a hierarchy of customers was derived by the system. That hierarchy in the experience of seeing the latest movie spanned audience-dazzling urban picture palaces all the way down to remote backwoods communities using converted shopfronts and rural barns.

Like any hierarchy, this one produced winners and losers, high flyers and bottom feeders. Generally, the successful elements across the enterprise saw the wisdom of combining to extend, expand and protect their commercial strengths. The resultant new machine age Goliaths of mass entertainment found their David in the industry's exhibition tier, amongst the stubbornly individualistic small entrepreneurs at the base of the food chain who had the least economic clout. These were the independent small-town movie house proprietors who had to wait the longest for the crumbs from the Hollywood table. Yet those crumbs, when they eventually arrived, were the same glamorous fantasies of the dream factory as originally enjoyed amidst pizzazz and gilded splendour by these rural Americans' counterparts in the cities.¹

In this irony of high and low quality standards fusing to serve small-town citizens with escapist pleasure more cheaply than their city cousins lay the seeds of an enormously energy-consuming disputation. At one end of this disputation sat Will Hays, savvy heartland political fixer with a smooth line of rhetoric and a genius for organisation. Down the other end of the long exhibition negotiating table sat Abram (Abe) Myers of the Allied States Association of Motion Picture Exhibitors (ASAMPE), an obscure, embittered ex-bureaucrat with thwarted dreams of stardom.² So closely did Hays personify the organised industry's peak trade body, the Motion Picture Producers and Distributors of America (MPPDA), that it was widely known as the Hays Office. Disgruntled, complaining, struggling against their better-heeled corporate competitors: the backwater neighbourhood mom-and-pop cinemas had seemingly forever been a burr in Hays' otherwise smooth saddle. In the 1920s, the

¹ Thomas Doherty, 'This is Where We Came In: The Audible Screen and the Voluble Audience of Early Cinema', in Melvyn Stokes and Richard Maltby, Eds., *American Movie Audiences: From the Turn of the Century to the Early Sound Era* (London: British Film Institute, 1999), 146.

² See account of Myers' attempt to enter Hollywood's production tier in 'Kinograms Newsreel Discontinued', *Harrison's Reports*, 21 November, 1931, p.185.

organised industry that Hays oversaw succeeded in corporatising the first national lobbyist for exhibitors, the Motion Picture Theatre Owners of America (MPTOA). But an internal revolt led to the exhibitors' ranks regurgitating a truculent breakaway association, the Allied States Association of Motion Picture Exhibitors (ASAMPE, better known simply as Allied States or Allied), which under Myers' guidance was to become far more intransigent.

The industrial environment of American cinema in the 1920s was a model of the emerging corporate framework that was coming to dominate the U.S. economy. Soon after the Great War, numerous movie producers, distributors and exhibitors formed new commercial alliances in 1919 to create a vertically integrated entertainment industry capable, through its oligopolistic structure, of controlling every step in its products' life cycle from conception through consumption to archiving. Questions of Hollywood's oligopoly structure would go on to underpin some of the interwar years' most crucial decision-making over the management of screen content in the seemingly unrelated sphere of geopolitical opinion formation. In this relatively embryonic industry the management and control of screen content was not a static site, but rather a living framework. This was reactive, and far more responsive to external stimuli than to any idealistic internal impulse to maximise the aesthetic and cultural value of screen art. The Hollywood screen was not foremost an art but a commodity. As with consumerist concerns over other commodities like food and pharmaceuticals, a powerful discourse grew up in 1920s America warning of the power of the screen. In this industry the perceived threat was to influence hearts and minds and change behaviours, and in doing so to challenge existing community loci of authority.³ Civic reformers offended by screen content soon made a link to the monopoly conditions behind their presentation. Leading screen content crusader Catheryne Gilman of the Parents and Teachers Association (PTA) believed that the "character of the film is so dependent upon the trade practices... that it is necessary for us to consider them" in order to reform the screen's output.⁴

The MPPDA strategically used this perceived causality as a device to negotiate away from questions of its monopoly structure. The Hollywood system known to its critics as Protection reified the hierarchy of first and subsequent-run cinemas, stratified within their geographic zones, who stood in line to receive product, scheduled on a timetable of precise clearance dates. The run-zone-clearance system enabled by the oligopoly under the MPPDA was an interlocking system designed to maximise profitability in order to maintain its picture palaces and afford the lavish production costs which gave the American national cinema its global

³ Richard Maltby, 'To Prevent the Prevalent Type of Book: Censorship and Adaptation in Hollywood, 1924-1934', in Francis G. Couvares, Ed., *Movie Censorship and American Culture* (Washington: Smithsonian Institute Press, 1996), 119.

⁴ David Horowitz, *Beyond Left & Right: Insurgency & the Establishment* (Urbana: University of Illinois Press, 1997), 78.

competitive advantage. Its true cost became the bottom rung agitation of independent exhibitors, with Allied at the head of a raft of more local, state or regionally based lobbyists.

From the early 1930s independent exhibitors under Abe Myers' strategic direction reinforced civic reformers by whole-heartedly adopting the latter's morality argument, finding a causality in Hollywood's oligopoly and offensive screen content. Exhibitor representatives fashioned this argument to emphasise local sovereignty and consumer choice. They argued that various undemocratic practices enabled by monopoly conditions like forced selling allowed the Hollywood producers to impose morally repugnant sex and gangster pictures on small communities struggling to uphold family values in an age of rural displacement to the cities. In the mid-thirties this same atavistic attraction of local autonomy as a prominent benefit of older ways threatened by machine age reorganisation was also being heard more widely from marginal political agitators gaining popularity in hard economic times. Media savvy orators like Huey Long and Father Charles Coughlin were rapidly expanding their reach through radio and growing in national influence as the Depression bit hard. But the simplicity of returning to a romanticised past carried great risks of regression through compromising the medical, economic, cultural and health benefits delivered through the nationally-focussed corporate economy. Such simplistic atavism also underpinned European fascism, a link portrayed in various ways in Hollywood's first films addressing fascistic behaviours in domestic American settings. These included the Black Legion cycle of 1936, which attracted producers wishing to make subtle points on-screen that addressed anti-Semitism, xenophobia and other issues of growing concern at home and abroad.⁵

By mid-decade the Depression's deepening maladies made it seem entrenched. The Roosevelt government's attempt to implement centralised corporate economic management in the guise of the National Recovery Administration (NRA) was outlawed by the Supreme Court in 1935. Hollywood had been a major beneficiary of the NRA's top down approach, including Codes for dispute management that structurally advantaged industry interests. The disabling of the NRA left film industry conflict resolution without the central coordination that had previously been managed by the MPPDA, and the necessity for problem-solving quickly reverted to *ad hoc* local solutions by film industry participants. This vacuum of regulation was then seized upon as an opportunity for fresh reform by the industry at several levels. One of these, drawing on Herbert Hoover's model of industrial self-government known as the "associative state" which underpinned the MPPDA's creation, was devised and conducted by

⁵ Christine Ann Colgan, *Warner Brothers Crusade Against the Third Reich: A Study of Anti-Nazi Activism and Film Production, 1933 –1941*, PhD Dissertation, University of Southern California, 1985, 115-118.

Hays in extreme secrecy.⁶ Despite significant efforts by both Hays and senior federal government representatives, studio intransigence prevented a deal being made in 1936 that could have delivered significantly enhanced self-regulation to the industry. Had such a deal emerged, it would have obviated much of the widespread external agitation by politicians and community activists attacking Hollywood in various public forums, much of which was fuelled and supported by Myers and Allied. It might also have forestalled the greatest influence on Classical Hollywood trade practices, the *Paramount* suit.

Like its namesake studio's logo of a towering mountain peak, the *Paramount* lawsuit looms large in the topography of this industry's history. In 1948, the Supreme Court's ruling on the case's second filing created an upheaval in Hollywood by forcing divestiture of the studios' theatre outlets, closing the curtain on the Golden Age of Hollywood. This landmark litigation commenced in 1938 and was conducted by the Antitrust Division within the Department of Justice, then headed by high profile legal activist Thurman Arnold. The initial litigation was underwritten by the prevailing sentiment in the White House which had turned in a strongly anti-Big Business direction in 1936-37 following the NRA's outlawing. That policy change foregrounded a strong public rhetoric of anti-Bigness which the federal government progressed by attacking monopoly conditions, with the declared intention of enhancing competition to benefit quotidian consumer interests in the marketplace.

A corresponding public push with an equally strong demotic flavour was emerging at the same time on behalf of the interests of filmgoers, particularly engaged middle class viewers concerned to stay as informed as possible on the world situation, as the Spanish Revolution advanced on the Continent, drawing in the military forces of fascist powers in Germany and Italy. A small cycle of Hollywood films used this conflict as their foundation, and a controversy over content management ensued, centred on conservative elements in the Catholic Church decrying Hollywood's perceived propaganda. This public debate took place at the same time as an internal shake-up in the MPPDA on its screen management boundaries and protocols. While these changes stayed behind the scenes, they led to the Hays Office being better prepared for future screen attempts to address political issues, especially those raised by fascism.

The need for such initiatives became more likely, since a major element within the *Paramount* litigation driven by Arnold was to open pathways for more diversity of screen opinion in order to strengthen the democracy that was succumbing to fascism in other Western countries. According to Arnold, opportunities for fresh, independent voices were at odds with the industry's monopoly structure, and Hays and executive MPPDA leaders,

⁶ Hoover's vision of the associative state is discussed in detail in Chapter 2.

aware of this threat to their conditions, were at pains to prevent perceptions arising that the organised industry was denying independent channels of thought and opinion from reaching the silver screen. Judicial decisions at this time were similarly affecting the rights of moviegoers as consumers and transforming the public debate on screen content management from an increasingly outdated concern with prurience and gunplay to one of film quality, political engagement and access.

The evolving content management issues came together for Hollywood in the eruption of one major studio's big budget feature film explicitly critical of Nazism and attacking a European nation during peacetime, *Confessions of a Nazi Spy*. Its May 1939 release places this film four months ahead of Germany's invasion of Poland, which launched World War II, and raises questions around the probity and wisdom of bursting the boundaries of domestic neutrality and foreign nations' sovereignty. At the time of its release, there was a theoretical possibility of a negotiated settlement to the European crisis, after which Germany would have been strengthened diplomatically and economically in its dealing with the United States. Such a possibility was not lost on Will Hays, who privately expressed his suspicions that Great Britain would be prepared to settle for a "Versailles style" agreement to secure German disarmament, in the process keeping America free from any need to maintain an anti-Nazi belligerence.⁷ Related concerns over national sovereignty are evident in the correspondence of Joseph I. (Joe) Breen, the head of the MPPDA's Production Code Administration (PCA), who was responsible for the delivery of the organised industry's management of screen content. It is clear from these records that Breen's approach had been affected by the previous year's internal MPPDA review to position the industry for greater challenges arising from the crisis of fascism in Europe.

Screen content management evolved to suit the rapidly changing times and, by not moving too far or too fast in any particular direction, alert administration by the MPPDA's head office in New York managed to maintain the industry's positioning to stay one step ahead of the risks of any serious community backlash. Much public sentiment resented the anti-fascist and pro-war content that did reach the screen, and for a highly capitalised corporate endeavour responsible for the livelihood of thousands, the unsung pragmatism of maintaining a sober, responsible balancing act was the only reasonable way to walk the tightrope of the pre-war years.

⁷ David Welky, *The Moguls and the Dictators: Hollywood and the Coming of World War II* (Baltimore: The Johns Hopkins University Press, 2008), 292 [citing Hays writing to Roy Howard, 24 May 1941 in *The Will Hays Papers*, University Publications of America, 1986 (hereafter Hays Papers), Reel 28].

No one had a crystal ball, and such pragmatism marked the interaction between Washington and Hollywood to resolve the *Paramount* case through a consent decree in 1940 as the country stepped up its national preparedness agenda. In the steadily building militaristic national media environment, the Great Debate between isolationists and interventionists moved into high gear in the summer of 1941, and swept Hollywood up in its net, in the high-profile Senate *Propaganda Hearings*.⁸ This nationally publicised inquiry risked reopening the *Paramount* case, but it was unevenly managed by its isolationist politicians and because of their mishandling, showboating and lack of preparedness, it stalled badly. Before the *Propaganda Hearings* could regain any footing, Pearl Harbor changed history and rendered this debate, along with so many other considerations of peacetime, moot.

Methodology, historiography and cinematic texts

This thesis focuses on the politics and impact of film exhibition on the corporatised American movie industry and how this influence helped determine Hollywood's anti-fascist outputs in the peacetime years before December 7, 1941.

The thesis has two primary foci which it seeks to integrate by exploring and illuminating their interaction. The first, as discussed and summarised in the opening part of this introduction, is industrial trade practices from the American film industry's inception through to Pearl Harbor. Scholars are increasingly demonstrating the decisive but long obfuscated influence on what audiences experienced of the back room debates by which Hollywood sought to reconcile its competing commercial, political and cultural imperatives. There are many rich strands of research that remain to be explored in this interaction.

The second focus of the thesis is the operation of screen content management in the Classical period of Hollywood as it related to the issues of European fascism and America's coincident debate on military interventionism in Europe. The effects of screen content management not only include certain movie texts, but extend to Hollywood's public politicking and its internal tides of power relations amongst executives. By positioning the overall focus of the thesis at the impact on national political discourse of industrial practices and particular movie texts, this project situates itself within the emergent discipline of New Cinema History.⁹ This academic orientation centrally and explicitly eschews considerations

⁸ Michele Flynn Stenehjem, *An American First: John T. Flynn and the America First Committee* (New Rochelle: Arlington House, 1976), 125; Michael Sherry, *In the Shadow of War: The United States since the 1930s* (New Haven: Yale University Press, 1995), 56.

⁹ Eric Smoodin, 'The History of Film History', in Jon Lewis and Eric Smoodin, Eds., *Looking Past the Screen: Case Studies in American Film History and Method* (Durham: Duke University Press, 2007); Richard Maltby and Melvyn Stokes, 'Introduction', in Richard Maltby, Melvyn Stokes and Robert C. Allen, Eds., *Going to the Movies: Hollywood and the Social Experience of Cinema* (Exeter: University of Exeter Press, 2007); Richard Maltby,

of the filmic text from its ambit. It does so essentially by rejecting one longstanding perspective, that of critical assessments of films as artistic products which succeed or fail as works of cinematic art. That perspective is seen to position analyses of movie texts as an outgrowth of literary studies and is criticised by proponents of New Cinema History as assessing data acontextually, and thus being incapable of enabling cinema to make any significant contribution to a wider social history. By contrast, a social history of cinema privileges audience experiences very broadly (and also privileges equally broad definitions of how widely Hollywood's audiences -including Washington, opinion leaders and politicians - were constituted) as a key element in the fabric of quotidian cultural history.

Americans' social and cultural history as actors, mitigated by isolationism, in the 1930s global ideological struggle cannot be thoroughly represented without certain filmic text descriptions and assessments of anti-fascist movies' manipulative, opinion-shaping effects. Amongst the handful of film titles to be included for analysis here, the thesis foregrounds 'anti-fascist' in its scope as a primary qualification for inclusion. Such films' assessment is intended to provide a curated passage, in generally linear terms, through the messages on screen available then to pre-war American viewers. The objective is to enlarge the evidence base concerned with peacetime anti-fascism in America. Not all the relevant movie titles are readily accessible today, making their integrated analysis herein an addition to the body of knowledge available for consideration by scholars. The academic literature (see discussion of sources which follows) has demonstrated how literally hundreds of pre-war Hollywood movies can be recognised to have been in varying degrees anti-fascist, either thematically or more usually through recourse to smuggling in a fleeting critical representation that attacks and/or ridicules the dictators. By contrast, in this thesis the explicitness of a movie's anti-fascism is a core criterion for inclusion. That explicitness extends to a movie's contemporaneous reception, because such a wider perspective illuminates the social impact that is a priority of the new cinema history. The small number of Hollywood movies set in the Spanish Civil War, and those addressing hooded gangs' domestic terrorism and lynching (with attendant cycle entries) created a web of associations, all of which represent contributions by Hollywood to the then current public discourse on the European dictators. That wider discourse was both hostile and favourable to attacking fascism, and variously linked movies within and across these cycles including *Fury* (1936), *Black Legion* (1937) and *Blockade* (1938) under a rubric of fascism and American politics.¹⁰

Daniel Biltereyst and Philippe Meers, Eds., *Explorations in New Cinema History: Approaches and Case Studies* (Malden, Massachusetts: Wiley-Blackwell, 2011).

¹⁰ Martin Dies, 'The Reds in Hollywood', in *Liberty*, 17 February, 1940, 48, quoted in Saverio Giovacchini, *Hollywood Modernism: Film and Politics in the Age of the New Deal* (Philadelphia: Temple University Press,

Thomas Elsaesser points out that the Production Code which governed screen content management needed to accommodate concerns "as politically delicate as the issue of America's isolationism in the late 1930s, and as morally disturbing as the depiction of gangsters in the early 1930s."¹¹ Internal MPPDA documents described and cited in the thesis show how anti-fascist movies were prominent drivers of change within the Hays Office as it struggled to stay ahead of rapidly evolving domestic political developments in the mid-late thirties.¹² Yet there was no flood of anti-fascist feature filmmaking. It was not that Hollywood needed to sway American opinion against Hitler and Mussolini – they were already thoroughly opposed by this time.¹³ The real security threat was internal.

Depression hardships had led many Americans to look beyond established authorities who seemed incapable of providing solutions, and to take more seriously a number of idiosyncratic schemes and their radical proponents. These included Dr Francis Townsend's targeting of senior citizens with a putatively self-financing pension scheme and muckraking writer Upton Sinclair's platform for state appropriation of industrial assets in California, both of which are detailed in Chapter 3 of the thesis.¹⁴ The risk posed by such political loose cannons was to undermine the centralised planning and authority essential to wartime preparedness in such key sectors as finance, health, transport and research. Two linked groups of Hollywood features from the mid-thirties, the Black Legion films and the lynching cycle, deploy ostensible anti-fascist contexts to embed strong arguments propounding the superior benefits and credibility of centralised science, medicine and mass media, as opposed to traditional superstitious folk practices and local news reporting. Under the broad umbrella of attacking domestic repression and terrorism analogous to European fascism, but thoroughly extolling the virtues of Big Government, these linked movie cycles tacitly comprised some of Hollywood's strongest interventionist outputs, as they strengthened the New Deal where it needed support for war the most: unity of purpose and national compliance.

It was the Warner Bros. entries that did most of the heavy lifting across the hooded gangs and lynching cycles. Central to the new, uncharted expansion of influence by the Depression's renegade political outliers shifting support away from established political actors was the concept of American individualism. The frontier ethos which supplied oxygen

2001), 113; Frank S. Nugent, 'They Won't Forget', *The New York Times*, 15 July, 1937, 16; Edgar Dale, 'The Movies and Race Relations' in *The Crisis: A Record of the Darker Races*, Vol.44, No. 10, October 1937, 294.

¹¹ Thomas Elsaesser, 'The European Cinema, Germany and Hollywood 1927-1934', in Giuliana Muscio, Ed., *Before the Codes 2. The Gateway to Hays*, (Venice, Marsilio, 1991), 212.

¹² This process is detailed in Chapter 5 of the thesis.

¹³ Benjamin Alpers, *Dictators, Democracy and American Culture: Envisioning the Totalitarian Enemy, 1920s-1950s*, (Chapel Hill: University Of North Carolina Press, 2003), 17, 40, 58.

¹⁴ David M. Kennedy, *Freedom from Fear* (New York: Oxford University Press, 1999), 234.

for individualism had become increasingly unsustainable in the three decades after the Civil War. As Jackson Lears has demonstrated, the newly centralising mass national economy of the late 19th century supplanted old revolutionary America's creed of inviolate personal autonomy with consumerism, and its new dynamic of self-expression through purchasing choices.¹⁵ Both Warner Bros.' *Black Legion* and its anti-lynching *Mountain Justice* (1937) extensively foreground tensions between safe consumerism and its moral and historical obverse, the producerist-individualism of Jeffersonian Republicanism. These movies' close proximity in time and their purposeful engagement with mass national audiences on some of the most important issues of their day reveal an additional path of cinematic opinion formation contributing to military preparedness against fascism.

It was neither Hitler nor Mussolini that most agitated the peacetime anti-fascist content concerns within Hollywood but another dictator, General Franco, and the Spanish Civil War. As with the lynching and Black Legion films, a small cycle of movies were produced by Hollywood that took this conflict for their setting. Independent producer and activist Walter Wanger pushed these overlapping interests to converge in his prestige feature film *Blockade*, engaging prominent leftists William Dieterle and John Howard Lawson to direct and write the project. From its inception *Blockade* operated more as a phenomenon than a mere movie, appearing to industry conservatives as a harbinger of the feared flood of progressive, Popular Front, anti-fascist special pleadings to come. When we learn, as the thesis details, that viewers of one of the other Spanish Civil War cycle features, *Love Under Fire* (1937) remarked only on its romantic elements while audiences for *Blockade* sat in stunned silence before bursting into applause, and subsequently discussed its politics with theatre managers, it is clear how an awareness of these ostensibly comparable filmic texts becomes essential to form the social and cultural meaning of the era.

The culmination of debates both within and outside the industry regarding pre-war anti-fascist cinema was the release of the Warner Bros. 'A' level feature, *Confessions of A Nazi Spy* in May 1939, several months before war broke out in Europe. Scholarly writing has pointed to this movie being evidence for an easing by Hollywood gatekeepers of the industry's strictures against explicit anti-fascist filmmaking during peacetime, but until now precisely *how* this crucial adjustment occurred was not clear.¹⁶ Part of this uncertainty derives from the fact that Joe Breen's Production Code Administration "always preferred to

¹⁵ T.J. Jackson Lears, *No Place of Grace: Antimodernism and the Transformation of American Culture 1880-1920* (New York: Pantheon, 1981).

¹⁶ Richard Maltby, 'The Production Code and The Hays Office', in Tino Balio, Ed., *Grand Design: Hollywood As A Modern Business Enterprise, 1930-1939* (Berkeley, University of California Press, 1995), 69-72.

work in secrecy.”¹⁷ This thesis addresses Hollywood industry gatekeepers' covert process of adjustment over several chapters by presenting a chronology that moves from highly confidential internal MPPDA debates, and then to the Production Code Administration's official pre-release reports on the Warner Bros. anti-Nazi project, describing its collaboration with the studio, and concluding with an extensively backgrounded textual assessment of the operations of this landmark Hollywood undertaking.

History and Sources

This thesis started with an epiphany. Against the background of my undergraduate degree, commenced in an unabashedly Marxist faculty where the modern mass media's co-opting of public opinion was taken as a given, I found myself one day many years later watching Basil Rathbone playing Sherlock Holmes. Against a dark, lowering sky, Holmes declaimed to Watson and we viewers:

*There's an east wind coming all the same, such a wind as never blew on England yet. It will be cold and bitter, Watson, and a good many of us may wither before its blast. But it's God's own wind none the less, and a cleaner, better, stronger land will lie in the sunshine when the storm has cleared.*¹⁸

Scales fell from my eyes: hidden propaganda!; encoded messages!! How many other major corporate film productions had tried to smuggle anti-fascist messages into the minds of an unwitting and isolationist America? Such was the original inquiry which informed my 2003 Honours thesis, an extension of which was the foundation of the original thinking behind this Ph.D. thesis in 2006.

A rethink became necessary with the 2008 publication of David Welky's *The Moguls and The Dictators*, a book which I have both enjoyed and benefited from, but which thoroughly beat me to the same punch – analysing the anti-fascist films of peacetime America.¹⁹ However, informed by my lead supervisor, Professor Richard Maltby, my project had also included from inception a strong interest in *how* these movies managed to smuggle in some messages and not others. This meant including detailed examinations of their producers' navigation of the requirements of the Hays Office and its Production Code. What some might call censorship is better understood as screen content management, and there is much scholarly work describing how such negotiations are significant elements on the broader

¹⁷ Giuliana Muscio, 'The Code That Ever Was', in Muscio, Ed., *Before the Codes 2.*, 31.

¹⁸ <https://unbound.com/books/the-continuity-girl/updates/when-sherlock-holmes-fought-the-nazis> Accessed 26 November, 2018. That film, *Sherlock Holmes and the Voice of Terror*, was a 1942 release and hence outside my project's central parameter of peacetime anti-fascist movies, but a spark had been lit, and the rest is history.

¹⁹ Welky, op.cit.

canvas of industry trade practices. This was the site of many hotly contested struggles, especially between the vertically integrated corporate studio behemoths and scrappy, unaffiliated smalltown entrepreneurs running independent theatres. Many of these battles were played out weekly in the pages of *The Motion Picture Herald*, which I had the privilege of unlimited access to on microfilm, as well as the highly partisan trade sheet *Harrison's Reports* in bound digest form, long before their current digital ubiquity.

This immersion brought to the surface arguments spearheaded by the vividly expressed and frequently inflammable rhetoric of the leading independent exhibitor lobbyist group, Allied States Association of Motion Picture Exhibitors. Their output in speeches and press releases was suffused with the principles of individualism on which the American republic was founded: the little guy (and gal!) who respected the views of their smalltown neighbours versus the implacable arrogance of out of touch Big City corporate types ruthlessly seeking profits at any social cost. As the thesis details, the individualist republican principles of Jefferson were in fact honoured in the breach by the independent exhibitors who implicitly claimed his legacy. Yet their unceasing Jeffersonian rhetoric provided a vital pathway to recognising the importance and capacity of such an accessible and easily recognisable foundation of the American public consciousness to sway opinion.²⁰ The Hollywood trade practice discourse enabled an expanded appreciation of the critique of individualism as a threat to national preparedness that is embedded in key films of the mid 1930s domestic fascism film cycle, as described in the thesis. Here, with its extensive coverage of Walter Wanger's activist cinema including *Blockade*, Erika Doss's interdisciplinary study of Modernism provided the crucial bridge for my thesis between the 1930s revival of producerist-republican ideology as it was expressed in mass market cultural forms and corporate America's appropriation and mediation of such images for its own ends.²¹

There are many quality secondary sources on Hollywood and World War II and these usefully allocate ample space to the films and related issues of the peacetime period before Pearl Harbor, as the bibliography details. One filmography constitutes an essential bedrock for this project, the Shull and Wilt encyclopaedia, published in 1996, which is divided into two parts for pre-war and post-Pearl Harbor war-oriented movies.²² It comprises detailed entries on 449 peacetime films of relevance, each allocated one and up to three "Bias Coding" descriptors, with further subdivisions coding film genre, topical references, primary setting

²⁰ Merrill D. Peterson, *The Jefferson Image in the American Mind* (New York: Oxford University Press, 1960).

²¹ Erika Doss, *Benton, Pollock, and the Politics of Modernism: From Regionalism to Abstract Expressionism* (Chicago: University of Chicago Press, 1991).

²² Michael S. Shull, David Edward Wilt, *Hollywood War Films, 1937-1945: An Exhaustive Filmography of American Feature-Length Motion Pictures Relating to World War II* (Jefferson, North Carolina: McFarland & Company, 1996).

and the usual filmography references of studio, director, running time, and other production information. A detailed introductory essay explores background issues across all the subdivisions, making this work an indispensable reference for this topic. The 1985 thesis by Christine Colgan focusing on Warner Bros. and anti-fascism remains an exceptionally useful resource, rich in original archival references, whose coverage extends well beyond the activities of that individual studio.

Archival sources yielded great rewards and constituted some of the biggest breakthroughs of my research. Much is still to be discovered in the records of the MPPDA where the ease of use and key activity summaries of the Flinders database is invaluable for contextualisation and making connections.²³ It was trawling through the MPPDA Archives and Hays Papers on microfilm that led me to recognise how these overlapped with material unearthed by Giuliana Muscio in *Hollywood's New Deal*, still one of the outstanding works of modern film scholarship.²⁴ The Flinders MPPDA data's extension and reinforcement of Muscio's discoveries provided the basis for much of the original research in the thesis.

Accessing the voices of ordinary Americans as primary sources for cinema presents significant challenges only partially capable of being overcome via archival sources. Several sources rich in first person opinions from interested perspectives contributed to the thesis. Foremost was trade journal *The Motion Picture Herald's* column *What The Picture Did For Me*. This regular weekly section gave a voice to independent theatre managers and was intended to offer consumer-oriented reports from them to other exhibitors concerning specific titles' qualities. It was organised primarily to provide these small business operators with a barometric assessment of each movie's capacity to reach an audience. By extension this included advice on how impresarios could further mould that reach through their promotional messages, positioning of titles at the top or bottom of a bill and in conjunction with other genres, all conspiring to maximise audience appeal. For contemporary scholars *What The Picture Did For Me* is a motherlode of colloquial delivery and informed but non-journalistic reporting.²⁵ Next in terms of immediacy was the movie reviewing of trade journals by their editorial staff. These fused an industrial perspective of the need for screen products to perform in the marketplace with the reviewer's individual aesthetic and political sensibility, through which the journal's staff deputised for audience members and offered aware but subjective accounts of their reactions to the film. My project also drew on a third tier, the conventional movie reviews (analogous to literary criticism) found in mainstream publications.

²³ <https://mppda.flinders.edu.au/>

²⁴ Giuliana Muscio, *Hollywood's New Deal* (Philadelphia: Temple University Press, 1997).

²⁵ See Kathryn H. Fuller-Seeley, "'What the Picture Did For Me': Small-Town Exhibitors' Strategies for Surviving the Great Depression' in Kathryn H. Fuller-Seeley, Ed., *Hollywood in the Neighborhood: Historical Case Studies of Local Moviegoing* (Berkeley: University of California Press, 2008).

At every one of these levels of textual assessment a structuring absence of great importance for the thesis was the frequent lack of any political reading in their accounts. Such was not always the case of course, and that comparison between absence and the occasional political engagement broadened the range of inputs available for scrutiny.

Close textual analysis of the required movies led inevitably to the grey market of private enthusiast-oriented DVD traders serving film buffs which, by their nature are evanescent and cannot specifically be identified here. A good starting point to enter these networks is the alternative auction site ioffer.²⁶

For a fuller appreciation of sources the bibliography appended to the thesis can be consulted in conjunction with this select overview.

²⁶ <https://www.ioffer.com/>

Chapter 1 – Corporatised Hollywood and the ones left behind: 1919-1927

Through its successive production, distribution and exhibition tiers, the American motion picture industry delivered ephemeral products sensitive to fashion whims to a national audience. In order to gain the power necessary to deal with its greatest challenges, the industry had always gravitated to a structural solution, and generally the same one – oligopoly. This was an impulse that was operational in the nation's entertainment sector well before cinema became an industry. In her history of American film spectatorship, Miriam Hansen observes how nineteenth century European immigration expanded the American market for leisure activities beyond the "genteel" middle class dominating the post-Civil War decades. Developing public space fostered entertainment opportunities including amusement parks, vaudeville, puppetry and rudimentary, pre-nickelodeon films, where the economic imperative encouraged the mingling of social groups into "an ostensibly classless, Americanized community of leisure". Principles of mass production and marketing enabled entrepreneurs to wrest control away from communal centres like town halls with amusement parks and vaudeville, but their "monopolistic objectives" were undermined by a lack of control over content delivery, especially amongst live performers. Thomas Edison, who always avidly sought ways to exploit his inventions commercially, is well known for the vital contribution he made to cinema's origins. In the new entertainment technology of the movies, with the control its equipment proffered to owners, he and his competitors alike saw the chance "to make the cinema a model of mass-cultural consumption."²⁷

From the chaotically expanding movie business's free-for-all early days an exclusive cartel was the organisational remedy chosen by its more serious entrepreneurs like Edison to weed out the "cowboy" element drawn to this new medium's easy entry and promise of quick profits. Edison's impulse to corner the market for film production found expression in patenting his cameras, through which the inventor extended his forebears' monopolistic practices over entertainment by "circling the wagons" of major movie interests into a protective consortium, the Motion Picture Patents Company (MPPC), widely known as The Trust. Its establishment was followed by a breakaway coalition of self-styled "independents" who in turn formed their own producers' cartel. It was a history of trust after trust. Federal attempts at intervention were not far behind, and Edison's MPPC was the subject of U.S. Government antitrust action in 1912. These adversaries inaugurated a long running pattern in motion picture regulatory history, in which an anti-competitive formation was enforced on

²⁷ Miriam Hansen, *Babel & Babylon: Spectatorship in American Silent Film* (Cambridge, Massachusetts: Harvard University Press, 1991) 60-62.

new entrants by the industry's leaders through one core exclusivity: patents under Edison and an interlocking distribution structure under Will Hays.²⁸

Origin story

Thomas Edison's invention of the motion picture projector in 1889 is the wellspring of the movies. The inventor was no isolated eccentric, but rather an engaged entrepreneur, and always maintained a keen interest in monetarising his work for profit.²⁹ With the key element of the patent for his projector in hand, The Edison Company patented viewing cabinets shortly afterwards to promote "peep shows," branded as Kinetoscopes. A competitor, the Biograph Company, obtained its own patents which carefully sidestepped Edison's originals, and soon promoted a similar form of arcade entertainment. Development proliferated in the last five years of the nineteenth century, and a third major player, Vitagraph, arose on the back of patents which enabled Edison projectors using their innovations to function as cameras. With all three supplying novelty movies to burlesque shows, penny arcades and other quick-thinking promoters, Edison, Biograph and Vitagraph entered the 20th Century as the industry's dominant film producers. As demand mushroomed, the patent basis of the three leaders came to be a site of intense contestation, with widespread legal actions being taken against new entrants who were either openly infringing the originators' rights or exploiting openings like Edison's mistake in not obtaining foreign patents on his projector, an oversight which enabled a reverse Atlantic crossing of his invention to work to his detriment.³⁰

Outright sale of the earliest movie titles was the norm in the new industry at first, and these were screened repetitively until prints were exhausted and disposed of. Here a persistent theme of the new artform emerges: that of quality issues driving structural change. As movies' quality grew with longer productions, the organisation of the business shifted significantly to adapt to fresh opportunities. The concept of film rental was given concrete reality in 1902 in San Francisco where the first film exchange business was opened. The Miles Brothers Exchange, as it was known, operated as a middle stratum between producers and exhibitors, offering great reductions in fees (without print ownership) and thus greater variety, which in turn fed the growing demand and enthusiasm of the public for their entertainments. The industry's crucial distribution tier was thus born, and in the next five years up to 150 film exchanges dotted the nation servicing impresarios large and small.

²⁸ Simon Whitney, 'Antitrust Policies and the Motion Picture Industry', in Gorham Kindem, (Ed.), *The American Movie Industry: The Business of Motion Pictures* (Carbondale: Southern Illinois University Press, 1982), 160.

²⁹ A.J. Millard, *Edison and the Business of Innovation* (Baltimore: Johns Hopkins University Press, 1990).

³⁰ Charles Musser, *The Emergence of Cinema: The American Screen to 1907* (New York: Charles Scribner's Sons, 1990).

Huge growth in demand during the twentieth century's first decade was swelling the ranks of the supply side at all levels, with production especially attracting and creating hosts of smaller outfits to feed the public's appetite for novelty and vicarious thrills on screens. To reinstate some order and obtain the legal rewards from royalty payments due to their patents, the Motion Picture Patents Company was formed in 1908. Comprising the seven biggest domestic U.S. producers and two French offshoots (American Pathé and Star Film Paris) plus Eastman Kodak as the supplier of raw celluloid, the MPPC pooled their patents, established a licencing system for the manufacture of equipment, and aimed to limit production to only its constituent film producers. What would become the interlocking production-distribution structure of Hollywood took shape here, as 116 heretofore independent film exchanges were granted exclusive licences for MPPC product, with a log-rolling agreement that no outsiders' product would be made available for rental by these distributors. Initial success was demonstrated by the affiliation of 12,000 exhibitors granted screening licences by the cartel.

Once again quality on screen prompted structural adjustments. The new stabilisation ensuing from the cartelisation led the MPPC to discriminate between theatres by differentiating their prices according to the strength of houses' location. Weekly rates for a daily program change ranged from \$125 for the best situated city locations, down to \$15 for the humblest, out of the way cinemas. This classification dynamic would endure and evolve as the industry grew through the new century, and would come to form a key plank in the trade practices disputes of the interwar years when sound films were solidly established.

Another structural feature of the mature industry in Hollywood's 1930s Golden Age arose here: vertical integration across the tiers of distribution and production. While the MPPC's strictures were initially largely effective, there was always some leakage across the boundaries between those inside the cartel and the independent producers and distributors who were excluded. Contraventions occurred through traffic running both ways, as some independent distributors obtained licenced movies they were not entitled to rent, while some outside production firms managed to get their unlicenced films included covertly amongst the roster of titles available to exhibitors. In response, the MPPC created its own distribution subsidiary, the General Film Company, bringing rental inhouse, where the function would structurally remain, even into Hollywood's peak decades of the 1930s and 1940s. By forced sale, all but one of the 58 primary film exchanges were soon taken over by the cartel, with most of the remaining minors driven out of business through starvation of the supply of new titles. By 1910, General Film was America's only national distributor, and had settled on the longstanding population of 52 exchanges around the country's various territories. Enforcing

its patents, only films shot with MPPC-licensed cameras could thus gain the broad distribution required by the burgeoning market.³¹

The first breakout from this straitjacket was the owner of that one prominent film exchange who refused to come inside the MPPC's tent with the creation of General Film: William Fox. In a story soon to be repeated by other future Hollywood moguls like Adolph Zukor, Fox pushed ahead on the parallel fronts of film production and distribution through the expansion of his exchange into a national service. Carl Laemmle, later of Universal, was another renegade operating outside the boundaries of the MPPC to make films. Laemmle was one of the pioneers of the push for greater quality and narrative complexity as movies expanded from the cartel's staple one and two reels of 15 or 30 minutes duration into four and five reels.

An inevitable flurry of litigation initially saw the MPPC's patent rights trump charges by independents of illegal restraint of trade. This is an important plank in antitrust law, then a relatively new framework of business regulation, that had grown out of late 19th century responses to monopolisation by railroad tycoons known colloquially as the Robber Barons.³² The tide was reversed when the Federal Government in 1912 commenced antitrust action against both the MPPC and General Film. Both were found guilty of unreasonable restraint of trade due to their monopolising of commerce in films, cameras, projectors and related equipment, a stranglehold their patent rights could no longer legally maintain in the anti-monopoly regulatory environment of the new century.³³ The cartel's control fractured in the early 1910s, with defections from inside and new renegade competitors flourishing outside. In the melee, independent producers put as much geographical distance as they could between themselves and the East Coast old guard, spurring the creation of the Hollywood film colony.

³¹ Robert Anderson, 'The Motion Picture Patents Company: A Reevaluation', in *The American film Industry*, Revised Edition, Ed. Tino Balio (Madison: University of Wisconsin Press, 1985); Martin Sopocy, 'The Edison-Biograph Patent Litigation of 1901-1907', *Film History* 3:1 (1989); Jeanne Thomas Allen, 'Afterword', to Ralph Cassady, Jr., 'Monopoly in Motion Picture Production and Distribution: 1908-1915', in *The American Movie Industry: The Business of Motion Pictures* Ed. Gorham Kindem (Carbondale: Southern Illinois University Press, 1982); Jeanne Thomas Allen, 'The Decay of the Motion Picture Patents Company', in *The American Film Industry* (1st edition), Ed. Tino Balio (Madison: University of Wisconsin Press, 1976), 123.

³² Martin J. Sklar, *The Corporate Reconstruction of American Capitalism, 1890-1916: the Market, the Law, and Politics* (Cambridge: Cambridge University Press, 1988); William Letwin, *Law and Economic Policy in America: the Evolution of the Sherman Antitrust Act* (Chicago: University of Chicago Press, 1981); David Bunting, *The Rise of Large American Corporations: 1889-1919* (New York: Garland, 1986); Louis Galambos, *The Public Image of Big Business in America, 1880-1940: A Quantitative Study in Social Change* (Baltimore: Johns Hopkins University Press, 1975); Nanci R. Lamoreaux, *The Great Merger Movement in American Business, 1895-1904* (Cambridge: Cambridge University Press, 1985), 159.

³³ *United States of America v. Motion Picture Patents Company and others: Brief for the United States. Film History* 1:3 (1987), 292-7.

Quality on screen continued to exert its strong influence over industry structure. The MPPC's rigid rules tying production to distribution preferences mitigated against the audience's emerging appetite for ever longer feature films, an opportunity which Fox, Mutual, Universal and Paramount forerunner Famous Players-Lasky were only too happy to fill. These four grew to become national producer-distributors in their own right, while the Edison-inspired cartel collapsed and was formally wound up in 1918.

With quality enhancements went comparable cost increases. Their recouping made distribution on the national scale essential. An opening in the market existed in this environment since those national producer-distributors were, with the exception of Famous Players-Lasky, conservatively sticking to their one and two reelers, mostly made inhouse. As the leading producer of the emerging quality picture of four to five reels, Adolph Zukor had been forced to go outside their reach to the independent states rights exchanges. These were so named because their state's jurisdiction was usually the limit of their coverage. In 1914, with independent producers proliferating, a number of states rights exchanges were brought inside a new national distribution umbrella operating under the rubric Paramount Pictures Corporation. Its ability to guarantee the wide national release pattern required by expensive high quality five-reel features provided a ready foundation for the five figure funding advances which needed to be secured from banks for their production. Zukor quickly merged his production interests with Paramount's distribution network, and in 1916 bought a dozen more producers on board to form Famous Players-Lasky, the quality flagship whose feature film expertise had, by 1918, come to dominate the American market.³⁴

Among Famous Players-Lasky's many innovations was a temporal adjustment to screening patterns. Expensive productions stood a better chance of earning money if they had a few days for word of mouth to develop and encourage patronage, something not available with the then prevailing norm of a daily changeover. Such promotional influence was also free of charge, at least to producers. The staggered fee structure pioneered by General Film became elaborated under Famous Players-Lasky, whose weekly charges could range from \$700 down to \$35, spanning palaces to fleapits.

A vulnerable interdependency between monopoly structure and contentious screen content grew out of the great consolidations between production, exhibition and distribution that took place from the late 1910s to the mid-1920s. The epic story has grown up around the most dramatic element in this process: "the Battle of the Theatres." By 1917, industry titan Adolph Zukor had realised that without controlling a network of first-run houses covering every key

³⁴ Kia Afra, *The Hollywood Trust: Trade Associations and the Rise of the Studio System* (Lanham, Maryland: Rowman & Littlefield, 2016).

urban market in North America, his continued dominance in the production of high quality “photoplays” was doomed to be undermined by those with such theatres. In the telling of ensuing events as a tragic saga, the process of “consolidation” has been portrayed as less an orderly industry restructure than a mob-style takeover. In this account, recurring frequently throughout the literature, Zukor’s agent would make a purchase offer for the best downtown first-run cinemas, while optioning a nearby building site or block for the construction of a more lavish rival theatre if they refused. Zukor’s high end screen productions would naturally dry up for the recalcitrants, too, unless they capitulated. Extra persuasion came from hired goons, some of whom doubled during the day as extras before the cameras.³⁵ Like many enduring myths, this one has a factual basis, allowing for the paring back of its exaggeration.³⁶

Once Zukor secured the necessary multi-million dollar financing in 1919 to create a national exhibition network of top flight downtown cinemas, he agreed to a strategy for achieving this suggested by Stephen Lynch, his Paramount partner who had Southern states’ exhibition locked up.³⁷ Whether it was because law enforcement, especially against big businessmen, was more “flexible” in the South, Lynch’s persuasive tactics were in fact able to include standover muscle known as “the wrecking crew” and “the dynamite gang” who could use violence to achieve the desired theatre handover. The 1931 insider history of movie business by former “muckraker” and producer Benjamin Hampton, which has been heavily relied upon by many subsequent historians, coined the phrase “Battle of the Theaters” for this coercive buyout.³⁸ Hampton equally makes it clear that in a tightly interwoven industry networked by gossip and grapevines the rumours and fear-mongering aroused by a handful of exemplary incidents served to erode exhibitor resistance more by intimidation than by taking action. The resultant paranoia spread in waves beyond the South to such a degree that most of Zukor’s targets folded and gave in to his terms without violence, a group-think process that Hampton credits the mogul as anticipating. The “Battle of the Theaters” had long-lasting psychological impacts which influenced the actions of key industry players throughout the interwar decades.³⁹ Illustrative of this is the provenance of the foundation members of the first fully national lobby group for independent exhibitors, the Motion Picture Theater Owners of America (MPTOA), being drawn from “the southern states that had been

³⁵ D. J. Wenden, *The Birth of the Movies* (London: Macdonald & Jane’s, 1974).

³⁶ Benjamin Hampton, *History of the American Film Industry from its Beginnings to 1931* (New York: Dover, 1970).

³⁷ Hampton, 254-255.

³⁸ I use the American spelling “Theater” to maintain the integrity of Hampton’s historical phrase, but the English “theatre” elsewhere.

³⁹ Mae D. Huettig, *Economic Control of the Motion Picture Industry; a Study in Industrial Organization* (Philadelphia: University of Pennsylvania Press, 1944), 38.

swept by Lynch's crews"⁴⁰. As well, the impetus for Allied States, the exhibitor organisation which would play such a key role in unravelling the studio system, came from Virginia and Washington DC.⁴¹

Exhibitors' grievances in the 1920s

As the major producer-distributors scrambled to vertically integrate through consolidating their interests in 1919, many exhibitor businesses found themselves contrastingly unaffiliated, commercially independent and newly dwarfed by the industry's other two tiers, production and distribution. Producers and distributors, many of whom functioned as hyphenated combinations of both industry tiers, were usually less independently-inclined and belonged to several industry groups. This enabled them to enjoy the advantages of combining to pursue their interests via large, well-resourced organisations. Producer-distributors could and did lobby through the Theatre Owners Chamber of Commerce and the National Association of the Motion Picture Industry (NAMPI).⁴² By contrast, the great majority of exhibitors not linked into cinema chains or association with a production studio were by the end of the 1910s operating as "a mere mob."⁴³ This put the scattered, disparate small-town impresarios at a real disadvantage when disputes over industrial practices arose.

Entering the new era of the freshly corporatised movie business at the start of the twenties, exhibitors had numerous trade practice grievances. At Wichita, Kansas in April 1920, an exhibitors' convention coalesced around the major issues they considered to be "Matters of national importance." The sales contract then commonly used throughout the industry, a document "as brazen and one-sided as could ever be devised by minds of men," focused their attention.⁴⁴ Prominent therein was a requirement for advance payments levied on exhibitors that was known as "the deposit system." This obligation came without any reciprocity by producers such as returning a share of the film's profits to those forced to "invest" in each production in this way, nor any opportunity for oversight of the movie through access or representation at the site of production.⁴⁵ Commercial advertising on screen, with thinly-veiled business promotions disingenuously presented as educational films or "local color," also provoked exhibitors' ire at the Wichita gathering.⁴⁶

⁴⁰ Hampton, 261

⁴¹ 'Sydney Cohen's Control of MPTOA Sent Steffes Out to Form Allied', *Motion Picture Herald*, 4 December 1937, 24.

⁴² 'Marcus Loew and His Intentions', *Harrison's Reports*, 10 July 1920, 198.

⁴³ 'Organize!', *Harrison's Reports*, 13 September 1919, 118.

⁴⁴ 'Back from Kansas', *Harrison's Reports*, 10 April 1920, 181.

⁴⁵ 'Marcus Loew and His Intentions', *Harrison's Reports*, 10 July 1920, 198.

⁴⁶ 'Back from Kansas', *Harrison's Reports*, 10 April 1920, 181.

The industry's remuneration method was a long running sore point. Payment could be either through percentage or flat rental arrangements. The latter offered distributors more certainty, and the former higher rewards but greater risk, as many films still flopped at the box office. Revealing the tenor of relationships at the time between industry tiers (contemporaneously referred to as branches), the percentage system could bear the added expense for producer-distributors of hiring detective agencies to verify the audience figures and hence box office receipts from theatre owners, some of whom were perceived as "gyppers" who could not be trusted not to under-report attendance numbers.⁴⁷ Distrust went both ways, and generally the small independent exhibitors preferred a flat rental fee.

In order to arbitrate complaints, exchange managers had formed Boards of Trade to look after their interests when disputes arose, and a long running controversy centred around their practices and fairness. Initially, no exhibitor representation was allowed onto these tribunals which would adjudicate on exhibitors' fates; outcomes and penalties could include refusal of supply, thus forcing a theatre to close. As early as 1920, intervention by Washington was called for in order to right their putative one-sidedness and perceived illegality.⁴⁸ That year a Federal investigation did take place in one, the Kansas City Film Board of Trade.⁴⁹

In the face of this fragmented, unorganised exhibition sector, an early attempt in 1919 at collectivised film booking by independent theatres to gain the advantages of greater scale was considered and rejected by the studio-linked exchanges.⁵⁰ As the multi-reel feature film was being refined and taking over from the original "small unit program" of one or two reels, Famous Players-Lasky reserved the right in its sales contract to upwardly adjust the pricing on certain films that it would subsequently re-categorise as "Superspecials," notwithstanding that they had already been contractually agreed at a lower fee. In July 1920 Famous (as they were colloquially known in the industry) did just that, notifying higher charges on 46 titles out of their total roster of 130 films that year.⁵¹ Such contractual retractions and price updating constituted a running battle throughout Hollywood's interwar decades,

The consolidated industry's peak representative body NAMPI was attacked by former impresario and longstanding exhibitor advocate Pete Harrison in his weekly news sheet *Harrison's Reports* in 1920 for having "kept [exhibitors] in slavery" over many years, robbed

⁴⁷ 'The Question of Percentage', *Harrison's Reports*, 29 June 1929, 104.

⁴⁸ 'Are You Represented on Your Local Film Board of Trade?', *Harrison's Reports*, 27 March 1920, 179.

⁴⁹ 'Back from Kansas', *Harrison's Reports*, 10 April 1920, 181.

⁵⁰ 'New York Exchange Managers Refuse Collective Bookings', *Harrison's Reports*, 4 October 1919, 121.

⁵¹ Untitled, *Harrison's Reports*, 9 August 1919, 115; 'Protest at Once', *Harrison's Reports*, 24 July 1920, 200.

them of business opportunities and taxed them into submission.⁵² Moves to gain an equal footing through a national exhibitor organisation arose from the regional level body, the New York State Motion Picture League, out of which the Motion Picture Theatre Owners Association (MPTOA) was formed in 1920.⁵³ Prominent New York League leader Syd Cohen was quickly elected president of the MPTOA's executive board.⁵⁴ Now exhibitors nationwide could witness "the last gasp of the octopus" to control their destiny, exulted Harrison.⁵⁵

When the dust began to settle on the flurry of mergers between distribution, production and exhibition companies that peaked between 1919 and 1921, not only had a fearsomely efficient industrial machine been perfected, but also a big and coherent target for political players. However disreputable the method of its consolidation, the industry had by the twenties realised its true power. For some onlookers this was disturbing, but for others it represented an opportunity. The Hearst press epitomised both when it turned the Fatty Arbuckle scandal of 1921 into a paradigm for the despoiling of virginal American youth by the unchecked appetites of a gluttonous, libidinous Hollywood. Despite his eventual exoneration by the courts, Arbuckle was in the wrong place at the wrong time with the wrong nickname. As several concurrent scandals then converged in the sensationalist media it was clear that a nerve had been struck with the public. Constraining the threatening cultural force of the movies now featured frequently in populist headlines. A steady drumbeat of commentary called for external control of the industry through government regulation.⁵⁶

Interests in both public and private spheres, inside and outside the business, were aroused to bitter denunciations of the industry as a goliath, and some attacks used the content-monopoly linkage. At the birth of the United Artists studio in 1919, the household names behind its creation – Chaplin, Pickford, Fairbanks and D.W. Griffith – claimed their new production entity was necessary "to protect the great motion picture public from threatening combinations and trusts that would force upon them mediocre productions and machine-made entertainment."⁵⁷ In 1920 an independent movie exhibitor recycled the 19th century's octopus metaphor of greedy monopolists manipulating many arms of business, by accusing

⁵² 'Marcus Loew and His Intentions', *Harrison's Reports*, 10 July 1920, 198.

⁵³ 'Back from Kansas', *Harrison's Reports, Reports*, 10 April 1920, 181.

⁵⁴ 'The Convention at the Hotel Winton in Cleveland', *Harrison's Reports*, 19 June 1920, 192.

⁵⁵ 'Marcus Loew and His Intentions', *Harrison's Reports*, 10 July 1920, 198.

⁵⁶ Greg Merritt, *Room 1219: The Life of Fatty Arbuckle, the Mysterious Death of Virginia Rappe, and the Scandal that Changed Hollywood* (Chicago: Chicago Review Press, 2013).

⁵⁷ J.A. Aberdeen, *Hollywood Renegades: The Society of Independent Motion Picture Producers* (Los Angeles: Cobblestone, 2000), 37.

“corrupt trusts [of creating a] gigantic octopus [to] ruthlessly ride over the people who have invested their money to cultivate and educate a community with the best entertainment.”⁵⁸

This dangerous eruption of protest spearheaded by the Arbuckle witch-hunt caused the industry to stiffen its lobbying posture. Major studio representatives at the time putatively had a public platform through their membership of the National Board of Censorship, a pre-emptive (prior restraint) assessment body, which included civic and other non-industry members.⁵⁹ But the Board had by then become a token affiliation for producers, and not an organisation taken seriously in the industry since 1916, when it rebranded as the National Board of Review in a futile attempt to stay relevant. As threats of external regulation grew stronger in this hazardous climate, such an unpredictable content management regime was no longer enough, and in 1921 the freshly stabilised major studios mobilised to upgrade their industry’s public face. Earlier that year the primary industry body, NAMPI, had significantly failed in its campaign against state censorship in New York. Adolph Zukor initially approached Commerce Secretary Herbert Hoover to take on the role of Hollywood overlord. Hoover’s demurral led to the cultivation of fellow Cabinet member and Postmaster-General Will H. Hays over the winter of 1921-22.⁶⁰ In January the Motion Picture Producers and Distributors of America (MPPDA), more commonly known as the Hays Office, was launched.⁶¹

In this environment advocates of public interest adopted the same “moral outrage” rhetoric as those of disadvantaged businesspeople operating theatres, but these social reformers carried the additional danger of being closer to the machinery of regulation. In 1922, an iconoclastic Western states politician drew the monopoly and content strands together in an attack which extended to new appointment Hays. Senator Henry L. Myers of North Dakota saw the screen’s potential for moral uplift being doomed as long as its control lay in the grip of a handful of men who put profits ahead of public benefit, men whose shopping list for screen material included “the sensual, the sordid, the prurient, the phases of fast life, the ways of extravagance, the risqué, the paths of shady life.”⁶² Here the latent but unmistakable anti-Semitism often directed against the industry stands out clearly. New

⁵⁸ David A. Horowitz, ‘An Alliance of Convenience: Independent Exhibitors and Purity Crusaders Battle Hollywood, 1920-1940’, *The Historian*, Vol. 59, No. 3, (Spring 1997), 558.

⁵⁹ Leigh Ann Wheeler, *Against Obscenity: Reform and the Politics of Womanhood in America 1873-1935* (Baltimore: John Hopkins University Press, 2004).

⁶⁰ Louis Pizzitola, *Hearst over Hollywood: Power, Passion, and Propaganda in the Movies* (New York: Columbia University Press, 2002), 198-202; Howard T. Lewis, *The Motion Picture Industry* (New York: D. Van Nostrand, 1933), 264, n.2

⁶¹ Afra, *The Hollywood Trust*, 161.

⁶² Ruth Inglis, *Freedom of the Movies: A Report on Self-Regulation from The Commission on Freedom of the Press* (Chicago: University of Chicago Press, 1947), 70; Steven J. Ross, *Movies and American Society* (Malden, Massachusetts: Wiley-Blackwell, 2002), 123.

technology, of which Hollywood was an exemplar, was shifting the locus of authority for cultural influence in America away from the traditional Protestant elites to newly influential social groupings largely drawn from the recent waves of immigration from Central Europe. Comprising a strong Jewish element fleeing persecution, the entrepreneurial energies of many new arrivals embraced change at every level, and helped pioneer the new technologies of mass communication that transformed Middle America, loosening the grip that WASP elites held on opinion formation through older print media. With its suggestion of “alien” ways, this allegation’s subtext envisaged a threat to Middle American values from “the other.” It drew upon a nativist xenophobia whose underlying sectarianism provided the spark at the crudest, most superficial level for a link between monopoly and on-screen concerns. This “few men pulling the strings” trope was a recurrent rhetorical tactic of decency and moral uplift campaigns against the movies between the wars.⁶³

Arbuckle’s high-earning career was one of the first lambs sacrificed to the public hysteria as Zukor agreed to keep him off screen (and later off the studio lot altogether). But as the heat died down through the 1920s, the industry maintained its self-regulatory freedom from government intrusion. From its inaugural crisis with Arbuckle, the Hays Office demonstrated the major studios’ willingness to negotiate away content issues (not to mention entire careers) to preserve the sanctity of their industrial domain, a tactic to which it would return repeatedly in future crises.

Block booking and how it worked

Central to the anger around studios’ control was their practice of compulsory block booking. Though in use long before the Great War, the practice gained critical mass after 1919, the year of the major consolidation, when the producers of the war era aligned themselves into a handful of vertically-integrated production/distribution and exhibition companies which came to define Classical Hollywood. In this newly concentrated environment the term block booking became a descriptive rubric that lumped together all the unfairness resulting from the major studios’ growing stranglehold on moviemaking’s every level, and thus served as a lightning rod for the grievances of their oligopoly’s failed competitors. As with any political football, objectivity and perspective have long been in short supply in the debates around block booking. The leading industrial body of unaffiliated cinemas long characterised this practice as evil, a rhetorical tactic sustained by this lobby throughout the 1930s. But how could a simple sales practice take on such epochal, divisive proportions?

⁶³ Neal Gabler, *An Empire of Their Own: How the Jews Invented Hollywood* (New York: Crown Publishers, 1988).

Its basic definition describes block booking as the advance rental by an exhibitor of a package of films as a single block, mixing stars, genre categories (western, romance etc.) and quality levels, at an agreed price for exhibition within a specified timeframe. As an option, this sales practice had been available to theatres since 1904.⁶⁴ It was Zukor who ruthlessly optimised (rather than, as is often alleged, single-handedly conceived) the block booking practice. In 1917, he realised that the movies of America's Sweetheart, Mary Pickford, were so guaranteed to click with audiences that when negotiating with exhibitors, her titles could singlehandedly drag along in a package the sales of other, lesser, Famous Players productions of unpredictable appeal. In the then very fast-changing industrial world of the movies Pickford represented the apex of the "star series system," when films were bought in "star blocks" such as "6 Pickfords, 6 Harts, or 6 Clarks."⁶⁵ This supplanted the service mode of full-line content delivery (shorts, newsreels, features etc) that was implemented by General Film in 1910 and imitated by the independent competitors Universal and Mutual. With the contract of America's first screen megastar firmly in hand, Zukor bundled his titles in blocks, obliging exhibitors to take quite a few less promising titles along with America's Sweetheart. Given the eternal uncertainty of ticket sales, such packaging amounted to a transfer of risk from producer to exhibitor; from the strong to the weak.⁶⁶ Veteran independent and circuit exhibitor Arthur L. Mayer described it as a "system of buying films like fruit in a basket, good on top, bad on bottom."⁶⁷

Compulsory block booking became entrenched around 1920 when a glut of production and the postwar contraction of demand combined to create an oversupply, for once advantaging exhibitors who now had the bargaining power to drive prices down.⁶⁸ But those producers with the most popular stars (and, increasingly, directors) – Famous Players-Lasky, First National and Fox – were able to respond by using the block selling tactic to protect the vulnerable lower depths of their catalogues, and the practice stuck.⁶⁹

Two trends were then solidifying block booking's necessity. The Great War handed Hollywood cinema a world dominance which its glossy production values entrenched fully in peacetime, albeit at an increasingly stupendous price. Production costs in the American industry had constantly risen along with cinema's growth, but passed a point around 1919

⁶⁴ Donahue, Suzanne, *American Film Distribution: The Changing Marketplace* (Ann Arbor: UMI Research Press, 1987), 7.

⁶⁵ Lewis, *The Motion Picture Industry*, 152; F. Andrew Hanssen, 'The Block Booking of Films Re-examined', *The Journal of Law and Economics*, Vol.43, No. 2 (October 2000), 405, n.48.

⁶⁶ Individual sales were theoretically possible but would have been prohibitively priced.

⁶⁷ *Hollywood Quarterly*, winter 1947-48, 173.

⁶⁸ Lewis, *The Motion Picture Industry*, 146.

⁶⁹ Hampton, *History of the American Film Industry*, 249-250.

that required the big banks to become involved, institutionalising the New York control of the industry that continued even after production moved west.⁷⁰ Whilst offshore sales substantially underwrote the expenditure required to maintain global dominance, there was still such an enormous front-end loading to the cash cycle required for production that the studios were utterly reliant on a guaranteed capital flow in advance.⁷¹ Pre-purchasing of films by unaffiliated exhibitors replaced the deposit system but continued to capitalise the major studio hand that fed them. Producers employed its leverage to guarantee budget forecasts to the satisfaction of its bankers. Exacerbating exhibitors' risk, audience fickleness was growing along with the Hollywood product's plateauing sophistication in the mid- and late 1920s, increasingly making the prediction of returns on investments akin to crystal ball gazing, and the reliability of pre-sales ever more important.

The fact that contracts for supply occurred so far ahead of their realisation, sometimes up to a year in advance, necessitated one of the system's most bitterly criticised aspects, "blind selling." An independent exhibitor revealed in testimony before Congress in 1940 just how mechanical this practice really was:

Only numbers will appear on the contracts and work sheets. If you buy from First National you get number 951 to 977. If you buy from Warner Bros. you get number 901 to 927... R.K.O. will make 45 pictures, identified only by numbers, 601 to 646. No description of the subjects.⁷²

That lacuna – pictures' actual content – would be incrementally filled in over time before the eventual screenings. Labor Day, September 1, has long functioned as America's annual moment of renewal: the school year begins, Detroit's new model cars are released and Hollywood studios' annual supply contracts come due for renewal.⁷³ This re-contracting of movie houses to studios' production slates was preceded by the selling season of late summer and early autumn, when trade journals would run multi-page adverts tempting bookers with more and more details describing stars and genres (but little else). There was always considerable uncertainty, at least until the film actually arrived with its pressbook, as to what exactly had been bargained for. Maintaining contracts with several distributors, few exhibitors shopped around more widely, preferring to maintain existing relationships with

⁷⁰ Hampton, 318-9.

⁷¹ Ruth Vasey, *The World According to Hollywood, 1918-1939* (Madison: University of Wisconsin Press, 1997), 7.

⁷² Huettig, *Economic Control*, 121.

⁷³ F. Andrew Hanssen, 'Vertical Integration During the Hollywood Studio Era', *Journal of Law and Economics*, Vol. 53, (3) 2010; Richard Schickel, *Good Morning, Mr. Zip Zip: Movies, Memory and World War II* (Chicago: Ivan R. Dee, 2003), 3.

several distributors, such loyalty being really what summer's advertising campaigns were all about.⁷⁴

In the pre-television age of the 1930s, the market was virtually insatiable, and would hungrily wolf down virtually whatever Hollywood could throw into the "maw of exhibition."⁷⁵ But as an artform movies were unique, and not directly comparable to literature and the visual arts, which are "not compelled to issue a specific number of volumes or compositions or canvasses each week," as Zukor realised early on.⁷⁶ Superseding all else in their Fordism of fantasy was "the iron necessity to keep producing."⁷⁷ Variety was essential, and was as carefully managed by this tightly controlling industry as every other element. In most theatres, programs were generally updated at least twice a week, with their changeover a core element of contractual management. Some situations (trade jargon for a movie house's profile) could have three or even four changeovers a week. A minimalist once-weekly changeover for 52 weeks a year required an output of 104 titles, with many houses requiring an extra 52 to make 156 titles. With the 52-week year, blocks tended to be subdivided into units approximating 13 full length movies, enabling their neat compilation to satisfy a demand divisible by 52. With a weekly changeover policy and key city locations to rival

⁷⁴ Lewis, *The Motion Picture Industry*, 146.

⁷⁵ Tino Balio, Ed., *Grand Design*, Chapter 4.

⁷⁶ Hampton, *History of the American film Industry*, 270.

⁷⁷ Richard Schickel, Introduction to Parker Tyler, *Magic and Myth of the Movies* (New York: Simon & Schuster, 1970), xii.

THEATRE	CITY OR TOWN	STATE	ZONE	POP.	
SEATING CAPACITY	ADM. PRICES	NO. CHANGES WEEKLY	SUN. OPERATION: YES — NO —		
OWNERSHIP	MANAGEMENT		SHIP VIA —		
IRENE DUNNE in "MADAME CURIE" From the amazing novel by her daughter, IRENE CURIE — the book that will sweep the world. A true life story of the woman whose love was as deep as humanity, whose career was more thrilling than fiction and whose achievement will never be forgotten.	DAYS	RENTAL TERMS	MY MAN GODFREY Starring WILLIAM POWELL and CAROLE LOMBARD—Cast includes Alice Brady, Eugene Palette, Gail Patrick, Mischa Auer, Alan Mowbray, Joan Dixon—GREGORY LA CAVA, Director and associate producer. Screenplay by Morris Ryskind and Eric Hatch.	DAYS	RENTAL TERMS
HIPPODROME Produced with the great R. H. BURNSIDE himself as collaborator and technical adviser. Brilliant, spectacular musical suggested by the glamorous history of the famous N. Y. Hippodrome, which was a world landmark and legend.			JAMES WHALE PRODUCTION ANOTHER SMASHING BOX OFFICE RELEASE from the man who directed "SHOW BOAT". Watch the coming announcements!		
TIME OUT OF MIND RACHEL FIELDS' prize-winning book just elected the most distinguished novel of 1936 by American critics and bookdealers. . . . Story of a Maine town girl who lived a whole lifetime of devotion and sacrifice for one little hour of love. Screenplay by Humphrey Pearson.			MELODY LADY A JEROME KERN MUSICAL PRODUCTION with new numbers by the composer of "SHOW BOAT," from story by EARL DEER BIGGERS. A big, all-star super musical—Screenplay by Herbert Fields and lyrics by Dorothy Fields.		
EVERYBODY SINGS All-star musical with hit tunes and gorgeous girls. . . . LOU BROCK, Associate Producer. Academy award winner last year for his musical novelty "So This Is Paris?" He was the first to team Fred Astaire and Ginger Rogers. Directed by Ralph Murphy. Music and lyrics by Frank Loesser and Irving Actman.			TWO IN A CROWD Directed by ALFRED GREEN who directed Bette Davis in her Academy award performance in "Dangerous" — with JOAN BENNETT and JOEL McCREA. E. M. Asher, associate producer.		
RENO IN THE FALL The legends on the gayety and the heartbreak in America's most famous matrimonial hot-spot! Story by Grace Norton. E. M. Asher, associate producer.			EDWARD ARNOLD PRODUCTION A special release starring the man who established one of the screen's finest characterizations in "DIAMOND JIM." Watch the coming announcements!		
UNTITLED			AS GOOD AS MARRIED They got married deliberately for protection against others. Great story from pen of NORMAN KRASNA who wrote "Small Miracle" and "Hands Across the Table" — Morris Ryskind, associate producer. Pulitzer prize winner of "Of Thee I Sing" fame and co-author of "Night at the Opera" and numerous other Max Baer's stage and screen hits.		
MY CHILDREN The true and hitherto unrevealed story of the DIONNE family. . . . the story the world has been waiting for. . . . drama based on facts by Lillian Barker, with screenplay by Mrs. Barker and Samuel Orlitz. Subject to Approval of Canadian Gov't.			A FOOL FOR BLONDES Starring Victor McLaglen with an all-star cast. McLaglen was last year's Academy prize winner for his performance in "The Informer." From the story "BIG" a LIBERTY MAGAZINE sensation by Owen Francis. Edmund Grainger, associate producer. John G. Blystone directing.		
THE LUCKIEST GIRL IN THE WORLD LADIES HOME JOURNAL story ["Kitchen Privileges"], voted by women one of the best stories of years. . . . read by millions. . . . ANN JORDAN, author. WALTER LANG, director. Story of girl who knew love when she saw it and was willing to prove that two can live on nothing at all. . . . if necessary.			FLYING HOSTESS Romance in the clouds. . . . breath-taking, heart-stopping drama. . . . a story with echoes in the headlines. . . . a bow to the glorious girls who risk their lives daily on the great passenger planes and whose story has never been told. Edmund Grainger, associate producer.		
HELLO, BEAUTIFUL She dressed him, fed him, made him love her—by telephone. It was a crazy business, but that was her job! Story by Ethel F. Matheson. With Doris Moran and Louis Hayward.			KARLOFF—"MAN IN THE CAB" A new Karloff in a different and surprising role—He chilled 'em before—Now he'll thrill them anew. A picture that gives him added lustre and palling power.		
ROXANA Novel by CLARENCE BUDINGTON KELLAND, author of "Mr. Deeds Goes To Town," "The Cof's Paw" and "Strike Me Pink" appeared first as a serial in Sat. Eve. Post and now a popular, best-selling novel.			UNTITLED		
UNTITLED			CHILDREN OF BROADWAY A rich, riotous and romantic comedy about two wise babies of Broadway who found children of nature—naturally it's a natural! Story by M. Cates Webster. Screenplay by Harry Clark.		
CLASS PROPHECY McCALL'S MAGAZINE success by Eleanor Griffith — the story of the girl they all forgot on graduation day — but the girl boy affairs will long remember.			COAST GUARD Fast action, headlining romance, and an inside story of the adventure and heart affairs of the men who stand guard at Uncle Sam's front doors. . . .		
FOUR DAYS' WONDER From the world-famous A. A. MIELNE story just purchased, with an all-star cast including Jeanne Darte.			UNTITLED		
UNTITLED			THREE SMART GIRLS Father may know best. . . . but these three girls knew better. They saw dad heading for a fall and showed him how to put on the brakes. Director, Henry Kostor. Jos. Pasternak, associate producer. With Jeanne Darte, youthful sensation of Broadway and a hand-picked cast.		
LESSONS IN SOCIETY The school where they learned to be high-end set folks back on their heels. You can teach how to be ladies, but when love comes along the best of them forget.			CALIFORNIA STRAIGHT AHEAD 1,000 miles of action romance—whizzing with speed and thrills and zipping along with youthful adventure all the way!		
UNTITLED			UNTITLED		
RICH AND RECKLESS Story of a debutante who takes over a business and in turn is taken over by her most unmanageable employee. . . . It's a fight from the word 'go' A woman's wit against a man's strength. With Edmund Lowe and Gloria Stuart. Story by Roy and Marjorie Chantler. Screenplay by Alice D. G. Miller and Albert Perkins.			UNTITLED		
UNTITLED			SON OF A CHAMPION From JACK LONDON'S famous story—drama for the tearing crowds—cracking love story for the women. One of the great writer's greatest!		
6 BUCK JONES The greatest Western and action star of all time in six knock-out features. . . . stories selected from best writers and aimed straight at the cash register. The boy that rides the red out of the box office!	NO. DAYS	PRICE PER SUBJECT	TOTAL RENTAL	PLAYING ARRANGEMENT	

1936 Universal worksheet (features)⁷⁸

⁷⁸ Universal advertisement, *Motion Picture Herald* 11 July, 1936, 99.

UNIVERSAL NEWSREEL THE REAL NEWS POWER OF THE MOTION PICTURE SCREEN WITH GRAHAM McNAMEE									
104 ISSUES	NO. ISSUES	PRICE PER ISSUE	TOTAL RENTAL	STARTING DATE					
THE SUPER POWER SERIALS I									
NO. EPISODES		PRICE	TOTAL RENTAL	PLAYING ARRANGEMENTS	NO. EPISODES		PRICE	TOTAL RENTAL	PLAYING ARRANGEMENTS
15	BUCK JONES IN PHANTOM RIDER Buck Jones, the king of all serial stars, in another rip-roaring, hard-riding half-adventure chapter-play.				12	JUNGLE JIM By Alex Raymond, creator of "Flash Gordon" — a famous King Features Newspaper Cartoon Strip — Jungle adventures in darkest Africa!			
13	ACE DRUMMOND With JOHN KING From King Features amazing Thrill Cartoon strip by Capt. Eddie Rickenbacker; running in hundreds of country's greatest newspapers and read by the millions — young and old!				12	SECRET AGENT X-9 The outstanding newspaper mystery strip of them all — from Charles Flanders' King Features popular newspaper Cartoon Strip — another great serial concept!			
HIGH POWER SHORTS									
13 SENSATIONAL MUSICAL MENTONES							PRICE	TOTAL RENTAL	PLAYING ARRANGEMENTS
The market demanded one-reel musicals—in Universal will make them. They will be powerful musical shorts, featuring the leading stars of stage, radio and screen, handomely made and adding new prestige to that already enjoyed by the Mentone releases.									
NO. ISSUES							PRICE	TOTAL RENTAL	PLAYING ARRANGEMENTS
26	GOING PLACES Exciting, inviting and always entertaining . . . The screen's roving adventurer finds amazing scenes in the world's far places . . . with comment by LOWELL THOMAS, who makes these travel-adventures come to life before your eyes. . . .								
	STRANGER THAN FICTION Fantastic people and unusual things from the corners of the world. . . . Each one different—all intensely interesting—will highlight any program. Reported by the talented and popular JIMMY WALLINGTON and other well-known commentators.								
26	LAUGHTER-JAMMED, MUSIC-PACKED OSWALD CARTOONS								
The Funny Bunny Cartoons that has won its way to fame through the hearts of movie audiences all over the world — Oswald, the Lucky Rabbit, funnier than ever before — New stories, new tricks and new, snappy music.									
"YOU CAN'T GET AWAY WITH IT!"									
A SPECIAL TWO-REEL SUBJECT which takes you behind the scenes with the Dept. of Criminal Investigation. — Amusing revelations of Uncle Sam's cross-catchers at work! Produced by Charles E. Ford, who gave you "Camera Thrills."									
N.B. This is a SALESMAN'S GUIDE as to contemplated productions and has been prepared for his use only. It is not a part of the contract. All questions regarding substitution shall be determined solely on the basis of the contract.									

1936 Universal worksheet (shorts and serials)⁷⁹

⁷⁹ Universal advertisement, *Motion Picture Herald* 11 July, 1936, 100.

Zukor's, Loew's provides a useful example from 1924. Here Marcus Loew's 104-strong slate was comprised of 50 of his own productions and 6 from Nicholas Schenck, who had Buster Keaton plus Norma and Constance Talmadge in starring roles. Then from major distributor-producer First National came another twenty titles through a reciprocal understanding to supply up to that number to Loew. This left twenty-eight feature slots needing filling. Twenty of these would be obtained from Zukor, whose own houses looked to Loew for comparable arrangements. The eight remaining slots would be routinely held back for outstanding Superspecial-style big pictures.⁸⁰

The Run-Zone-Clearance system of Protection

As with any fashion product, "newness" for movies was a marketable asset, and many cinemagoers, not only the diehard fans, would pay more to be among the first to see the latest star turn. This concept of freshness became a deliverable, carefully shepherded into a film's "first run," apotheosised by the legendary picture palaces of major cities' downtown entertainment districts. The "halo effect," the quality of a film's word-of-mouth to influence audience interest in subsequent runs, was dependent on the first-run theatre and its attendant publicity. As a title's exhibition lifespan spread out from the downtown palaces, between each subsequent "run" a scheduling interval was built in, known as a film's "clearance" to maintain later audiences' anticipation and hence subsequent-run exhibitors' profitability. The number of runs for one title could in extreme cases reach double figures as the film's exhibition path moved geographically outward and demographically down the pecking order in carefully defined zones. This Run-Zone-Clearance system implemented "protection," referring to the means of safeguarding the profitability to be squeezed from each property. MPPDA counsel Charles Pettijohn once lauded this system's benefits to small-town, low budget exhibitors by noting how in the machine age "the humblest theatre... [can hear] the same 40-piece symphony orchestra accompaniment that is shown at the Roxy Theatre in New York."⁸¹

In 1927 Sidney Kent (then at Famous Players-Lasky) shared with Harvard business students a candid anatomy of the market. He started with a total census of 18,000 theatres but quickly eliminated the "undesirable" 5,000 "grindhouses" outside the Hays Office purview which showed unapproved exploitation fare like 'sexual hygiene' and stag films.⁸² The remaining 13,000 cinemas included the 1,250 "key accounts" which returned 75% of the industry's revenue in just two to three weeks. Although the residue – "small-town business"–

⁸⁰ 'Is There Going to be a Zukor-Loew War?', *Harrison's Reports*, 26 July, 1924, 117.

⁸¹ Doherty, *American Movie Audiences*, 146.

⁸² The number is probably an exaggeration; many theatres occasionally played such films along with the majors' output, but it is unlikely that a great number specialised exclusively in such fare.

took the rest of the year to obtain, it was essential to be persistent. “Your profit is in that twenty-five per cent so you have to go after it and get it,” he concluded sternly.⁸³

The system certainly delivered results, but it was a tightly managed straitjacket. The Standard Exhibition Contract determined charges, returns, advertisements, minimum admissions prices and play dates.⁸⁴ Control was pervasive, coming both overtly and covertly. Combined with stiff “no-play” penalties, such program crowding systematically excluded independent productions from finding openings, irrespective of the quality of their movies, creating a major frustration for many inside and outside the industry. Another complaint was the forbidden trade practice of “full line forcing,” which meant that to obtain a studio’s desired features, their short films, cartoons, newsreels and the like had to be purchased as well.⁸⁵ Likened by critics to a form of medieval servitude, the system appeared to be one in which “the independents exist by sufferance.”⁸⁶ First-runs did not have to worry because all major studios’ product was flexibly and informally shared between them according to need through mutual understandings of the “you scratch my back” variety.⁸⁷ This was not an indulgence but a necessity. No one studio could supply each theatre’s annual requirements and, for historical reasons pertaining to their houses’ acquisition, the vertically integrated majors each dominated one geographical region, such as Paramount in the south. On the outside looking in, there was a constant undercurrent of antipathy from unaffiliated cinema proprietors, who were denied so many of these mutual benefits. Many of them were longstanding movie entrepreneurs who, in the “Battle of the Theatres” era, had been forced out of first-runs that they had built up over years, often in an atmosphere of fear for their safety. Forcibly demoted, they had not only lost income, but status in their community.⁸⁸

Adolph Zukor, and his Famous Players-Lasky which grew to become Paramount, has a record of innovation in American cinema that is supremely double-edged. It was Zukor who, while not alone amongst producers, most competitively saw the potential for pushing up standards from shabby nickelodeons through “quality” films analogous to theatre-going in order to reach the deeper pockets of aspirational middle-class audiences. He pioneered the quality features this required when, stymied by the MPPC’s conservative reliance on one or two reels, he imported from France the 4-reel spectacle *Queen Elizabeth* starring Sarah Bernhardt in 1912 to widely appreciated success. From there he remained in the vanguard

⁸³ Joseph P. Kennedy Ed., *The Story of the Films* (Chicago: A.W. Shaw Company, 1927), 217-8.

⁸⁴ Donahue, *American Film Distribution*, 22.

⁸⁵ Whitney, ‘Antitrust Policies and the Motion Picture Industry’, 167.

⁸⁶ Huettig, *Economic Control*, 133.

⁸⁷ Hanssen, ‘Vertical Integration’.

⁸⁸ Hampton, *History of the American Film Industry*, 262-3.

of producers whose premium attractions had the greatest profit margins for over two decades.⁸⁹

Less favourably, Paramount also became shorthand for the destruction of the studio system that Zukor was instrumental in perfecting. As lead defendant amongst the major studios, all of which were arraigned in 1938 by the Justice Department on antitrust violations in the *Paramount* suit, this studio inadvertently lent its name to the destruction of the Studio System. Zukor, Famous Players-Lasky and Paramount were for decades arguably the primary focus for aggrieved cinema proprietors' complaints and resistance. As the instigator and chief beneficiary of the "Battle of the Theaters" ugliness, Zukor was many independents' number one *bête-noire*. The enmity of the 1930s was not only historical. Across the history of the interwar years' cinema exhibition, his and his companies' names continually stay in the vanguard of publicity for egregious practices, from undelivered film titles to Securities and Exchange violations. Hollywood's trade practices history is littered with references to Paramount, and not just in the headline cases. Given the brutal nature of the urgent grab for power in Zukor's spending spree on theatres in 1919, it is unsurprising that complaints about those takeover tactics reached government. It did not hurt when one complainant was a politically conservative movie mogul controlling a populist media empire of unusual influence: William Randolph Hearst. Hearst was a disgruntled ex-suitor turned bitter enemy after his production partnership with Zukor from March 1919 to February 1923. The Zukor deal was essentially a consolation prize for the press magnate after missing out on participation in the consortium that would become United Artists. Providing a more equal match for Zukor than independent theatre operators could ever hope for, Hearst nevertheless had not been partnered with the mogul long before he privately began expressing similar grievances as the exhibitors, including juggling of books, malfeasance and scapegoating. These complaints may have been smokescreens for his primary disappointment - Marion Davies' pictures being at the wrong end of Paramount's block booking packages: the bottom.⁹⁰

Such complaints were of great interest to the Federal Trade Commission (FTC). The FTC's 1921 investigation into Zukor's activities laid down the parameters of antitrust action pursued by the Federal Government for decades through to 1948's *Paramount* Supreme Court decision. The Federal Trade Commission was formed in 1914 and started operating in

⁸⁹ Michael Conant, *Antitrust in the Motion Picture Industry: Economic and Legal Analysis* (Berkeley: University of California Press, 1960), 22; Hampton, *History of the American film industry*, 106-118.

⁹⁰ Pizzitola, *Hearst over Hollywood*, 176-8; 208; 192-4.

March 1915.⁹¹ In August 1921, following complaints from exhibitors concerning aggressive theatre buying tactics, the FTC accused Famous Players-Lasky of illegal restraint of trade.⁹² Extensive evidence gathering by FTC investigators going out to interview exhibitors over several years until 1925 led to a voluminous record describing movie industry trade practices. In July 1927 the FTC handed down its findings which described how Famous Player-Lasky's success in gaining market dominance derived from the "illegal sales policy" which Zukor deployed to intimidate and coerce exhibitors to lease his studio's titles over those of competitors' offerings. Zukor's success in cornering the key city first run market from which 50-85% of a title's revenue derived resulted in the studio "unduly hindering competitors, lessening competition and restraining trade... [creating] a dangerous tendency (sic) to create a... monopoly in the motion picture industry." The Commission issued a cease and desist order against Famous Players-Lasky, but limited this to prohibiting further block booking activities, and not stretching to the related practice of maintaining surplus theatres, despite what one legal expert described later as "the trade evils proved."⁹³ The order did prevent the respondents from extending their practice of illegal surplus theatre acquisition, but did not oblige its winding back through divestiture. Throughout the continually delayed hearings, Zukor had continued to expand and by 1926 had achieved blanket nationwide coverage after his acquisition of first run houses in the Chicago and Detroit markets.⁹⁴

The FTC lacked enforcement powers, which could only be exercised through a court, and Famous Players-Lasky, which had been renamed Paramount-Publix, advised their intention to not comply with the block booking order, necessitating an appeal hearing which did not take place until 1932.⁹⁵ More foot-dragging was caused by the Commission's claimed lack of funds to comply with the legal requirement to print the record of evidence, amounting to some 20,000 pages. At those court hearings to test the order, it was agreed to whittle down the printing to 1,000 pages, considered by one legal expert to comprise "the weakest" components of the evidence. The appeals court in April 1932 dismissed the 1927 order, citing as mitigating evidence Famous Players-Lasky's drop in market share, from 30.8 % in 1921 to 20.5% in 1924 as refutation for the claimed market dominance.⁹⁶ The Solicitor-

⁹¹ Marc Winerman and William E. Kovacic, 'The William Humphrey and Abram Myers Years: The FTC from 1925 to 1929', Vol. 77. *Antitrust Law Journal* No.3 (2011), 706-707.

⁹² 'The Two Block-Booking Decisions in the Federal Courts', *Harrison's Reports*, 23 April 1932, 65.

⁹³ 'The Federal Trade Commission v. Famous Players-Lasky: The "Finding of Facts" and the Order to "Cease and Desist"', *Harrison's Reports*, 17 December 1927, 204A.

⁹⁴ Douglas Gomery, *Shared Pleasures: A History of Movie Presentation in the United States* (Madison: University of Wisconsin Press, 1992), 60-61; 'The Federal Trade Commission v. Famous Players-Lasky: The "Finding of Facts" and the Order to "Cease and Desist"', *Harrison's Reports*, 17 December 1927, 204B.

⁹⁵ 'What Influences Are Delaying Action in the Block Booking Case Against Paramount?', *Harrison's Reports*, 23 May 1931, 84.

⁹⁶ Conant, *Antitrust in the Motion Picture Industry*, 27-28.

General in the then dying Hoover administration decided against a Supreme Court appeal, effectively ending this long running attempted trust-busting action, which had lasted over 11 years at taxpayers' expense.⁹⁷

Independent exhibitors fight back

Instead of politicians or moral crusaders, the most persistent voice clamouring to keep the heat on the major studios' trade practices was the national lobby of independent cinema proprietors, the Allied States Association of Motion Picture Exhibitors and particularly its indefatigable leader and strategist Abram Fern Myers, once of the FTC. Myers remains one of the most under-appreciated shapers of the events and contours of the collapse of the Hollywood studio system.⁹⁸ Five years after his involvement as one of the Federal Trade Commissioners hearing the case had ended, now ex-FTC Chairman Abram Myers was dismissive of the 1932 decision in the Famous Players-Lasky case, noting how irrelevant evidence collected before 1925 was in 1932 when major studios had variously merged and reorganised and the products they delivered were now wired for sound. Myers instead chose to focus on a Federal Court decision delivered in the same month, tying all the major producer-distributors in an antitrust action brought by the Department of Justice against Balaban & Katz, the major Chicago area affiliated exhibition chain., Myers observed how the companies pleading guilty to antitrust charges in order to negotiate a consent decree should be understood as "the fifth decree finding the industry to be guilty of violating the Sherman Law to be entered in the last three years – a record never before equalled in any other line of business."⁹⁹ Such bluntly critical analysis would have been inappropriate public comment for a senior government officer, but Myers had changed course in the intervening years.

Exhibitors were in a unique position compared to the other key links in the Hollywood chain, producers and distributors. Independent exhibitors were firmly within the industry yet fundamentally estranged from its dominant monopoly. Unlike their industry brethren, for the theatre proprietors there were no sectors further downstream to absorb problems, except the patrons upon whom they relied for survival. Exhibitors were thus the penultimate consumers in this economy, where a project needed to be successfully onsold from original property, to

⁹⁷ Benjamin Werne, 'The Neely Anti-Block Booking and Blind Selling Bill – An Analysis', in *Contemporary Law Pamphlets*, ed. New York University of Law (New York: New York University of Law, 1940), 1; 7.

⁹⁸ Myers' ongoing obscurity is witnessed by his almost complete invisibility in the literature. There are minimal references to his and/or Allied's postwar role [only] in *The American Film Industry* (Ed. Balio), Donahue, *American Film Distribution*, and Conant, *Antitrust*; Gomery affords Allied appropriate coverage in his NRA Code analysis in *The American Movie Industry* (Ed. Kindem); Inglis allocates him a single mention in her *Freedom of the Movies*; and he is described as "aggressive" by Moley's *Hays Office* study. By contrast he is afforded considerable space and considered analysis in the studies by Muscio and Horowitz, the latter not a film scholar.

⁹⁹'The Two Block-Booking Decisions in the Federal Courts', *Harrison's Reports*, 23 April, 1932, 68.

soundstage, to distributor, and then to audiences by the exhibitor. These “showmen” (some of whom were actually women) were the public face of the movies, and hence directly exposed and more vulnerable to its public: the movie-going audience, as well as to the industry’s self-appointed and elected watchdogs. Themselves prominent activists, their representatives often experienced strained alliances with other special interest groups. Independent small-town impresarios could find themselves challenging MPPDA positions over monopoly supply on the one hand and then defending themselves against attacks by community reformers on the other, for screening the very films she had objected to in the first place.

Although trade associations for exhibitors predated the Major Consolidation, commencing organising from 1911, Zukor was centrally involved in the events that spawned their collectivism at the national level. He turned to Wall Street in 1917 for a \$10 million share issue to finance his purchasing of a string of theatres sufficient to provide a foundation for his productions after many of the premier first run houses were brought together under the First National banner, a combination he felt risked his access to those key audiences.¹⁰⁰ As his 1919 buying spree of theatres unfolded, numerous independent exhibitor groups were being formed around the country as a defensive reaction, subsequently merging with others for the strength needed to resist their incipient domination by producers. At Cleveland in 1920, three putatively national groups representing regional blocs came together to confer and make strategy: the Motion Picture Exhibitors Of America (MPEA) formed in St. Louis in 1919; the Independent Motion Picture Exhibitors Of America (IMPEA) formed in Chicago in 1920 and the Motion Picture Theatre Owners Of America (MPTOA) with representation in 32 states in 1920. Though Zukor publicly made “merger” overtures to the exhibitors attending the Cleveland conference, his “open door” offer to join Famous Players-Lasky was successfully resisted by over 700 unaffiliated theatre owners from every state “determined to conquer the menace.”¹⁰¹ A war chest to this end was started, but suspicions as to its true purpose may have been justified when Zukor’s business competitor, close friend (and later brother in law) Marcus Loew, key architect of the combine that would become MGM, became one of its first contributors, pledging \$2,000.

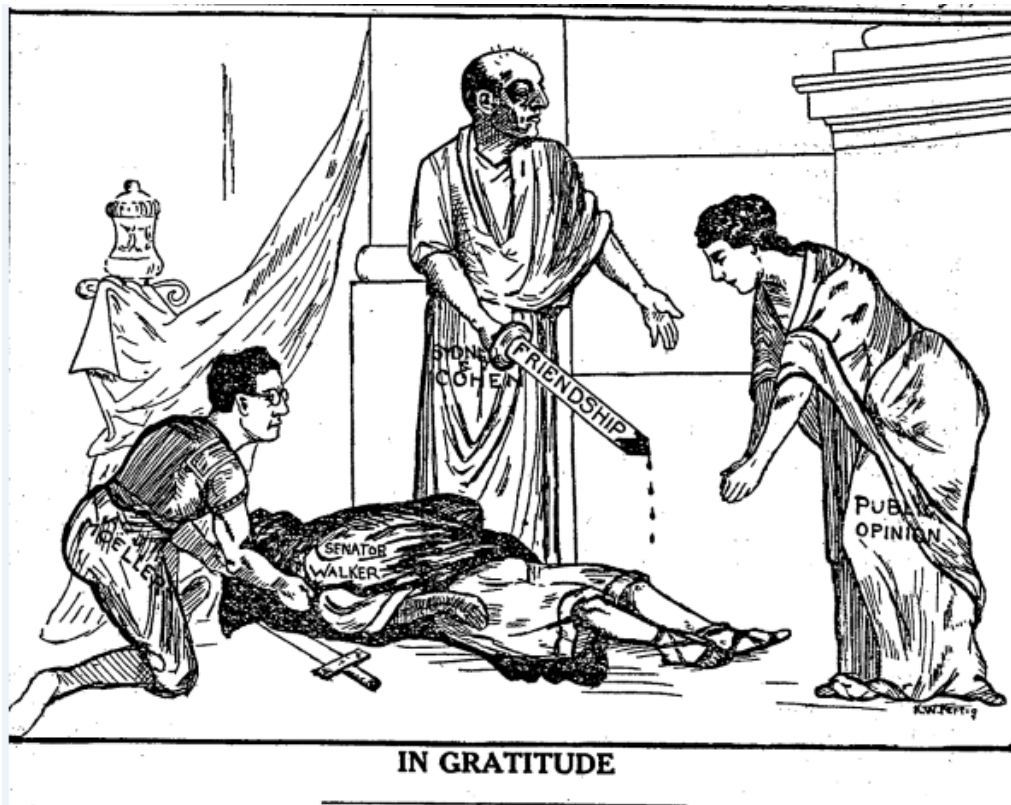
Zukor continued to personally take on the challenges of exhibitors, not only appearing before the following year’s inaugural MPTOA convention in Minneapolis, again suggesting they merge their interests with his, but also riding with many of the sector’s key players in their

¹⁰⁰David Bordwell, Janet Staiger and Kristin Thompson, *The Classical Hollywood Cinema* (London: Routledge & Kegan Paul, 1985), 102-3; 399.

¹⁰¹‘MPTOA Conceived in Fight Over Producer Domination of Theatres’, *Motion Picture Herald*, 4 December 1937, 22-23.

train from New York, making himself available to their diatribes and tearfully seeking their understanding.¹⁰²By then, however, he had already obtained the theatres he needed, and was not disadvantaged by promises to cease further acquisition.

The newly combined body that emerged in 1920 from independent exhibitors' growing consensus for the need to organise on the national level was the Motion Picture Theaters Owners of America (MPTOA). It would spend its first seven years see-sawing between support for polarities of true independence or strength through size that ultimately could not be reconciled. Just one year after that foundational Cleveland conference, the MPTOA's inaugural 1921 convention sought ways to placate Zukor through a peacemaking committee, while simultaneously agreeing to compete against him head-on with a fifteen-million-dollar proposal for exhibitors to expand into distribution. This plan obtained the support of Thomas Ince, Lewis J. Selznick and the Federated Film Exchanges of America.¹⁰³



Harrison's Reports comments on Cohen's 1922 ouster of Walker¹⁰⁴

Senator Jimmy Walker, later to gain notoriety as the corrupt mayor of New York City, was the new Association's first general counsel. Despite working side by side with him for two years on exhibitors' interests, the MPTOA's initial chair, New York exhibitor Sydney S.

¹⁰² Hampton, *History of the American film industry*, 265-272.

¹⁰³ 'Play Date Control An Early Issue', *Motion Picture Herald*, 4 December, 1937, 23.

¹⁰⁴ 'In Gratitude', *Harrison's Reports*, 6 May, 1922, 72; A. J. Moeller was the signatory on the dismissal letter.

Cohen, in 1922 sacked the high-profile politician, claiming he'd made a thinly disguised public bid for Cohen's position— and at an exceptionally high salary.¹⁰⁵ After supporting Cohen in 1920, independent exhibitors' advocate Pete Harrison had been publicly spruiking Democrat Walker in 1922 to take over the exhibitor body's top job as a counterbalance in Washington to the recent appointment by the producer-distributors of Republican Will Hays, whose "entry into the motion picture arena has entirely altered the situation."¹⁰⁶ Upon his dismissal from the MPTOA Walker accused Cohen of betrayal, to which Cohen responded: "... talk about Walker being stabbed in the back. My God, I have been stabbed in the back and front, cut across and up and down... I've been on the level, gentleman. I haven't taken a penny, not even a free poster, from the producers."¹⁰⁷ The next year Cohen fought off what was probably an apocryphal threat from Detroit's James Ritter, before which one optimistic opponent reported "we've got the rats on the run."¹⁰⁸ At this stage Cohen successfully portrayed the Michigan exhibitor as the catspaw of auto magnate Henry Ford, allegedly making a covert bid for control of the nation's movie screens.

A far more serious Midwestern coup attempt against New York leader Cohen came at the following year's Chicago convention, this time from William Alvin "Fighting Al" Steffes, a prominent Minnesota theatre impresario, whom Cohen then handily out-manoeuvred.¹⁰⁹ At Chicago, besides resuming their position of resisting Zukor, the fledgling MPTOA also took issue with one of Hays' key reforms, the Uniform Contract, which had just come into effect that April.¹¹⁰ Their negotiations with Hays ended up floundering completely, and none of seven points on which the MPTOA had sought concessions were accepted.¹¹¹ Prominent trade publisher Martin Quigley said the MPTOA's 1923 summit meeting had left him "with an overwhelming feeling of disgust" after Cohen's forces routed from the MPTOA's executive some of the exhibition tier's most effective operators, including Steffes, Ritter, New York veteran Charles O'Reilly, and many others.¹¹²

¹⁰⁵ 'The Biggest Crime in the History of the Industry', *Harrison's Reports*, 29 April, 1922, 65, 68; 'Are There Any Justice-Loving Men Amongst Exhibitors?', *Harrison's Reports*, 6 May, 1922, 69.

¹⁰⁶ 'Who Should Be the Next President of M.P.T.O.A.?', *Harrison's Reports*, 22 April, 1922, 61.

¹⁰⁷ 'Play Date Control', *Motion Picture Herald*, 4 December, 1937, 23.

¹⁰⁸ 'Producer Theatres Admitted in 1927', *Motion Picture Herald*, 4 December, 1937, 32.

¹⁰⁹ 'Allied Campaign Continues Unless All Majors Agree to Conciliation', *Motion Picture Herald*, 21 May 1938, 13.

¹¹⁰ Lewis, 264-5; Raymond Moley, *The Hays Office* (Indianapolis: Bobbs-Merrill, 1945) 192. After reviews in 1925 and 1926 this became the Standard Exhibition Contract.

¹¹¹ 'Producer Theatres Admitted', *Motion Picture Herald*, 4 December, 1937, 32.

¹¹² 'Play Date Control', *Motion Picture Herald*, 4 December, 1937, 23.

Sheer personality conflicts drove much of this brawling in the MPTOA's early years, focused on a loathing of Cohen, whom powerbroker Steffes publicly called "a double crosser."¹¹³ Shortly after the failed anti-Cohen coup of 1923, "Big Al" (as Steffes was most commonly known), "a heavysset, compelling man whose jet hair is flecked with grey," convened a meeting of disaffected state exhibitor leaders in the town of French Lick, Indiana.¹¹⁴ Here these key regional bosses agreed to joint action against Federal admissions taxes, a vital activity and one that was planned to be taken outside MPTOA auspices at any rate. Having demonstrated that they could work together effectively, this new assemblage representing a range of mostly heartland states formally established their breakaway group, the Allied State Organisations of Motion Picture Theatre Owners in April 1924.¹¹⁵ Later refining their name to Allied States Association of Motion Picture Exhibitors, technically they continued to be members of the MPTOA.¹¹⁶ At that year's convention, Cohen sought to outwit the newly convened Steffes cell in a widely publicised gambit by standing down, while simultaneously engineering key administrative positions to remain in the control of his own men. This time, however, he had stayed his hand too long. Pre-empting the chair's fake retirement, Steffes launched a counter-attack from the floor of the convention and led his group out of the MPTOA, seemingly for good. Splitting the independents' lobby thus into two competing bodies was a move with far-reaching implications, and would push the MPTOA into the camp of the putative enemy – the studios.

Allied's creation highlighted unaffiliated theatre owners' prevailing air of uncertainty, even in the mid-1920s when the producer-distributor mergers and consolidations had settled down. No sooner had Allied been announced as an internal MPTOA "ginger" group in 1924 than reunification overtures were promptly canvassed with the parent body at its convention that year. This occurred even as the competing groupings fought each other to take credit for a backdown by the Federal government over a new admissions tax. The more prospective shape of things to come was seen in May the same year, when the much more provocative Allied launched its first attack on the major studios, citing producers' "aggressions" and excessive charges on film rentals.¹¹⁷ Steffes would go so far as to announce their return to the MPTOA fold in 1925, as part of a "war to the finish" against the majors, and even Allied's short-lived disbanding the following year. Before this brief hibernation by Allied in 1926, Hays convened meetings between the MPPDA and a combined MPTOA/Allied board to

¹¹³ 'Sydney Cohen's Control of MPTOA Sent Steffes Out to Form Allied', *Motion Picture Herald*, 4 December, 1937, 24.

¹¹⁴ *TIME* June 7, 1924, 37.

¹¹⁵ Minnesota, Texas, Kansas, Michigan, Indiana, Illinois, North Carolina, Wisconsin and the District of Columbia.

¹¹⁶ 'Sydney Cohen's Control', *Motion Picture Herald*, 4 December, 1937, 24.

¹¹⁷ 'Sydney Cohen's Control', *Motion Picture Herald*, 4 December, 1937, 24.

hammer out an updated Standard Contract but, though the two exhibitor groups managed to present an agreed position, once again they could not reach a deal with the Hays Office.¹¹⁸

All this prevarication came to an end in 1927, when the MPTOA agreed to open its doors to membership by theatres affiliated with the vertically-integrated major studio/distributors, in order to get out from under the financial pressures of surviving exclusively on the dues of genuinely independent cinemas. This victory by the major studio interests became institutionalised at the MPTOA's board level. New directors immediately joined from Pathé, RKO forerunner Keith-Albee-Orpheum, Fox and Paramount subsidiary Publix, whose Harry Marx also became MPTOA vice president. While never formally being a wing of the studios like the MPPDA, the MPTOA's future affiliation and constricted independence was now clear, prompting frequent brickbats in the years to come from Allied. Vociferous MPTOA member Jack Miller of Chicago, welcoming this 1927 takeover, looked back on the sorry history of the Association's squabbling early years trying to bring order to independent-minded theatre owners, rationalising: "So far the organisation hasn't been worth a good damn. It hasn't been worth the powder to blow it to hell. It has been almost a corpse. But today some pep has been blown into it."¹¹⁹ The industry would soon see, in the imminent interaction of Myers and Allied, that there were many ways to energise a dormant situation.

Abram Myers and Allied

Unusually for a senior bureaucrat, the career trajectory of Judge Abram Fern Myers found its path adhering to an industry polemic rather than an institution or agency. While it was Thurman Arnold, head of the Antitrust Division of the Department of Justice who, as figurehead of the *Paramount* litigation, would pull the trigger, it was Myers who calibrated, loaded and aimed this fatal shot at the studio system. His actions' consequences – in fact his very words – course throughout the core events which cumulatively succeeded in bringing down the vertically-integrated majors. As a Federal Trade Commissioner from 1926-29, Myers finalised the Government's first large scale assault against block booking in the *Famous Players-Lasky* case and then personally led the subsequent industry-government conference which attempted to find a way forward, under the assumption that the practice could be extinguished. In January 1929 Myers commenced what would become over three decades of service as general counsel (and initial president) for Allied States.¹²⁰

¹¹⁸ 'Group First Hit Majors in 1923', *Motion Picture Herald*, 4 December, 1937, 25; Moley, *The Hays Office*, 194.

¹¹⁹ 'Producer Theatres Admitted', *Motion Picture Herald*, 4 December, 1937, 32

¹²⁰ Lewis, *The Motion Picture Industry*, 303; Donald Crafton, *The Talkies: American Cinema's Conversion to Sound, 1926-1931* (Berkeley, University of California Press, 1999), 149.

In this defining role, Myers was the key strategist driving the most activist and disruptive trade practice agenda in the industry, remaining in this position until the 1960s. Myers drafted the first successful government legislation seeking divorcement of movie exhibition from production and distribution for the state legislature of North Dakota. He then led the legal team driving it on behalf of that state's government, in the process achieving a model that would influence other states and the Federal Government. Myers' lead role in the negotiations for the NRA Code of Practice was central to independents' sole victory in those negotiations, retaining double features as the only legal non-price competitive tactic for small theatres. Myers personally drafted the Neely bill to outlaw block booking, which posed the greatest legislative threat to Hollywood's monopolistic hegemony throughout the thirties and tied up untold amounts of industry resources. Having thus made the strategists of the industry distracted, and undeterred by the successes of the Hays Office in Washington in areas such as the NRA Code, in the late 1930s Myers added several new interacting levels to Allied's reform strategy. He was constantly energising its grass roots members to lodge complaints with the Federal Government, a practice that strongly influenced Washington's later successful antitrust actions, all the while simultaneously targeting the legal machinery of all 48 state governments.¹²¹ Myers' hands-on success in North Dakota in having divorcement legislation passed was just the beginning of a multi-pronged strategy which was planned to extend to all of the remaining 47 states, in order to achieve Allied's aims from the state capitals up rather than from Washington down.¹²² As all this was taking place, Myers demonstrated his flexibility and open-mindedness as a tactician by additionally embracing anti-chain store legislation (from a 1931 Louisiana law attacking corporatisation) as an alternative strategy to loosening the grip of the studios on their cinema outlets. Myers' attack was unrelenting, his anti-monopolist rhetoric was often vehement, and his opportunism in grasping new methods to achieve Allied's goals bespoke an imaginative, energised opponent of the established industry. Hollywood had no shortage of antagonists, but Abram Myers was one of its most formidable.

¹²¹ Ellis W. Hawley, *The New Deal and the Problem of Monopoly* (Princeton, New Jersey: Princeton University Press, 1966), 365-368.

¹²² "Divorcement" Law Ruled Legal; U.S. Salves Fears of Witnesses', *Motion Picture Herald*, 23 July, 1938, 18.



*Abram Fern Myers*¹²³

Abram Fern Myers came to movie activism from the same political crucible as Will Hays and later 1940 GOP Presidential candidate Wendell Willkie: all three were Indiana Republicans.¹²⁴ In the Republican administrations of the 1920s key posts in the Federal Trade Commission were subject to a high degree of political patronage. In 1924 Hays nearly succeeded in filling a Commissioner vacancy at the FTC with Republican President Warren Harding's former secretary George Christian, until that nominee's heavy-handed pre-confirmation lobbying on behalf of Famous Players-Lasky, still subject to FTC investigation, scuttled his appointment. Undeterred, Hays tried again in 1926, while the Famous Players-Lasky investigation was still afoot, when another Republican Party Federal Trade Commissioner position needed to be filled. Hays recommended to the White House Indiana Judge Abram Myers and in August 1926 he became a Federal Trade Commissioner.¹²⁵ Ascending to the role, Myers found other Hoosiers already at the FTC including Commissioner William E. Humphrey and Martin A. Morrison, then running the case against Zukor's Famous Players-Lasky.¹²⁶

Myers came to the Federal Trade Commission from the Department of Justice, where he had risen to the position of lead counsel. It was a career described by the Attorney-General's letter of recommendation in which Myers "started at the Department as an office boy and now knew more about antitrust than anyone else." Myers arrived at the FTC with a pro-regulatory agenda which drew on Theodore Roosevelt's New Nationalism and Herbert Hoover's associationalism. He was, however, critical of big business and corporatisation's human costs, condemning the mode of takeover and consolidation "laterally and perpendicularly across every industry, until all producers and traders are transformed into hirelings." Avidly championing competition as "the great regulator" of the economy, Myers was far from *laissez-faire*. At the FTC he pushed for listing transparent pricing in petroleum at the wholesale and retail level, and tried to prevent any changes once such listings were public, calling this necessary for independent businesses "to survive the competitive struggle

¹²³ 'Hammons to Go On With Allied Franchise', *Motion Picture Herald*, 30 May, 1931, 14.

¹²⁴ <http://politicalgraveyard.com/bio/myers.html> - accessed July 28, 2018.

¹²⁵ Pizzitola, *Hearst over Hollywood*, 247-248.

¹²⁶ Kenneth G. Crawford, *The Pressure Boys* (New York: Arno Press, 1974 – Reprint Edition), 105.

and remain independent,” a clear foreshadowing of his years at Allied. A further harbinger of his Hollywood years was a rich rhetoric (“business suicide”; “industrial murder”) and an abrasive style. His combative tenure at the FTC only lasted four years. One major setback was his 1928 attempt to investigate interrelationships amongst General Motors, Du Pont and U.S. Steel. After its derailing, Myers’ key Commission antagonist, William Humphrey, gloated that this had been “bureaucracy gone mad.” Unfortunately there was an unmistakable thread of duplicity in Myers’ actions as well, with a tendency to go behind key actors to advance his initiatives. This led to Myers’ ultimate undoing, when Republican Senator William Borah attacked him as “either a liar or a forger” after alleged correspondence with the judge hearing the Continental Baking cases, Morris Soper, was revealed to differ significantly from what Myers had claimed. That alleged misrepresentation was exacerbated by Myers describing Judge Soper in writing as a Pontius Pilate figure, “washing his hands” of the prosecution.¹²⁷ Sidelined thereafter, Myers departed the Commission in January 1929.

Myers’ subsequent Hollywood activities suggest a sense of unfinished business. Roots in the ignoble FTC defeat in *Famous Players-Lasky* that stretched out for years connect Myers with the most vocal of the disgruntled exhibitors who claimed to be victimised by corporate interests. Myers did not *choose* to leave the FTC and take up the cudgels at Allied in 1929, as inferred throughout the literature but was, in effect, sacked after his ignominiously short tenure of one term.¹²⁸ Taken together, accounts of independent exhibitors losing control of first runs and/or failing in block booking battles and their resultant erosion of personal prestige and wealth are threads that mirror so strongly the personal story of Myers’ Washington years that their subsequent intertwining in Allied appears almost predestined.

Signs of this destiny were evident at the FTC Conference he chaired in 1927 in the course of the *Famous Players-Lasky* case. Consistent with associative state practice, the panel brought major industry players to the table seeking a path to hammer out solutions consultatively, and was focused on the industry’s key instrument, the Standard Exhibition Contract. What was on display here were the personalities behind the positions, and their chemistry. From the independent exhibitors’ viewpoint, predispositions were evident when Myers scolded Paramount’s Sidney Kent, the studio executive most consistently involved at the interface of exhibitor relations, for being unprepared to deal at the Conference when Kent attempted to delay proceedings, a “rebuff [which] created a sensation” among those present.¹²⁹ When Kent attempted to mystify Hollywood as a site of unique qualities only insiders could appreciate, Myers quickly shut him down, refusing to accept that movies are

¹²⁷ Winerman and Kovacic, ‘FTC’, 702; 717; 719-721; 723-724; 728.

¹²⁸ ‘New Proposal for Federal Control’, *Motion Picture Herald*, 3 April 1937, 18.

¹²⁹ ‘What the Trade Practice Conference Has Accomplished’, *Harrison’s Reports*, 22 October, 1927, 169.

“an occult or mysterious business that the layman cannot understand.”¹³⁰ Later Myers gave Kent another “jolt,” publicly stating he would not listen to him defending block booking at the Conference.¹³¹ At another point in the proceedings “Myers had a good laugh” at the expense of MPPDA General Counsel Gabriel Hess, when Hess refused to be drawn on the absurdity of an extreme example of picture substitution put to him by an exhibitor.¹³² Building a fuller, reconcilable picture of Myers’ worldview, he later praised the Hollywood leaders’ nemesis, the “agitator exhibitors,” saying: These “independents may represent only 10 per cent of the business, but it is the vital 10 per cent.”¹³³ Such orientation to the plucky little guy and away from privileged elites more at home in Manhattan boardrooms arguably aligns Myers with the producer-republican strand in American thought, as his “hirelings” quote underlines. In this light, Myers’ Republican Party membership, which helped promote him to his involvement in the *Famous* case, appears to hark back to Teddy Roosevelt, if not Lincoln, rather than the New Era leaders Harding and Coolidge with whom Hays was affiliated.¹³⁴

Harder to reconcile is Myers’ enlightened economic perspective favouring robust free enterprise unburdened by excessive regulatory interference, and the strategic position he relentlessly championed at Allied. For the independent exhibitors, he constantly cited moral turpitude on screen as their justification to sidestep the “Protection” sales model of movies to exhibitors. Being an ephemeral cultural product, temporal windows of consumption are crucially linked to the remunerative value of movies, yet what Myers was pushing was essentially a flatter market.¹³⁵ This superficial equality conveniently overlooked disparities in overhead, financial exposure and investment risks between the lavish, customer-friendly picture palaces answerable to their investors, and the small cinemas clamouring for a competitive advantage by screening movies as early as possible. There is further noteworthy evidence attesting to Myers’ facility in placing pragmatism ahead of free market ideology. In 1933 he addressed the Federal Motion Picture Council, a body comprising church leaders planning a “Federal Commission to regulate and censor” Hollywood pictures. Acknowledging that his Allied membership was opposed to Federal censorship “save as a last resort to save themselves and their patrons from a certain class of pictures,” Myers claimed, however disingenuously, “that clean, wholesome pictures pay and that lewd and indecent pictures do not,” uniting the two organisations in common purpose. The Hollywood studios, with their

¹³⁰ ‘Not an Occult Business!’, *Harrison’s Reports*, 5 November, 1927, 180.

¹³¹ ‘What the Trade Practice Conference Has Accomplished’, *Harrison’s Reports*, 22 October, 1927, 169; 172.

¹³² ‘Not an Occult Business!’, *Harrison’s Reports*, 5 November, 1927, 180.

¹³³ Untitled, *Harrison’s Reports*, 9 August, 1919, 115; Cassady, ‘Monopoly in Motion Picture Production and Distribution’, 130.

¹³⁴ ‘What Influences Are Delaying Action in the Block Booking Case Against Paramount?’, *Harrison’s Reports*, 23 May 1931, 84.

¹³⁵ Richard Maltby, ‘The Standard Exhibition Contract and the Unwritten History of the Classical Hollywood Cinema’, *Film History* Vol. 25, No. 1-2, 149.

control “of the large down-town theatres catering to the so-called sophisticated trade ... [have] cast off all restraint... and lost sight of the fact that the patrons of the Broadway cathedrals... have very little in common” with small town audiences, he argued. Myers’ unsparing candour did not whitewash the tendencies of many small cinema proprietors, however, whom he admitted found in the block booking system “a ready and complete alibi” to exonerate them when screening movies with questionable morals. Successful passage of the Brookhart Bill then in the Senate, one of a long line of legislative proposals to outlaw block booking and blind selling, would mean exhibitors in every town would henceforth be held to “strict accountability,” he told the meeting. Ominously (to some), Myers promised local community leaders that the trade practice reform he envisaged “will give you a control over the matter that you have never heretofore enjoyed.”¹³⁶ More than any other exhibitor advocate besides Pete Harrison, Myers’ moral repugnance at risqué pictures did seem the most heartfelt: “The sex and gang pictures made by the producers for their downtown theatres... are so unsuited to the neighbourhood and small town houses... [leading to] social and moral problems involved in forcing such pictures on the family trade,” he said in 1932.¹³⁷

Like Joseph Breen, best known for managing screen content at the Production Code Administration, who was lured away to RKO for an unhappy stint in 1941-42 as an executive, Myers could not resist the temptation of standing in producers’ shoes, albeit on a much smaller scale. In 1931 he arranged with the small Kinogram outfit to deliver a series of revenue-raising newsreels for Allied. Even here, Myers’ expedience shone through, and the deal sparked a rare cleavage with Harrison, always zealously crusading against commercial advertising on screen, when it was revealed that the Kinogram reels would contain “concealed” promotions for products and services.¹³⁸ Myers defended the deal, arguing they had members’ support and were announced promotions, without any concealment, were subject to censorship and prioritised entertainment values. None of this assuaged Harrison.¹³⁹ Within months Allied quietly withdrew the plan, citing insufficient “suitable” advertising.¹⁴⁰ Myers rose to great bureaucratic heights in Washington from his start as an office boy, but revealed an indulgent side to his nature with unprofessional comments at the FTC Conference. Shortly thereafter he was humbled professionally, but found a lifeline back to the limelight through the movie industry. His contradictions were as notable as many high

¹³⁶ ‘The Money “Sign of the Cross” Has Lost Because of the Scenes of Shocking Cruelty’, *Harrison’s Reports*, 18 February, 1933, 28.

¹³⁷ ‘The Two Block-Booking Decisions in the Federal Courts’, *Harrison’s Reports*, 23 April, 1932, 65.

¹³⁸ ‘The Attitude of the Newspapers Toward the Allied Newsreel (Kinograms)’, *Harrison’s Reports*, 1 August, 1931, 124.

¹³⁹ ‘A Letter from Abram F. Myers’, *Harrison’s Reports*, 8 August, 1931, 128.

¹⁴⁰ ‘Kinograms Newsreel Discontinued’, *Harrison’s Reports*, 21 November, 1931, p.185.

achieving public figures of the era, but his passion and skill combined to keep him in the limelight for many more years.

Chapter 2 – Hollywood dispute resolution and localism: 1920-1938

The motion picture industry, like other sectors dominated by large, nationally-oriented corporations delivering products on a national scale in order to maximise efficiencies, found itself obliged to straddle a significant sea change in American industrial policy during the New Deal. As the peak representative body for the organised industry, the MPPDA was obliged to adapt to the changes that were taking place following the end of the 1920s Republican New Era politics.

Herbert Hoover and the associative state

Regulatory arrangements in 1930s America operated in a context in which a centralising public sector bureaucracy was continuing to expand from the kickstart it had received under Theodore Roosevelt.¹⁴¹ This was a trend that had particularly disturbed Herbert Hoover, and during his political ascendancy in the 1920s he set out to do something about it. Appointed by President Harding, Hoover served two GOP administrations as Secretary of Commerce from 1920-28. He clearly appreciated that in corporatising America, industry goliaths' disproportionate influence had a great potential to be detrimental to consumers and workers, but he felt that the core ideals of American individualism were being threatened by a growing bureaucracy servicing an increased number of protective guidelines and laws.¹⁴² To mitigate such an unwelcome by-product of increasingly centralised regulation, he went back to the core problem – unconstrained big business – to craft a better response. Rather than civil servants, Hoover, “the great engineer,” preferred to see industry leaders managing society and governmental functions.¹⁴³ He envisaged a new model of “private government” that would bypass “evils” like consolidated capital, cartelisation and government red tape. The goal he set himself as Commerce Secretary was nothing less than industrial self-government. Since the late nineteenth century Hoover had seen technological change driving processes of scientific management, responsible trade associations and enhanced productivity gains, but in the 1920s he felt the need to accelerate these processes by creating a new model: the “associative state.” Industry associations would be the locus of this new form of governance. Through an enlightened leadership committed “voluntarily to service, efficiency and ethical behavior,” just as Hoover himself had demonstrated throughout his career and especially in

¹⁴¹ Theda Skocpol and Kenneth Finegold, ‘State Capacity and Economic Intervention in the Early New Deal’, *Political Science Quarterly*, Vol. 97, No. 2, (Summer, 1982), 261-262; Ellis W. Hawley, ‘Herbert Hoover, the Commerce Secretariat, and the Vision of an “Associative State”’, 1921-1928, *The Journal of American History*, Vol. 61, No. 1 (June, 1974), 116; David A. Horowitz, *America’s Political Class under Fire: The Twentieth Century’s Great Culture War* (New York: Routledge, 2003), 66.

¹⁴² George E. Mowry, *The Urban Nation: 1920-1960* (New York: Hill and Wang, 1965), 58-59

¹⁴³ John Mark Dempsey and Eric Gruver, “‘The American System’: Herbert Hoover, the Associative State, and Broadcast Commercialism’, *Presidential Studies Quarterly*, Vol. 39, No. 2 (June 2009), 230.

his stewardship of the Public Food Administration in World War I, autonomous sectoral bodies would derive their energy and inspiration from grass roots organisations and the creativity and drive of individuals' activity. These would be enabled and supported by government resources but emphatically not directly managed by them.¹⁴⁴ Hoover's associational ideology "dominated the politics of business during the 1920s," and he and his subordinates at Commerce fostered and supported hundreds of specialist industry conferences guiding their sectors through research, targeted inquiries and decision-making committees to deliver this self-governing model of big business.¹⁴⁵

The MPPDA was formed in this image. As Postmaster General under President Harding following his management of the latter's successful election campaign in 1920, Hays and Hoover were Cabinet-level colleagues until Hays left government to design and run a new industry body for Hollywood. This he did with an eye to pragmatism and, like Hoover, an aversion to all but the minimum level of bureaucratic involvement in order to maximise effective and efficient functioning. With the MPPDA Hays knew he needed to be more than just practical, as his head-hunting by the movie industry had followed a series of scandals peaking with Fatty Arbuckle, and Hollywood needed to demonstrate a new image of responsibility and trustworthiness to a concerned public. Dispute resolution in particular was at the core of the concrete application of associationism's philosophy of reducing roadblocks for business. Here Hays' fostering of machinery codifying arbitration practices to handle disputes was a fundamental element of his steering of the industry's trade body. The high level of disputation in the industry made such a focus essential, as the unwelcome alternative – costly litigation and court appearances – would continually demonstrate in the interwar years.

At the dawn of the 1930s, with the Depression and the transition to sound convulsing Hollywood, a string of major legal judgments in the Federal Courts grounded in antitrust law went against the organised industry. In 1929 District Court Judge Thacher heard two cases brought by the Department of Justice against Hollywood. The first of these, the Credit Committees case (U.S. vs First National et al), essentially concerned film supply being linked to credit checks when new theatre owners assumed the previous exhibitors' film supply contracts. Here Thacher upheld Hollywood's right to oblige background checks for fraud before contracting.¹⁴⁶ The second judgment (U.S. vs Paramount-Famous Players-Lasky et al) concerned the recently updated Standard Exhibition Contract's compulsory arbitration

¹⁴⁴ Hawley, 'Herbert Hoover', 117; 129; 118; 127, 135.

¹⁴⁵ Dempsey and Gruver, 'Associative State', 229.

¹⁴⁶ Now is the Time for Mr Hays to Show Whether He is A Statesman or Not, *Harrison's Reports*, 23 November, 1929, 185.

clause which Thacher found violated the Sherman Act, thus outlawing the arbitration boards used in the industry for dispute settling. The essence of his decision was that the means cannot justify the ends: an industrial benefit obtained unfairly is illegal, regardless of how much it advantages all participants. Producers cannot *collectively* force an outcome on exhibitors. Key to the judgment was Thacher's finding that through the Trade Practice Conference arising from the 1927 FTC Famous Players-Lasky case, not all exhibitors bound by the new contract were represented in the process which made that agreement, rendering an admittedly beneficial service an involuntary restraint and hence illegal. All arbitration machinery except marginal administrative practices was thus tainted and could not continue, creating severe disruptions to the industry.

In 1930 in Connecticut, Judge Burrows found the old Standard Contract violated antitrust proscriptions on restraint of trade and was illegal, a judgment reinforced the next year in Utah, Minnesota and in the Tri-State case in Idaho.¹⁴⁷ In November 1930, on appeal from the industry of the 1929 Thacher decisions, the Supreme Court upheld the independents' Compulsory Arbitration victory and overturned Hollywood's Credit Committees win, citing the familiar "coercion" logic, finding obligatory credit checks were a violation of the Sherman Act. In the Fox West Coast case of 1930, as with the Thacher judgments, all the major studios were joined as defendants in a case litigated by the Department of Justice. Here the Protection system of Run-Zone-Clearance was held to be illegal in a decision that was conspicuously consumer-oriented, as it found that the arbitrary delaying of titles' availability between levels (first run, second run, etc) risks disadvantaging customers in outlying towns who must either wait or drive further to see the same movies.¹⁴⁸ Protection received a further series of legal blows over the next two years, being found illegal by Oklahoma Judge Johnson in the *Momand* case, by Judge Woodward in Chicago in the *Balaban and Katz* case and by Judge TC Munger in Lincoln, Nebraska in the *Youngclaus* suit.¹⁴⁹

The National Recovery Authority

For a brief period in the mid-30s a lull in equilibrium between independents and the majors prevailed, in which agreed rules for trade practices were recognised in detail, arbitration mechanisms and their deliverers were known by name, and antitrust laws were suspended,

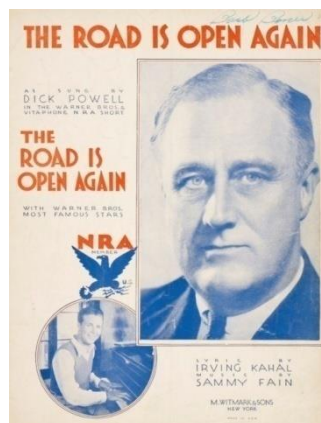
¹⁴⁷ 'The Old Standard Contract Declared Illegal', *Harrison's Reports*, 18 October, 1930, 165; 'Another Judge Declares the Old Standard Contract Illegal', *Harrison's Reports*, 28 March, 1931, 52; 'The Mess the Old Standard Contract Is In', *Harrison's Reports*, 21 November, 1931, 188; 'Old Contract Declared Dead in Ohio', *Harrison's Reports*, 14 February, 1931, 28.

¹⁴⁸ 'Regarding the Court Decree in the Fox-West Coast Case', *Harrison's Reports*, 20 September, 1930, 152; 'Where Are the Cheers?', *Harrison's Reports*, 1 November, 1930, 173-176.

¹⁴⁹ 'Protection Unlawful!', *Harrison's Reports*, 10 October, 1931, p.161; 'The Two Block-Booking Decisions in the Federal Courts', *Harrison's Reports*, 23 April, 1932, 68; 'The Youngclaus Victory', *Harrison's Reports*, 16 July, 1932, 116; 117.

provided all parties played ball. The mechanism delivering this panacea, the National Recovery Authority Code of Practice for the Motion Picture Industry, commenced in November 1933 under its enabling legislation, the National Industries Recovery Act (NIRA). George S. Brady, a Boston lawyer specialising in trade practices, was one of the most erudite critics of Hollywood's industrial arrangements and was praised even by his opponents on the industry side of the table for his "adroitness" on movie industry matters.¹⁵⁰ Watching the legal decisions steadily going against the industry, Brady believed the Protection system was on the ropes, just at the moment when NIRA stepped in:

The tide was running strongly against [protection], and even the word itself was starting to have a sinister connotation. In June 1933, it seemed as if protection were (*sic*) dying, ready to slide into a nameless grave. Then came the National Industrial Recovery Act, a great experiment in idealism... It was an injection of adrenalin into a weakened heart. It not only revived the sinking patient but it accomplished a miraculous cure.¹⁵¹



*Warner Bros. And the Blue Eagle*¹⁵²

The NRA was the implementation arm of FDR's New Deal (its Blue Eagle logo can still be seen on prints of many of the era's films, especially those of Warner Bros.). Among their numerous Depression remedies, New Dealers saw one pathway for healthy commerce as being the elimination of cutthroat price competition. Because any resultant pricing collusion could breach antitrust laws, the New Deal's major industrial reform, the National Industrial Recovery Act, fashioned a package which, along with new labour relations arrangements for

¹⁵⁰ George S. Ryan, 'Anti-Trust Litigation in the Motion Picture Industry – No. 1', *Harrison's Reports*, 18 April, 1936, 61.

¹⁵¹ George S. Ryan, 'Anti-Trust Litigation in the Motion Picture Industry – No. 8', *Harrison's Reports*, 6 June, 1936, 92. There were some positive decisions for the majors in this period, too. The Appeal Court dismissal of the FTC case found block booking to be legal.

¹⁵² <https://wolfsonianfiulibrary.wordpress.com/2014/01/18/elephants-donkeys-eagles-and-uncle-sam-new-deal-branding-from-the-wolfsonian-library/> : accessed 18 August, 2018.

unions, explicitly exempted businesses in every major industry from existing antitrust statutes. In return, business would agree to develop a code of fair practice, on an industry-by-industry basis, thus effectively delivering corporate America self-government. New Deal rhetoric notwithstanding, such a step was ideologically consistent with the 1920s New Era Republican administrations in which trade groups were fostered, codes of practice were encouraged and facilitated, and antitrust enforcement was constrained by funding cuts.¹⁵³ For the motion picture industry's most prominent trade association, the MPPDA, it was like being handed the keys to the store. While the MPPDA was not the only industry association recognised as having a role to play in the Motion Picture Industry Code – Allied and MPTOA were also included – the Code's development processes drove home how disadvantaged the unaffiliated exhibitors had become as a result of the cleavage between their two national lobbyists. During the Code negotiations, the two exhibitor bodies could not agree on a united position and, thus divided, were conquered on virtually every negotiating point by the combined influence of producers and studio-affiliated distributors.¹⁵⁴ Then in May 1935 the National Industries Recovery Act was declared illegal by the Supreme Court in *Schechter Poultry Corp. v. United States*, taking the Code machinery with it. Within months of the demise of the Codes, *Box Office* magazine reported that "a great increase of law suits, either to enforce contractual provisions or to oppose unfair trade practices" was sweeping through the industry.¹⁵⁵

Prior to the NRA Code, a highly organised system had long been handling dispute resolution within the industry. This was the Film Boards of Trade, which exchanges created in several larger cities including New York, Chicago and Detroit in 1915 as bureaux of their Chambers of Commerce, in response to the business's growing complexity. Started as trade associations, a corporatist orientation was reflected in their membership being limited to the managers of these distributors, denying from inception any pretence of inclusiveness. In 1917, after exhibitors began renegeing on payments for films that performed below expectation, distributors responded with a requirement to pay a deposit upfront. Brokering a solution, the Boards formed grievance committees that included exhibitor representatives in return for mandating the use of Boards' arbitration machinery.¹⁵⁶ The sanctions extended to cessation of supply from *all* producer members, not just the disputant. Thereafter, from 1923-25 the MPPDA centralised and expanded Boards nationally under its General Counsel Charles Pettijohn, incorporating a mandatory arbitration clause into the Standard Exhibition

¹⁵³ Gomery in Kindem, *The American Movie Industry*, 207-208; Lynn Dumenil, *The Modern Temper: American Culture and Society in the 1920s* (New York: Hill and Wang, 1995), 35.

¹⁵⁴ Muscio, *Hollywood's New Deal*, 117.

¹⁵⁵ *Box Office*, 19 October 1935, p.3.

¹⁵⁶ 'Distributors' Refusal of Support Brings the End to Film Boards', *Motion Picture Herald*, 26 June 1937, 18.

Contract in 1924, in return for the abandonment of the deposit system, which was deemed no longer necessary since disputes had been brought under the MPPDA umbrella.

Even though unaffiliated exhibitors had equal representation with distributors on arbitration panels, the Boards were seen by some as a system of “kangaroo courts.”¹⁵⁷ The MPTOA formally complained to Washington in 1925, when Cohen described the Boards as “nothing more than collection agencies... intended to terrify the small exhibitor and those unacquainted with legal procedure.”¹⁵⁸ But after a year’s investigation the Justice Department found their practices legal, and the MPPDA publicly championed them as cutting edge industrial practice. The then-Federal Trade Commissioner Abram Myers, chairing 1927’s Trade Practice Conference to engineer a block booking solution, endorsed their compulsory nature.¹⁵⁹ The climate soon changed, as the merger mania occasioned by the introduction of sound spurred a blizzard of antitrust activity at the end of the twenties, and in 1929 President Hoover’s new Attorney-General singled out Hollywood as overdue for antitrust investigation.¹⁶⁰ That year the Thacher Federal Court decision (endorsed and elaborated by the Supreme Court in 1930 in *McReynolds*) outlawed Film Boards’ obligatory arbitration on the ground that it denied parties unfettered access to the fundamental right of adjudication by a court.¹⁶¹ Overnight “arbitration was suspended nationally” and every Board shut down operations lest its continuation draw criminal penalties.¹⁶² The response of the Hays Office was to sack Boards’ secretaries and wind down their functions to mere public relations roles such as liaison with community groups, critiquing legislation, monitoring and reporting on the industry and even managing theatres’ fire prevention.¹⁶³ Despite the MPPDA withdrawing its support, many distributors unilaterally maintained an adjudication service at the local level in their exchanges. This development saw the introduction of varying degrees of impartiality and independence, a backward step after the transparency and uniformity of the previously national system.

At the executive end of the industry, the early thirties was marked by furious activity to redesign the now-outlawed self-regulatory system. The site for this activity was the Standard Exhibition Contract, the terms of which governed intra-industry practice. This was an instrument that had been continually contested and refined in a slug-of-war spanning the decade between the inception of the MPPDA and NIRA. Leading industry figure Sidney

¹⁵⁷ Lewis, *The Motion Picture Industry*, 268.

¹⁵⁸ William Marston Seabury, *The Public and the Motion Picture Industry* (New York: The Macmillan Company, 1926), 96.

¹⁵⁹ Conant, *Antitrust in the Motion Picture Industry*, 202.

¹⁶⁰ Crafton, *Talkies*, 184.

¹⁶¹ Donahue, *American Film Distribution*, 23.

¹⁶² Lewis, *The Motion Picture Industry*, 291.

¹⁶³ Distributors’ Refusal of Support Brings the End to Film Boards, *Motion Picture Herald*, 26 June 1937, 18.

Kent, formerly of Paramount but now heading Fox, stepped in to drive a process of negotiation by conference, but at the end of 1932 this remained stalled when Allied refused to ratify the resultant new contract.¹⁶⁴

Despite losing their attempt to retain such non-price competitive measures as giveaways of consumer goods, games of chance specifically tailored to attendance in the cinema audience (Bank Night) and other benefits like free parking, the independents did have one unambiguous win in the NRA Code negotiations, and it would be very far-reaching.¹⁶⁵ The MPPDA failed in its attempt to ban the double bill format on which the final Code document remained silent, leaving this exhibition strategy as unaffiliated theatres' key form of non-price competition.¹⁶⁶ This one measure fuelled a debate over film quality which would come to supersede the "decency" controversy that had dominated the screen's content management discourse in the early thirties.

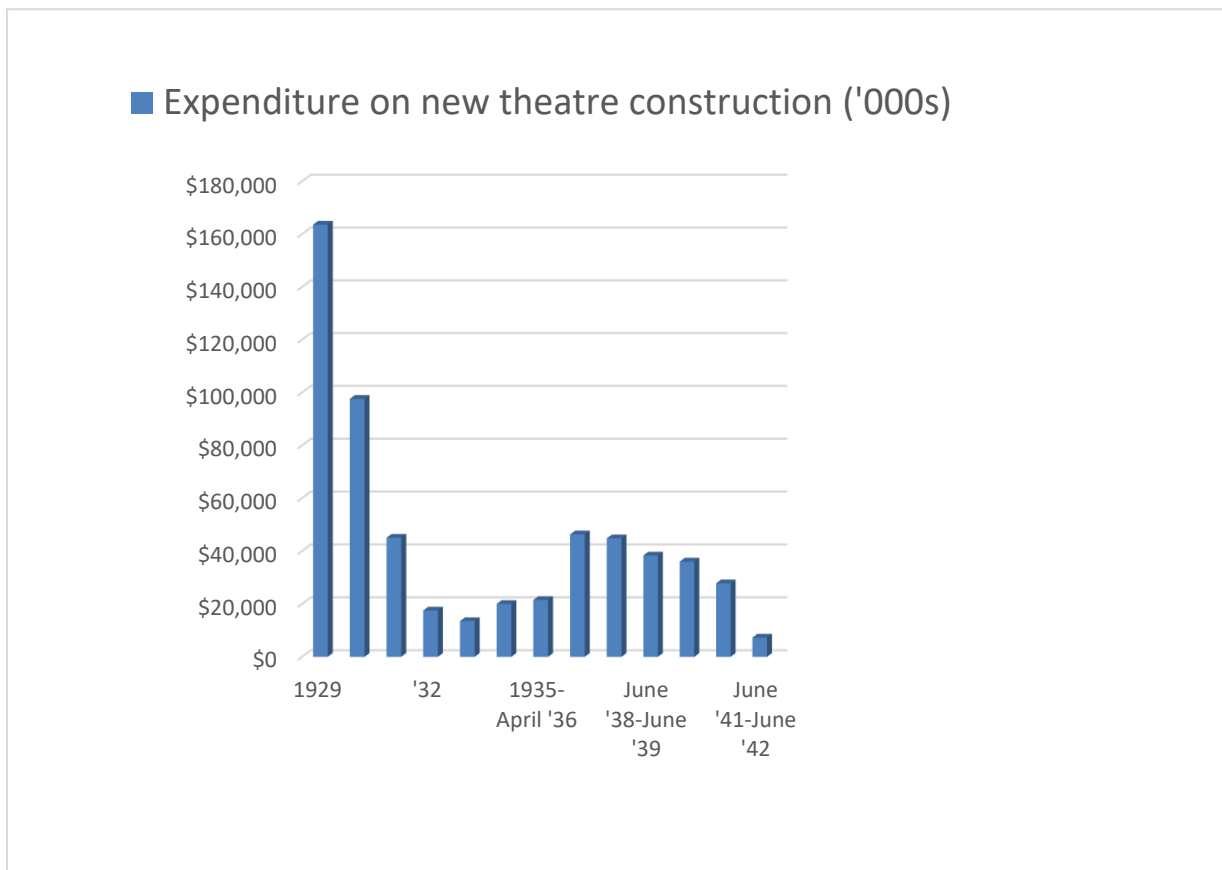
The post-NRA, pre-*Paramount* environment between 1935 and 1938 saw practices which had earlier squeezed independent exhibitors returning with renewed force. Following Hollywood's economic nadir of 1932-33, the shell-shocked industry was still clawing its way out of Depression doldrums, with survivors' competitive instincts suitably sharpened. The rulebook that was the NRA Code having been tossed out, the studios' natural dominance soon came to be reflected in its interactions with unaffiliated exhibitors. Philosophically, the all-encompassing nature of the exemption from antitrust responsibilities embedded in NIRA appears to have reinforced a state of mind in the industry's senior strategists, who had consistently failed to make concessions to appease the independents, even when the cost of doing so was relatively small.

¹⁶⁴ Lewis, 298.

¹⁶⁵ Douglas Gomery, 'Hollywood, the National Recovery Administration, and the Question of Monopoly Power' in Gorham Kindem (Ed.), *The American Movie Industry: The Business Of Motion Pictures* (Carbondale: Southern Illinois University Press, 1982), 210. In his analysis of the NRA Code, Gomery (205) pointedly takes issue with Robert Sklar's view in *Movie-Made America* (New York: Vintage, 1979 – 1st Edition) [169] that the Code "ended up strengthening the small businessman at the expense of the major producer-distributors." But in the regulatory vacuum between *Thacher* (1929) and *NIRA* (1933), independent exhibitors were not left stranded without industry-specific mechanisms that were more affordable than courts, with the recognition that "local boards will operate much as they have done in the past" (Lewis, 296). The NRA Code then ensured continuity through its Grievance Boards maintaining the 50:50 division of studio/independent representatives, although as Gomery points out (210) its (rarely used) appellate level was dominated by 8 of 9 commissioners being MPPDA appointees. Voting with their feet, unaffiliated exhibitors embraced the NRA system enthusiastically, overwhelmingly reversing the flow from a preponderance of distributor claims to a great majority by exhibitors. See Lewis Nizer, *New Courts of Industry: Self-Regulation Under the Motion Picture Code* (New York: The Longacre Press, 1935), 58.

¹⁶⁶ Robert Sklar, *Movie-Made America* (New York: Vintage, 1979 – 1st Edition), 169.

Following the Code's demise and the return of the industry's profitability from 1934, mass theatre acquisitions resumed as part of a nationwide trend focused in the northeast.¹⁶⁷ In 1936-37 major studio affiliates moved to add 100 cinemas to enable them to compete more strongly with unaligned exhibitors.¹⁶⁸ The following table records the post-conversion (to sound) trough and partial rebound (ending with the Government-imposed restrictions that were part of wartime contingency.)



* 1931 approximated.¹⁶⁹

The total number of U.S. theatres rose from 12,024 in 1935 to 15,115 in 1939, according to the Bureau of Census in the Department of Commerce.¹⁷⁰ After the spike upwards in 1936, the New York-based Independent Theatre Owners Association (ITOA) threatened an appeal to the FTC, arguing that such expansion would push the first-runs' monopoly deeper, putting existing subsequent runs "still further down the line."¹⁷¹ Echoes of the independents' deeply ingrained fear and loathing of the predatory tactics used by Zukor in the Battle of the

¹⁶⁷ '1934 was the Turning Point for Earnings', *Motion Picture Herald*, 12 June 1937, 62 (citing Treasury Department data).

¹⁶⁸ 'Large Circuits Add 100 Houses in New Expansion', *Motion Picture Herald*, 15 May 1937, 13.

¹⁶⁹ *Better Theatres* data in Wheeler Dixon (Ed.), *Producers Releasing Corporation: A Comprehensive Filmography and History* (Jefferson: McFarland, 1986), 90.

¹⁷⁰ '1944 Industry Statistics' in Dixon, *Producers Releasing Corporation*, 89.

¹⁷¹ 'Large Circuits', *Motion Picture Herald*, 15 May 1937, 13.

Theaters era could be heard clearly in their reactions. Seeking an emergency conference with Zukor, Schenck and Paramount president Barney Balaban, “not their hirelings such as Hays [or] Pettijohn,” Allied’s Steffes characterised the majors’ new expansion as “spite theatres.”¹⁷²

In Washington, key players were finding it hard to let go of the NRA model of industry regulation they had been forced to jettison by the Supreme Court in *Schechter v. US*. Legislative measures to “restore” key aspects of NRA were circulated in exposure drafts in the spring of 1937 regarding child labour, a fair trade system for all industries, and prohibitions on strike breakers and spying on workers.¹⁷³ Weighing in, Washington-based Myers [drew on his former status as Federal Trade Commissioner to state that:

the preponderance of opinion in industrial circles favors the establishment of some method whereby the competitive problems of industry can be worked out cooperatively under the watchful eye of the federal government and without undue interference on the part of inexperienced and opinionated bureaucrats. The tragedy of NRA was its maladministration.¹⁷⁴

This praise for the Hoover associative state model, which Myers describes without naming it, further illustrates the Allied leader’s tendency for contradictory public utterances. Here Myers unaccountably overlooks the NRA’s disabling of antitrust laws and, now an ex-bureaucrat himself, attacks those charged with implementing NRA Codes as a class.

Localism underwrites trade practices

Screen content in the interwar years was predominantly debated under the rubric of “morals.” Reformers’ primary concerns were with a smutty licentiousness and the glamourisation of criminality. A longstanding “protect the children” discourse is traceable in American culture broadly from the 1830s, when a household-based economy started to be supplanted as the site of production by manufacturing, and the roles of women and children were reoriented and reconceptualised as increasingly needing safeguarding.¹⁷⁵ Intensifying this discourse for cinema during the 20th Century was the recurring theme of “the power of the movies,” especially talkies’ ability to influence the young who comprised so much of its target audience. Suggestiveness and role modelling paraded seductively across the silver screen

¹⁷² ‘Labor Affiliation is Sidestepped’, *Motion Picture Herald*, 5 June 1937, 33.

¹⁷³ ‘Conciliation Boards or Suits, is the Warning’, *Motion Picture Herald*, 1 May 1937, 76.

¹⁷⁴ ‘Mr. Myers Meets Pandora’, *Motion Picture Herald*, 22 May 1937, 14.

¹⁷⁵ Lary May, *Screening Out the Past: The Birth of Mass Culture and the Motion Picture Industry* (New York: Oxford University Press, 1980), 7-10.

and posed to many observers a real threat to minds too unsophisticated to filter their glamour objectively and critically.

These fears intersected with steadily growing disquiet at a site which favoured the activism of Allied and Myers: small communities' sovereignty. Following the Civil war an issue of growing sensitivity in rural and regional areas of the U.S. was localism, specifically the perceived erosion of local differentiation, authority and control in the face of rapidly growing corporatisation and an increasingly dominating national government. Concerns over loss of autonomy often became transmuted into an argument of local values versus urban influence, of standards imposed uninvited from above overwhelming those emanating organically from below at the grass roots level of communities. Especially after the Great War, this was an inevitable corollary of technological change, with automobiles freeing the young from the constraints of parental authority, particularly in courtship, mechanisation changing work hierarchies and the new media of radio and movies importing attitudes, dress styles and language foreign to many heretofore culturally isolated families. Exemplifying this was a 1926 view that

psychic revolt springs chiefly from the motion films, with some aid from the automobile. We have a generation of youth sex-excited, self-assertive, self-confident, and parent-critical.¹⁷⁶

Culture was one site where diminution of local sovereignty was widely noticed, as it could be seen as everybody's issue. The motion picture, that most mechanised communications medium of all, was particularly viewed askance for the esoteric, conspicuously urban, melting pot textures of its movies, whose origins were perceived as the lotus-eating world of "exotic California."¹⁷⁷ The abstemious and self-consciously Midwestern Will Hays personally addressed such Calvinist suspicion in the reasons underpinning the preamble to the Production Code, which explained that:

"Small communities, remote from sophistication and from the hardening process which often takes place in the ethical and moral standards of groups in larger cities, are easily and readily reached by any sort of film."¹⁷⁸

For movies, local sovereignty could be readily linked to a moral resistance: it was immoral to impose on communities films that offended their values. The smaller the community the more acute this became, especially in this pre-television age of limited entertainment options.

¹⁷⁶ Ross, *Movies and American Society*, 123.

¹⁷⁷ Muscio, *Hollywood's New Deal*, 131.

¹⁷⁸ Phillip French, *The Movie Moguls* (London: Penguin-Putnam, 1971), 106. This industry document was actually the one bit of the Code material written by Father Daniel Lord, who was a Jesuit.

A putative lack of choice in the studios' offerings to exhibitors because of block purchase obligations made this squarely a trade practice issue, and one that could be simplified enough for everybody to understand. Thus content anxieties onscreen could be traced back to industrial practices that owed their intransigence and potency to monopoly.

There was no shortage of reasons to arouse partisan feelings for the primacy of one's own neighbourhood. By the early twenties, independent theatre proprietors had been squeezed (sometimes brutally) out of the most lucrative first run markets entirely.¹⁷⁹ Some had accepted incorporation into the vertically integrated studio chains, while those vowing to remain independent exercised that prerogative by holding on to their movie houses and grudgingly accepting a reduced status lower down the pecking order of subsequent runs. Many of these entrepreneurs who had been forcibly left behind were not joiners but rather "fiercely individualistic" small business people whose cinemas were family concerns and "emphatically not for sale."¹⁸⁰ Some harked back to the nickelodeon days and could look back on battles with Edison and Zukor, making them even more unlikely to meekly accept the predations of new corporate enemies from the big city in the thirties.

It is clear from the *Exploitation Briefs* column of trade journal the *Motion Picture Herald* which details ballyhoo (what today we more politely call promotional activities) that these people were not shrinking violets, and would prefer to launch outlandish schemes trumpeting Coming Attractions than quietly run the local five and dime. In this context rhetoric that sounds disproportionate to a 21st century observer, particularly recurrent claims of "the evils of block booking," becomes easier to understand. The sense here of proprietors still fighting a battle which Zukor *et al* had won in 1919 is inescapable. "Much of the bitterness of the exhibitors against the majors goes back to this period of strong-arm dealing... [as] the pattern of the relationship between the majors and independents was established by [Zukor] at this time," wrote Mae Huettig in 1944.¹⁸¹

While it is difficult to prove empirically that exhibitors were, at least in spirit, re-fighting lost battles, there is ample circumstantial reinforcement for such a view. For one thing, Zukor continued to be a big target. From 1919 on and especially after the mid-1920s collapse of his then primary competitor First National, the prominence of the "US Steel of Hollywood" bordered on the mythic.¹⁸² "Immeasurable, invisible world power rested on the desk of the

¹⁷⁹ Huettig, *Economic Control*, 38-39. Some first runs (undoubtedly in marginal markets) remained independent.

¹⁸⁰ Hampton, *History of the American film industry*, 262-263.

¹⁸¹ Huettig, 38.

¹⁸² Richard Koszarski, *An Evening's Entertainment: The Age of the Silent Feature Picture, 1915-1928* (Berkeley: University of California Press, 1994), 69

Emperor of Entertainment in the lofty Paramount Building in Times Square,” wrote Hampton in 1931 (two years before the Emperor’s bankruptcy).¹⁸³

The sense that emotions rather than carefully calculated self-interest underlay independents’ opposition to major studios’ systematic control can also be seen in the timing of their public utterances. Although localism was deeply embedded in the block booking discourse, this aspect of the debate was characterised by periodic eruptions rather than a sustained drumbeat of public protest. As noted, public outrage was occasioned when Zukor’s theatre acquisitions of 1919 apotheosised the majors’ consolidation. Another nodal point, the 1927 release of the FTC findings pillorying block booking, sparked a renewed wave of outraged public condemnation, including blasts from Canon William Sheafe Chase, long-time critic of social ills ranging from food hygiene to immoral movies, who found this moment opportune to rail against the “Movie Trust... throttling good pictures” and putting children at risk of “moral injury” through “seductive motion pictures.”¹⁸⁴

Over time, the widely held view that screen immorality was a function of the studios’ monopoly became played out on two levels of refinement. At its most basic, the constriction caused by the movies’ decision-making resting in what was effectively a cartel was tantamount to arguing that market forces had been disabled, and that in such an environment immoral movies could not realistically be resisted or countered with alternative, quality fare.¹⁸⁵ A new level of refinement came, however, when movie reformers extended this model by identifying those very exhibitors who often screened objectionable movies as a discrete group subject to the same lack of freedom that the moguls imposed on their audiences. A perception started to take hold that audiences and independent exhibitors were actually in the same boat. Once again Zukor’s practices were focal; after the FTC handed down its findings in *Famous Players-Lasky* in July 1927, prominent movie reformers sat up, took notice and started to connect the dots. “There are moral issues behind block booking, blind booking, the uniform contract, arbitrations, and all other trade practices,” realised leading screen content crusader, the PTA’s Catheryne Gilman.¹⁸⁶ Soon after, the Motion Picture Research Council (MPRC) sponsor, the Payne Fund, studying the impact on movies on children in the early 30s, asserted that “with an open market [devoid of mandatory block booking] restored to America... the local exhibitor will have no excuse for exploiting

¹⁸³ Hampton, 363; Zukor was the studio’s sole executive survivor.

¹⁸⁴ Horowitz, ‘Alliance of Convenience’, 7-8. Later that year, in October 1927, the FTC convened a trade practice conference which resulted in block booking being affirmed by the regulator. See Afra, 236-237.

¹⁸⁵ This same argument could be inverted and portrayed as a competitive advantage, as when one H. Connick of Famous Players-Lasky told the Governor of New York in 1921 that “these four or five men together can absolutely insure (sic) the quality of these pictures to any standard that might be agreed upon”: Seabury, 149.

¹⁸⁶ Horowitz, ‘Alliance of Convenience’, 1.

motion pictures in defiance of the wishes of his community and his patrons.”¹⁸⁷ This shift in the onus for the quality of screen content on to the shoulders of the exhibitor was a sleeper issue that would eventually surface contradictorily in the late 1930s. For many of the small businesspeople running the local Bijou, morals was a relatively convenient flag to fly, until it started costing them money.

From the mid to late thirties the big driver for the airing of movie trade practice issues was the 1936 Neely bill intended to specifically outlaw block booking. As noted, it had been drafted by Abram F. Myers, using a largely verbatim recycling of his wording in *Famous Players-Lasky*.¹⁸⁸ Energising the block booking debate was the series of late thirties hearings on the bill, the strongest threat the industry had until then faced on this practice. Public interest advocates at these hearings evidently believed that outlawing mandatory block booking would yield better pictures, eliminate offensive films and raise moral standards. Civic groups and the PTA, Protestant, temperance and women’s groups argued that, without block booking tying exhibitors’ hands, “inferior films cannot be passed off in blocks” and therefore “civic organisations could bring pressure to bear upon the local exhibitor and only ‘desirable’ pictures would be displayed.”The argument was slightly more realistically summarised in the Neely hearings Senate Report:

Local communities... ought to be freed from the situation in which they find themselves when the manager of the picture house offers what seems to be an unanswerable argument, that he is compelled to show a vulgar or licentious picture because he is the victim of a monopolistic system of buying blind or in blocks, and that he cannot run his theatre unless he shows all the pictures in the block.¹⁸⁹

The monopoly-content nexus spilled over beyond the bounds of the Neely hearings. President of Leland Stanford University and MPRC head, Dr Ray Lyman Wilbur, drew on the Council’s Payne Fund studies to call block booking a threat to America’s youth, saying that “unless the local exhibitor has some control over the selection of the type of films he can show we will suffer.”¹⁹⁰ Responding to an Allied pamphlet he believed had impugned his honesty, an exasperated Sidney Kent publicly challenged Myers’ integrity regarding block booking’s alleged moral dimension, querulously asking whether the Allied strategist was “honestly concerned with community selection of motion picture entertainment as a reason

¹⁸⁷ Horowitz, *Beyond Left & Right*, 78.

¹⁸⁸ Werne, ‘Neely Anti-Block Booking Bill’, n. 1, p.1.

¹⁸⁹ Werne, 9; 8.

¹⁹⁰ ‘Pettengill’s Bill Seen Youth Aid by Council Head’, *Motion Picture Herald*, 17 April 1937, 28.

for supporting the [Neely] bill on the basis of public morals.”¹⁹¹ Myers had in fact been incessantly linking localism and the values of the family trade outside urban centres to the monopoly control of screen content, strategically tying morals to trade practices whenever one of these two strands arose. At their 1931 convention Allied slammed “the forced showing” of “an unusually large amount of poor quality pictures... unfit for exhibit” in neighbourhood and small-town theaters.¹⁹²

Others in positions of authority, albeit of varying autonomy, remained as sceptical as Kent. Speaking for an ostensibly independent body that was actually an MPPDA mouthpiece, the East Coast Preview Committee, Better Films veteran Mrs Loring D. Jones told *The New York Times* in 1937 that since Joseph Breen had cleaned up the nation’s screens, block booking now “is not a consumer issue and certainly not a moral question” and should be considered only “in the realm of trade practice.”¹⁹³ Tightening the debate’s focus still further, a Federal Court in Ohio in 1938 raised the central dimension underpinning block booking’s “moral” issue: money. Disputing whether the businesspeople exhibiting movies were on any higher ethical plane than those delivering them, the court stated: “We cannot assume any local exhibitor would put aside pecuniary consideration in the interest of public morals to a greater extent than the wholesale distributor.”¹⁹⁴

Many neighbourhood theatre owners wanted to at least appear to be responsive and hear patrons’ feedback. This is not surprising since, as Sidney Kent told Harvard students in the university’s lecture series on the movie industry of 1927, the exhibitor “may also may be the local banker, blacksmith, or grocery man.”¹⁹⁵ The *Motion Picture Herald’s* section of smaller exhibitors’ reviews called “What the Picture Did for Me” comprised individually submitted accounts covering a wide spectrum of audience reactions in candid, colloquial terms. Cumulatively these reports from “the nabes” paint a picture of entrepreneurs strongly identifying with, and concerned for, their place in the community. “What the Picture Did For Me” primarily shows that these small business operators were happy mainly when customers were happy, but frustrated at times when they felt their hands were tied as far as program selection went.

Here another, subtler, agenda behind the lobbying of community-oriented movie reformers can be seen more clearly. This was the practice of the nabes using block booking as an

¹⁹¹ ‘Myers, Kent, Kuykendall, Exhibitors, Press, Neely Argue Block Sales Bill’, *Motion Picture Herald*, 9 April 1938, 12.

¹⁹² Horowitz, ‘Alliance of Convenience’, 7.

¹⁹³ ‘Press Finds Clubwomen No Longer Opposed to Block Booking System’, *Motion Picture Herald*, 20 March 1937, 70.

¹⁹⁴ ‘3 Judges to Hear Injunction Plea in ‘Divorce’ Case’, *Motion Picture Herald*, 26 February 1938, 27.

¹⁹⁵ Kennedy, *The Story of the Films*, 219.

excuse when customers complained about what they were showing.¹⁹⁶ When *The New York Times* investigated women’s clubs’ views, the paper was told block booking “is merely a Frankenstein reared by theater managers who hope to hide behind it in evading responsibility for presentation of tawdry pictures.”¹⁹⁷ One corollary of this was that the “fiercest opponents of block booking were civic groups ”whom the practice “angered ... because its inflexibility limited their influence on exhibitors.”¹⁹⁸ The more optimistic community groups, including the PTA, Protestant, temperance and women’s groups, believed that if block booking was eliminated, “the exhibitor could consult his local clientele as to their choice, and order his films accordingly” with the result being that “crime and sex pictures would not be so prevalent.”¹⁹⁹ In response, the major studios pointed to a core feature of the Standard Exhibition Contract, the ten per cent cancellation clause, to refute such claimed inflexibility, saying that titles truly offensive to a local cinema audience could be rejected up to this 10 percent ceiling without financial penalty. Data from the 1938 season (below, published in 1940) shows how this contractual privilege was actually used by unaffiliated entrepreneurs:²⁰⁰

PICTURES RECEIVING LARGE NUMBER OF CANCELLATIONS OR REJECTIONS

<u>Name of Picture</u>	<u>Number of Theatres Cancelling or Rejecting</u>
<i>Music For Madame</i> (Nino Martini)	5,873
<i>Quality Street</i> (Sir James M. Barrie)	4,837
<i>Hitting A New High</i> (Lily Pons)	4,662
<i>The Great Garrick</i> (Life of the Great English Actor)	3,389
<i>April Romance</i> (Life of Franz Schubert)	3,871
<i>The Saint of New York</i> (Mystery Story)	3,756
<i>Winterset</i> (Pulitzer Prize Play)	3,259
<i>A Midsummer Night’s Dream</i> (Shakespeare)	2,971
<i>Great Expectations</i> (Charles Dickens’ Story)	2,730

¹⁹⁶ Huettig, *Economic Control*, 116.

¹⁹⁷ ‘Press Finds Clubwomen No Longer Opposed’, *Motion Picture Herald*, 20 March 1937, 70.

¹⁹⁸ Muscio, *Hollywood’s New Deal*, 130; 123; Werne, 12, Inglis, *Freedom of the Movies*, 49-50.

¹⁹⁹ Werne, 9.

²⁰⁰ Werne, 11.

<i>Under Your Spell</i> (Lawrence Tibbett)	2,135
<i>The Good Fairy</i> (Romantic Comedy)	1,897
<i>New Faces of 1937</i> (Musical)	1,562
<i>The Green Pastures</i> (Pulitzer Prize Play)	1,506
<i>Crime And Punishment</i> (Based on Dostoyevsky's Classic)	1,506
<i>That Girl From Paris</i> (Lily Pons)	1,472

PICTURES RECEIVING FEWER THAN 20 CANCELLATIONS OR REJECTIONS

Name of Picture

<i>Lady Be Careful</i> (Based On Stage Play "Sailor Beware")
<i>The Last Gangster</i> (Al Capone)
<i>The Big City</i> (Taxi Warfare)
<i>Desire</i> (Marlene Dietrich – Gary Cooper)
<i>Alcatraz</i> (Prison Story)
<i>I Am the Law</i> (Edward G. Robinson)
<i>They Gave Him a Gun</i> (War Story)
<i>Saratoga</i> (Jean Harlow)
<i>Her Jungle Love</i> (Dorothy Lamoure – South Seas)
<i>The Bad Man of Brimstone</i> (Wallace Beery)
<i>Angels With Dirty Faces</i> (James Cagney)
<i>A Slight Case of Murder</i> (Damon Runyon's story with Edward G. Robinson)
<i>Little Tough Guys</i> (Dead End Kids Type)
<i>Dracula</i> * (Produced 1931, Reissued 1938)
<i>Frankenstein</i> * (Produced 1931, Reissued 1938)

(The last two pictures were shown in the last season largely on double bills, and played to some 4,400 reissue contracts with no cancellations.)

A blunt instrument, the cancellation capacity was the most direct lever available to exhibitors to influence what patrons could actually see and support with their dimes and quarters. Unsurprisingly, the content concerns of independent theatre operators appear to have been regarded through the prism of profits, rather than artistic quality or morals. This is reinforced by the prevalence of gangster and related pictures amongst the least cancelled, titles counterbalanced by an equally strong preponderance of putative “quality” origins in the most rejected movies. Audiences, apparently, knew what they wanted, rather than what was good for them, with exhibitors happy to accept “the plebiscite of the box office” in preference to that of any coalition of regulators.²⁰¹

It was ever thus. Over ten years earlier, as the FTC worked in 1927 to enforce its order against block booking, the studios retorted that only if forced by their inclusion in a block would movie houses show films that were “good for society.”²⁰² Such hyperbole gained credibility from a study conducted from 1927-1928 and reported in *Harvard Business Reports* showing cancellation percentages by reason, in which the gripe of “unsuitable type of film” sat way down the priorities, ranked no higher than fifteen per cent.²⁰³ Moving forward a decade, in his survey of the *Variety* performance reports from October 1934 to October 1936, Mark Glancy discovered that the key social problem films (those lauded by latterday critics such as King Vidor’s Depression saga *Our Daily Bread* (1934) and *Fury*, Fritz Lang’s anti-lynching drama) were box office poison and the “least representative of audience preferences in this period.”²⁰⁴

Contemporary research reinforces this tendency from another direction. In 2000, economist Andrew Hanssen examined records between 1933-1940 of eight theatres, a mix of Warner Bros. second and third runs in a discrete market, Long Island New York, for cancellations. He found the ten percent threshold allowable under the Standard Exhibition Contract was consistently under-utilised, with its activation averaging only 63 percent. And while the 10 percent ceiling was reached by only a minority, none pushed to exceed this threshold.²⁰⁵ His

²⁰¹ Anne Morey, *Hollywood Outsiders: The Adaptation of the Film Industry, 1913-1934* (Minneapolis: University of Minnesota Press, 2003), 127.

²⁰² Donahue, *American Film Distribution*, 25.

²⁰³ Hanssen, ‘Block Booking’, 412-413.

²⁰⁴ Mark Glancy and John Sedgwick, ‘Cinemas in the United States in the Mid-1930s: A Study Based on the *Variety* Dataset’ in *Going to the Movies*, Eds. Richard Maltby, Melvyn Stokes and Robert C. Allen, (Exeter: University of Exeter Press, 2003), 162-163.

²⁰⁵ A further sample in the study of seven theatres, whose data was incomplete, did suggest that they were exceeding the threshold. Equally unfortunately as the inconclusive data, the run levels of these cinemas is unclear.

finding aligns with other datasets that indicate that most complaints came from conventional business transaction failures and/or run-zone clearance issues, rather than screen content concerns. In MPPDA figures for 1928 the overwhelming priority for producer-distributors' complaints against exhibitors was breach of contract through not exhibiting pictures, at 81.7%, with failure to pay charges a distant second at 7.2%. Exhibitors' complaints had a more even spread, the top being 38.5% for non-delivery of contracted titles, with protection violations (ie playing contracted titles elsewhere too soon) second at 18.2% and failing to designate play dates at 7.5%. Both industry sectors had a right of complaint for screen content "because of racial or religious subject matter" but for each, this criterion struggled to reach a tenth of a percent of overall complaints.²⁰⁶

The three datasets for cancellations – the low comparative ranking of unsuitable screen content as a complaint (1927-28), the most and least cancelled titles privileging entertainment over "betterment" (1938) and Long Island subsequent runs' cancellation usage being below prescribed limits (1933-40) – interact suggestively. Together they present a picture of how well the system was functioning to meet the demands of its core paying clients. Consumers – both exhibitors and viewers – were apparently being provided with what they wanted to see at the movies.

Nevertheless, the human dimension of these customers, so critical in building our understanding of the forces driving independent cinemas to political action, does blur the hard edges of this data. One late 1930s Michigan "village" exhibitor, reliant on supply from Detroit exchanges 40 miles away, found that invoking her cancellation right was not a discrete action but rather meant "an inducement to sell a new contract, which puts you in a bad position to bargain."²⁰⁷ This and similar anecdotal information, often published unselfconsciously in mass market magazines, builds a portrait of small-town businesspeople systematically drained by the organised industry of most of their profit potential. *Fortune* magazine commuted to Chicago with one such independent exhibitor and reported that he routinely faced costly but dubious arbitration, untrustworthy personal dealings and expensive logistics.²⁰⁸

While such circumstances may be the lot of many industries, potent disadvantages were particular to the motion picture industry, and may help explain some of the passion and level of vitriol heard in industry debates.²⁰⁹ The unique situation of the top five major studios

²⁰⁶ Lewis, *The Motion Picture Industry*, 273.

²⁰⁷ Gregory A. Waller, Ed. *Moviegoing in America* (Malden, Massachusetts: Blackwell, 2002), 200.

²⁰⁸ Waller, *Moviegoing in America*, 208.

²⁰⁹ The hardnosed business relationship that is inferred by independent exhibitors' rhetoric was re-enacted by screenwriter Jim Thompson in his 1949 novel *Nothing More Than Murder*, whose Chapter Two describes a

integrating their production business with distribution through affiliated theatre chains meant that they were simultaneously supplier to, and competitor against, the independents. Because each screen product is a creative work, copyright law extended producer-distributors' control beyond that experienced in comparable industries. Downstream retailers in equivalent circumstances like used car dealers and secondhand booksellers onselling the products of manufacturing giants from Detroit and the Manhattan publishing houses enjoyed a freedom and autonomy most independent movie exhibitors could only dream of. By contrast, in Hollywood, its producers had a stake in profitability at two stages, production and, except for the independent exhibitors, customer sales. If this was ever considered as a conflict by the studios, they reconciled it by playing hardball in both selling contexts: distribution and exhibition. Myers observed from his own moviegoing experiences in the Washington DC market how the system "diverted as much of the normal patronage from neighbourhood houses into first run houses as the latter can hope to get," leaving small theatre operators powerless to resist.²¹⁰ By the law of the commercial jungle, independent exhibitors simply had insufficient leverage, so to strengthen their position, they looked somewhere else for influence. They claimed to have found it on the screen itself, transmuting their film content concerns around smut and violence into a discourse of industrial practices that aligned their commercial interests with claims for local sovereignty in movie choice.

smalltown independent exhibitor negotiating deals with the local film exchange manager in raw, unvarnished dialogue redolent of Allied and other lobbyists' quotes appearing in the weekly trade papers.

²¹⁰ Richard Maltby, 'Hicks, Sticks and Flaps: Classical Hollywood's Generic Conception of its Audience', in *Identifying Hollywood's Audiences: Cultural Identity and the Movies* eds Melvyn Stokes and Richard Maltby (London: British Film Institute, 1999), 35.

Chapter 3 – Mobilising regressive groups: 1933-1937

Independent exhibitors' displacement of their trade practices concerns onto screen content issues, however invalidated by empirical evidence, was not an unreasonable bluff to try out in the rough and tumble of the commercial marketplace. But impresarios do not operate in a vacuum, and arguments for a return to such old fashioned political empowerment were simultaneously occurring on a much wider political canvas, and with a comparable degree of resentment and disaffection, elsewhere in America. On this broader scale the rhetoric of going back to old ways posed significant dangers. A vestigial impulse to return to an idealised simpler past is regressive at face value. Moreover, reducing or eliminating the benefits of scale that underpinned the nationally-oriented centralised economy, including those from Hollywood, risked depriving small communities of benefits in science, health, culture and medicine as well as driving costs up for reduced services. A two-tier economy pushing or entrenching small towns into second rate status was a real possibility. Beyond economics, xenophobia and corruption were some of the risks that came with privileging small-town sovereignty, and these factors were already being encountered by New Deal reformers as stumbling blocks to assistance in the field.²¹¹ Traditional individualism harking back to America's founding fathers, especially the activism of Jeffersonian and Jacksonian ideals, was the ideological foundation of much of the 1930s' alternative political activism in the body politic at large. That archetype of American individualism offered Hollywood a familiar, indeed favourite, construct through which to examine, explore and criticise contemporary calls to return to the old ways and turn back the clock of modernism, and indeed was the focus of several early thirties feature films as well as at least one discrete cycle of Hollywood movies in 1936. The fact that similar impulses and corruptions were advancing in the equally modern, technologically determined Western economies and cultures of Europe, and in an increasingly disturbing manner, added to these Hollywood films' cinematic canvas the broader possibility of a critique and a warning against fascism's capacity to infect the body politic in advanced capitalist societies.²¹²

Classical Hollywood's movie texts, including those containing such critiques, were evanescent. Although most titles' public availability extended over several months as they progressed down the run chain, audience members in the 1930s were substantially place-based, limiting their likely access to the days or weeks a movie was screened locally. In practice this meant films received one viewing, with their impact subject to the fallibility of viewers' memories, a limitation that would not be overcome on a mass scale until the advent of home video in the 1970s. Even an unusually literate moviegoer, with a commercial

²¹¹ Anthony Badger, *The New Deal: The Depression Years, 1933-1940* (New York: Hill and Wang, 1989), 306-309.

²¹² Alpers, *Dictators*, 76.

interest in accurate recollection of a film's details, could erroneously recall important elements, as evidenced by Graham Greene's imperfect recall of *Black Legion*, which he misquotes at an important scene in his film review for the upscale British periodical *Night and Day*.²¹³ For this reason alone, careful examination of key films' actual cinematic texts through examining them on DVD is an essential prerequisite of film scholarship. Moreover, the confluence of sound and image – Hollywood's light and magic that is only available on screen – offers scholars data that is not available through merely analysing a movie's final shooting script. Early application of the Production Code often tripped up on this fuller dimension of messaging as MPPDA assessors discovered in the mid-thirties that "monitoring screenplays had to be so thorough as to exclude expressive trickery, such as the use of off-screen space, ellipses or allusions in order to represent what was not allowed by the spirit or letter of the Code."²¹⁴ This thesis is informed by that awareness and goes further to extract meaning from the Hollywood studios' output by contextualising how political aspects were delivered by the movie itself. Through this methodology this chapter explores consumerist and producer-republican concerns laying claim to the traditions of American individualism and how these were mobilised on screen in order to deliver cinematic messages bearing on military intervention.

1930s populism and its 19th Century roots

One month before the 1896 Presidential Election contested by populist leader William Jennings Bryan, men of property were expressing fears that unless the ruling Republican Party was returned "they would be hanging from lampposts after Election Day."²¹⁵ In the groundswell of unrest caused by the Great Crash of 1929, fears of insurrection from below were similarly circulating widely, with one newspaper in the early thirties explicitly fearing "a revolution boiling up from the bottom."²¹⁶ Through the early thirties much anticipated economic improvements were failing to materialise and, despite the whirlwind of activity in 1933 during the First Hundred Days of the New Deal, thereafter Americans' resentment and opposition began to grow. As with the 1890s ferment, many of the people who were hurting most in the Depression claimed that foundational American principles had been overwhelmed by the greed and selfishness of big business.

²¹³ Actual dialogue (at 41:45) for a scene showing secret profit accounting is: "sale of uniforms and regalia after deducting regional commanders' commissions; sale of *Black Legion* special revolvers, with ammunition, making a grand total of two hundred and twenty one dollars and 58 cents". Greene's paraphrasing, quoted at page 89 of the thesis, is numerically close but noticeably misconstrues the nature of several of these elements.

²¹⁴ Muscio, 'The Code That Ever Was', 32.

²¹⁵ Sam Pizzigati, *The Rich Don't Always Win: The Forgotten Triumph over Plutocracy that Created the American Middle Class, 1900-1970* (New York: Seven Stories Press, 2012), 13.

²¹⁶ Ronald A. Mulder, *The Insurgent Progressives in the United States Senate and the New Deal, 1933-1939* (New York: Garland Publishing, 1979), 55-56.

The First New Deal was fundamentally conservative and centred on reviving the health of large-scale, consumer-oriented corporations. The Hollywood studios shaped entertainment cinema as just one sector typical of the vertically integrated, nationally focussed service industries. The structural core of the New Deal, the National Recovery Administration, epitomised the new Democratic government's Big Business orientation as it strengthened existing oligopolies through price-fixing and cartelisation within sectors, and further enabled corporatist dominance through exemptions from antitrust laws. Attempting to save corporate America from its excesses and inadequacies, Roosevelt was "the surgeon not the executioner" of capitalism.²¹⁷

Several media-aware agitators sprouting an imaginative variety of simple nostrums and quick fixes soon came to national prominence and rapidly grew into figureheads with broad-based constituencies. Dr Francis Townsend attracted significant support from aged Americans starting in 1933 with his eponymous Townsend Plan for a fixed pension linked to an obligatory spending provision that would theoretically stimulate the economy. Prominent leftist agitprop author Upton Sinclair turned his activist focus to the 1934 California gubernatorial campaign through his End Poverty in California (EPIC) platform promoting large scale nationalisation of unused economic assets and infrastructure, including the Hollywood studios. This attracted sufficient voter enthusiasm for him to gain the Democratic nomination for Governor, on which ticket he was defeated after gaining national notoriety and the opposition of key party leaders from the White House down.

By far the biggest contrarian impacts on the national stage came from Louisiana Governor Huey Long and Father Charles Coughlin, the "Radio Priest." Both were attracting large and rapidly growing followings as the New Deal faltered in 1933-34, exploiting the airwaves to promote their own alternative economic cures. Between them they could leverage the political power of Long's Democratic affiliation and the coercive seduction of Coughlin's legendary vocal prowess, an Irish brogue of "mellow richness... heart-warming confidential intimacy [and] emotional and ingratiating charm."²¹⁸ Long had come to national prominence on the back of his Louisiana governorship in the early thirties, marked by reforms that taxed corporations, expanded infrastructure and paid for educational resources through corrupt financial practices.²¹⁹ The two radio crusaders' expanding constituencies each grew from a regional base (Coughlin's in Detroit) to national prominence and both solidified their initial

²¹⁷ Amaury Riencourt, 'Caesarism Comes to America', in *The New Deal: What Was It?*, Ed. Morton Keller (New York: Holt, Rineart and Winston, 1963), 108.

²¹⁸ Alan Brinkley, *Voices of Protest: Huey Long, Father Coughlin and the Great Depression* (New York: Vintage, 1982), 92.

²¹⁹ Edwin Amenta; Kathleen Dunleavy; Mary Bernstein, 'Stolen Thunder? Huey Long's "Share Our Wealth," Political Mediation, and the Second New Deal,' *American Sociological Review* (Vol. 59, No. 5: Oct., 1994), 680.

on-air impact through networks of followers at the local level via club memberships and activities.²²⁰

In February 1934 Long created his own national political rescue movement, Share Our Wealth. Taxation would be central, with limits on individuals' wealth maintained by direct taxation and measures for the polity including a guaranteed annual income of \$2,000 plus a "homestead" grant of \$4-5,000 to every family for the domestic essentials, including a house, car and appliances.²²¹ At the same time, after his initially exuberant support for the President, Coughlin by 1934 had begun to temper his support, and was openly critical of the NRA for its impacts on small businesspeople. Roundly attacking the links between modern capitalism and Big Business, he described government as "their slave."²²²

The positions of Coughlin and Long in the thirties were connected atavistically to the electoral plank of Bryan's nineteenth century Peoples Party. Like Bryan, both of these machine age activists championed the downtrodden generally and railed against the forces and power of monopolies, bankers and privileged elites. Adapting arguments familiar from the 1890s, Coughlin and Long maintained regular radio broadcasts that were "connecting their messages so clearly with the residual appeal of the populist tradition" that some historians have described them as "neo-populists."²²³ In common with the 1890s platform was their push for the remonetisation of silver and the printing of new money (reviving Lincoln's Civil War greenbacking); government ownership of key institutions (banking for Coughlin, utilities for the earlier populists); xenophobia (Coughlin's anti-Semitism, anti-immigration in the 1890s); and a searing derision of plutocrats.²²⁴ "It's a money question," said Coughlin, tacitly summing up both eras.²²⁵

President Roosevelt considered that these two nationally networked radio agitators represented such a serious threat to his government that in April 1935 he directed his key "fixer" and dispenser of patronage, Postmaster-General James Farley, to investigate their political impact.²²⁶ Adopting the first ever use of scientific polling, Farley discovered that these two figureheads represented a major risk to Roosevelt's 1936 re-election prospects.²²⁷ Farley especially startled the White House with the breadth and depth of the support he had

²²⁰ Brinkley, 166-168

²²¹ Amenta et al, 'Stolen Thunder', 679.

²²² Brinkley, 124-7.

²²³ Brinkley, 165; Amenta et al, 'Stolen Thunder', 679-681.

²²⁴ Harold Evans, *The American Century - People Power and Politics: An Illustrated History* (London: Jonathan Cape, 1998), 28; Brinkley, *Voices of Persuasion*, 164.

²²⁵ Michael Kazin, *The Populist Persuasion: An American History* (New York: Basic Books, 1995), 119.

²²⁶ Mulder, *Insurgent Progressives*, 143.

²²⁷ Mulder, *Insurgent Progressives*, 103; Pizzigati, *Triumph Over Plutocracy*, 164; Mowry, *Urban Nation*, 107.

found for the political agitator from the bayou, Governor Long.²²⁸ Potentially running as a third party candidate, the “Kingfish” stood to attract as much as ten per cent of the electorate, primarily left-leaning voters who had been previously supporting Roosevelt, seriously jeopardising the President’s re-election. In this inward-turning decade in America, the implications of such a power shift were not just local but global, as the same wish for a nostalgic return to earlier, simpler times that animated Coughlin’s and Long’s followers also underpinned the strong isolationist sentiment around the country, tacitly extending these traditionalist voters’ influence to the European sphere.²²⁹

Long and Coughlin’s radicalism suited the times. Growing anti-plutocrat sentiment in the Depression was exacerbated by a public discourse in which ordinary Americans were smarting with embarrassment over alleged allied manipulations that had induced them into the Great War. Revelations poured in during the years 1933-34 of big banks’ and major U.S. manufacturers’ secret wartime collusion with British and French interests, which in this strained environment landed like sparks on tinder. The March 1934 special edition of *Fortune* magazine, *Arms and the Men*, caught the widespread attention of a Depression-sensitised public, while simultaneously Washington’s politicians were being lobbied strongly by pacifist women’s groups to investigate any nexus between excess profits, big finance and Washington.²³⁰ The result of this combination was the Munitions Inquiry created by Congress in the spring of 1934, which lasted for two years under its iconoclastic chairman, the prominent Midwestern Maverick Senator Gerald P. Nye (R-North Dakota). Nye generated copious headlines with scathing condemnations of major munitions-producing corporations like Du Pont, and the banks who profited along with them.

Spurred by the growing electoral risks, including mobilisation by Long and Coughlin of their “vast activist armies,” in early 1935 FDR embarked on a new path of activism and rhetoric targeting the financially-challenged voter and their day to day consumer concerns.²³¹ Rather than cede any strategic advantage to wild card opponents like Nye, Long and Coughlin, the President began to reinvigorate his claim to speak for the economically marginalised against the wealthy. He prominently foregrounded this in his January 1935 State of the Union address, acknowledging that “we have not weeded out the over privileged... [nor] effectively lifted up the under privileged.”²³² After the Supreme Court declared the NRA illegal in May 1935, just one month after Farley’s secret poll, the President in June revealed a new political

²²⁸ Albert Fried, *FDR and His Enemies* (New York: Palgrave, 1999), 105; Kennedy, *Freedom from Fear*, 240-241.

²²⁹ Manfred Jonas, *Isolationism in America 1935-1941* (Chicago: Imprint, 1990), 169; Brinkley, *Voices of Protest*, 151-153.

²³⁰ Jonas, 141-145.

²³¹ Pizzigati, *Triumph Over Plutocracy*, 164

²³² Badger, *New Deal*, 94; Pizzigati, 164-5.

direction that was vigorously anti-monopoly, championed small business and sought to improve marketplace competition. He demanded that Congress pass bills of a strongly liberal persuasion for social security, public works and union workplace relations supplemented by “soak the rich” taxation legislation.²³³ Keeping the pressure on the White House over taxation and appropriating the propertied class’s discourse, insurgent Nebraskan Senator George Norris warned that if the great “fortunes are not broken up by law... the time will come when they will be broken up by the mob.”²³⁴

The concern held by many Americans about these political loose cannons was that their vivid hate-mongering rhetoric and demonisation of big banks, the financial establishment and entrenched wealth would induce a lobotomising effect on national audiences who, mesmerised by radio, locked on to the radio agitators’ simplistic remedies with a lowest common denominator zeal born of desperation. Parallels were all too available in Europe, where regimentation and loss of liberty were advancing with apparent popular acquiescence as solutions to economic woes. Attracting followers through simplistically emotional mass persuasion, both Long and Coughlin were prominently accused of demagoguery, an aspersion which readily evoked European fascism and the style of its dictators.²³⁵

Journalistic warnings like *Forerunners of American Fascism* (1935) by respected broadcaster Raymond Gram Swing complemented thinly disguised fictional accounts of the dangers posed by Long and Coughlin in the novel *It Can’t Happen Here* by Sinclair Lewis.²³⁶

It was these simmering comparisons to European fascists that activated Coughlin’s eventual undoing. For the presidential election of 1936 he organised a third-party campaign under the candidacy of disenchanted Western Democrat William Lemke, a far less charismatic national personality than the Radio Priest himself. Abandoning his strongest platform, the airwaves, Coughlin took to the hustings himself, fatally undermining their campaign. Presaging what occurred two decades later when Richard Nixon lost popularity to John F. Kennedy on visual grounds in their televised debates, in 1936 the unstinting glare of newsreel cameras brought to light features of the Radio Priest’s personality that were previously masked in the studio. In newsreels “a harsh and feverish Coughlin... [whose] grinning, boastful visage... really did seem like an American version of Mussolini or Hitler.”²³⁷ The arguably greater danger posed by Huey Long ended with his assassination in 1935.

²³³ Amenta et al, ‘Stolen Thunder’, 678.

²³⁴ Mulder, *Insurgent Progressives*, 116-17

²³⁵ Brinkley, *Voices of Protest*, 73; 113.

²³⁶ Robert A. Rosenbaum, *Waking to Danger: Americans and Nazi Germany* (Santa Barbara: Praeger, 2010), 64-65.

²³⁷ Kazin, *Populist Persuasion*, 125; Brinkley, *Voices of Protest*, 256.

Long and Coughlin had powerfully invoked the producer-republican discourse of individuals taking back power from the royalists, economic or otherwise, who were disadvantaging them. They championed a recouping of lost local authority eroded by community impotence in the face of corporatised governance and centralised power. These activist radio orators' mobilisation of large numbers of disadvantaged citizens demonstrated how the yeoman discourse of individualist enterprise continued to offer a deep repository of national symbolic motivation, but also a storehouse prey to abuse in the wrong hands.

The Hollywood version

On the screen the mid-thirties marked a high tide for fears of demagoguery and attendant mobocracy. Several Hollywood features warned against mob-think, particularly in the Black Legion cycle (*Legion of Terror* [November 1936]; *The Black Legion* [January 1937]; and *Nation Aflame* [October 1937]). These dramas anticipated widely held fears that author and screenwriter Nathanael West would also raise in his anti-fascist screenplay for *It Could Happen to You* (1937 – examined as a case study in this thesis), prompted by Republic producer Leonard Fields who advised the novelist “that a good picture might be made about the rise of Fascism in America.”²³⁸ None of these movies directly addressed Nazism except West's (and his not by name). Some did, however, stage nocturnal torchlit ceremonies enabling visual allusions to footage of book burning and other fascist ceremonies abroad being seen on U.S. newsreels. Operating commercially, these filmmakers were (to varying degrees) reacting to an American political and cultural climate in which mass persuaders like Coughlin were finding receptive audiences for their intolerance and reactionary policies on an increasingly large scale.²³⁹

Classical Hollywood always celebrated the individual, vicariously restoring dreams of freedom disabled by the metaphorical closing of the frontier and making a faceless mass its project's dialectical opposite. Historians have located the cinematic epitome of “the crowd as protagonist” in King Vidor's *The Crowd* (1928).²⁴⁰ The film's visual strategies emphasis Machine Age fears of the loss of individual identity. Skyscrapers dwarf the city's inhabitants while in its overhead shots of sidewalks, pedestrians' identities blend and merge into anonymity before they reach offices in which the desks are precisely separated like engine parts, devoid of human character. But its mob formation is benign and well intentioned, and

²³⁸ Jay Martin, *Nathanael West: The Art of His Life* (New York: Carroll & Graf, 1984), 279.

²³⁹ Richard Maltby, 'As Close to Real Life as Hollywood Ever Gets: Headline Pictures, Topical Movies, Editorial Cinema, and Studio Realism in the 1930s', in Cynthia Lucia, Roy Grundmann and Art Simon Eds., *The Wiley-Blackwell History of American Film* (Hoboken: Blackwell Publishing, 2012), 93.

²⁴⁰ Andrew Bergman, *We're in the Money: Depression America and Its Films* (New York: Harper & Row, 1972), 23; 75-76; 79-81; Scott Eyman, *The Speed of Sound: Hollywood and the Talkie Revolution, 1926-1930* (New York: Simon & Schuster, 1997), 170.

its disruptive impact is primarily a feature of urbanisation and the associated overcrowding and depersonalisation that Vidor abhorred. Hollywood's interest in group think continued into the sound era but grew darker. As early as 1932, Michael Curtiz filmed a lynching in *Cabin In The Cotton*, while Cecil de Mille seemed to endorse the vigilante justice meted out by his blonde haired high school students in *This Day and Age* (1933), an export rejected from screening in Holland due to its "strong fascist tendencies."²⁴¹ After the Depression hit America, a crowd could be perceived as made up of the innocent victims of the crash's economic fallout. In *Gabriel Over the White House* (1933), acme of the "dictatorial president as fascist" cycle of the early 1930s, a protesting mob of Bonus Army, Hooverville type ex-soldiers warrant mainly sympathy and never achieve sufficient potency to become truly threatening. Such weakness reinforces the crowd's ideological inferiority to the individual male protagonist who solves problems his own way in typical Hollywood narratives. Similarly, in Warners' *Black Fury* (1935), the controversial drama of mining unionism, the crowd of workers and their families is virtuous but ingenuous. Easily hoodwinked by a corrupt agitator, they are shown as guileless, a portrayal with obvious applicability to demagoguery and fascism. Here their assemblage in a union neatly provides a mechanism to portray group think, but the film carefully avoids any inferred criticism of industrial organising, a sensitive political issue during the New Deal years.

Although still shown as sympathetic, a key transformation – the commingling of crowd members' victimisation with their latent threat - takes place in *Mr Deeds Goes To Town* (1936), the first of Capra's Depression Trilogy. Delaying its depression angle for over an hour, during which time the archetypal city's generic corruption is exhaustively established, a mob of disenfranchised yeoman farmers kicked off their small plots is presented as a danger, albeit a flawed one. When this injured mob eventually rises in anger and revolt, a catatonic Deeds is catalysed to break his silence and spell out his scheme for a return to a traditional producer-republicanism system. As in *Gabriel Over the White House*, the crowd members at best are innocent victims, but even when their integrity is affirmed, as here, they are undercut with disapproval and criticism. *Mr Deeds Goes To Town* caught the Jeffersonian undertow to Huey Long's Share Our Wealth Society, propagated through local clubs nationwide, and Father Coughlin's comparable National Union for Social Justice programs. But although the producer-republican ideal is promised, it is not seen to be delivered nor even as likely to be achieved. Its adherents are undeniably economic and cultural losers, history's victims. In time-honoured Hollywood fashion, *Mr Deeds Goes To Town* allows audiences their cake and its eating; its deployment of the producerist yeoman vision is a sop

²⁴¹ *This Day and Age* file, Production Code Administration Collection, Margaret Herrick Library Special Collections, Academy of Motion Picture Arts and Sciences, Beverly Hills, CA.

which it has no intention of fulfilling, and by revealing this vision's anachronistic status rather than its unworkability, posits it as a problem of history. As with Longfellow Deeds' scheme, the day of reckoning never came for any of the radio demagogues' nostrums.

In mid-decade the Dream Factory issued its most explicit analysis ever of how crowds and fascist forces could operate in American society. The film was *The President Vanishes* (1935), a dystopian fantasy that was the brainchild of outspoken liberal producer, Walter Wanger. The film uses a near-future setting to speculate on a variety of scenarios for mob rule. None bode well for America, but in the end a cunning individual outsmarts everybody. Wanger's movie advances mobology a step further in its portrayal of the fascist para-military Grey Shirts by showing them as the end point of processes only initiated in other Hollywood films. Violent, militaristic automatons, their origins are likely to have been in the same ragtag situation of small town orators provoking restless individuals seen so often in other movies. It is true that *The President Vanishes'* other deployment of "mob as actor," the peace demonstrators, continues the Hollywood tradition of representing crowds as susceptible dupes, but unlike the Grey Shirts they are a minor player in this drama. The monsters here are on a larger canvas, pulling the strings from boardrooms and smoke-filled chambers, of which the crowd has no conception or awareness.

Hollywood's corporatist impulses to national homogenisation at the expense of local autonomy are clearly evident in another mid-decade cycle that attacked fascistic behaviours at home: the lynching dramas *Fury* (1936), *They Won't Forget* and *Mountain Justice* (both 1937). In this cycle's entries the promotion of expert-centric, technocratically sanctioned solutions on a national scale coalesces around three primary themes. Firstly, local solutions are dangerously inferior to centralised national responses in all three films, where mob rule threatens enlightened scientific, judicial and consumerist policy delivery. Secondly, individual action (including as rescue mission) is doomed to failure, or worse, crosses over into criminality. Spencer Tracy experiences this transformation in *Fury* where his lone voice protesting the criminally encouraged mob is drowned out and overwhelmed. In *They Won't Forget*, the imported Northern lawyer cannot prevent serious legal injustice; and *Mountain Justice* sees another enlightened Northern protagonist presented as powerless against local corruption. Finally, nationally networked media outlets and opinion formation are more authoritative (*Fury*) or prudent and balanced (*They Won't Forget*) and thus superior to local community viewpoints which foster bigotry that can extend to criminality. One prominent social observer was willing to explicitly extend the parallel between the way political demagoguery and Hollywood techniques could influence the body politic through mass American audiences' inherent susceptibility. Shortly after watching *They Won't Forget*, as well as *Fury* and *Black Legion*, in 1937 Edgar Dale, educator and film activist whose

research was one of the most enduring of the Payne Fund's studies, warned how a core fascist tactic – stigmatising an “out group” – could gain traction in the U.S. because “motion picture and radio audiences are... less critical,” and:

This uncritical attitude has become the working ground of the propagandist in many countries today... [who] can, through the use of selected narrative and drama, convert the mist of popular prejudice constantly hovering about into a storm of blind antagonism. We see this perfectly illustrated in Hitler's Nordictatorship.²⁴²

Foreseeable dangers to America from a reactionary hardening of the body politic's views included appeasement with Hitler, resistance to military intervention in Europe, opposition for aid to Great Britain and support for iconoclastic and isolationist impulses at home. Not offering any prescriptions to neatly solve such problems, these cinematic portrayals nevertheless reveal early warning shots sounded by an alarmed Hollywood about the risks to freedom in America's own backyard. Anxious about how circumstances had come to such a pass, some of these creators posited in these films various theories in their explorations of demagoguery and fascism's wellsprings and energising processes.²⁴³ Even when the films ducked headline issues, they still managed to press relevant points of alarm, even if only inadvertently, as they proceeded en route to entertainment.

The Black Legion cycle

The Black Legion films constitute a cycle which included a minor studio film that was a function of opportunism and exploitation, with any potential ideological impact secondary, as well as an independent entrant which gamely attempted to explain the political phenomenon. By contrast, a major studio budget afforded Warner Bros. the luxury of attempting an individual case study to round out the cycle. With Classical Hollywood's narrative predilections for extrapolating out from the particular to the general, this more supple, personified approach allowed for a probing analysis of American demagoguery's context and enabling mechanisms.

In the industrial Midwest during the unstable mid-thirties a sinister manifestation of demagoguery was well entrenched and making national headlines. The Black Legion was one of many groups directly inspired by the Ku Klux Klan, replicating their garb of hoods, robes and unique insignia, albeit now in an eponymous black. Arising out of an early 1930s split in Midwest branches of the Klan, the Black Legion's strongholds were the industrial

²⁴² Edgar Dale, 'The Movies and Race Relations', 294.

²⁴³ Colgan, *Warner Bros.*, 115-118, details *Black Legion* producer Robert Lord's original conception which strongly attacked U.S. anti-Semitism with overtones of fascist politics in Europe.

states of Michigan, Ohio and Indiana, then reeling from the worst impacts of the Depression.²⁴⁴ Comprised primarily of displaced Okies and white rural labourers from the south, nativism forged a common cultural bond between members. Under pressure of economic hard times this curdled into a broad xenophobia that merged racism against African-Americans with anti-Catholicism and anti-Semitism.²⁴⁵ Initially their focus was akin to a self-help organisation, as they secured work for members.²⁴⁶ This pragmatism positioned them well to draw upon ex-Klan branches, many of whose Midwestern members came from the earlier waves of job-seeking southerners heading north to the factories. As late as 1935, a union organizer in Indiana reported that manufacturing industry's "plants are still importing Kentucky and Tennessee hillbillies."²⁴⁷ Such workplace volatility was easily exploitable for groups with a broader agenda. Even in the prosperous twenties, the Ku Klux Klan had "split the workmen of [Muncie, Indiana] into two armed camps, and the exploiters of labour took care of things."²⁴⁸ By the much tougher mid-thirties, the Black Legion could claim 30,000 members in Michigan alone.²⁴⁹ Such growth was accompanied by political infiltration in the administration of government, and the patronage system meant that not just factory work but also white collar jobs were dispensed accordingly.²⁵⁰ This created obligations that compromised the due process of law and allowed the Black Legion's corruption to spread, since police officers and jurists were amongst the tainted. This circumstance would provoke controversy in Hollywood's attempted filming of their story; Warner Bros. was obliged by studio lawyers to remove *Black Legion's* depiction of jury rigging and reshoot the scenes.²⁵¹

The New Deal's entrenchment of unionism through collective bargaining caused major ripples in this environment, as the new federally sanctioned industrial unions under John L. Lewis turned to communist groups for the organising expertise they sorely lacked and needed in a hurry.²⁵² Detroit was a key site for the major battle that industries were waging through the National Association of Manufacturers (NAM) to maintain non-unionised workplaces, known as the "open shop", a struggle also occurring in Minneapolis, Seattle, San Francisco, and Toledo.²⁵³ Henry Ford was accused by the leftist press of bankrolling the Black Legion amongst his array of anti-union strategies, and his ruthless practices had

²⁴⁴ George Morris, 'The Black Legion Rides', *The Workers Library*, August 1936, 29.

²⁴⁵ Maltby, 'As Close to Real Life as Hollywood Ever Gets', 95.

²⁴⁶ David M. Chalmers, *Hooded Americanism: The History of the Ku Klux Klan* (Durham: Duke University Press, 2007), 309.

²⁴⁷ Robert S. Lynd and Helen Merrell Lynd, *Middletown in Transition* (New York: Harcourt Brace, 1937), 27.

²⁴⁸ Robert and Helen Lynd, 41.

²⁴⁹ John L. Spivak, 'Who Backs the Black Legion?', *New Masses*, 16 June, 1936, 9-10.

²⁵⁰ Morris, *Black Legion Rides*, 9.

²⁵¹ Colgan, *Warner Bros.*, 109-110.

²⁵² Ted Morgan, *Reds: McCarthyism in Twentieth Century America* (New York: Random House, 2003), 174.

²⁵³ Irving Bernstein, *The Lean Years: A History of the American Worker, 1920-1933* (Boston: Houghton Mifflin, 1960).

resulted in several killings during strikebreaking in the early thirties. These elements would fascinate the media when they combined spectacularly in Detroit to finally bring an end to the Black Legion in 1936.

The head of the Legion's 'Death Squad,' Dayton Dean, kidnapped and murdered a young staffer of New Deal agency the Works Progress Administration, Charles Poole, who was married to a Legion member's cousin.²⁵⁴ Poole's "crime" was merely his Catholicism. Prior to this the Detroit police, one of whose chiefs was a Black Legion member, had been turning a blind eye to beatings and murders of blacks and union organisers.²⁵⁵ No such silencing was possible for such a high-profile crime, however, and wholesale Legion arrests ensued. At his sensational trial attracting international media attention, Dayton Dean not only provided a full confession, but turned informant against key office bearers, shattering the Black Legion's organisation.

Columbia's Legion of Terror and the independent Nation Aflame

Legion of Terror was a quickie "B" movie released in November 1936. It was produced by Columbia, one of the Little Three vertically integrated studios. Columbia stabilised its "A" movie highs (Frank Capra) and lows (Frank Capra) with serials and "Bs," primarily westerns. By the mid-late 30s, economic stringency had pushed studio strongman Harry Cohn's average running time for his production slate down to a cellar-dwelling 62 minutes (ninth among the studios), exactly the length of *Legion of Terror*.²⁵⁶ It was standard practice in this era for producers of screen thrillers to turn to nation-grabbing headlines as plot material, issuing productions the industry described as "topicals." For instance, high profile New York District Attorney Thomas E. Dewey's well publicised crusade against Gotham gangsters prompted the major studio programmer in 1937, *Marked Woman* (Warner Bros.) in which the Dewey character was played by Humphrey Bogart, followed in quick succession the next year by five crime "Bs" from a mix of major, minor and poverty row producers.²⁵⁷ The Black Legion trial attracted an equally diverse mix of studio interest. When the hooded group's by turns bizarre and dramatic murder case hit the headlines in May 1936 it caused a national, and indeed global, sensation. Although Warners announced production plans just days after

²⁵⁴ Spivak, 'Who Backs the Black Legion?', *New Masses*,9.

²⁵⁵ Morris, *Black Legion Rides*, 12

²⁵⁶ Gomery, *Shared Pleasures*,167.

²⁵⁷ The titles are: *Smashing the Rackets* (RKO); *Law of the Underworld* (RKO); *Racket Busters* (Warner Bros.); *I Am the Law* (Columbia); and *Gang Bullets* [aka *The Crooked Way*] (Monogram).

Dean's arrest, it was Columbia who brought the Black Legion to screens first, that same November, utilising a production schedule that lasted only three weeks.²⁵⁸



The outcome of Columbia's rush is identikit formula filmmaking. *Legion of Terror* is remarkably devoid of the ideological baggage or xenophobically-motivated characters emblematic of 1930s American demagoguery. Its plot has Federal postal agents detailed to investigate an unnamed heartland city from which a parcel bomb has been sent to a veteran Washington politician. Working undercover, they pose as applicants for factory work, which leads them inside the Legion organisation. *Legion of Terror* portrays its hooded members as pragmatic jobseekers for whom membership of any organisation, including a union (mentioned dispassionately in the dialogue), is merely a prerequisite for employment, and little else. Crucial to their apolitical motivation is the *mise-en-scene*. The process for Legion recruitment takes place in a generic union hall studio set familiar from industrial dramas like *Black Fury*, with no race baiting or stirring of hatreds, just a fat organiser (suggestive of a union racketeer) collecting dues. This class of jobseeker is introduced domestically, in a comfortable petit-bourgeois home familiar to Hollywood audiences, where they display the bearing and dress sense of the semi-skilled, quasi-management lower middle class. These

²⁵⁸ *Variety* in Colgan, *Warner Bros.*, 103, n.195; Brian Tavesin IMDB, posted 5 September, 2005 (https://www.imdb.com/title/tt0027879/reviews?ref_=tt_ov_rt; accessed 29 July, 2018); Columbia advertisement, *Motion Picture Herald*, 31 October, 1936, 64-65.

men are a world apart from the raggedy, unshaven “hobo” types of the rural dispossessed as portrayed in some thirties films including Capra’s *Mr Deeds Goes To Town*(1936). The Legion’s members here are self-optimising individual actors, presented as hard-headed rather than gullible or deluded, who make their decisions on the available information with their eyes open, and can view the Legion’s hooded garb and secretive rituals as a function of recruitment processes in an (admittedly eccentric) job-finding organisation. In this regard *Legion of Terror* actually approaches documentary realism for the industrial Midwest of the mid-1930s that the Lynds described in *Middletown Revisited*, where the working class

in recent years has been heavily recruited from first- and second-generation farm stock... men [who] share the prevailing philosophy of individual competence... and fascinated by a rising standard of living offered them on every hand on the instalment plan... do not readily segregate themselves from the rest of the city.”²⁵⁹

Inadvertently, through its cheapness and off the shelf filmmaking, this population of ersatz Ku Klux Klansmen yields a more frightening representation of evil’s banality: the hooded night rider next door. But this is not a film concerned with ideology. When *Legion of Terror* resorts to a crowd scene it is indistinguishable from the stock sequence of countless Westerns where the good townsfolk – not the hooded unemployed – get pretty darn riled after congregating spontaneously in the town square and, shot from above as is typical in horse operas, head off to “do sumpin’ about it.” The independent, self-determining nature of this film’s Black Legionnaire helps explain why a crowd scene redolent of Westerns fits so seamlessly: these men’s individual autonomy is inviolate from the outset, and not destroyed by mob rule.

Although the deep structure of *Legion of Terror* (to the extent it has one) is strictly boilerplate, the film does flatter itself with gratuitous topical references including “propaganda”; “world war”; “the moneyed interests”; and the Ku Klux Klan. But it remains a film with no depth and one devoid of cinematic editorialising. Although its torchlit night-time Legion ceremony is plainly redolent of fascist images like the Nazi nocturnal book-burning parades of 1933, it is actually gangster imagery which predominates. This is how Hollywood’s filmmakers represented the Black Legion: as a mere local racket without global implications. Equally gratuitous is a tacked-on final peroration excoriating “joinerism,” presumably seeing the well-known popularity of fraternal, lodge and other organisations in the Depression years as risking the fertilisation of domestic fascism. An opportunistic production, *Legion of Terror* was, as its commercial function necessitated, pushed out quickly, but was altogether too

²⁵⁹ Robert and Helen Lynd, *Middletown in Transition*, 26.

rushed to examine any political motives beyond the traditional frontier values of the B-Western woodpile.

This cycle's other low budget programmer, *Nation Aflame*, released in October 1937, is quite consciously analytical. Its curiosity is, however, almost entirely focussed on demagoguery and (like Nathanael West's *It Could Happen to You*) simply assumes Americans' acquiescence to powerful forces without dedicating much time to exploring how a fascist bloc can form from disparate individuals. The plot of *Nation Aflame* starts with failed real estate grifters, aided and abetted by a corrupt state Governor, who have been run out of town and need a new hustle. Looking around at their environment they see a chance in scapegoating "non-Americans" for the economic woes of the Depression, and by extension charging nativist Americans dues to join a new group repelling such "outsiders." This is a strategy typical not only of embryonic fascism, but also of Hollywood's representational strategies, where criminality ensures audience antipathy without resorting to a lecture in politics. The film's initial set-up comes close to didacticism, however, explicitly discussing mobs and "prejudice," enabling characters to cite unemployment and the Depression as breeding status envy and class hatred:

"We'll capitalize on jealousy, intolerance and patriotism. We'll form a secret lodge and band our members into a legion of patriotic avengers: The Avenging Angels!"

The corrupt nature of such racist hate mongers is constantly posited throughout the film, emphasising that they are merely another variant of American hucksterism, with a pitch that is just a phony ruse for "suckers." *Nation Aflame* firmly locates the xenophobia it depicts within domestic U.S. traditions rather than European affairs, as recruiting the suckers comes as naturally as the all-American stump oratory of the medicine show which these grifters stage.²⁶⁰

²⁶⁰ Advertisement, *Independent Film Exhibitors Bulletin*, 23 October, 1937, 7.



Central to these characters' cynicism is the ploy of their mastermind, Frank Sandino, citing "American names for American people" (an undisguised Coughlin reference). To deflect attention away from his own Italian background he adopts a nativist alias, "Frank Sands." Mussolini had been reviled in U.S. public opinion since his 1935 invasion of Ethiopia, and Italian fascist allusions are cemented here by a bust of Caesar lending the iconic inspiration to the unveiling of the group's uniform (in West's *It Could Happen to You*, a portrait of George Washington serves a similar function). The uniform's contemporaneity is underlined by the prominence of Machine Age lightning bolts for insignia, creating Nazi SS allusions. Bringing the Italian cultural specificity full circle and linking back to the group's criminally deceitful origins, an extortion racket against local employers which Sandino uses for funds is presented unambiguously as a mafia-style operation. Matching his xenophobic tirades with the rhetoric of pre-war Nazi organisations, Sandino also establishes a 'youth' cadre to enforce "one hundred per cent Americanism" (again, per Coughlin). While much of the movie's rhetoric is sufficiently pungent ("foreign vultures") as to raise concerns that the film's true intentions might actually *be* fascistic, viewers are unmistakably situated in opposition to Sandino throughout. Two women whom he has already mistreated share reaction shots of cynicism to his rant that America's wealth is only to be shared amongst "real Americans," and an "absolute boycott against foreigners is our only salvation." The women's opposition is reinforced by the upstanding DA's reaction that it is "criminal to advocate such a policy." When mob violence ensues, *Nation Aflame* is redolent of Eisenstein in its montages of rioting crowds, while the criminal kangaroo court of Fritz Lang's *M* is recalled when the camera pans across the bland faces of the "avenging angels."

Thomas Dixon, author of the Klan's seminal tract, *Birth Of A Nation*, also wrote the source novel for *Nation Aflame*, and stock footage of hooded night riders torching houses (intercut with shots of immigrant-style families to link them) recoups that investment in a chilling manner redolent of Cossack terror against European Jewry. Yet despite the film's polemics being clear and pointed, its overall narrative is incoherent and scattershot. Elitist editorialising is sprinkled throughout *Nation Aflame*, with references to "gullible citizens," "hypnotised" members and "mob hysteria." The local newspaper editor deplors "mob rule" and cites his First World War experience of fighting in the trenches alongside Doughboys of immigrant stock. These elements, together with the film's strong verbal and visual editorialising, its anti-huckster stance, and non-Hollywood cinematic language combine to create an idiosyncratic portrait from independent producers of how fascism can take hold in a domestic environment, while simultaneously highlighting the criminal banality behind such forces.

Late in *Nation Aflame*, with mindless mob risks growing, a putative alternative – the 'good crowd' – emerges when an assembly of reasonable citizens verbally press the politicians for answers. Lacking influence under the prevailing jungle law, they achieve nothing and do not reappear. Equally characteristic of the film's pessimism, another mob, newly coalescing toward the story's end in response to revelations of Sandino's marital infidelity, prove his undoing and aggressively run him out of town, providing the movie with its narrative closure.

By contrast, in Columbia's *Legion of Terror* the mob violence is motivated not by the persuasive oratory of a demagogue but by a corrupt press, which does not change the nature of the regressive behaviour involved. This is the malleability and susceptibility that occurs when the individual finds their identity becoming subsumed within a mass formation and increasingly having less and less control. In Weimar Germany Siegfried Kracauer observed that, for the members of a group, "deliberately avoiding differentiation necessarily leads to a state of primitiveness."²⁶¹ In these films of irrational mob violence we see Hollywood reaching a similar conclusion.

Warner Bros. and Black Legion

Frank Taylor (Humphrey Bogart) is a man in the middle. His self-worth is apparently largely dependent on the choices he makes as a consumer, but these choices are limited by his workingman's wage. When he is passed over for an expected promotion in favour of co-worker Dombrowski (pronounced prominently as 'dumb-browski' throughout the film), a bland ethnic "time and motion" type who has invented a device for the factory that improves

²⁶¹ Siegfried Kracauer, *The Mass Ornament: Weimar Essays* (Cambridge Massachusetts: Harvard University Press, 1995), 156.

its efficiency, Frank is publicly humiliated and enraged. Dombrowski, with his slide rule engrossing him at lunch breaks while the other men play ball, is the exponent of Taylorism that Frank could never be. Diluted from his initial draft Jewishness to an anodyne, de-racialised cipher in the final film, Dombrowski still remains fundamentally an “other.” Such blandness satisfied Joe Breen’s insistence that any potential xenophobic flashpoint be excised from every Hollywood narrative. Producer Robert Lord first submitted an outline showing the Black Legion headed by a virulent anti-Semite, Dr Penny, whose expansion across America is accompanied by anti-Jewish attacks and boycotts. In his rejection of this approach, Breen cited PCA policy:

not to approve stories which raise and deal with the provocative and inflammatory subjects of racial and religious prejudice. This present treatment contains incidents which are definitely calculated to raise this objection.

Lord parried this objection in his meeting with PCA representatives Geoffrey Shurlock and Islin Auster on the grounds of the story’s truthfulness, to which the Breen men replied it “was primarily a policy matter.”²⁶² As those industry professionals around the table knew, such a distinction elevated the objection beyond finessing the black letter terminology of the ‘law,’ the Code, and placed any dissension at the executive level of policy makers in the MPPDA, and ultimately Hays himself.

Anti-fascist initiatives would push the Code into the sort of controversy that it was designed to avoid but lacked the clauses to prevent. Prurience and violence were proscribed in lavish detail, but abuses of civil liberties revealed the document’s gaps. This was especially true when the fascism was domestic. Such shortcomings reveal how uninterested the Code was when it came to “issues films.” The Code imposed restrictions on the representation of particular events but was largely indifferent to fleeting controversies. These were matters of “industry policy,” which was –by its nature – unwritten, and until 1938 left much to the discretion of Joe Breen, until it became an increasingly prominent absence in the PCA’s capacity, as later sections of this thesis describe. As *Confessions of a Nazi Spy* would show three years hence, demonising Nazism risked invoking the Code’s strictures on representations of foreigners, but when the evildoers were American it floundered. Warners was content to ease off with *Black Legion*. Originally sketching Dombrowski as a Jew with a suitably representative surname, this cultural affiliation was replaced by a Hollywood Esperanto which contrived the synthetic racial assignation “Huniak.”²⁶³ To guarantee this

²⁶² Colgan, *Warner Bros.*, 115-118; Steven Carr, *Hollywood and Anti-Semitism: A Cultural History Up to World War II*(Cambridge: Cambridge University Press, 2001), 157-158

²⁶³ See n. 68 in Maltby, ‘As Close To Real Life As Hollywood Ever Gets’.

obfuscation an actor notably lacking in Semitic features, Henry Brandon, was cast. But like a narrative Turin Shroud, a trace element that reveals *Black Legion*'s original intentions peeks through this erasure. Chided by his co-workers because he "always has his nose in a book," the most racist of them adds (despite Brandon's visual evidence to the contrary)"and a plenty big one at that."

After Dombrowski's promotion, we are returned to the domestic space where *Black Legion* is so firmly anchored. Here Frank, angry and thwarted in his consumption plans for a new car and home appliances for his wife, turns to the lounge room radio console for escapist solace. Station-hopping, he settles on a voice of unusually florid tone and grandiloquent flourish spouting a diatribe demonising "hordes of grasping pushing foreigners stealing jobs from American workmen," riddled with the rhetoric of "real, one hundred per cent Americans" and a climactic call "America for Americans!" Clearly modelled on Father Coughlin, noted for his mellifluous speech cadences, Taylor now sees his problems in a context supplied by this airwaves axe-grinder and is readily recruited into the fascist stream. *Black Legion* is here at its most didactic, explicitly showing xenophobic demagoguery constructing the explanation for Taylor's setback in the workplace, with its devastating implications for his self-esteem.

Frank's ensuing descent into criminality is shown very cinematically. Darkness increasingly surrounds him as he skulks in the newly shadowy spaces of the (now contaminated) family home. Practicing dramatic moves at home with his new gun, Taylor is black-shirted (neatly conflating European fascist imagery with that of the Hollywood Badman gunslinger) and unshaven, exploiting Bogart's naturally saturnine features, a preview of his 1940s hardboiled persona. In his study *Violence in Classical Hollywood*, Stephen Prince describes the "shadowplay" as a recurring stratagem of 1930s American thrillers to portray gunplay that would have been banned by the Production Code if shown directly.²⁶⁴ Following immediately on Frank's initiation into the Black Legion, we see a pistol-wielding shadow – twice life-size – appear on the Taylor home's wall. Mingling anonymity and lethal force, the sense of Frank and/or his family being threatened is inescapable – until we see the shadow's source revealed as Taylor himself. Now armed for the first time, he play-acts gunslinger moves like an impressionable boy (a comparison cemented by his son's immediate appearance, equally entranced by the weapon, deepening the domestic danger). Such a regressive transformation arising from group membership was recognised by Kracauer in 1922, observing that "the group is wed to the eternal idea, while the individuals tumble down into the realm of shadows."²⁶⁵ This key sequence takes the sense of a divided

²⁶⁴ Stephen Prince, *Classical Film Violence: Designing and Regulating Brutality in Hollywood Cinema, 1930-1968* (New Brunswick, New Jersey: Rutgers University Press, 2003), 75.

²⁶⁵ Kracauer, *The Mass Ornament*, 147.

self beyond any doubt through filming Frank not directly, but seen in a full length mirror, to emphasise his duality and its shifting equation towards evil. By positing Frank and his family as emblematic of the Middle Americans watching the drama in the darkened cinema, this demonstration by Warner Bros. of demagoguery's effectiveness at disabling the personal constraints which maintain control and civic order presents the frightening prospect of a destabilised society. In its universality it is a sobering implication that suggests no one is safe, and was directly transferable to Nazism, which for years seemed to have been having the same psychologically disabling effect on a national scale in Germany.²⁶⁶

Everyman Frank Taylor in *Black Legion* is emblematic of how historians have seen modernism's corruption of American rugged individualism from its exemplar, the self-sufficiency of small yeoman farmers. Those autonomous individuals have been supplanted in the 20th century by a new self which "proved easily erodible by the emerging power of consumerism."²⁶⁷ Wanting to be the good provider for his family but subjected to pressures beyond any remedy that is socially sanctioned, Taylor becomes perfect fodder for demagoguery. Such a despairing view of modernism is reinforced by the nature of the Black Legion's central victim. Dombrowski is a paragon not only of Fordist ingenuity at the factory, but of traditional republican-producerism at home. When the night riders turn up to torch his house, the front yard advertises: "farm eggs & poultry" for sale: "fresh eggs, 39 cents; pullets, 32 cents." *Black Legion* is saturated in consumerist anxiety. Taylor's purchase of the gun required by his new affiliation is done at the sacrifice of household niceties, a domestic budget which Frank's wife pointedly remarks turned to Dombrowski family produce with its value for money equation to make ends meet, thus reinforcing the immigrant family's virtue and contribution to the community while simultaneously contrasting Frank's own profligacy. Even in court at his murder trial, consumer purchases of surplus production capacity like a name brand baseball bat (a 'Louisville Slugger') for his son, a vacuum cleaner his wife explicitly denies wanting and a new Ford Phaeton "with aircraft dials" for him to ride around in are proffered to the judge as the explanation for his motivation to murder.

Extending its materialist critique, corrupt big business types are introduced (a last-minute insertion shot post-production by Michael Curtiz, rather than director Archie Mayo) as the Legion's real string-pullers (a device also used in *The President Vanishes* [1934] and *Bullets or Ballots* [1936]). This white collar criminal syndicate views the black-hooded members not as vengeance riders or nativist crusaders but as mere units of profit:

First gangster: "What this country needs is bigger and better patriots..."

²⁶⁶ Alpers, 76; 96; 105.

²⁶⁷ Lears, *No Place of Grace*, 38.

Second gangster: "... at so much a head..."

1st : "We're producing, aren't we? Pure 100% patriotism..."

2nd: "Yes, but of a rather low specific gravity..."

1st: "... but of a higher cash content."

Graham Greene was struck by *Black Legion's* attack on a reductionist modernism where all is commodified and the price for houses being torched, families terrified and lives taken can be found in a Sears catalogue:

The horror is not in the climax where Taylor shoots his friend dead, but... in the secret accounts read to the Managing Director, so much for from the sale of uniforms and regalia, so much from officers' commissions, so much from revolvers at wholesale rates: total profits for the month: \$221,049.15 cents."²⁶⁸

In the *Black Legion* cycle Hollywood pushed the Ku Klux Klan archetype much further into universality than its criminal prototype seemed capable of including, limning a workingman vulnerability that was more widespread than ever during the Depression. Using consumerism as a connecting tissue capable of propelling ordinary citizens into bizarre, marginalised activities, the representation of macabre assemblies like those of the Klan was brought into the political centre, where their mindless idolatry and xenophobic values enabled the broader threat of European fascism to be constructed out of this common cloth. Even though an intended warning against anti-Semitic activities was ostensibly neutered by Joseph Breen's office in *Black Legion*, the final product preserved a critique against demagoguery that endured powerfully. By detailing an ideological basis of how ordinary citizens' susceptibility could subvert traditional American values, all three of this cycle's films made readily available an interpretation that the dangers of fascism were a lot closer to home than an ocean buffer would suggest.

²⁶⁸ Graham Greene, *The Pleasure Dome: The Collected Film Criticism 1935-40* (Oxford: Oxford University Press, 1980), 151.

Chapter 4 –“Administrative adjustments” in the Post-NRA vacuum: 1935-1937

The fallout from the *Schechter* case outlawing the NRA and its Industry Codes of Practice in May 1935 sent this industry back to the drawing board. This revisionism occurred at several levels of the industry. Even before *Schechter*, behind the scenes Will Hays had very quietly commenced a cautious reaching out to the Antitrust Division in the Department of Justice in the hope of gaining a profound restructuring of regulatory arrangements. This anticipated new framework carried the promise of stabilising trade practices through a fresh understanding and a new relationship of trust between Washington and New York that, without explicitly citing a precedent, unmistakably aligned with New Era Hoover concepts of an associative state. Hays was prescient, as the post-NRA environment for trade practices was marked by greater uncertainty and volatility than the industry was accustomed to.

Turning back to local solutions

After the ignominious demise of the experiment that was the NRA, exhibitors at the grass roots level were more vocal than usual in airing distrust of distantly-located national elites, and strongly urged local solutions, especially in the highly contentious arena of intra-industry dispute resolution. An attempt to erect a voluntary model of dispute resolution in late 1935 driven by labour “spokesman” Major George Berry “blew up,” and in January 1936 *Motion Picture Herald* reported that the industry “saw no hope [that] voluntary regulation ... would replace the NRA Code.”²⁶⁹ The MPTOA now turned to the major distributors, requesting that they take the initiative and establish such local conciliation boards in cooperation with exhibitors. Abram Myers viewed this sourly, arguing that the majors’ “distributors will have nothing to do with any boards... unless they can control the personnel of such boards, unaffiliated as well as affiliated.”²⁷⁰

The hard-headed lawyers under Hays recognised that Roosevelt’s longed-for future of Blue Eagle continuity was a pipe dream, at least for Hollywood. A new pathway was needed. But how to replace a comfortable, intra-industry stakeholder management system when the Government’s own scheme – which Hollywood had been largely allowed to author under NRA Code auspices – was, along with every other NRA Code, ruled illegal? Although independent exhibitors had often complained about their experiences under the NRA’s Code of Practice for the Motion Picture Industry, these were not always one-sided. Even fiercely partisan independent exhibitor advocate Pete Harrison reported that due to the “impartial

²⁶⁹ Hawley, *The New Deal*, 149; Raymond Moley, *The Hays Office* (Indianapolis: The Bobbs-Merrill Company, 1945), 204-205.

²⁷⁰ ‘Early Adoption of Local Boards Urged’, *Motion Picture Herald*, 23 January 1937, 62.

functioning of the Grievance boards,” claimants had “obtained prompt relief,” citing the experience in Milwaukee where a first-run was removed from Fox and granted to an independent.²⁷¹ Harrison opined that, notwithstanding the “fact that the majority on [the Code Authority] is predominantly ‘major’... [to say] independent exhibitors will not get a break is erroneous.”²⁷² But how to claw back some of the balance that had been lost, post-NIRA?

The MPPDA officer who managed its Theatre Services Department was David Palfreyman, effectively making him Hays’ primary exhibitors’ wrangler.²⁷³ Reporting to the boss in September 1935, Palfreyman concisely summarised the problematic vacuum recognised by many in the industry publicly and privately:

Since the collapse of NRA and with it the Code organization in this industry for the adjustment of commercial and trade disputes in exhibition and distribution, no program or machinery for hearing, conciliating or adjusting unfair trade practices, grievances, irritations and abuses has been established.²⁷⁴

Appreciating the challenge to smooth industry functioning created by the demise of *NIRA*’s framework, all hands at the Hays Office went on deck. MPPDA General Counsel Charles Pettijohn had traversed a long circuitous journey from once representing independent exhibitors in Cleveland, where he had been “the idol of small theatre owners,” to a long reign as Hays’ top legal advisor.²⁷⁵ Though clearly concerned, Pettijohn saw an upside to the post-*NIRA* universe, in freedom from the dues paying that underwrote the Code apparatus. With promoters who ran cinemas already writing in requesting a new industrial framework, Pettijohn, who had created and overseen the MPPDA’s Film Boards of Trade before they were also invalidated by the Supreme Court, saw an old window reopening. He recommended creating “such an organisation as Film Boards of Trade (changing the name if that is advisable).” Now, “without government support... some set-up in the field between New York and Los Angeles is necessary and vital.” Throughout Pettijohn’s advice, he continued to appreciate that even the most unreasonable demands of exhibitors were usually continuing to be met and amicably resolved by negotiation:

The constant hammering and solicitation of the [film] exchanges for help and “expensive cooperation” of various kinds have, in the past, been intelligently handled

²⁷¹ ‘Those Who Did Not Sign the Code’, *Harrison’s Reports*, 19 May, 1934, 80.

²⁷² ‘Are Your Interests Looked After?’, *Harrison’s Reports*, op.cit.

²⁷³ Moley, *The Hays Office*, 48.

²⁷⁴ David Palfreyman, ‘Trade Relations in the Motion Picture Industry’, September 1935, MPPDA Digital Archive, Flinders University Library Special Collections. <http://mppda.flinders.edu.au> (hereafter MPPDA Archive).

²⁷⁵ Gertrude Jobses, *Motion Picture Empire* (Hamden, Connecticut: Archon Books, 1966), 189.

by Film Boards of Trade without leaving any sore spots behind (emphasis in original).²⁷⁶

Following his advice, he said, would save “grief that cannot be estimated in dollars and cents.” Pettijohn believed that drawing on the firsthand knowledge of communities’ first-run and other leading exhibitors, in cooperation with the studios’ representatives, “could wipe out more ‘phoney complaints’ and ‘imaginary grievances’ than can be promoted by a few small, cheap, political exhibitors and salaried local exhibitor secretaries and business managers.”²⁷⁷

From the NRA to an uncertain future

1936 showed a long awaited return of business momentum, with *The Motion Picture Herald* reporting “rapidly mounting grosses and consequently improved financial statements from large companies.”²⁷⁸ The Department of Commerce backed this up, finding that in 1936 the American public spent more on movies than in any year since 1929.²⁷⁹ Even as the studios were drawing breath domestically, European markets resumed their fascist-led contraction. Nazi constriction of Hollywood’s activity on the Continent revived, following a brief moratorium stage-managed for the Berlin Olympics. Not just in Europe, but also in Asia, increasingly nationalistic walls of industry protection were being erected. With the NRA experiment fading from view, it must have seemed to industry veterans that the ‘natural’ forces of studio dominance over the independent exhibitors were reasserting themselves.

When the New Deal’s functional centrepiece, the National Industrial Recovery Act, was declared illegal on May 27, 1935 by the Supreme Court, the administration’s denial that Roosevelt’s Blue Eagle was now grounded started at the very top with the President himself. In a letter he had read into the *Congressional Record* on August 24, 1935 the President both identified culprits and proposed a way forward. Roosevelt blamed “a tendency toward serious impairment of established standards [of employment] by a minority [of employers]” and foreshadowed “legislation for preserving permanently to the Nation such social and economic advantages as were gained through previous emergency enactments.”²⁸⁰ Though

²⁷⁶ Charles Pettijohn to Hays, 11 June, 1935, MPPDA Archive (emphasis in original).

²⁷⁷ Ibid.

²⁷⁸ ‘Rising Grosses and Admissions Reflect Progress Made in 1936, *Motion Picture Herald*, 2 January, 1937, 77; Increased Warnings Seen As Six Companies File Income Statements’, *Motion Picture Herald*, 17 April, 1937, 33.

²⁷⁹ ‘1936 Best Money Year Since ’29, U. S. Reports on National Income’, *Motion Picture Herald*, 23 October, 1937, 31.

²⁸⁰ Clipping from *The Congressional Record*, 24 August, 1935, in Inter-Office Memo, Schreiber to Hess, 18 September, 1935, MPPDA Archive. (This was particularly so in light of some of the court decisions which had declared some of these practices not illegal – in the case of overbuying, *Fraxam Amusement Corp. v. Skouras Theatre Corp.*)

the Act had been invalidated in 1935, by joint resolution the National Industrial Recovery Administration was extended until April 1, 1936 on two fronts. The first literally ensured that the baby was not thrown out with the bathwater by having the now defunct law's labour protection (child labour rules, minimum wage and maximum hours) temporarily maintained. The second concerned the outlawed regime's antitrust exemptions. As FDR noted, this enabled "unfair competitive practices which offend against existing law... [to be] exempted expressly from the penalties of the antitrust laws, including criminal prosecutions, injunctions and treble damages." The trouble was that such relief depended on applying to the Federal Trade Commission for approval of a new industrial agreement, at least temporarily exposing applicants to admissions of illegal behaviour without Code protection. Now one of trade practices lawyer George Brady's critiques, that the film industry's NRA Code "placed the stamp of legality upon forbidden practice" revealed its truth, as privately echoed by inhouse MPPDA legal advice concerning such applications to the FTC:

It is a very serious problem to undertake to state whether overbuying by an exhibitor, or the purchasing of clearance which some people in the industry might think 'unfair' under the circumstances, are unfair competitive practices which offend against existing law. Quite clearly it would be dangerous for any distributor or any exhibitor to concede that such it was or to ask for the Government's administrative agencies to declare that it is.²⁸¹

Secret plans to minimise Washington's role in Hollywood trade practices

Industrial history, entrenched practices and the best legal advice money could buy indicated that a cogent, realistic way forward was possible and offered a reliable solution. Several months of painstaking work by a very hands-on Hays and one of the government's top legal policymakers ensued. The undertaking was marked by great patience and forbearance by both sides, but it failed to achieve a result. The major studios continually fell back on intransigent self-interest and Hays was revealed to lack the authority to force his charges in Hollywood to transcend this in the best interests of the wider industry. Washington left the exercise both disillusioned and strengthened with a greater resolve to address the industry's problems through the most powerful legal tools at its disposal.

Starting in April 1936 a highly confidential closed doors negotiation between Will Hays and Justice Department officials reporting directly to Thurman Arnold began to build a new arrangement with which to cooperatively manage seemingly intractable trade practice issues. Hays had determined to seize the moment of the post-NRA vacuum as a time ripe for

²⁸¹ 'George S. Ryan, 'Anti-Trust Litigation in the Motion Picture Industry – No. 8', *Harrison's Reports*, 6 June, 1936, 89; Schreiber to Hess, 18 September, 1935, Hays Papers, Reel 16.

greater receptivity to new ideas and pathways that could address the trade practices ills which still beset the industry. Consistent with his longstanding GOP background and status as a senior Cabinet member under President Harding, he drew for inspiration on the associative state philosophy pioneered by his former Cabinet colleague Herbert Hoover when the latter was Commerce Secretary. Although now out of fashion under FDR, those principles were still capable of receiving a favourable hearing at some of the New Deal's highest administrative levels.

Their private-public sector site of covert exploration was an exclusive forum, with participation by invitation only. As such, prominent spokespeople and public advocates on both sides, being oblivious to the back-channel conversations, occasionally promoted views at odds with their masters. Such public flak as arose usually provided a welcome smokescreen, but sometimes also had other uses. In February 1935 an Assistant Attorney-General testified before the independent Darrow Commission established the previous year to investigate the operations of the New Deal's National Recovery Administration (NRA), saying that the Department of Justice received more complaints against the motion picture industry than any other.²⁸² Will Hays could claim to be offended by this assertion, and within a fortnight was seeing Attorney-General Cummings to take up the issue. By then a much larger shadow was looming over Hays' corporate patrons and possibly even his own prominent role shepherding them through opportunities and crises. Throughout the pre-*Paramount* period an extended series of legal actions known collectively as the *St Louis* case was dominating the conversations concerning Hollywood's trade practices. Its changing climate created the weather conditions behind several of the key industrial decisions in this period.

The St Louis case

During the economic downturn of the Depression, Warner Bros. foreclosed its longstanding operation of three modern, first run theatres in St Louis. Then in 1934, with conditions much improved and its interest rekindled, it lost a competitive bidding process to regain the leases on those houses to independent exhibitor Fanchon and Marco (F&M).²⁸³ In retaliation, Warners not only denied F&M its own product (which included First National releases), but went to the extra length of leasing the entire production slates of Paramount and RKO for its remaining theatres, leaving F&M to scramble for a grab bag of decidedly mixed quality titles

²⁸² Donald R. Brand, *Corporatism and the Rule of Law: A Study of the National Recovery Administration* (Ithaca: Cornell University Press, 1988), 159; 'Copy of notes used by WHH in presentation of 28 February, 1935, to the Attorney General', Hays Papers, Reel 14,.

²⁸³ 'A U.S. Government Representative's Views on Theatre Ownership by Producers', *Harrison's Reports*, 25 July, 1936, 120; Conant, *Antitrust*, 86.

from a severely constricted menu of producers to fill these three screens. This commonly protested practice of product starvation was also known as a “freeze out,” and was intended to squeeze the competitor out of the desired venues. From its former three-house splendour, Warners funnelled their new product glut into two obsolete and “uncomfortable” old unconverted stage theatres, but maintained their St Louis ticket prices at levels commensurate with modern cinemas elsewhere, thus disadvantaging consumers. Determined not to give in, F&M’s lawyers approached the Department of Justice in 1934 to seek equitable relief, requesting an order for fair play through a judicial decree obliging the lease of films from Warner Bros.²⁸⁴ On hearing the particulars, the department went further, determining that the circumstances warranted prosecution for criminal conspiracy under the Sherman Antitrust Act, distinctly upping the stakes. Harsh criminal penalties now came into play, including treble damages and possible incarceration, with the expanded conflict requiring a jury verdict of “peers,” rather than the technical expertise of a judge. Such a high profile, potentially costly prosecution would not have escaped the awareness of the Justice Department’s boss, Attorney-General Homer Cummings, when it was being developed in 1934, well before the Darrow Committee accusations that Hays claimed as the justification for his February 1935 meeting with Cummings.

When the indictments were laid in January 1935, the *St Louis* case’s notoriety spilled over the banks of mere industrial interest and was seen in the media as a national political issue. Newspaper and *TIME* magazine stories of the period were ramping up an already steady stream of rumours that Hays would be removed from his MPPDA post in favour of FDR confidante Jim Farley. The two men’s parallels were so many that Farley could readily be viewed as the Democrats’ reincarnation for FDR of Hays’ role in the Harding GOP administration: a fixer. As Postmaster-General and chair of their party’s National Committee, a pivotal electoral post, both men held key positions for dispensing patronage, making them each their Chief Executive’s prime “right hand man.” On January 18, 1935 New York’s *Daily Mirror* suggested “there is a lot more behind the St. Louis Federal Grand Jury indictment of a group of big shot movie moguls than appears on the surface,” and the following day’s *Kansas City Times* described a “feeling in political circles that the indictments against three film companies... may be the first drop of grease applied to the skids of the deacon,” as they labelled Hays. Noting that Farley was a devout Catholic and personally close to the Legion

²⁸⁴ ‘Allied States Comment on the St. Louis Trial, *Harrison’s Reports*’, 7 December, 1935, 193; 196.

of Decency's top counsel Alfred E. Smith, the Midwest paper speculated that Farley "would rule Hollywood with the combined powers of church and state behind him."²⁸⁵

According to the lawyer who prosecuted the case for the U.S. government, U.S. Special Assistant Attorney-General Russell Hardy, everybody was losing out through Warners' product starvation tactics in St Louis: all the major studio distributors were losing money, all the theatres were doing likewise and St. Louis audiences had to take it or leave it, suffering lower standards of choice and amenity than other comparable U.S. markets.²⁸⁶ This perspective of consumer victimisation was of particular interest to New Dealers, and would be more fully realised in Thurman Arnold's strategy prosecuting the *Paramount* suit in 1938.

Going into his February 1935 meeting with the Attorney-General, the movies' "guide," as Hays liked to be called, claimed to be genuinely puzzled about the recent testimony of the Justice Department to the Darrow Committee placing the movie industry at the top of the complaints ladder, and felt he could only speculate as to the nature and provenance of these grievances. It was no secret that Abram Myers had long encouraged independent exhibitors to complain formally to the Department of Justice. Hays' briefing notes for the Washington meeting reveal that he considered the material he would discuss with Cummings was "(p)robably from the so-called 'Independents' and against" the major studio distributors and/or their local theatrical competitors. "These complaints do not point to a clear violation or they would be acted on by the Department." Hays tested his thesis by running through a mental checklist, satisfying himself that there could be no complaints over price fixing, allocation of territories or restricted film access. It could not be block booking either as the practice had been "held legal" in the final appeal against the FTC in the *Famous Players-Lasky* case.²⁸⁷ "Therefore [they] must be against practices peculiar to M.P. [Motion Pictures]," Hays concluded before his Cummings meeting, rationalising in a "law of the jungle" analogy that, while size matters, it was hardly illegal.²⁸⁸ However sincerely Hays desired to be a good corporate citizen, his stocktake suggests a narrow reading of the broader political landscape, mid-Depression, an obliviousness which risked him being dangerously outmoded. While the *Famous Players* decision stood in law, the court of public opinion had moved on and

²⁸⁵ Drew Pearson and Robert S. Allen, 'Daily Washington Merry-Go-Round', *Daily Mirror* (New York), 18 January, 1935, 10; 'What's What in the Movies', *Kansas City Times* (Missouri), 19 January, 1935: Hays Papers, Reel 14.

²⁸⁶ 'Government Representative's Views', *Harrison's Reports*, 25 July, 1936, 120

²⁸⁷ The essence of that judgment had been that with only one studio as defendant it was impossible to prove monopolistic concert of action. Since that landmark case, further legal judgments in the 1930s had failed to provide a consistent body of case law that would have enabled managed responses and internal policy reform by the MPPDA, simply because there was no clear pattern, with some judgments favouring independents and others finding for the organised industry.

²⁸⁸ 'Notes used by WHH', *Hays Papers*.

exhibitor activists were now agitating in a changed, post-Crash environment in which Big Business was seen as far less trustworthy than had been the case in the Roaring Twenties. As a highly visible example of corporate America's continuing influence and survival while many other areas of the country were convulsed by the economic downturn, Hollywood's public messaging regarding its dealings with the marginalised small players in the economy could now benefit from more signs of sensitivity and responsiveness towards those who depended on its policies and practices.

Lawyers, secrecy and paranoia

In his Cummings meeting Hays wanted to appear as transparent as possible. He proposed to the Attorney-General that the Justice Department conduct an analysis of all the exhibitor complaints they received, availing itself of the full cooperation of the plenary MPPDA membership and its offices in order that he and his executive could "come to an understanding with the department as to all bona fide complaints or practices questioned by the department" and to extend for further scrutiny "any questioned practice" that remained outstanding.²⁸⁹ It was a confident, thorough, "cards on the table" proposition. However clear Hays found his own conscience, he appreciated that "the companies cannot long continue to act under threat and at their alleged peril or to labour long under the disaffection of public officials."²⁹⁰ This sense of urgency was not overtly reflected by the government, which waited fourteen months before formally accepting Hays' offer of cooperation in April 1936. Their spur then was the first *St Louis* verdict handed down in February that year: acquittal by jury after a lengthy trial marked by the losing side's accusations of "showboating" by Hollywood, "riding" the court and swaying the jury with irrelevant theatrics.²⁹¹ Regardless of Hollywood's victory in that engagement, an investigative process was now underway, and the resultant chain of events would inexorably move ever closer to the filing of the first *Paramount* complaint in July 1938. Even as Hays made his pitch to Cummings in early 1935, the Department of Justice was conducting related research in Texas, leading to litigation that would have ramifications as far-reaching as the *St Louis* case.²⁹²

Karl Hoblitzelle had done for the Lone Star State what other great theatrical entrepreneurs like Barney Balaban and William Fox achieved in more media-rich centres like Chicago and New York. From 1905 his various corporate activities under the Interstate banner transformed local entertainment options across Texas from cheap, sleazy vaudeville to family-friendly picture palaces that, through various interrelationships with national

²⁸⁹ 'Notes used by WHH,' *Hays Papers*.

²⁹⁰ *Ibid*.

²⁹¹ 'Allied States Comment on the St. Louis Trial', *Harrison's Reports*, 7 December, 1935, 193; 196.

²⁹² Hess wire to Hays, 24 June 1936, *Hays Papers*, Reel 16.

distributors RKO and Paramount, thoroughly dominated the region's exhibition market through the 1930s.²⁹³ In the mid-thirties Hoblitzelle leveraged this dominance to obtain contracts from every major Hollywood distributor, forcing them to agree to terms he laid down stipulating that smaller, subsequent run competitors maintain minimum 25 cent ticket prices (in an era when ten cent admissions were common for smaller theatres) and "refrain" from programming double bills, still the lifeblood of many smaller houses.²⁹⁴ During 1935 these contracts would be "unsuccessfully attacked" in the Texas State Supreme Court at Dallas, but given that they disadvantaged consumers (and newspaper readers), the controversy would not cease attracting attention.²⁹⁵ The Department of Justice's information-gathering on Hoblitzelle would lead to its "economic study" of Hollywood, the "General Motion Picture Investigation" officially launched in May 1936, followed by a major FBI investigation in 1937, and become the bedrock fact-finding for the *Paramount* litigation.²⁹⁶



*Texas Interstate's Majestic Theatre, Dallas, 1910*²⁹⁷

In April 1936, well over a year after Hays made his "cards up" proposition to Cummings, Antitrust Division head John Dickinson wrote to advise Hays that Justice was formally

²⁹³ <http://www.hrc.utexas.edu/collections/film/holdings/interstate/> ; accessed 29 July, 2018.

²⁹⁴ Butz, David A. and Kleit, Andrew N., 'Are Vertical Restraints Pro-or Anti-competitive? Lessons from Interstate Circuit', *Journal of Law & Economics*, Vol. 44, No. 1, April 2001, 132; "refrain": Hess wire to Hays, 23 June, 1936, Hays Papers, Reel 16; Conant, *Antitrust in the Motion Picture Industry*, 87-88.

²⁹⁵ 'Distributors Deny Anti-Trust Charge; New Momand Suit', *Motion Picture Herald*, 13 February, 1937, 44.

²⁹⁶ Muscio, *Hollywood's New Deal*, 147-149.

²⁹⁷ <http://www.hrc.utexas.edu/collections/film/holdings/interstate/> ; accessed 18 August, 2018.

accepting the MPPDA's offer of shared complaint scrutiny.²⁹⁸ Hays had previously obtained his knowledge of actual situations in the field through the Film Boards of Trade, but their abolition meant that this information was no longer so readily available to him as it had been when he made his proposal to Cummings. Without a "mole" inside the department, the MPPDA had no way of knowing the true nature of independents' grievances, which meant that the new communication-sharing arrangement was a tactical coup for Hays. Senior MPPDA legal counsel Gabriel Hess was tasked to advise Hays on what the Justice records revealed. Hess reported back to his boss that, from the Antitrust Division complaint files forwarded to the MPPDA, there was a definite pattern. In the first tranche of ten complaints, *all* "charge inability to get rights to exhibit motion picture films distributed by the so-called 'major' distributors."²⁹⁹

For Hays, the key objective was to obtain this access to information which provided early warning of issues and complaints, enabling the industry, through the MPPDA, to have exclusive first look and blanket ownership of all antitrust and other related investigations of Hollywood. Inevitably there were misunderstandings, suspicions and fraught moments throughout the Justice-MPPDA negotiations. Hays often seemed particularly on edge. After an Assistant Attorney-General named Joseph Keenan was quoted in *Daily Variety* as being "closeted... with federal judges 'for the purpose of investigating the motion picture industry'" in Los Angeles, Hays exploded, detailing Hess to "see just what the dope is. Are they or are they not capable of keeping their word?"³⁰⁰ Hays also did not want the MPPDA appearing complacent in the eyes of Washington and took umbrage when, in privileged correspondence, Dickinson erroneously ascribed to the Hays Office a substantial awareness of the intractable problems being complained about to the department, when in fact the MPPDA had never seen the files.³⁰¹ Pride was not going underground with these ostensibly friendly negotiations.

However uneasily, Hollywood's political arm in New York and the Department of Justice were nevertheless now directly cooperating more closely than ever before. As a proven and successful innovator in Hollywood, Hays' instinct for partnership and for the co-opting of potential enemies was a distinctive feature of his career. This skill was exemplified by the way he gained the trust of the anti-smut campaigners of the Parents and Teachers Association (PTA) for the MPPDA's 1922 anti-censorship victory in Massachusetts.³⁰² Even when the PTA later turned against Hays, they found their reversal blunted by his cultivation

²⁹⁸ 'In Review', 29 September, 1936, Hays Papers, Reel 16.

²⁹⁹ Hess wire to Hays, 24 June, 1936, Hays Papers, Reel 16.

³⁰⁰ Hays Night Letter to Hess, 11 Sept, 1936, Hays Papers, Reel 16.

³⁰¹ Hays to Dickinson, 30 May, 1936, Hays Papers, Reel 16.

³⁰² Wheeler, *Against Obscenity*, 67-72.

of support from other women's representatives through his funding of their Better Films groups. In the mid-thirties this uncanny ability to bring advocates "inside the tent" was again being demonstrated with Hays' Films in Education initiative, normalising and legitimising Hollywood representations of historical events as pedagogical tools. Now, through Hays' canny skill and patience, the most prized partnership possibility of all – Washington's trade practices regulator – seemed within Hollywood's grasp. Rather than fearing unsympathetic Federal intervention, the possibility of responding to small-town exhibitors from a platform arm-in-arm with Washington carried the promise of neutralising a running sore of many years' duration. Yet when another marketplace perspective– that of the movie consumer – came under threat from inadequate regulatory responses here, the ambit for the negotiation widened, and the stakes rose considerably.

The two sides grew closer throughout their negotiations, and a posture akin to a form of *noblesse oblige* started to arise within the Hays Office. Hess was the first to articulate this in pragmatic terms, suggesting their new arrangement involved "something more than merely furnishing [information; rather] we would use the good offices of the Association to bring about a condition which would be satisfactory to the Department" for each complaint.³⁰³ This was the first appearance of what would come to be known as "administrative adjustments," a process of pragmatic one-off scrutiny of complaints by the MPPDA in order to resolve outstanding concerns that had been lodged with the Antitrust Division. This in fact was the process the MPPDA had always sought to make conventional practice in the industry since the twenties. Hays agreed with Hess, and formally advised Justice that the MPPDA would shoulder this burden, a stance not merely consistent with the sweeping tone of the undertakings he had made to the Attorney-General in February 1935, but extending his original proposal a significant step further.³⁰⁴

Secrecy, closely monitored by Hays, was a given throughout the initiative. The caution was successful, as so little leaked out, and so late, that no one ever put the pieces together. Months after the negotiations' summer 1936 zenith, *Harrison's Reports* stated (erroneously, since the plan originated in the Hays Office, not Washington) that:

(A) suggestion has been made to the Hays forces from [Washington] ... to resort to "Administrative Adjustments"... by which exhibitor complaints are referred to the Hays association for adjustment, contrary to all precedents.³⁰⁵

³⁰³ Hess to Hays, 21 May, 1936, Hays Papers, Reel 16.

³⁰⁴ Hays to Dickinson, 30 May, 1936, Hays Papers, Reel 16.

³⁰⁵ 'The Producer Concessions to the Independent Exhibitors', *Harrison's Reports*, 26 December, 1936, 205; 208.

Moreover, the MPPDA's arch-enemy Allied evinced a complete misunderstanding of the arrangement. In February 1937 their submission to the House Judiciary Committee attacking Hollywood industrial practices contained the familiar arguments opposing block booking, and other practices. However, Myers' familiar rhetoric took the unusually rash step of criticising by name Assistant Attorney-General Paul Williams – who “appears to be deaf to the appeals of the complaining exhibitors” – and praising Williams' predecessor Russell Hardy for his vigorous prosecution of the *St Louis* case. Myers went on to unwittingly highlight Allied's own paranoia as he belittled Williams, stating that on his watch:

There are indications that the complaints of independent exhibitors are forwarded to the legal representatives of the Big Eight for comment. Such a practice, if followed, would be not only futile but dangerous in that it would inevitably lead to recrimination and retaliation.³⁰⁶

Assistant Attorney-General Paul Williams had come to the department's motion picture undertaking in the spring of 1936 from a career spanning the practice of law in Salt Lake City and New York following active wartime Army duty on the Mexican border and in the Great War.³⁰⁷ He would stay to run the ensuing *Paramount* prosecution alongside his boss, Thurman Arnold. Initially his dealings with the industry's leaders were cordial. Paramount Vice President and General Counsel Austin Keough's first impression of Williams emphasised his “fairness and intellectual honesty” following an initial meeting that was “most pleasant and will undoubtedly result in the cooperation you assured would be given.”³⁰⁸

Williams also liked the idea of administrative adjustments and seemed to be singing from Pettijohn's, and indeed Herbert Hoover's, hymn sheet, convincing Hess that he (Williams):

thought that the complaints were matters which essentially could not be dealt with by the judicial method of actions in the law courts, and that he was committed to the idea that they should be dealt with in a kind of “quasi-administrative procedure” where they could “yield to adjustment.”³⁰⁹

In the same breath that this trust was forming, however, a familiar monkey wrench reappeared. The Hays lawyers were hearing concerns from Texas that threatened to unwind the entire developing friendly arrangement with Justice. Hess reported that Dwight

³⁰⁶ ‘Petition for Relief from Contracts, Combinations, Conspiracies and Monopolies in the Motion Picture Industry,’ Allied States Association of Motion Picture Exhibitors, submission to the House Of Representatives Committee on the Judiciary, 10 February, 1937, 21: MPPDA Archive.

³⁰⁷ ‘The Federal Prosecuting Staff’, *Motion Picture Herald*, 30 July, 1938, 17; ‘In Review,’ Hays Papers, Reel 21.

³⁰⁸ Hess wire to Hays, 23 June, 1936; Hess wire to Hays 25 June, 1936, Hays Papers, Reel 16.

³⁰⁹ Hess to Hays, 25 August, 1936, Hays Papers, Reel 16.

Savage of the department's Dallas office "has requested information and facts for purpose of testing legality of Hoblitzelle's contracts."³¹⁰ At this juncture Texas Interstate had prevailed in the State Supreme Court at Dallas the year before and publicly remained an upstanding corporate citizen. Nevertheless the 25 cent, single bill-only contract "controversy" continued unabated and would eventually provide ammunition for prominent Texas politicians Martin Dies and Sam Hobbs to launch their own proposals for national investigations of the movie industry in 1937.³¹¹ Sensitivity over Hoblitzelle was acute since the contracts were made with every studio, and the entire MPPDA membership was exposed. It was evident that not every corner in the Justice Department had been apprised of the quiet cooperation now growing between Cummings' and Hays' minions. Paul Williams denied to Hess any knowledge of Savage's request, but immediately recognised the implications of this flare-up, and undertook to confer with his superiors as to the "matter of policy involved."³¹² The Hays office view was that "in all matters of this character there would first be made attempt to solve problem involved, failing which to then agree upon proper course to be taken."³¹³ The near impossibility of keeping all high level motion picture industry disputes corralled within a clandestine understanding outside the checks and balances of public administration had now been made starkly apparent.

Response was swift, and the following day Williams personally advised Hess of Washington's view that "it was not policy of department to submit any complaint prior to filing." Action against Texas Interstate had been recommended before Williams' arrival in this area, but that was not the point, as Williams "believed [Hays] understood [what is] to be the policy after your conferences in Washington."³¹⁴ The reach of the MPPDA's ambitions in the embryonic partnership were now unambiguously laid out by Hess, who told Williams "that action concerning Hoblitzelle at this time was likely to disrupt arrangements we were in the midst of perfecting."³¹⁵ But the policy issue here was a fundamental tenet of prosecutorial autonomy and in a modern democracy a watertight poacher-gamekeeper partnership like that being brewed behind the scenes here was a bridge too far; such an arrangement had already been attempted by NIRA and had just been ruled illegal. Behind their bluff, cracks were now starting to appear in the Hays team's confidence, Hess advising his chief that "I fear [Williams] is without influence or authority," now that the stakes were rising, and policy positions were being checked back and forth with Washington.³¹⁶ Thus

³¹⁰ Hess wire to Hays 23 June, 1936, Hays Papers, Reel 16.

³¹¹ Pettijohn to Hays, 27 May, 1937, Hays Papers, Reel 18.

³¹² Hess wire to Hays, 23 June, 1936, Hays Papers, Reel 16.

³¹³ Ibid.

³¹⁴ Hess wire to Hays, 24 June, 1936, Hays Papers, Reel 16.

³¹⁵ Ibid.

³¹⁶ Ibid.

when Williams wrote to Hays directly two weeks later, unilaterally guaranteeing that no related actions by the companies would “be in violation of any of the Anti-Trust laws or [act] to furnish evidence of any such violation,” note was taken (“assurances which must not be overstated, but may be relied upon”) at the MPPDA, but little of the resurgent tension eased.³¹⁷

Once the steam from rising tempers had cleared and the Hoblitzelle situation had been better understood, Cummings and Dickinson bent over very far to accommodate the conditions sought by Hays, as Hess reported from a landmark meeting:

Department’s understanding was stated very satisfactorily and assurance given that no action anywhere adverse to our interests would be taken without affording opportunity for hearing of our side and full discussion... while department cannot as a matter of policy unqualifiedly agree not to investigate except after disclosure of complaint to [MPPDA], it is understood by all department will generally adopt such procedure and only revert to former practice dependent on results of our present understanding... think our arrangement delicate... department’s representative in Texas was not authorised to file suit nor to state that suit would be filed but only to go there for certain supplemental information... we have specific assurance that... if study of situation discloses any grounds for action we will be advised and conferred with and that [Interstate counsel] George Wright would be given an opportunity to present Hoblitzelle [side]... consider interview which lasted one and a half hours entirely encouraging and evidencing new attitude.³¹⁸

Justice was giving a lot, but the price tag was clear: results. Two months then elapsed, at which point Hess convened a summit of the industry’s top legal minds for a meeting in Boston where all eight studios were represented by their senior counsel. Completely counter to Hess’ intention, this summit in Boston turned out to be the death knell for the Hollywood-Washington cooperative plan. Throughout its history, spanning arbitration, the NRA and then these administrative adjustments, the MPPDA had been pursuing a consistent line in developing mechanisms for industry self-regulation, run by themselves or their agencies as a mediator between their producer-distributor membership and the independent exhibitors. Although consistent with Hoover’s associative state policy, this approach nevertheless kept encountering obstacles externally in anti-trust rulings, but also internally with the repeated intransigence of their member companies to compromise their

³¹⁷ Williams to Hays, 7 July, 1936, Hays Papers, Reel 16.

³¹⁸ Hess wire to Hays, 30 June, 1936, Hays Papers, Reel 16, (emphasis added).

immediate economic self-interest in the interest of better and more peaceable governance. In Boston that tendency towards internal, studio level, intransigence, was seen clearly.

In their meeting, the studio lawyers argued that the key danger in the Hays-Cummings deal was that the government might use the information the companies provided against them. It quickly became clear that none of the company lawyers had ever “wholeheartedly” supported the MPPDA’s proposed role as a clearing house to pass on the complaints transmitted by Justice. Several questionable arguments were raised, all of which Hess advised Hays were “entirely without legal merit.” Hess’s naïveté was indicated by his proposal that the MPPDA could “insulate” the studios from the government by mixing the data they submitted in such a way as to blur any attribution of wrongdoing back to any particular company. More realistically, Hess wanted the Hays Office to perform a traffic cop role, verifying data back to Washington because information provided from the field in his experience is “not in all cases complete or trustworthy.” Taking events full circle back to early 1935, the motion picture companies wanted to go in reverse and cut the Hays Office out of the loop, and individually receive the complaints originally accepted by the Antitrust Division. Apart from rightly seeing this as reducing pressure for administrative adjustments to be made, Hess limned the big picture better than anyone else by pointing out the *quid pro quo*: if Justice saw no value-adding function in the MPPDA, it would likely not feel bound to the concessions so painstakingly extracted from Cummings to interpolate the Hays Office between complaints and ensuing litigation. Turning back to a mode of unilateral dispute-resolution for complaints not satisfactorily reconciled in the first place was not only illogical but threatened the “fruition of the understanding begun with the Attorney-General.” Overall, Hess saw that the studios were averse to “uncharted waters,” and that ultimately none of them wanted administrative adjustments imposed on their own affiliated theatres.³¹⁹ This, together with a refusal to cede to the MPPDA the authority either to negotiate adjustments or determine the outcome of disputes, constituted the companies’ bottom line.

Proof of the incalculable gain that the companies were jeopardising came within days, as Williams confirmed the government’s readiness to discuss its research on Hoblitzelle in a conference with industry parties, rather than by raising indictments against them.³²⁰ A terse and evidently tired Williams was every bit as dismayed as Hess with the Boston deliberations. He suggested pulling the plug on the entire arrangement, but Hess (and subsequently Hays) strenuously resisted this move. However much Williams’ optimism was waning, to Hess he nevertheless:

³¹⁹ Hess to Hays, 28 August 28, 1936, Hays Papers, Reel 16.

³²⁰ Hess to Hays, 3 September, 1936, Hays Papers, Reel 16.

again expressed the hope that the companies would not stand on their legal rights; that they would not find reasons for not supplying pictures, but would seek means to supply pictures to complainants thereby cleaning up a lot of the small complaints which could not be treated in any other manner.³²¹

As autumn 1936 began cooling the air, a growing silence settled in over the administrative adjustments scheme, each side having retreated quietly to its corner. By now the biggest game in town – the Presidential election – was focussing the attention of MPPDA strategists. Leveraging this, Palfreyman once again attempted a level-headed, sensible plan of action. Arguing that after the 1936 poll newly elected members of Congress would be susceptible to fresh anti-Hollywood lobbying, he and Hess suggested an approach essentially previewing what would become the MPTOA Ten Point Program of 1937 (detailed in Chapter 6 of this thesis), stressing dispute resolution, with one particular caveat:

Exhibitors generally should be disabused of the notion that this plan has anything to do with the former Arbitration Boards or the Film Boards. It should be made very clear that this is conciliation, not arbitration.³²²

Paul Williams' thinking had moved on in this period too. The first real fruit of the Hays-Cummings "understanding" was the recourse to a negotiated, non-court resolution for Hoblitzelle through a cooperative conference, as Williams had reported to Hess in early September. But when this forum failed to produce the hoped for circuit-breaker, charges were filed against Texas Interstate and all of the "Big Eight" studio-distributor members of the MPPDA by the Federal Government in December 1936. Once in court, the *Texas Interstate* case would generate press copy throughout 1937-38, emphasising the detriment to low-income viewers of withholding the best entertainment from the most needy, and intensely fuelling the public interest debate around consumers' right to affordable entertainment. From support for privately administered non-judicial intervention by a centralised authority satisfactory to the government (the MPPDA) during the summer, Williams had grown disillusioned and was increasingly thinking in structural terms, officially advising the FBI in January 1937 that:

the question of theatre control by the major producers presents one of the most disturbing problems now confronting the administration of the antitrust laws [for] the motion picture industry.³²³

³²¹ Ibid.

³²² Palfreyman to Hays, 7 October, 1936, Hays Papers, Reel 16.

³²³ Muscio, *Hollywood's New Deal*, 151.

It was always going to be an uphill battle to develop a reliable new system in a context where the disputants had such a longstanding history of mutual antipathy and distrust. Williams saw this demonstrated in practice by the failure of the Hoblitzelle cooperative conference in Texas, and reinforced when it was personified in the lawyers' summit in Boston. That very conflict – the studios' interest in distribution and the practice of competitive exhibition by producers – lay at the heart of an untenable situation engendering ceaseless complaint by independent movie houses.

Williams was now undergoing his own “conversion narrative.” In hindsight it is apparent that a signal moment in his transformation had its seeds in his brief summer vacation. Noticeably tired and frustrated, he told Hess his holiday reading in New Hampshire would include the MPPDA's block booking pamphlet and transcripts of the Neely-Pettengill hearings conducted throughout the year, augmented by study of the *Famous Players-Lasky* decision delivered by Abram Myers as Federal Trade Commissioner in 1927.³²⁴ Little of this augured well for Hollywood. Throughout 1936, press coverage of the hearings on the Neely-Pettengill block booking bill(s) featured a steady stream of complaints against the motion picture industry by grass roots community groups detailing real or imagined grievances. By 1938, Williams would be working hand in glove with Abram Myers against Hollywood. Allied had been placed in the privileged position of providing evidence and witnesses for the *Paramount* complaint, which in July that year indicted many of the key industry players, such as Austin Keough, whom Williams had worked alongside in 1936.³²⁵

For legal analysts in Washington like Williams and Thurman Arnold, the *St. Louis* case had served to bring into sharp relief the “public interest” test then growing in importance in antitrust enforcement. The trustbusters' thinking was beginning to shift from the necessity of proving conspiratorial activity, notoriously difficult in practice (especially as no one wrote anything sensitive down), and moving to focus on the *impacts* of commercial/industrial arrangements on the market and ultimately consumers. This was a natural by-product of New Deal thinking, as *St. Louis* prosecutor Hardy told a receptive audience at Allied's 1936 national convention, when he said that antitrust's role was:

to promote diffusion of wealth and opportunity among the population... by protecting the right of the individual, the small and lesser enterprise, to pursue a trade or

³²⁴ Hess to Hays, 3 September, 1936, Hays Papers, Reel 16.

³²⁵ Muscio, *Hollywood's New Deal*, 155.

business free from interference or exclusion by others... [or their] hindrances, burdens or limitations.³²⁶

At the MPPDA Hays had consistently attempted to steer a middle, accommodating course through compromise and negotiation to arrive at workable solutions that benefited both the individual parties and the industry as a whole, without adding greater legal complexity. When significant impairment to consumers' experiences, as was being demonstrated throughout the *St Louis* case, increasingly came to be recognised as a profound by-product of practices enabled by the companies' interlocking stricture, it strengthened the public interest issue as a driver for structural reform by those like Myers who favoured regulatory solutions. Using this perspective, the ranks of the victimised swelled from marginalised small business operators to picturegoers virtually everywhere. This development would turn out to be ominous for the studios, since public interest "was in fact the legal basis on which to request divestiture in an antitrust case."³²⁷

Such was not isolated thinking but part of a growing tide. Myers' pragmatism had seen him commence his new career at Allied by initially aligning himself with the moral reformers who identified family-friendly entertainments as a primary victim of oligopoly, in order to protect the theatre owners whom he argued were obliged to screen smut and violence. He may even have believed this. Increasingly, however, he was now able to move away from a moral argument that did not hold up to one in which the public was an economic victim. His task was made easier when the majors continued with the practices he had been lacerating them over for years, much to Hays' frustration.

³²⁶ A U.S. Government Representative's Views on Theatre Ownership by Producers (continued), *Harrison's Reports*, 1 August, 1936, 121; 124.

³²⁷ Muscio, *Hollywood's New Deal*, 156.

Chapter 5 – Discretely liberalising the screen as Franco takes Spain: 1937-1938

In the summer of 1938 two of the fresh controversies besetting Hollywood were perceived within the MPPDA executive in New York as being, to an extent, interlinked and mutually reinforcing. Individually the problems were serious enough. Catholic representatives and the Church's national media were engaged in widespread condemnation of the industry's practices that allowed an unmistakably anti-Franco feature film, *Blockade*, to hit prestige screens nationwide, while in New York's Federal Court the Department of Justice's long anticipated antitrust action, the *Paramount* lawsuit, had been filed and portended an end to the vertically integrated structure the industry recognised as the foundation of its economic success. The perception at the highest levels of the Hays Office that the industry's handling of such a challenging screen subject as fascism risked damaging its defences in the legal action prompted internal steps that would alter the course of its content management procedures throughout the remaining peacetime years. Even while the Spanish Civil War was still being fought, several major studio productions situated dramatic narratives in the context of Spain's fascist-initiated military action. Through their widely differing domestic reception, these movies now contribute to the evidence base enabling further analysis of contemporaneous American attitudes towards the European situation. Linking such diversity of reaction to detailed descriptions of these movies' cinematic operations produces more data to evaluate the impacts of on-screen actions which variously ignored, leveraged and promoted anti-fascist views in pre-war America.

The Spanish Civil War: Hollywood's first fascist-derived film cycle

The summer of 1938 saw the release of Hollywood's most prominent treatment of the Spanish Civil War (spanning July 1936 to April 1939), the Walter Wanger production *Blockade*. Hollywood was not slow to recognise opportunities in the Iberian conflict that could be moulded to its advantage, and *Blockade* was the last entry in Hollywood's small cycle of Spanish Civil War feature films, which also comprised *The Last Train from Madrid* and *Love Under Fire*, both released in the summer of 1937. Studio promotion saw the Spanish Civil War as a freshly minted exotic backdrop for the type of bourgeois dramatising they could safely exploit, provided that sufficient care was taken to avoid politicising. One Paramount advertisement declared *Last Train from Madrid* to be "The *Shanghai Express* of the Spanish Revolution":

A thrill-a-minute fast-paced sock adventure story that'll knock the spots off any heat wave and pack 'em in during those lazy June days. One of the big pictures of the year, released right when you need it most. A cast that rates as all-star.³²⁸

This rebounded critically in the Communist newspaper *The Daily Worker*, which similarly observed that the conflict provided an “insignificant backdrop” for a routine Hollywood love story which “no one will take seriously.”³²⁹ Contemporary trade press reviews approached the set-up credulously and without the cynicism modern observers have brought to these 1937 romances, and evaluated them solely on their dramatic properties as entertainment.

The first of the studio fictions, *Last Train from Madrid*, was released on June 18 1937, eleven months after the conflict began. The film is pervaded with an anti-authoritarian viewpoint exemplified by its deployment of uniformed figures extending police state behaviour into summary executions which attract no consequences. While its characters' associations are very muddled, there *are* pointers to their political affiliations. Although explicitly, via the device of a prologue, favouring neither “faction” in the conflict, the initial dialogue of Anthony Quinn and Lionel Atwill positions them as Loyalists. This is strengthened in a later scene of female soldiers being bombed. Women fighters were a feature of the Loyalist forces, enabling gender to offer a distinction here from Franco, whose army was drawn from enlisted men. Gender had further implications for differences in the warring sides' representation. This movie uses Soviet newsreel images of women civilians fleeing bombs, interspersed diegetically with studio footage of the American reporter to suggest that he too is under threat. This managed to offend Graham Greene, writing film criticism for the British magazine *Night and Day*, when “the facetiousness of the screen journalist in a screen air raid mingled with news-shots of the genuine terror” drove him to conclude that *Last Train from Madrid* was “the worst film of the decade and should have been the funniest.”³³⁰

³²⁸ Paramount Advertisement, *Motion Picture Herald*, 15 May, 1937, 29.

³²⁹ Russell Campbell, *Cinema Strikes Back: Radical Filmmaking in the United States 1930-1942* (Ann Arbor: UMI Press, 1982), 354, n.24.

³³⁰ Greene, *The Pleasure Dome*, 154.



*Anti-Franco imagery frequently focused on the war's impact on women*³³¹

Some of the weaknesses of Hollywood's dual discourse strategy, whereby two levels of narrative interpretation are made available to audiences depending on their sophistication and insight, are revealed by one viewer's recollections of the movie. Poet Donald Hall attended *Last Train from Madrid* as an eight year old with his mother on first release in New Haven, Connecticut. While the film's intentional political vagueness offered enough structural and contextual information to enable adult viewers to connect the dots, its absences were not simultaneously devoid of meaning to a child like Hall, who found them morally inscrutable. For this young viewer the film's strategy of retaining the violence without any clear motives unhitched cause from effect. This decoupling produced instead an existential horror. The adult Hall recollected he "registered only the panic of unmotivated murder" in "this film's eerie political emptiness."³³² American subsequent-run audiences were not entirely clear about its proceedings either, and generally felt indifferent towards the movie.³³³

Within weeks came Hollywood's next entry, *Love Under Fire*, starring Don Ameche and Loretta Young, opening on August 20 1937. While no less explicit about its setting, opening with explicit irony on a tourism poster showing Spain, "the land of rest and romance," this

³³¹ <http://histclo.com/essay/war/ww2/air/eur/luft/luft-scw.html> : accessed 18 August, 2018.

³³² Donald Hall, 'The Last Train From Madrid: War Cards, Purpose, Blame, and Fire,' in David Rosenberg (Ed.), *The Movie That Changed My Life* (New York: Penguin USA, 1993), 23, 21. In Ontario, Canada *The Last Train from Madrid* made good money, even though Harland Rankin of the Plaza Theatre in Tibury reported that "the Spanish war is not as popular with the people" ('What the Picture Did for Me', *Motion Picture Herald*, 11 December, 1937, 70).

³³³ 'What the Picture Did for Me', *Motion Picture Herald*, 31 July, 1937, 74; 'What the Picture Did for Me', *Motion Picture Herald*, 11 September, 1937, 78.

Twentieth Century Fox programmer is curiously overlooked in much of the literature. It is not without its political points, particularly the casting of Sig Ruman in his evergreen Nazi buffoon stereotype as a corrupt general coordinating the looting soldiers, who are established as Franco forces in a linking scene. Like *Last Train from Madrid*, *Love Under Fire* critiques militarism generically, showing an officer shooting down an approaching plane that is low on fuel. But overall *Love Under Fire* is remarkably fake, opting to be flippant in the tradition of Hollywood moonshine. The two stars' meet-cute takes place in a major set-piece at an art deco nightclub that is as Spanish as a Buick. When eventually Young recognises that "there's a revolution going on," she asks Ameche, with all the passion of a baseball spectator, which side he wants to win. "I don't care" he replies, and suggests they place bets. Well under most observers' radar, propping up double bills, a rare firsthand account came from backwoods Ashland, Alabama whose exhibitor called it a "Good picture we made [the] mistake of playing only once."³³⁴ However entertaining it may have been in Ashland, seen contextually *Love Under Fire* epitomises Hollywood trivialisation.

If ever there was going to be an anti-Franco breakout film from Hollywood that would enrage as well as engage Americans it would have been *Blockade*, starring Henry Fonda and Madeleine Carroll. Driven by high profile independent producer Walter Wanger, the project promised a fortuitous coalescing of this impresario's professional and political interests. An outsider to the Hollywood establishment, Wanger's sensibilities and antennae were just as attuned to the Beltway in Washington DC that debated America's interests through a prism of geopolitical awareness as he was to the cautious insularity of entertainment executives in California and New York. Coming from a prosperous Jewish background and an Ivy League education, he enjoyed an outspoken public persona that had at least as much in common with a media savant like Walter Lippmann as it did with the Hollywood producers he competed against for literary properties, stars and financing. But while his pronouncements and politics stressed the demotic, Wanger was no grass roots activist and "viewed reform from the stance of a corporate liberal, in terms of elite control and world leadership" by America.³³⁵ Wanger's pragmatic approach to *Blockade* was evident when he cancelled production in March 1937 when it was more of an espionage romance, entitled *The River Is Blue*. The shutdown was not because he evinced any strong anxiety over going out on a political limb but rather his "inability to predict the outcome of the present Spanish struggle."³³⁶ Wanger leveraged the bona fides of his anti-fascist project with the first teaser advertisement for *Blockade*, highlighting the non-fiction experience of director William

³³⁴ 'What the Picture Did for Me, *Motion Picture Herald*, 4 December, 1937, 66.

³³⁵ Doss, *Modernism*, 247.

³³⁶ 'The Hollywood Scene: The Foreign Factor', *Motion Picture Herald*, 27 March, 1937, 31.

Dieterle, “the genius who made *Zola* and *Pasteur*.”³³⁷ These two well received biographical features implicitly reinforced the filmmaker’s credibility through their reputation for historical accuracy, underlining verisimilitude as a key element in the new project’s reception.

The enduring story of the film’s progress through the Production Code Administration incongruously emphasises the sartorial. In order to demonstrate the even-handedness of nonpartisan Hollywood the production extolled how thoroughly details of both armies’ uniforms were smudged: “Care has been taken to prevent any costume of the production from being accurately that of either side in the Spanish Civil War. The story does not attempt to favour any side in the present conflict,” said the publicity material. Yet this attempt at wilful blindness is explicitly undercut on screen from the outset by a place and period locator. Breen was so sanguine about the final success of the PCA processes that he was overseas on holiday when the film hit the market, not foreseeing any need to be close at hand for damage control. While this now seems naive, it may have been an understandable complacency. Four years after the content management crisis engineered by the Legion of Decency in 1934, Breen and the PCA had proven to be skilful in reconciling the tensions of diverse audience thresholds of acceptable screen content at the sites of prurience and sex (romantic dramas/screwball comedies) and violence (gangster movies) through adept manipulation and massaging of genre conventions plus, where necessary, deploying a dual discourse before granting a Code Seal.

Blockade can be distinguished amongst the Hollywood productions on the Spanish Civil War because it alone made the conflict integral to its plot’s structure. This deep structure was ineradicable and rendered the surface elisions ordered by the PCA incapable of neutering its message, which became muddied but not extinguished. Unlike the conventional Hollywood narrative of the two 1937 romances, in *Blockade* the audience perspective was that of the civilians affected by war. While some of the key turning points in the film are initially unclear and hence confusing, the strength of context restores meanings lost through surface smudging. *Blockade*’s plot revolves around a myriad of deceptive identity switches, culminating in a decoy freighter in the harbour to lure away a threatening submarine so that the actual, desperately needed, supply ship can berth safely. The U-Boat, though unidentified, is crewed by accented officers, enabling their subsequent hostile actions to be explicable only as fascist aggression that would hurt the struggling citizenry. Madeleine Carroll’s early encounter with the villainous spymaster sees her fending off his unwanted attentions and accusing him of being a double agent, after which she races off to identify him as a spy for the Franco forces in order to live up to her promise to Fonda that she’d betray

³³⁷ *Blockade* advertisement, *Motion Picture Herald*, 21 May, 1938, 25.

them. In both instances, subsequent context makes the import of earlier actions unmistakably anti-Franco. In this way its left-leaning creators director Dieterle and screenwriter Lawson managed to sabotage the content management system of the PCA.

The Legion of Decency and America's Catholic media agreed. They were apoplectic. Just as New York's leftists boisterously picketed Nazi movies when attempts were made to screen them in the Yorkville German-American district, now theatres showing *Blockade* were on the receiving end of noisy protests from aroused Catholics.³³⁸ A consistent, albeit tacit, theme in the conservative Catholic attacks was cinema's ability to appear convincing through obfuscation and emotional manipulation of messages. The *Catholic News* saw the movie's having an anti-war stance which it deployed as a "Trojan Horse" to disguise its true interventionist objective.³³⁹ Similarly, *Motion Picture Herald* publisher Martin Quigley warned of the "impressionable minds" now being jeopardised by its misleading propaganda.³⁴⁰

Such claims were not invalid, and *Blockade* left itself open to many of the criticisms it received from the Catholic press. The Spanish Civil War was a conflict which featured unusually clear demarcations and hence allegiances. As a class, the peasant labourers who could not afford to own property generally supported the democratically elected Marxist national government, whereas wealthy landowners supported the Franco insurgents who promised to maintain their security over land and restore the Church's authority. *Blockade's* creators put slanted alignments at its core by situating protagonist Fonda as a land-owning peasant opposed to the encroaching military forces, essentially presenting his character as oxymoronic in order to maintain Classical Hollywood's preference for eating one's own cake at the same time. In the movie's scenes of conflict, non-combatant women, children and old men are shown praying in church for peace to return, yet throughout the (non-Basque) Republic, most of the churches had been closed or burned down by government-aligned leftists. These factually insecure foundations corrupted the movie's subsequent defensibility, and its unabashed concluding plea by Fonda for intervention from America and Britain in his memorable address to camera, and hence audience members. Even on the level of Hollywood dramatic licence, verisimilitude which could have supported anti-fascist politicians in the West was fudged, as the blockade-breaking supply ship was presented as an unexplained miracle, easily interpreted as a "supernatural intervention" to extend a spiritual dimension to the film's climax. In truth it was a British freighter that successfully broke the

³³⁸ William Alexander, *Film on the Left: American Documentary Film from 1931 1942* (Princeton, New Jersey, Princeton University Press, 1981), 41; 'Dispute Continues Over Wanger Film', *Motion Picture Herald*, 23 July, 1938, 34.

³³⁹ Matthew Bernstein, *Walter Wanger: Hollywood Independent* (Berkeley: University of California Press, 1994), 134.

³⁴⁰ 'designs of propaganda... invasive of motion picture's status...', *Motion Picture Herald*, 6 August, 1938, 22.

siege and brought relief to the Republicans. Eliding this fact meant that *Blockade* unwisely undermined arguments that a middle path of humanitarian relief was a credible, non-interventionist policy for anti-fascist nations in the West that could allow them to take a stand while continuing to sidestep militaristic involvement against the axis powers.³⁴¹

Regardless of their own critical faculties, Catholic viewers theoretically risked moral and spiritual ambush by attending this movie. The Legion of Decency established a new category, "Separately Classified" for the film, explaining "Many people will regard this picture as containing foreign political propaganda in favor of one side in the present unfortunate struggle in Spain."³⁴² Yet those viewers, Catholic or otherwise, who overcame the rhetorical and metaphysical barriers were largely undisturbed by *Blockade*. The report from Torrington Connecticut's State Theatre was typical, if more ebullient than most: "A swell picture... Why the Legion of Decency could honestly condemn the picture I have yet to learn. True, it may have a little Communism in it but the other things offset it... I knew several Catholics who signed the [Legion] pledge. Yet they went to see this one and after doing it did not feel the least bit guilty about it, and in fact were glad they did."³⁴³ Such reception reinforces the view that the Legion of Decency was primarily offended by the surrounding publicity and ensuing debate, such as this exhibitor's. Like *The Last Train from Madrid*, the primary antipathy of *Blockade* is not towards fascists but to soldiers of fortune. Its most radical departure is staging the final anti-war peroration of Fonda's direct to camera, leaving one New York State resort town audience "in a sort of daze for about a minute [before they] started applauding."³⁴⁴ As in the more clearly anti-fascist *Black Legion*, the film's conclusion foreclosed on the usual release for viewers of a happy ending, which even the following year's *Confessions of a Nazi Spy* would deliver, however incongruously. Despite everything, *Blockade* was meant to unsettle its audiences enough to prompt them to some action. Down in the trenches, exhibitor advocate Pete Harrison seemed more in touch with the zeitgeist, opining: "it is too depressing, too heart-rending... may arouse the spectators but it will leave them restless and unhappy, and, in the face of conditions today, it seems that such a picture is not what the masses want."³⁴⁵ True to this perception, *Blockade* quickly lost traction in houses after coming out of the gate strongly on the back of Wanger's variegated and often

³⁴¹ Marjorie A. Valleau, *The Spanish Civil War in American and European Films* (Ann Arbor: University Microfilms International, 1982), 25-29.

³⁴² Disclaimer, *Motion Picture Herald*, 18 June, 1938, 8.

³⁴³ 'What the Picture Did for Me', *Motion Picture Herald*, 31 December, 1938, 60

³⁴⁴ 'What the Picture Did for Me', *Motion Picture Herald* 30 July, 1938, 74

³⁴⁵ Review of *Blockade*, *Harrison's Reports*, 11 June, 1938, 94.

ingenious publicity blitz, including a faked allegation of fascist spies invading the set, presented in terms echoing a similar alarm over German spies in the First World War.³⁴⁶

Blockade was Hollywood's first peacetime attempt at a serious "preachment" movie on European fascism, but there is widespread agreement, then and now, that it failed on every key criterion. Co-authors Lawson, Wanger, Breen and Dieterle each have to shoulder a share of the blame, but ultimately it suggests that Classical Hollywood Style was inherently unsuited to such topical, confronting and controversial content and would inevitably be compromised. Something more was needed than the sweeping artificiality of a land-owning peasant Boy encountering a conflicted espionage Girl in a meet-cute that propels them to actions intended to engender sustained moral outrage in American viewers long after they had left the cinema. In the aftermath, Wanger argued for more originality and experimentation from Hollywood.³⁴⁷ He would extend that critique in early 1939 to calling for a direct counterattack by Hollywood on the fascist propaganda emanating from the Axis powers.³⁴⁸ Both *TIME* and *The New York Times* vented frustrations over the hypersensitive state that American cinema had reached when even such a compromised preachment as *Blockade* could be sidelined by vociferous protest from vested interests. As events in Europe continued to fixate American eyes, their concerns articulated a broader based anxiety around just what constituted film quality.

Independent producers' market access and audience interests

As *Blockade* was hitting prestige first run cinemas in the summer of 1938, on July 20 the *Paramount* litigation was filed, substantially restating many of the longstanding arguments by independent movie exhibitors critical of oligopoly control by the organised film industry. The Justice Department's litigation featured a renewed emphasis on restricted access in the marketplace for the supply side, citing Hollywood's structural barriers to independent production. In its bill of complaint for *Paramount* the Government claimed that the industry's interlocking structure was "preventing independent producers from finding a satisfactory market for their films... [denying any] opportunity for new forms of artistic expression" not sanctioned by the major studios, despite the existence of "communities which would support them." A sense of Washington looking ahead to wartime morale seeped between lines of the Justice Department's reasoning, which claimed that "public interest will be served by restoring free enterprise to an industry which affects so vitally the welfare and morals of

³⁴⁶ Bernstein, *Wanger*, 134; 'Great Alarm!', *Motion Picture Herald*, 28 May, 1938, 7; 'Asides and Interludes', *Motion Picture Herald*, 4 June, 1938, 31.

³⁴⁷ 'Coast Liberals Urge More Freedom for the Screen', *Motion Picture Herald*, 30 July, 1938, 39.

³⁴⁸ Bernstein, *Wanger*, 140.

large sections of our citizenship.”³⁴⁹ An element of anti-fascism’s rhetoric is evident in the complaint’s assertion that now in America “each community is regimented into accepting” what the industry wants them to watch. Implicitly interpreting movies as a public good, as the trend in trade practices litigation was moving, meant that the industry must recognise how it serves the national interest because its role is “not a private affair but a matter of vital concern” for America, not only for its employees but especially its audience.³⁵⁰

This feature of the government’s litigation was timely, with public dissatisfaction increasingly being voiced about feature films’ lack of political relevance and meaningful engagement with issues.³⁵¹ No lobby of comparable strength to Allied existed for independent mainstream producers in the 1930s.³⁵² From early 1937 the pages of Hollywood trade bible the *Motion Picture Herald* became the arena for an ongoing debate on the temper and orientation of the American moviegoer against the background of the geopolitical tensions. In its editorial voice and coverage this authoritative weekly was by definition deeply invested in the Production Code as its publisher, Martin Quigley, claimed (erroneously) to be the Code’s co-author. That document’s intent to shape not just screen content but, less overtly, viewers’ preferences, made the trade paper’s heightened interest in the evolution of the audience deeply grounded. Hollywood’s tacit contract with its audiences was to provide non-threatening escapist entertainment that guaranteed not to challenge patrons’ most closely held personal beliefs and values. It enabled parents to sanction their children’s movie attendance without constantly investigating and ensured a sanctuary from the modern world’s obligations of citizenship and public responsibility. Such entertainment may not always have shone when exposed to the light of critical evaluation, but that was never its intended mode of consumption. Critiques of Hollywood’s lack of seriousness were commonplace, even reassuring, to an industry geared to escapism, and calls for more engagement and geopolitical relevance would normally have vanished into the ether. Indicative that Hollywood now had a case to answer when it came to engagement, Hays gently demurred in his 1938 Annual Report, accepting the “soft impeachment” of criticisms that the silver screen lacked seriousness:

³⁴⁹ ‘U.S. Says Aim is “Restoration”’, *Motion Picture Herald*, 23 July, 1938, 13.

³⁵⁰ ‘U.S. Sues Majors to Divorce Exhibition and End Block Sales’, *Motion Picture Herald*, 23 July 1938, 12.

³⁵¹ Catherine Jurca, *Hollywood 1938: Motion Pictures’ Greatest Year* (Berkeley: University of California Press, 2012), 208-214; Larry Ceplair and David Englund, *The Inquisition in Hollywood: Politics in the Film Community, 1930-1960* (Garden City, New York: Anchor Press, 1980), 100, 105, 110; Paul Buhle and Dave Wagner, *Red Hollywood: The Untold Story Behind Hollywood’s Favorite Movies* (New York: The New Press, 2002) 158; Giovacchini, *Hollywood Modernism*, 86-87; 100.

³⁵² The Society of Independent Motion Picture Producers came together between December 1941 and early 1942. See: J. A. Aberdeen, *Hollywood Renegades: The Society of Independent Motion Picture Producers* (Los Angeles: Cobblestone Entertainment, 2000), 8.

Entertainment is the commodity for which the public pays... The industry has resisted and must continue to resist the lure of propaganda in that sinister sense that persistently urged upon it by extremist groups.³⁵³

Individual viewers could not really be said to have had a voice, literally or politically, in the American cinema during the interwar years. When the screen started talking, audiences were encouraged to stop, ushering in a new etiquette of one way verbalisation. Although barely registering in the U.S. mainstream media of the early to middle 1930s, for years before the fascist invasions in Ethiopia and Spain there had been calls from America's radical film movement centred in New York to resist militarism and fascism on the silver screen. Before 1935 these had been shrill, inflexible and acontextual and unsurprisingly gained no traction beyond existing adherents. But that year's transition of American communism to the Popular Front footing produced a softening of barriers. The Popular Front was a short-lived coalition fusing pragmatism and idealism in which middle class activists and hard left ideologues were encouraged to find common ground in the resistance to global fascism. This nexus acted to promote more inclusiveness between Moscow-inspired hardliners and members of the progressive middle class acting on conscience, enabling a strategic broadening of action. Maintaining but expanding from its old narrow ideological resistances to militarism as well, the new coalition pushed Hollywood to make "true and socially useful" movies on contemporary realities and "films that will better the understanding between racial and religious groups."³⁵⁴

Growing political concerns in the 1930s were strongly marked by this increase in calls for greater relevance and engagement with the issues of the day on the screen. A consortium uniting diverse public bodies to speak for spectators was created in the middle of decade under the umbrella of Associated Film Audiences. This body attracted a diversity of public interest groups, spanning the Federal Council of Churches of Christ in America, YWCA, National Urban League, American Youth Congress, Schools Motion Picture Committee and the Teachers' Union.³⁵⁵ Although the Associated Film Audiences grew out of a narrowly Communist body, the Workers Film and Photo League, "the new group's broad base of organizational support and non-militant plan of action clearly mark it as a phenomenon of the People's Front era."³⁵⁶ Coinciding with Associated Film Audiences' organisational thrust, individual Americans were similarly expressing a desire for films with more engagement with

³⁵³ Maltby, 'The Production Code and The Hays Office', 67, quoting Margaret Thorp, *America At The Movies* (London: Faber, 1946), 161.

³⁵⁴ 'Political, Labor Groups Organize to Eliminate "Militaristic" Films', *Motion Picture Herald*, 13 March, 1937, 55.

³⁵⁵ *ibid.*

³⁵⁶ Campbell, *Cinema Strikes Back*, op.cit., 69.

the realities and complexities of adult life, though not necessarily to do with fascism. For many, Hollywood's balancing act had swung too far towards froth, and lacking iron in their cinematic diet, certain voices were calling for meatier fare. A "higher attainment" and "adult serials" were sought by some exhibitors. Redeploying the touchy term "propaganda," a leftist film lecturer at New York University, Howard Cullman, wanted the industry to be more propagandist in the interests of "social awareness" and championing of controversial causes it usually avoids on screen.³⁵⁷ Later in 1937 MGM reported on a survey it had conducted about screening preferences through newspaper readers which found that more such "controversial elements," along with an expansion of educational content generally, stood out as the primary unsatisfied desires of moviegoers.³⁵⁸

By the turn of 1938-39 the pendulum of public criticism had clearly swung away from concerns about permissiveness to a sense that the screen had become overly constrained and timid. Typical of press commentary collected for the MPPDA through its internal monitoring service that winter was the Cleveland Ohio *Plain Dealer*, which complained that "under the Joseph I. Breen censorship... 'You Can't' seems to sum up every move until it now almost becomes 'Hollywood Can't Make Pictures.'"

The appetite for movie relevance towards the geopolitical stresses of the era spread beyond industry boundaries. In January 1939 poet and FDR confidante Archibald MacLeish wrote:

To be invited in the autumn of 1938, with Hitler swallowing the Czechs... with England accepting the indecency of Munich... with Japan tearing at the gigantic carcass of China, with the Jews suffering unspeakable indignities in Germany... to sit through such films as *The Cowboy and The Lady*... [et al] is pretty close to insulting.³⁵⁹

War on screen

Conflict and war had been a screen staple all century, but in the mid-to-late 1930s such spectacle would increasingly become anchored in a global reality of growing relevance to Americans. In the summer of 1936 U.S. newsreel teams were covering military action in Spain within two weeks of Franco's coup and sending footage back home. One year later, as the same crews were dispatched to China, the *Motion Picture Herald* noted it was "the third consecutive year [starting with Ethiopia] the summer has brought a war" to moviegoers.³⁶⁰ After the post-Creel Committee backlash, anti-militarist sensibilities grew during the

³⁵⁷ 'Mr. Cullman Discusses Live and Dead Issues', *Motion Picture Herald*, 16 January, 1937, 7; 9.

³⁵⁸ 'MGM Asks Public, Press For Tastes in Shorts', *Motion Picture Herald*, 23 October, 1937, 63.

³⁵⁹ Jurca, 1938, op.cit., 210.

³⁶⁰ 'Newsreels Rush Crews to China; 2 Reported Jailed', *Motion Picture Herald*, 14 August, 1937, 52.

Depression. Journalist George Creel had been appointed by President Woodrow Wilson in 1917 to coordinate the nation's information management during the Great War, but his extreme approach was "prone to hysterical, lurid and crude exaggeration" and became notorious for its excessive zeal.³⁶¹ Returning Doughboys quickly debunked atrocity and other propaganda stories widely circulating in their absence and in their name.³⁶² The war's aftermath helped spark a backlash as America's mass domestic readership was presented with detailed arguments from researchers and journalists that the nation had been hoodwinked by her wartime allies.

Anti-militarist sentiments reached a high tide after the Dies Munitions Inquiry of 1934 determined that profiteering drove America's World War One involvement. Students on American university campuses were actively campaigning for pacifism, sometimes with violent results. Opinion makers and public interest advocates based in urban centres were able to articulate anti-war views on behalf of the sophisticated audiences patronising the cities' first and second run palaces, and these audiences were potentially part of the base for Popular Front middle class activism. Parallel to the new audience mouthpieces, leftist journal *FILMS* saw Hollywood polarised between traditional escapism and a "morbid interest in war." The latter appetite was being met either by films set in World War I or others that "display the horror of war without having anything constructive to say about it."³⁶³ At the lower-run cinemas in outlying markets there was anecdotal evidence that the situation was different. A relevant feature film of this time that stood out in exhibitors' feedback was *Road To Glory* (1936), Howard Hawks' ode to Great War militarism and heroics, which started reaching subsequent runs in 1937. Local exhibitors in regional markets, particularly in the Midwest with higher proportions of Scandinavian populations traditionally associated with pacifist leanings, and high German-American concentrations, played a prominent role in Allied States, often leading the resistance to the obligations imposed by block booking and mandatory playdates pushing them to run such a title. These heartland states were also in the regions most receptive to isolationism. As voters, their opinions would be important for any interventionist propaganda in the years of escalating peacetime anti-fascism. Here Hawks' jingoism was not welcome.

"It is very evident here that the public does not want war pictures" reported small-town Columbia City, Indiana's Columbia Theatre after their lowest turnout in three years, where

³⁶¹ Clayton Laurie, *The Propaganda Warriors: America's Crusade against Nazi Germany* (Lawrence: University Press of Kansas, 1996), 49.

³⁶² J. Michael Sproule, *Propaganda and Democracy: The American Experience of Media and Mass Persuasion* (Cambridge: Cambridge University Press, 1997), 16.

³⁶³ Bob Russell, 'A Letter from Hollywood', in *FILMS: A Quarterly of Discussion and Analysis* (New York: Arno Press, 1968 – Reprint Edition of Original Issues 1-4, 1939-40), 102.

Road To Glory“ was not well received.”³⁶⁴ In rural small-town Heppner, Oregon Elaine S. Furlong at the Star Theatre similarly reported that “objections received were from people opposed to war films.”³⁶⁵ In Conway, New Hampshire, Leon C. Bolduc of the Majestic Theatre found *Road To Glory*“ too heavy for mass entertainment. War stories not wanted. People want to forget their troubles when they go to the theatre.”³⁶⁶ J.E. Stocker of Detroit’s neighbourhood patronage Myrtle Theatre “ran no trailer on this and was glad when this playdate was past.” He elaborated that if *Road To Glory*“ was intended as a grim reminder of the horrors of war it succeeded, but if it was intended as entertainment that is another story.” Some small-town cinema proprietors were more forgiving, as in Ashland, Alabama where “patrons were divided in their opinion of the picture” and Middleville, Michigan’s Arcade Theatre where *Road To Glory*“ did poorly. No fault of the picture.”³⁶⁷

In 1938, Hollywood actuality footage entered the court of public opinion. The New Year’s edition of the *Motion Picture Herald*, published on January 1, 1938, was the site of an increasingly shrill three-cornered battle among the studios, with full page advertising footage of the USS Panay, the American gunboat that suffered an unprovoked attack by Japanese planes while patrolling Chinese waters in December 1937. This pitched Twentieth Century Fox spruiking its Movietone reels as “Greater than any feature!” against MGM offering “its customers complete and thrilling pictures of the bombing” and Universal trumpeting a packaged assembly, Norman Alley’s *Bombing of U.S.S. Panay*.³⁶⁸ Crucial to the official interpretation of the incident was the question of whether the U.S. flag was visible to the attacking Japanese warplanes. Evidence from the footage, which had been shot on board and also from shore and neighbouring vessels, was inconclusive. Washington, which held back from inflaming this matter diplomatically, took the unusual step of clearing all footage for public consumption, entirely devoid of censorship. Such a step is likely to have been revealing of the President’s true position: condemnation based on clear evidence. Universal’s cameraman Norman Alley told *The New York Times* that his pictures unambiguously refute Japanese claims that the ship was not recognised as American.³⁶⁹ When Universal publicised its *Bombing of U.S.S. Panay* film with the assertion: “NOW READY! The country is fighting anxious to see it!,” they presented an intriguing ambiguity around the orientation of *readiness*: product or audience? Irrespective of which they meant,

³⁶⁴ ‘What the Picture Did for Me’, *Motion Picture Herald*, 20 February, 1937, 75.

³⁶⁵ ‘What the Picture Did for Me’, *Motion Picture Herald*, 16 January, 1937, 71.

³⁶⁶ ‘What the Picture Did for Me’, *Motion Picture Herald*, 20 March, 1937, 68.

³⁶⁷ ‘What the Picture Did for Me’, *Motion Picture Herald*, 16 January, 1937, 71.

³⁶⁸ 20th Century Fox Movietone News Advertisement, *Motion Picture Herald*, 1 Jan, 1938, 29; MGM News of the Day Advertisement, *Motion Picture Herald*, 1 Jan, 1938, 31; Universal Advertisement, *Motion Picture Herald*, 1 Jan, 1938, 33.

³⁶⁹ ‘U.S. Adopts Hands Off Policy’, *Motion Picture Herald*, 1 January, 1938, 14.

further reinforcement for an increasingly engaged, mature and curious filmgoing public came from the *Herald's* account of rapid expansion plans for newsreel-specific cinemas for films like those of the *Panay*, which the paper saw as “indicative of the fact America’s theatre-going public has acquired a taste for the comparatively new type of programs.”³⁷⁰

Content regulation boundaries in a rapidly changing environment

By 1937 Joseph Breen was at the apex of his success in Hollywood. The Production Code Administration (PCA) operations of the MPPDA and its screen content management system that he presided over were running smoothly and keeping controversy at bay. Widely known, Breen was respected as the ultimate authority on the application of the Production Code. Following the more stringent application of the Code’s regulations from 1934, Breen personally took credit for the significant upswing in box office takings that started in 1935.³⁷¹ So successful had the Hollywood formula become that parties with broader agendas than profitable escapism had now begun actively buying in to the medium. By the mid-to-late thirties the boundaries of the screen were being pushed by a variety of non-MPPDA producers applying proven Hollywood production values in the service of non-fiction subject matter. These spanned a broad but unrelated range of interests encompassing commercial (screen advertising), government policy (New Deal documentaries) and ideological (anti-Franco). All these cinematic outsiders had seen the value of Hollywood moonshine in pressing home to a mass audience a variety of messages that went beyond the mere diversions and momentary pleasures of Tinseltown. Their incursions on the screen were creating ripples behind the scenes in the industry’s regulatory forum, the MPPDA.

The mainstream American screen, being a medium of recognised influence, was controlled by the MPPDA through its affiliated theatres, yet in the mid-thirties was increasingly being used by non-member producers for various ideological, political and commercial ends, all positioned beyond the escapism of pure entertainment. With its *March Of Time* series publishing giant Time-LIFE had created a new format, the screen magazine, that was comparable in its drama and epic sweep with the most ambitious of Hollywood productions yet was squeezed into bite-sized slots of under half an hour, albeit with an explicitly didactic edge. Also from New York, but at the other end of the political continuum, dominating the leftist network of independent agitprop filmmakers there was Frontier Films, whose anti-Franco Spanish Civil War documentary *The Spanish Earth* (1937) had achieved good results in mainstream U.S. cinemas by consciously deploying middle class-friendly production

³⁷⁰ ‘New Expansion Moves in “Newsreel” Theatres Reported by Three Groups’, *Motion Picture Herald*, 1 January, 1938, 12.

³⁷¹ Gregory D. Black, *Hollywood Censored: Morality Codes, Catholics and the Movies* (Cambridge: Cambridge University Press, 1994), 239.

values and the marquee power of literary celebrity Ernest Hemingway. Documentary filmmaker Pare Lorentz was at the apex of a body of filmmakers drawing on Federal government funding, which enabled them to hire technical staff of sufficient skill to produce high quality short documentaries including *The Plow That Broke The Plains* (1936), *The River* (1938) and *Power For The Parkinsons* (1940 –the Rural Electrification Administration) promoting Washington’s agenda in specific areas of policy intent.

Towards the end of 1937 a longstanding issue reappeared that brought to the surface tensions over Breen’s authority and the boundaries of the PCA’s reach that would extend into the core functions of the MPPDA. The matter that November was advertising films, in particular the question of whether the PCA should allocate them seals.³⁷² Screen advertising’s history extended as far back as that of entertainment cinema’s, but the practice was irregular and unregulated. The first concerted screen advertising push occurred in 1918, when *Scientific American* observed that “the audience at a picture show is fair game for the American advertiser.”³⁷³ Unlike radio audiences, moviegoers were paying their hard-earned cash in return for pure entertainment and an escape from commercialism. Initially, such scruples could be overcome when screen advertising still had novelty value, provided the plug was “cleverly kept in the background,” even if not concealed entirely. But this evasion quickly paled, and by 1921 a major non-Hollywood distributor of advertising reels warned that marketers “did not realize the ‘combative’ spirit that was aroused “when an audience that has paid to be amused finds its dignity slighted and its feelings outraged by being forced to gaze for several minutes at some fool picture” clumsily inserting sales pitches in “an alleged drama.”³⁷⁴ Movie exhibition’s cream, the first runs, downtown palaces and the better second runs, generally shunned screen advertising but lower level subsequent run exhibitors welcomed any entertaining screen content, especially when it was provided *gratis*. While never ceasing entirely, the practice receded until the early thirties when talkies offered Hollywood new persuasive possibilities, especially to expanding corporate brands seeking national audiences.³⁷⁵ Although the MPPDA formally issued a ban on screen advertising in 1931, independent exhibitors continued to fill the space thus vacated by affiliated theatres.

Francis Harmon, Will Hays’ recently appointed executive assistant and head of the Eastern division of the PCA, was in favour of developing a special MPPDA seal for advertising films, and argued that this would not represent an endorsement of any product.³⁷⁶ If implemented, the service would be a new function the administration of which would fall squarely on the

³⁷² Francis Harmon memo to Hays, November 8, 1937, MPPDA Archive.

³⁷³ Kerry Segrave, *Product Placement in Hollywood Films: A History* (Jefferson: McFarland, 2004), 8.

³⁷⁴ Segrave, *Product Placement*, 14.

³⁷⁵ Segrave, *Product Placement*, Chapter 2.

³⁷⁶ Harmon memo to Hays, November 8, 1937, MPPDA Archive.

PCA. Joe Breen appreciated the situation differently, in terms redolent of the previous decade's silent cinema audiences. He foresaw "enormous difficulty and embarrassment later on. With radio broadcasting now so completely dominated by commercial sponsors and dependent entirely for its support upon commercial advertising," the PCA head viewed the risk of ceding control over income streams as too great:

Our patrons pay a definite fee to see the pictures, exhibited in our theatres, and our industry is supported and maintained by the money thus paid into the box-office. To authorize anything which might tend to change, or break-down, or present system, is, in my judgment, highly dangerous.³⁷⁷

Obtaining the MPPDA Seal conferred legitimacy, and positioned a screen product within a body of standards the public could trust. General Counsel Charles Pettijohn moved the debate around entertainment and propaganda into the grey area of these qualities' comingling when he observed that, despite not having a seal, Lorentz's New Deal soil conservation short *The River* had been shown in Fox West Coast and Balaban & Katz theatres and that Paramount were then planning to distribute it nationally:

(W)hether or not we should use the Production Code Administration for servicing a particular picture or a certain type of picture should depend upon whether such picture or type of picture is designed primarily for entertainment. A picture may be entertaining in spite of the fact that it advertises a commodity or is produced as propaganda, but its primary purpose is to sell a commodity or aid a Cause, and the entertainment aspect thereof is definitely secondary.³⁷⁸



Francis Harmon at work ³⁷⁹

Levels of authority within the MPPDA were frequently being drawn out in exchanges like these amongst the Association's executive, casting light on the fault lines between key

³⁷⁷ Breen memo to Harmon, 15 November, 1937, MPPDA Archive.

³⁷⁸ Breen memo to Hays, 29 January, 1937 MPPDA Archive.

³⁷⁹ 'Leaders of WAC At Work', *Motion Picture Herald*, 28 August, 1942, 13.

leaders. Breen was always careful to foreground the chain of command from New York's executive determining MPPDA policy and the Hollywood-based PCA's execution of their details. On a concurrent matter, the screen representation of race, Breen had requested Harmon's "concise statement as to what... should be approved in motion pictures dealing with negroes and whites." Harmon saw this as an opportunity to underline his credentials of liberal inclusiveness and an ability to see the big picture more subtly than the comparatively hidebound and reactionary Breen. Tacitly reinforcing the less than liberal PCA boss's place in the Hays Office hierarchy, Harmon posited a contrast between his inductive approach and that of Breen's deductive reasoning, admittedly a skill necessary for a regulator applying rules to varying texts. When replying, Harmon noted that "the enclosed memorandum reflects fairly accurately the point of view of thoughtful leaders, both black and white, with whom I have been working for nearly twenty years in the realm of interracial relationships."³⁸⁰ Earlier that year, in January 1937, Breen had been similarly establishing boundaries for the representation of alcohol consumption on screen and took the opportunity to sum up his overarching worldview for Hollywood's social and cultural role: "The screen reflects this development in American life. It does not lead in this movement, or point the way." This comparatively reactive posture of Breen was increasingly becoming at odds with more progressive voices inside the MPPDA like Harmon and its Washington bureau chief Roy Norr.³⁸¹

Industry Policy

In January 1938, Breen provided Columbia with a letter featuring strongly worded cautionary advice warning against proceeding with a property then entitled *The Gentleman From Montana*.³⁸² This was adapted from an unpublished short story based on iconoclast Western populist Democrat Senator Burton Wheeler by screenwriter Lewis R. Foster, which would go on to form the basis of Frank Capra's *Mr Smith Goes To Washington* (1939). According to Breen, several aspects of the text presented an unacceptably "improper portrayal of the United States Senate."³⁸³ His advice was not grounded in Production Code proscriptions, as none directly applied. Here Breen was tacitly enacting the MPPDA's wider head of authority, Industry Policy. No regulatory instrument, however thorough, can ever be exhaustive enough to anticipate every eventuality arising in the field, and such was the case with the Motion Picture Production Code. This was long recognised within the MPPDA and a second site of

³⁸⁰ Harmon letter to Breen, 5 November, 1937. MPPDA Archive.

³⁸¹ Breen memo to Hays, 29 January, 1937. MPPDA Archive.

³⁸² Breen memo to Hays, 31 January, 1938. MPPDA Archive.

³⁸³ Breen, Letter to John Hammel at Paramount, and to Louis B. Mayer at MGM, 19 January, 1938, *Mr. Smith Goes to Washington* file, Production Code Administration Collection, Margaret Herrick Library Special Collections, Academy of Motion Picture Arts and Sciences, Beverly Hills, CA.

authoritative guidance, sitting outside the “cold type” of the Code’s black letter law, was operational under the term Industry Policy. Anchoring the dividing line between these regulatory categories was a stark distinction in their enforcement: a fine of \$25,000 applied for affiliated theatres exhibiting a film containing Code violations, whereas no material penalties were capable of being levied on any transgression of Industry Policy.³⁸⁴ Industry Policy signified an uncodified, fluid and ever-evolving realm of judgements based on MPPDA experience, *obiter dicta* and interpretations of political environments. This major regulatory hierarchy was merely hinted at in the associated terminology: the Code’s application was an administrative function of the MPPDA, while beyond the document’s boundaries, Industry Policy took over to play an advisory role.

Much of the advice provided under the rubric of Industry Policy addressed what was known as political censorship. This was typically exercised by smaller jurisdictions like state governments and municipal authorities, where it was not unusual for movie censorship to be managed by the local police. Here the shades of meaning in the term “political” are subtly relevant. These sub-national jurisdictions’ censor boards attended to the politics of their own backyard, and their screen excisions were hence locally informed, rather than necessarily being reactions to national political issues. To illustrate this in a theoretical sense, a Catholic stronghold like Boston might be more sensitive to screen attacks on priests while being comparably relaxed, given its otherwise liberal politics, with cinematic messages urging collectivism that heartland communities would attack as communistic. Such boards, not least to justify their existence, often made cuts beyond the strictures of the Production Code after a film was finished, risking mutilation of prints and attendant costs, inconvenience and loss of revenue for the studios. Anticipating these often picayune censor actions was a value adding service Breen recognised as vital. Industry Policy subsumed an economically essential advisory function and was based on the PCA staff’s long years of familiarity with political censor boards’ personalities and quirks, both institutional and individual.³⁸⁵

Of particular concern to the internal MPPDA debate underway in 1937-38 was any sign of concerted action by industry members, especially any coercive measures that could be interpreted as impinging on freedom of initiative or expression, because these could readily provide evidence of monopoly behaviour contravening antitrust laws. Any indications of the major companies operating in lockstep risked giving the appearance of colluding through the oligopolistic structure of the industry. Interest in Breen’s reach, expressed obliquely as “PCA

³⁸⁴ This is only technically true. The fine was never actually imposed, and operated as a publicity device rather than a serious enforcement instrument.

³⁸⁵ Thomas Doherty, *Hollywood’s Censor: Joseph I. Breen and the Production Code Administration* (New York: Columbia University Press, 2007), 115-116.

Jurisdiction,” predates the Justice Department’s *Paramount* litigation, but the lawsuit’s lodgement in July 1938 brought a greatly heightened focus to questions of how far PCA, and hence MPPDA, control ranged. While the original concern was with Breen aggrandising beyond the Code, the broader concerns about the change in government antitrust policy gave this an increasing salience, which became increasingly evident in Norr and Breen’s mutual lack of patience with each other. Breen’s warning against the Capra project, although delivered months before the litigation, created a major precedent of significant danger when seen in the context of the *Paramount* complaint that freedom of activity and expression for film producers was being inhibited by Hollywood’s vertically integrated structure featuring the MPPDA at its apex.

Within two weeks of Breen’s *Gentleman from Montana* opinion reaching Columbia in March 1938 (MGM and Paramount had also earlier expressed interest and received the same advice that January), Hays tasked Harmon with conducting an audit into the range of topics on which the Breen office was providing opinions. In his background memorandum preceding the initial findings of his audit, Harmon perceived the industrial necessity:

A reasonably clear and predictable definition of the extent of the jurisdiction of the Production Code Administration is urgently needed. Legal problems must be met and a course charted through the maze of confusing terminology now in current use. Refusal of the PCA to review a film is tantamount to forbidding its exhibition in affiliated theatres, unless films which do not need PCA seal for such exhibition are so classified.³⁸⁶

Surveying a two month interval of PCA files, Harmon found numerous instances of non-Code recommendations and advice to producers, many relating to high profile public figures and political matters outside Breen’s remit.³⁸⁷ Initially a strong concern unveiled by the audit was not just the range but especially the strength of the PCA’s advice proffered under Industry Policy. Some of this advice recommended content modifications in anticipation of the reactions of political censor boards and other advocates, such as newspaper editors and public interest groups, based on arguments which sat outside the Code. In an attempt to address this overreach, a sense of materiality was introduced by Harmon through the suggestion of reflecting regulatory difference by sending separate letters. Critical to their function in distinguishing Industry Policy from the black letter law of the Code was that such correspondence needed to be careful

³⁸⁶ Harmon internal memo re Production Code, May 7, 1938, MPPDA Archive.

³⁸⁷ Vasey, *World According to Hollywood*, 221-222.

not to influence unduly recipients of the PCA communications who may not realize this distinction [and that they] contain no language implying that the PCA has authority to insist upon the carrying out of any advice thus given [nor any] element of recommendation or coerciveness.

Harmon went on to advise that, of necessity, the MPPDA must “counsel with member companies about contemplated moves affecting them all, and to warn one or all about the probable public reaction, at home and abroad, to a contemplated course of action. (Such counsel will be given to non-member companies on the same basis and for the same reasons.)”³⁸⁸ This final point appears to be a veiled admonition to Breen who had been arousing consternation with his growing practice of writing to non-MPPDA producers (potentially including those outside Hollywood on the East Coast) in the same technical language familiar to the studios, thus risking accusations of restraint of trade in an antitrust context. Harmon perceived a risk here that such evidence “could support the accusation that the MPPDA was exceeding its jurisdiction and unreasonably restricting the freedom of the screen.”³⁸⁹

Hays was at pains to foreground the distinction between obligatory measures prescribed in the Code on the one hand and on the other, the status of Industry Policy as merely advisory, but in no way prescriptive. While it was “unnecessary, in my opinion, [to make] any reference to political censorship reaction in those cases in which Code violations occur,” when stepping outside the Code such wider contextualising would be useful to help producers appreciate the PCA’s logic, and possibly help filmmakers take responsibility for the cuts they were being urged to make. This would also shift the blame to the secondary, downstream censors in the smaller jurisdictions, as Hays argued:

When no Code violation is involved, but our experience indicates the certainty, probability, or possibility of deletions by censor boards, would it not be good so to advise the producer without recommending or requesting that the change be made? It occurs to me that careful adherence to this change in the phraseology would place the responsibility upon the censor boards rather than upon us in these cases where no Code violation is involved.³⁹⁰

Strengthening the advice, Hays told Breen, “with policy matters not covered by Code provisions, we must resort to persuasion because authority does not go that far. Much of our success has come from appealing to the spirit rather than to the letter of the law and one

³⁸⁸ Harmon internal memo re Production Code, May 7, 1938, MPPDA Archive.

³⁸⁹ Vasey, *World According to Hollywood*, 222.

³⁹⁰ Hays to Breen, March 16, 1938, MPPDA Archive.

of your own most significant contributions to the entire enterprise would be lost if you should desist from raising important policy questions from day to day and vigorously outlining reasons why.” Breen responded by “emphasizing the importance of preserving both the authority and potency of these separate functions.” Looking more broadly to Hollywood’s many opponents, Hays’ office in reply stressed the need to “further refine our procedures so as to maintain the full integrity of the PCA work and at the same time give our critics the least possible ammunition with which to attack us.”³⁹¹

This reference to industry critics underlines how Hays was always very mindful of cultivating the support and good opinions of the industry’s Congressional and bureaucratic critics in an ongoing campaign that was central to his role. Here, however, the antitrust risk had been exacerbated by a recent misstep that inadvertently delivered into the hands of lawmakers exactly the sort of evidence of a great broadening of PCA reach that now threatened the industry’s integrated structure. Hays described how “I took a bound volume of recent PCA Opinions when I went to Washington last Sunday for the purpose of showing certain people just how much has been accomplished under the Code.”³⁹² Realising his error, shortly thereafter Hays warned Breen that a “hostile critic might be able to take bound volumes of our PCA opinions and magnify either the censorship or the policy references out of all proportion to their relative importance.” Breen responded with an eye to pragmatism:

The studio executives, I am certain, will want no change whatever in the present procedure. They will want us to urge upon their producers, as vigorously as possible, the elimination of material, which is likely to be deleted pretty generally by censor boards, irrespective of how the letters, carrying these recommendations, may read to people not concerned with the problem of making motion pictures.[...]It is almost certain that, with the receipt of this [second, advisory] letter, the head of the studio, or the producer, will want to discuss the policy question with us. I take it, however, that it is your thought that we should not enter into any such discussion, lest, possibly, in doing so, we might commit the Association in these matters.³⁹³

Whereas Hays had suggested a subtle displacement of responsibility on to the shoulders of wayward producers in order to reduce the risk to his trade association, and by extension the studios, of antitrust charges, this was interpreted by Breen as soft pedalling from someone out of touch with the rough and tumble of industry hardball dealing.

³⁹¹ Harmon internal memo re Production Code, May 7, 1938, MPPDA Archive.

³⁹² Hays to Breen, March 16, 1938, MPPDA Archive. These volumes were created by PCA official Iselin Auster in 1935 or 1936, primarily as an internal guide to precedent. They may have been deliberately expunged after the incident that Hays describes.

³⁹³ Breen to Hays, 26 March, 1938, MPPDA Archive.

The “new questions” of anti-fascist feature films

This difference of perspective in methods for handling producers' complaints presented Breen with an opportunity he quickly grasped. The PCA boss went on to identify an additional category of screen regulation he saw through the prism of Industry Policy, which he described as the “new questions” arising at the end of the decade:

You will have in mind that, under our present procedure, the PCA deals with minor questions of policy as these come up. Questions of policy, which are new questions, are referred to you. The kind of policy matters which we classify as minor, and which we have been trying to deal with in our general examination of the script, are such questions as those which might characterize a member of the United States Senate as a ‘heavy’; or questions in which police officials are shown to be dishonest; or those in which lawyers, or doctors, or bankers, are indicted as a class. Those so-called new questions, which it has been our practice to refer to you, are those which were suggested by such stories as *Zola*, *The Road Back*, *Three Comrades*, *True Confession*, *Rothschild*, etc.³⁹⁴

Not only were they raising “so-called new questions,” but all these films are intrinsically linked by their content: all are anti-Nazi films. *The Life of Emile Zola* (1937) through its subject matter is an unmistakable indictment of anti-Semitism in Europe; James Whales' *The Road Back* (1937) delivers to the screen Erich Maria Remarque's follow-up to *All Quiet On The Western Front* and features a Hitler parody of such derision that it provoked a media scandal after reprisal threats from the Reich's counsel in Los Angeles, Dr George Gyssling; *Three Comrades* (1938) tracks the tragic impact on several German individuals of the rise of Nazism in the struggling Weimar Republic; and *The House of Rothschild* (1934) was a philo-Semitic biographical study following several generations of the prominent European Jewish banking family.³⁹⁵

In undertaking his audit task, Harmon (and hence Hays) did not initially see their review as an opportunity to clarify the PCA's obligations when it came to increasingly difficult European geo-politics in studio feature films. Yet Breen, impatiently, did not intend to wait for an East Coast Hays Office edict but rather made a point of getting in first, and bluntly reinforced the quarantine of this most contentious topic to the MPPDA executives in New York. By separating out the “new questions” now arising, Breen explicitly positioned himself to

³⁹⁴ Breen to Hays, 26 March, 1938, MPPDA Archive. *True Confession* may be a story/working title but is not a produced film.

³⁹⁵ Explicitly citing *The Road Back*, derisory references to the major studios as well as the leading industry activist body, the Hollywood Anti-Nazi League, are woven into the dialogue of screenwriter Horace McCoy's 1938 novel, *I Should Have Stayed Home*, a cautionary tale of the lower ranks' toiling in the Dream Factory.

delineate his own version of diplomatic immunity from the growing tide of anti-fascist screen content, such as *Blockade*, that was raising increasingly difficult questions for Hollywood. Here a narrow focus suited Breen, and he adroitly moved to step aside from making pronouncements, let alone policy, on anti-fascist screen representation. Breen was happy to offload to Hays Office headquarters responsibility for the more abstract, conceptual political questions which New York, by implication, preferred to manage.

Strengthening his position, the anti-Nazi feature films Breen wanted to refer to New York for guidance could not be accommodated within Harmon's roundup of the short, independently produced East Coast political films then gaining audience favour. Harmon had been at pains to cleave off from the Hays Office's responsibility a body of essentially non-escapist films, whose non-MPPDA producers had woken up to the value of Hollywood's techniques for entertainment to win the hearts and minds of viewers. In his PCA audit, Harmon had attempted to map with precision a taxonomy of films not requiring a Seal and his resulting list thoroughly captures the short films then gaining popularity through weaving entertainment values into their fundamentally proselytising narratives:

It is recommended that the Production Code Administration be instructed to review any film presented except films falling within the following classifications:

- a. News reels (exempted already upon grounds of public interest)
- b. Advertising trailers of a local character (exempted already)
- c. Advertising films promoting the sale or use of a commodity,
- d. Sponsored films, produced or distributed by commercial enterprises for promoting 'good will' for the business, industry, profession, or trade.
- e. Films advertising or promoting support for organizations established to sponsor special interests or causes,

When any film not specifically excepted above is presented to the Production Code Administration, it shall be reviewed and if it conforms to standards of decency, morality and fairness embodied in the Production Code and any amendments thereto, the Association's Certificate of Approval shall be issued therefore.³⁹⁶

One other prominent industry insider, publisher Martin Quigley, was also taking steps to address the matter of the screen's geo-political content. Quigley was a strenuous advocate for the value of escapist entertainment as the true and virtually entire role of the screen, a

³⁹⁶ Harmon internal memo re Production Code, May 7, 1938, MPPDA Archive.

public benefit that could only grow in importance during periods of national stress like war and economic depression. Adamantly opposed to opening up the American cinema to any form of propaganda or preachment, he tacitly underlined his influential role in the genesis of the Production Code by taking it upon himself to draft a new Code provision which he submitted to Hays in 1938 while the internal PCA debate was taking place. His proposed addendum to the Production Code read:

No motion picture shall be produced which shall advocate or create sympathy for political theories alien to, and subversive of, American institutions, nor any picture which perverts or tends to pervert the theatre screen from its avowed purpose of entertainment to the function of political controversy.

Quigley was alert to the expanding oxygen being found on screens at this time for geo-political issues which he believed meant that “the industry faces a serious emergency on account of the efforts being made to use the entertainment screen for purposes of political controversy and for the advancement of alien political philosophies.”³⁹⁷ Much of this disgruntlement was triggered by *Blockade*, which deeply offended Quigley’s (and Breen’s) Catholic sensibilities. A panel of four, including Harmon and Norr, was convened by Hays to consider Quigley’s proposal, which they eventually rejected, arguing:

If the film deals with a controversial subject, but is free from that which offends decency or is listed in the Code as morally objectionable, then the sole remaining question to be decided by the PCA should not be whether the film is “desirable” but whether the presentation deals fairly and honestly, and without deliberate deception, with the subject matter.³⁹⁸

Quigley’s response was scathing, and when he wrote to Hays in September 1938 he was especially disparaging of Norr’s involvement, “an obvious travesty on commonsense procedure,” which contributed to a resolution that was “an invitation to disaster.”³⁹⁹ Harmon’s subsequent advice to Hays again put the spotlight squarely on anti-fascist films, but otherwise sought to take the heat out of what could be seen as simply a more formal codification of longstanding PCA practice:

The PCA did not undertake to decide the “desirability” of the release of *I Was a Prisoner of Nazi Germany*. In fact Mr. Breen made it quite clear in his letter sending Code Seal that in approving the film as conforming to the Code, the PCA was neither

³⁹⁷ Quigley to Hays, 11 July, 1938, MPPDA Archive.

³⁹⁸ ‘Jurisdiction of Production Code Administration’, MPPDA interoffice memo, nd 1938, MPPDA Archive.

³⁹⁹ Quigley to Hays, 11 July, 1938, MPPDA Archive.

approving nor disapproving the subject matter. Similarly with *Blockade*, *Zola*, *They Won't Forget* and other films to which countries, communities, or groups objected, the PCA, having found the films in conformity with the Code, issued certificates, without attempting to decide whether the film was “desirable” or not. Any other procedure is likely to involve the Association in difficulties under the Federal Anti-trust Laws as an unreasonable restraint of trade.⁴⁰⁰

At this point, evidence appeared of virtually all parties in Hollywood moving in lockstep in response to a Nazi provocation. The circumstance was the ill-timed U.S. tour of Leni Riefenstahl, Hitler’s filmmaker, who arrived in New York in December 1938, just weeks after sickening reports of systematic anti-Semitic atrocities in *Kristallnacht* in November had disgusted the nation from the White House down. Attempts by Riefenstahl to screen her documentary *Olympia* in America were blocked unanimously at every turn, yet in this context no one raised any eyebrows over monopolistic practice.⁴⁰¹ While entirely understandable, the event does reveal an element of cant in the protestations against monopolistic behaviours by Hollywood.

In January 1939, Roy Norr further highlighted the crucial antitrust context, arguing *apropos* the as yet upcoming resolution on the PCA’s jurisdiction that “it is bad public policy, bad legislative, and bad legal policy (in view of the pending Government suit which seeks to involve our PCA procedures in the monopoly charges), to begin this resolution with a statement that we are trying to apply our Production Code ‘to the largest possible number of films in the stream of public distribution.’” Norr reiterated his advice to Hays and Milliken from the previous May that the PCA had “sought to take on a vastly greater field than was ever intended.” He particularly excoriated what appears to have been a by-product of the Harmon taxonomy of exclusions (now generally endorsed), attacking:

the ridiculous and dangerous position in rejecting or refusing to service a picture on the grounds of political censorship ... [because] if we refused to service a film on the ground that it was politically “dangerous” we were, in effect, keeping it out of the leading theatres of the nation.⁴⁰²

Seen in this light, a clearer breach of the *Paramount* complaint is harder to imagine: an industry stance preventing any film interpreted as politically dangerous to gain access to the nation’s screens, only weeks after *Kristallnacht*. Heightening the risk, the MPPDA’s concern

⁴⁰⁰ Harmon, Norr group internal memo, 31 August, 1938, MPPDA Archive.

⁴⁰¹ Thomas Doherty, *Hollywood and Hitler, 1933-1939*, (New York: Columbia University Press, 2015), 303; ‘Anti-Nazis Protest Riefenstahl’s Visit to Circulate Olympic Film’, *Motion Picture Herald*, 12 November, 1938, 19.

⁴⁰² Norr to Harmon, Inter-Office Memo, 12 January 1939; MPPDA Archive; emphasis in original.

with the management of screen content regarding fascism was now leaking out to the mainstream press. *TIME* reported in October 1938 that at a high level MPPDA meeting, “the most impressive powwow of cinema bigwigs in a decade,” despite its ostensible top priority of responding to the *Paramount* suit, “word leaked from Hollywood that the real purpose of the meeting was something else entirely: to consider ways and means of checking anti-Semitism in so far as it affects movie revenues.”⁴⁰³

With the balance of screen regulatory power now shifting away from Breen and back to New York, more politically alert and flexible interpretations of screen content – particularly Nazism – could now be reliably anticipated, as and when they were needed. No one in Hollywood knew what was coming but, in effect, the MPPDA’s version of a wartime mobilisation exercise had now been thoroughly prosecuted and the industry’s content management mechanisms had had their role clarity strengthened in the process. As the East Coast executives were struggling to rein in Joe Breen in a marketplace that was expanding into non-fiction entertainment in order to better satisfy growing public interest appetites, the underlying driver – European fascism, ultimately reinforced by trade practices concerns – was recognised as too sensitive and complex an issue for any rigid screen content management codification to overrule common sense and political pragmatism.

⁴⁰³ ‘Cinema’, *TIME*, 31 October, 1938, 26: Hays Papers, Reel 21.

Chapter 6 – The road to Paramount: 1937-1938

A Senate Sub-Committee was established in February 1936 to conduct public hearings on the Neely-Pettingill anti-block booking bill, raising the heat generated by the industry's most potent threat yet to its monopoly. The studios could not justify complacency, and redesigns for trade practices continued to be brought to the forefront of work in Hollywood during 1936 and 1937.⁴⁰⁴ As detailed in Chapter 4 of this thesis, throughout 1937 Hays was working assiduously in this regard, spearheading a covert attempt to forge new working arrangements with the Department of Justice modelled on associative state thinking. Simultaneously, in a flurry of public activity, more trade practices arguments, blandishments and promises were being trumpeted by the industry's most cooperative national exhibitor body, the Motion Picture Theatre Owners of America (MPTOA), promoting a new model for market stability, the Ten Point Plan.

Washington turns against Hollywood

Emanating from Washington from 1937 and extending into the first half of 1938 there was ample rhetoric, not to mention concrete Department of Justice actions, to warrant serious concern in Hollywood and concrete action on trade practices. As New Year 1937 dawned over a re-elected Roosevelt administration, the Antitrust Division's Paul Williams, reflecting his newfound interest in structural analysis following the abortive secret negotiations with Hays, quietly commissioned a three-level FBI investigation spanning first run picture palaces, large independent chains and mom-and-pop neighbourhood theatres.⁴⁰⁵ Publicly, his retiring boss at antitrust, John Dickinson, crowed about their plans to "unleash the G-men," evidently relishing the irony of turning Hollywood's 1935 screen appropriation of J. Edgar Hoover's special agents in the person of Jimmy Cagney back on their mythologisers.⁴⁰⁶ By the end of the year, Williams' views had hardened to the point where he now advocated divorce at the national level, fully nine months before the Paramount filing of July 1938 called for the same remedy.⁴⁰⁷

The dust of New Year's Day 1937 had barely settled when interested parties started rattling the can of federal intervention. On his retirement after two years heading up the antitrust division, Assistant Attorney-General Dickinson called for legislation creating "independent facilities" within Justice to monitor, investigate and quickly prosecute violations within the

⁴⁰⁴ 'Majors Favor 66% of Trade Practice Program', *Motion Picture Herald*, 13 February 1937, 15.

⁴⁰⁵ Muscio, *Hollywood's New Deal*, 151.

⁴⁰⁶ 'Industry Itself Declared Source of Department of Justice Moves', *Motion Picture Herald*, 9 January, 1937, 25.

⁴⁰⁷ Muscio, *Hollywood's New Deal*, 152.

motion picture industry.⁴⁰⁸ For a bureaucrat, however senior, rather than an attention-seeking politician, to be publicly targeting a major industry was a significant ripple in the usually placid surface of corporate relations. Dickinson was no wild-eyed centralist. During the NRA Code process he developed an associative state style regime that put trade associations like the MPPDA at the centre of industry planning.⁴⁰⁹ But now, in the late thirties, he bemoaned government trustbusters' dependence on "tips" that were received as exhibitors' complaints rather than being able to rely on an active monitoring process. Dickinson was airing Justice's frustration at being used strategically by warring exhibitors and distributors as "a cats-paw" to catalyse intra-industry disputes, but then being unable to pounce when their negotiations were concluded.⁴¹⁰ If the Government had sufficient powers, he argued, the FBI could conduct "fishing expeditions" to gather evidence for prosecutions when violations were suspected. Quantifying the problem, Dickinson described to a House budget committee in March 1937 how a "continuous investigation... by four agents" was required to manage the constant flow of complaints reaching the government.⁴¹¹

Hollywood's name was now being kept in the spotlight in ways it would have preferred to have avoided. May 1937 saw the controversial 1934-35 corporate reorganisation of Paramount prominently cited as a cause of new securities legislation to protect small investors "burned" in its wake.⁴¹² Then in June Los Angeles-based Justice Department agent Joseph B. Keenan had been reported as publicly calling for criminal action against this "evil" industry, a characterisation his boss Cummings failed to disavow, albeit denying any "crusade."⁴¹³ Washington-based Myers enigmatically teased attendees of that spring's Allied States convention in Milwaukee that "there are rumblings in the Department of Justice, and it is possible that 'The Sleeping Giant' may wake to strike a blow for the sorely pressed exhibitors."⁴¹⁴

For Americans at large the new year 1937 was thawing the ground with promising economic conditions: rising stock values and commodity prices reflected expanding profits and wages, and all of these were combining to shrink unemployment.⁴¹⁵ Inside Washington, however, there was growing unease over unsustainable underlying economic indicators. Prices were

⁴⁰⁸ 'Industry Itself Declared Source', *Motion Picture Herald*.

⁴⁰⁹ Hawley, *The New Deal*, 24-25.

⁴¹⁰ 'Industry Itself Declared Source', *Motion Picture Herald*.

⁴¹¹ 'U.S. Inquiry of Trade Practices Asked in Bill, to Aid Independent', *Motion Picture Herald*, 27 March, 1937, p. 19; Moley, *The Hays Office*, op.cit., 207.

⁴¹² 'Paramount and Other Cases May Bring Reorganization Law', *Motion Picture Herald*, 15 May, 1937, 65; 'Re-echo', *Motion Picture Herald*, 26 June, 1937, 9.

⁴¹³ 'Exhibitor Plaints and U.S. Behind Inquiry Bill', *Motion Picture Herald*, 12 June, 1937, p. 13.

⁴¹⁴ 'Divorce Bills, Film Buying and Unionization Up at Allied Meet', *Motion Picture Herald*, 22 May, 1937, p. 41.

⁴¹⁵ Hawley, *The New Deal*, 383.

uneven and conditions unbalanced, and some observers pointed to monopolistic practices as the culprit. John Dickinson had spent much of his final year at Justice immersed in a steel pricing controversy where collusive bidding had resulted in a major marine infrastructure tender – bridge, harbour and terminal construction – being awarded to a German firm over US bidders, at a time when anti-fascist rhetoric was starting to figure in government utterances from the White House down.⁴¹⁶ A “major policy struggle was taking place,” in which the anti-monopolist New Dealers in the President’s inner circle were gaining the ascendancy, essentially reversing the push that had led to codes of practice for industry self-government under NIRA.⁴¹⁷ Attorney-General Homer Cummings’ view was that a wholesale “restatement” of antitrust was needed, and its reach would have to extend to Hollywood.⁴¹⁸ The President responded in April to the agitating of the administration’s anti-monopolists with an attack on high prices in the notoriously monopolistic industries of steel and copper, and the formation of “study groups” into how these prices were eroding consumers’ spending power. In private he tasked new Justice Department antitrust head Robert Jackson with investigating anti-monopoly laws and the Federal Trade Commission with investigating the monopoly-costs nexus.⁴¹⁹

As yet, few Hollywood eyebrows were raised. American business and industry at large had been conditioned by decades of cooperation with governments of both major parties, from New Era Republican associationism under Herbert Hoover to FDR’s New Deal joint planning. The FTC had been so marginalised it was unlikely to ever rock the boat, and in the comparably monopolistic communications medium, radio, the Federal Communications Commission was perceived by lawmakers as more an industry enabler than a consumer advocate.⁴²⁰ Aggressive, well-resourced and politically supported prosecutions were not a feature in this environment.

But unpredictability and mercurial temperament were also hallmarks of the Roosevelt presidency. Irrespective of White House dithering and prevarication, the movie industry was a big target attracting numerous complaints, and had resumed being so virtually as soon as the NRA ended in May 1935.⁴²¹ This volume of complaints kept it solidly in the sights of trustbusters for years, even as a sea change in economic policy was being navigated amongst the FDR inner circle. Hollywood thus stayed in the Washington minds that mattered, and with “all the agitation, it was virtually certain that once the antitrust campaign got

⁴¹⁶ Hawley, *The New Deal*, 365-366.

⁴¹⁷ *Ibid.*, 402.

⁴¹⁸ ‘Exhibitor Complaints’, *Motion Picture Herald*, 12 June, 1937, p. 13.; Hawley, *The New Deal*, 365-366

⁴¹⁹ Hawley, *The New Deal*, 384-385.

⁴²⁰ Douglas B. Craig, *Fireside Politics* (Baltimore: The Johns Hopkins University Press, 2000), 52-53.

⁴²¹ Moley, *The Hays Office*, 204-205.

underway, the motion picture industry would become one of the major targets of reform.”⁴²² By the summer of 1937 Hollywood was abuzz with rumours that the Justice Department was seriously contemplating antitrust action. Dickinson’s successor, Robert Jackson, put his stamp on the trade practices agenda in a major address which should have chilled proponents of standardised pricing and other such euphemisms for monopoly. Restraint of trade, he told the Georgia Bar Association, had caused so much “disappointment” in Washington that its response could include government competition, ownership and/or operation of enterprises as well as “drastic types of regulation and ‘death sentences.’” Business attempts to have it both ways, protesting or championing antitrust laws depending on whether they stood to gain or lose, could leave no alternative to the very “Government interference and ‘regimentation’” they abhor, he said. “American people will not permanently tolerate monopoly.”⁴²³

The MPTOA’s Ten Point Plan

Head of the MPTOA since 1933, Ed Kuykendall became the industry’s public face of industrial reform in 1936, driving a coherent trade practices agenda spearheaded by his Ten Point Program for reconstituting self-regulation. His scheme called for:

- local conciliation boards (to hear intra-industry disputes with minimal escalation)
- more liberal cancellation with the right to cancel unconditionally (rather than being obliged to justify with reasons)
- clearance adjustment (in the context of allocated levels in the Run Zone Clearance system, here allowing a right to seek changes)
- mediation of overbuying (complaints restricting one exhibitor when another held the rights to show unscreened titles, preventing the complainant from showing them)
- mediation of unfair competition between theatres (a broad brush clause)
- adjustment of non-theatrical competition (such as church, union or armed forces base screenings)
- short form of contract (for ease of use and minimal legalese)
- score charge elimination (another perennial complaint, against the fees bundled in for music rights)
- adjustment of preferred playing time (for greater local autonomy and exhibitor flexibility)

⁴²² Hawley, *The New Deal*, 368.

⁴²³ ‘Exhibitor Complaints’, *Motion Picture Herald*, 12 June, 1937, p. 13.

- elimination of forced short subject sales (by studios, bundling in short subjects to blocks, another long-term gripe of exhibitors).⁴²⁴

Kuykendall's plan grew out of extensive consultation with exhibitors, but only those who were MPTOA members, a much smaller constituency than Allied's. Bankrolled by the Hays Office since its 1927 accommodation with the studios, the MPTOA's core constituency was affiliated chains, and was viewed by many of the more independent exhibitors as a "front" for the MPPDA.⁴²⁵ The winter of 1929-30 had seen Myers and other Allied brass stump the country (armed with a shaky vertically-integrated franchise plan involving RKO, Allied and Tiffany) prising off many local and regional associations from the MPTOA, which ended up retaining a residue of studio-affiliated theatres.⁴²⁶ By 1931 the MPTOA could account for 1,375 exhibitors, whereas Allied's roster was about 6,000, easily dwarfing its more prosperous rival in membership size, although not in financial strength.⁴²⁷ That year the U.S. theatre population was approximately 14,500. Of these, 2,250 were affiliated with the Big Five major studios, with 1,200 in unaffiliated circuits, leaving around 11,000 independents.⁴²⁸ Each national industry group had captured about half of its potential base, but different polarities of the exhibitor population.

When he unveiled the centrepiece of his renewed push for industrial order to Will Hays in early spring 1936, Kuykendall was cold-shouldered by the MPPDA boss. The publicly available story was that Hays had been chilled by a consultation with Department of Justice officials following the NRA's November 1935 demise, deferring to caution in the belief that "mutual understandings" constitute monopoly. According to the exculpatory account of former Assistant Secretary of State Raymond Moley, foundational FDR Brains Trust advisor and a key Washington figure of the 1930s, Hays at this time had "concrete evidence that there was nothing he could usefully do." Hays told Kuykendall it was up to him to sort it out, and added "you'll have to approach each major studio distributor individually. I can't help you."⁴²⁹ The MPPDA boss was portrayed, unconvincingly, at this juncture by hagiographer Moley as facing "problems too perplexing for one man to settle... [and] not pretend(ing) to

⁴²⁴ 'Distributors Announce Committee to Effect Self-Regulation', *Motion Picture Herald*, 2 July 1938, p.13.

⁴²⁵ Lewis, *Motion Picture Industry*, 317; Crafton, *The Talkies*, 184; Horowitz, *Beyond Left & Right*, op.cit., 77.

⁴²⁶ Lewis, *Motion Picture Industry*, 312-313.

⁴²⁷ Donahue, *American Film Distribution*, 23; Lewis, *Motion Picture Industry*, 307.

⁴²⁸ Richard Maltby, 'Hicks, Sticks and Flaps', 40, n.57. Ten years later the population of operating U.S. cinemas at January 1, 1941 had grown to 17,541 (*Film Daily Yearbook*, 1941, 41), a roughly 20 per cent increase over the decade considered Hollywood's Golden Era.

⁴²⁹ Moley, *The Hays Office*, 206; Will H. Hays, *The Memoirs of Will H. Hays* (Garden City, New York: Doubleday, 1955), 484.

know the answers.”⁴³⁰ In fact, as the research detailed in Chapter 4 of the thesis reveals, Hays had already been quietly moving in a different direction for the past year.

Despite Hays’ rebuff, in April 1936 the MPTOA boss convened a dedicated committee to pursue reform, receiving acceptances from all eight studio-affiliated distributors. In the resulting closed door enclave held in the Rose Room of the Cinema Club at New York’s Hotel Algonquin Kuykendall warned that with “unfriendly legislators, reformers and club women who want to meddle into our motion picture affairs” current trade practices were unsustainable; without reform the organised industry was undeniably on the brink of unsympathetic intervention. The incongruity of Hollywood’s exhibition tier leading the way for producer-distributors, reversing the usual power relationship, was nowhere remarked upon.⁴³¹



*Ed Kuykendall (left) at launch meeting for Ten Point Plan (with UA distributor Paul Lazarus)*⁴³²

A mix of passivity and tokenism marked the studios’ early responses, except for Warner Bros., who failed to attend or participate in any of the Ten Point Program’s activities. By May 1936 five of the majors, MGM, Paramount, RKO, Universal and Columbia, were reported as being supportive in general and, on the question of cancellations, favouring at least a ten per cent threshold. Bolstering this, non-MPPDA member Republic joined the initiative and committed to twenty percent cancellation rights for full program purchasers.⁴³³ Early cooperation came easily on half of the Program’s clauses: cancellations; local conciliation boards; a simplified standard exhibition contract; score charges; and short subject forcing. The more intractable differences that clustered around the remaining five points were nothing new, and encapsulated some of the toughest bones of contention in the industry for over a decade: “unreasonable” clearance; overbuying; “cut-rate” competition between

⁴³⁰ Moley, *The Hays Office*, 205-206.

⁴³¹ ‘Eight Companies Receive Letter’, *Motion Picture Herald*, 11 April 1936, 15.

⁴³² ‘Distributors and Exhibitors Meet in New York For Self-Regulation’, *Motion Picture Herald*, 25 April 1936, 52.

⁴³³ ‘Drafting of Trade Provisions is Next’, *Motion Picture Herald*, 30 May 1936, 46.

theatres; non-theatrical exhibition; and designated playdates.⁴³⁴ As it became increasingly clear that a binding, global agreement would not be quickly forthcoming, speculation shifted to diverting claims in these areas of ongoing disputation to local dispute resolution machinery, an abdication of national leadership certain to continue aggravating Hollywood's existing enemies and further fuel demands for structural change.⁴³⁵

In June 1936 Kuykendall impressed observers by unveiling a revised short form contract, introducing a new level of substance into the debate and bringing with it hopes that maybe the affiliated exhibitors' leader could extricate the industry from the perpetual internal strife that years of litigation and government inquiries had failed to achieve.⁴³⁶ Soon however momentum faltered. Indifference from the studios became evident in a string of feints and promises lacking commitment, and Kuykendall plodded through the summer of 1936 publicly alternating between bluff and brinksmanship, hoping to goad the studios into giving meaningful undertakings.⁴³⁷ In August the Ten Points were declared by the *Motion Picture Herald* to be "sleeping."⁴³⁸

Pursuing their more insurgent strategy, Allied meanwhile sought wholesale restructure rather than mere evolutionary reform. In June 1936 and again that November, they called for nothing less than complete divorce of the exhibition tier, an argument backed up by a quarter-million dollar war chest for litigation.⁴³⁹ Indications that the majors were ready to deal came in October 1936, with concessions and a response to the MPTOA Ten Point Program mooted.⁴⁴⁰ It was all getting to be too much for Allied, who in November branded the MPTOA's steps as a smokescreen to undermine and divert attention away from the Neely Bill, which was, after all, the brainchild of Myers himself.⁴⁴¹ The year ended on a note of resigned exhaustion, with even the optimists at the *Motion Picture Herald* acknowledging one day after Christmas that the "(d)elays of large distribution companies in replying" to the Ten Point Plan were stymieing the establishment of local conciliation boards in territories

⁴³⁴ 'MPTOA Says Majors Will Give Exhibitors 5 Concessions in '36-37', *Motion Picture Herald*, 13 June 1936, 15.

⁴³⁵ 'Expected Concessions Listed', *Motion Picture Herald*, 13 June 1936, 18.

⁴³⁶ "'Short Form" Standard Contract Drafted by MPTOA For Distributors', *Motion Picture Herald*, 6 June 1936, 99.

⁴³⁷ 'Trade Practice Action Left to Sales Companies', *Motion Picture Herald*, 11 July 1936, 18; MPTOA Seeking Quick Action on Trade Practices, *Motion Picture Herald*, 25 July 1936, 61.

⁴³⁸ 'Distributors Win Four Tests of Dispute on Trade Practices', *Motion Picture Herald*, 15 August 1936, 53.

⁴³⁹ 'Allied Seeks \$250,000 'War Fund' As Last Stand', *Motion Picture Herald*, 13 June 1936, 13-14; Allied Asks Jail Terms for Producer-Distributors, *Motion Picture Herald*, 28 November 1936, 13; 15.

⁴⁴⁰ 'Paramount Settles E. M. Loew's Suit; More Trade Practice Issues', *Motion Picture Herald*, 3 October 1936, 29.

⁴⁴¹ '20th-Fox Will Follow Universal in Accepting Self-Regulation', *Motion Picture Herald*, 21 November 1936, 29.

such as St. Louis where distributors had been hoping to make a head start on the MPTOA's trade practices reform program.⁴⁴²

Following Universal's November 1936 announcement of agreeing to exhibitor concessions, through the winter of 1936-37 more and more of the majors publicly signed up to the Ten Point Program on an individual basis – just as Hays had requested.⁴⁴³ RKO came on board in January 1937; Columbia followed in February, going further than some studios to wind back score charges; and finally Paramount made it seven of eight in February 1937.⁴⁴⁴ Warner Bros., the least tractable of all the studios, stubbornly remained outside the tent and would remain so even as the *Paramount* litigation was filed, by which time it was too late for a centralised solution like the Ten Point Program.

As the weeks wore on in the spring of 1937, it was becoming increasingly difficult to ignore the fact that “nothing had been done” on the much mooted Conciliation Boards' methods, jurisdiction or staffing. The heart of the Ten Point Program was its coordination of boards to hear trade disputes, but on this key element distributors' positions were known to be “sharply divided.” A worn down Kuykendall now publicly complained that “the indifference and thinly veiled resistance of the distributors to any change is bound to be discouraging.”⁴⁴⁵ At this point Hays, returning to New York in March 1937 from wintering in Hollywood, held his first “press audience” for several years. Asked about Kuykendall's dissatisfaction with the industry's response to the Ten Point Program, Hays demurred, letting this opportunity to intervene go unanswered. He blamed the “immeasurable complexity of distribution machinery” for the delays. His apparent complacency seemed oblivious to the swelling reform momentum surging through the industry. “It's not the length of the step but the direction that's important,” he hinted obliquely.⁴⁴⁶

Exhibitors' anger over the long-running stasis soon boiled over, with calls to unite under their own czar-like figure, a role for which “no man is too big” or comes at too high a price tag. Lashing “the sterility of the MPTOA,” ITOA boss Harry Brandt in New York echoed Kuykendall's threat of government regulation from a year earlier and warned that “vast legislation” on the horizon made such a move urgent. Scrambling to stay relevant, Kuykendall blasted the concessions he had obtained to date from the seven cooperating

⁴⁴² ‘Conciliation Boards Approved; Three Companies Cooperating’, *Motion Picture Herald*, 19 December 1936, 76; ‘Delayed Boards’, *Motion Picture Herald*, 26 December 1936, 9.

⁴⁴³ ‘20th-Fox Will Follow’, *Motion Picture Herald*, 21 November 1936, 29.

⁴⁴⁴ ‘RKO is the Fifth Distributor to Accept Trade Practice Program’, *Motion Picture Herald*, 16 January 1937, 21; ‘Columbia is Sixth to Accept MPTOA's Trade Practice Plan’, *Motion Picture Herald*, 6 February 1937, 27; ‘Majors Favor 66% of Trade Practice Program’, *Motion Picture Herald*, 13 February 1937, 15.

⁴⁴⁵ ‘Self-Regulation Appeals Keynote MPTOA Meeting’, *Motion Picture Herald*, 20 March 1937, 15.

⁴⁴⁶ ‘Hays Discusses Trade Practices’, *Motion Picture Herald*, 6 March 1937, 38.

major studios, and promised that a secret plan of his was ready, but was too hush-hush to reveal.⁴⁴⁷ In this climate the Hays Office itself, with its central coordinating role of a high profile national industry, was now itself becoming potentially vulnerable. Hays no doubt recognised this, and his inscrutably opaque public demeanour was about to become more understandable. In two successive attacks separated only by a fortnight, Washington forces turned the heat directly on the MPPDA. Congressman Sam Hobbs (D.-Alabama) won approval in the House judiciary committee for his resolution for an inquiry aimed at the major studios which explicitly identified the MPPDA, charging it with acting “to suppress competition and restrain trade [to] monopolize the industry.”⁴⁴⁸ Revealing its provenance in exhibitors’ complaints, the Hobbs proposal expounded in detail on key aspects of the run-zone-clearance system and the concerns of the independents’ lobby.⁴⁴⁹ A fortnight later another Southern Democrat, Martin Dies, high profile Red-baiter and persistent Hollywood antagonist, went even further by proposing that Congress undertake what a panicked *Motion Picture Herald* called a “fantastically sweeping investigation of every conceivable phase of motion pictures, virtually placing the business under government supervision.”⁴⁵⁰ More veiled than Hobbs’ threat, Dies’ proposal nevertheless described the MPPDA unmistakably without mentioning it by name, including amongst its terms of reference one which would examine whether the association was acting “to monopolize business to prevent competition.” With public attention spreading upwards from the individual studio outfits to the industry’s central coordinating organisation, the Hays Office, it was becoming increasingly clear that a circuit breaker of real substance was needed to reduce unwanted external pressures on the movie industry.

The Philadelphia territory buyers strike

Through the summer of 1937 the industry was rocked by the extraordinary phenomenon of independent cinema proprietors flexing their collective economic muscle in a “buyers boycott” of Paramount. Its origin lay in an unusual direction: research. Allied had conducted a national buyers’ survey in 1936, comprising approximately 500 reports from 29 of the 31 national exchange territories. The broad geographic and demographic scope of these returns energised Allied’s executive, with its national secretary, Detroit’s H. M. Richey, declaring that the uniformity of “national markets” long relied upon by Hollywood to justify its centralised production structure was a myth. This shibboleth had long been a key plank in

⁴⁴⁷ ‘ITOA Moves for Third Exhibitor Unit; MPTOA Seeks Reform Action’, *Motion Picture Herald*, 17 April 1937, 48.

⁴⁴⁸ ‘House Committee Asks Film Enquiry’, *Motion Picture Herald*, 8 May 1937, 31; ‘Large Circuits Add 100 Houses in New Expansion’, *Motion Picture Herald*, 15 May 1937, 13.

⁴⁴⁹ ‘US Enquiry of Trade Practices Asked in Bill, to Aid Independent’, *Motion Picture Herald*, 27 March 1937, 19.

⁴⁵⁰ ‘Legislative Threats Reach New High Tide’, *Motion Picture Herald*, 29 May 1937, 13.

producers' rhetoric to tacitly refute independent exhibitors' claims for greater autonomy. The findings, which clearly affirmed regional variations in exhibition practice, revitalised the importance of negotiating at the local level in defiance of globalised corporations.⁴⁵¹ Thus glimpsing some enhanced leverage, Allied envisaged a buyers' go-slow as a bargaining ploy to gain relief from longstanding trade practice issues; exhibitors would delay their buying until distributors compromised on terms such as designated playdates, short subject forcing and the proportion of percentage pictures (as opposed to straight fees).⁴⁵² Specific action included delaying the signing of contracts, threatening a buyers' combine coordinated by Allied (notwithstanding that this would breach antitrust laws), cancellation of features that were re-priced upwards; the threat of a concerted Paramount boycott (likewise risking an antitrust breach); and disruptive legal action generally. At Allied's May 1937 annual convention, a nationwide buyers' combine that would be mandatory for all its members narrowly gained support in committee, despite the fact it posed clear risks of alienating independent-minded theatre proprietors who were intrinsically resistant to being herded into a corporate model as monolithic as the one they were fighting. Theory quickly became reality when Columbia, with Capra's much anticipated *Lost Horizons*, and Paramount with six 1936-37 season features, held back those key titles that summer, thus renegeing on their contracts, even as they negotiated price increases for the new season starting on Labor Day.⁴⁵³ Zukor tried to explain his company's shortfall by claiming "contingencies arose beyond all human expectations and it is surprising that we obtained the results we did," an argument Myers publicly declared "contradictory," insulting to exhibitors' intelligence and "utterly insincere."⁴⁵⁴ The resultant "National Paramount Product Strike" of August 1937 radiated out from Chicago to "an avalanche of cancellations by exhibitors on Paramount product in the thousands," exceeding its organisers' expectations and revealing the depth of independent exhibitors' underlying enmity.⁴⁵⁵ Steps planned in the campaign included cancelling all Paramount bookings, including shorts and newsreels, refraining from any new negotiations, and legal action over the studio's holding six 1936-37 season pictures back until the 1937-38 year. Picketing of Paramount exchanges and any non-participating cinemas, and discontinuing Paramount's weekly payment plan on shorts amplified the Allied campaign.

⁴⁵¹ 'Allied Demands Full Protection For All Independent Owners', *Motion Picture Herald*, 5 June, 1937, 29.

⁴⁵² 'Divorce Bills, Film Buying and Unionization Up At Allied Meet', *Motion Picture Herald*, 22 May, 1937, 41; 'Allied Makes Anti-Circuit Laws Chief Weapon Against Majors', *Motion Picture Herald*, 29 May, 1937, 21.

⁴⁵³ 'Allied Demands Full Protection For All Independent Owners', *Motion Picture Herald*, 5 June, 1937, 29.

⁴⁵⁴ Ibid.

⁴⁵⁵ 'Paramount Situation Up At Chicago Session', *Motion Picture Herald*, 31 July, 1937, 64; 'Ohio Independents Seek Inquiry', *Motion Picture Herald*, 14 August, 1937, 14. The six Paramount features were: *The Count of Luxembourg*; *Artists and Models*; *High, Wide and Handsome*; *Spawn of the North*; *Souls At Sea*; and a then-unnamed Lubitsch vehicle for Marlene Dietrich (eventually released as *Angel*).

The theatre entrepreneurs' "consumers strike" quickly intensified, with proprietors organising cinema picketing, airborne pamphlet drops optimistically targeting movie houses and any passing cinemagoers, along with sound trucks promoting their case. Paramount fought back, succeeding on August 2 in obtaining a temporary federal court injunction in Philadelphia citing restraint of trade under the Sherman Act. Reviving memories of the Battle of the Theaters, Paramount now cheekily reversed the historical roles, charging that regional lobbyist the United Motion Picture Theater Owners Association(UMPTOA) threatened exhibitors... with physical and bodily violence and with physical and bodily destruction to their theatres if they exhibited complainant's motion pictures."⁴⁵⁶ The UMPTOA counsel ridiculed this, claiming this moment was "the first time in the history of motion picture litigation that the big fellow came running to the courts for help because the little fellow was hurting them."⁴⁵⁷ Federal judge Oliver B. Dickinson seemed to agree. His court in Philadelphia dismissed Paramount's claim in early October, and with his lifting of the temporary injunction the "strike" quickly grew to nationwide proportions, spreading within weeks to New Jersey, Los Angeles, Pittsburgh and Boston.⁴⁵⁸

Collectivism of this nature was something the "organised industry" of the major studios intuitively recognised and vehemently opposed when it was practiced by others. A proposal immediately following from UMPTOA for a "buyers combine" to break the impasse prompted Paramount's vice-president Austin C. Keough to refuse to deal with any group that was thus organised to "gang up" on the company (and by implication on the studios' oligopoly). Ever treading the middle path, MPTOA's Kuykendall weighed in, criticising contractual "trick clauses" but bemoaning "unnecessary losses" on both sides.⁴⁵⁹ Paramount next "evened the score" with a Minnesota court decision two weeks later that conflicted with the Philadelphia dismissal, using much the same language, citing "intimidation, threats, force, fraud or defamatory publications," but now to the opposite effect of safeguarding the studio's staff from theatre owners' actions.⁴⁶⁰ Characterising *any* exhibitors' committee as a buyers combine, Paramount's resistance quickly bore fruit, and a "peaceful settlement" was mooted within days.⁴⁶¹ Despite maintaining their militaristic tone, UMPTOA agreed to an "armistice" in late October. Paramount withdrew its bluffing manoeuvre of a counter-threat to scrutinise exhibitors' books, but softened some cancellation and other contractual clauses, maintaining

⁴⁵⁶ "'Boycott' By Exhibitors Reaches Court and U. S. Trade Commission', *Motion Picture Herald*, 7 August, 1937, 61. UMPTOA is the United Motion Picture Theater Owners Association.

⁴⁵⁷ 'Conspiracy Charged', *Motion Picture Herald*, 7 August, 1937, 64.

⁴⁵⁸ 'Feelers to End Boycott Draw Reply from Paramount's Keough', *Motion Picture Herald*, 23 October, 1937, 23.

⁴⁵⁹ *ibid.*

⁴⁶⁰ 'Paramount Wins Minneapolis Round, Is Sued in Los Angeles', *Motion Picture Herald*, 16 October, 1937, 28.

⁴⁶¹ 'First Signs Seen of Settlement of Philadelphia "Boycott" Fight', *Motion Picture Herald*, 23 October, 1937, 24.

firmly its adherence to individually negotiated settlements.⁴⁶² As quickly as it flared up, the 1937 Buyers Strike was over.

In the end, Paramount easily outmanoeuvred its small business antagonists, but the company's victory here was pyrrhic. The Department of Justice had been following events closely, placing "unseen observers" in court to monitor proceedings from the beginning.⁴⁶³ The outcome provided stark proof that the contestants were unevenly matched. The strike reinforced the view that, when pitting small, temporary coalitions of businesspeople against Hollywood's best legal talent, self-regulation was not going to work, and therefore stronger legal remedies were needed. What could have been a key moment for Paramount to demonstrate the industry's reasonableness, even temporarily, instead exemplified its core antitrust problem in dramatic fashion. In August, when the strike's hostilities were at their height, Jackson had met with senior Allied representatives spearheaded by Myers, following the lobbyist's formal complaints against Paramount to Justice and the FTC over the structural problems behind the conflict.⁴⁶⁴ Timing being everything in politics, Paramount almost fell over itself in the buyers strike to validate Allied's complaints by providing an illustration of how closely Hollywood epitomised Jackson's key concern that: "anti-trust complaints originate almost entirely with business men against business men. Merger, consolidation, concentration and crushing of small competitors goes on apace."⁴⁶⁵

By now corrective, and not necessarily sympathetic, forces were eyeing the industry. The reporting of trade journal *Motion Picture Herald* in this interval, with its unusual recourse to pulpier screenwriters' lingo, suggests an extra emphasis on reaching readers in major studios in order to jolt them from their collective lethargy. Its striking headline from August 1937, *Gumshoeing U.S. Sleuths Hunt Data For Inquiries*, comes across as an attempt by editor Terry Ramsaye to send an overdue wakeup call to industry leaders, as he warned them that "Justice has 'planted' scores of secret service operatives throughout the entire country to gather information for possible wholesale investigations of trade practices in distribution and exhibition." Ramsaye reported that the Department's activist St. Louis litigation of 1936 would provide the model for four to five new prosecutions in key markets, but no one would know where this threat could strike because Justice would "maintain strict silence until the actual filing of suits."⁴⁶⁶ In October 1937 the *Motion Picture Herald* reported that what it characterised as a "virtually nation-wide 'under cover' investigation of motion picture practices... again broke into the open this month." This time special assistant

⁴⁶² 'Armistice Brings Settlement Terms to Terminate "Boycott"', *Motion Picture Herald*, 30 October, 1937, 15.

⁴⁶³ 'Gumshoeing U.S. Sleuths Hunt Data for Inquiries', *Motion Picture Herald*, 14 August, 1937, 13.

⁴⁶⁴ 'Gumshoeing U.S. Sleuths', *Motion Picture Herald*, op.cit.,13; 15.

⁴⁶⁵ 'Exhibitor Plaints and U.S. Behind Inquiry Bill', *Motion Picture Herald*, 12 June, 1937, 13.

⁴⁶⁶ 'Gumshoeing U.S. Sleuths', *Motion Picture Herald*, 13.

attorneys general Collins and Law would get an FBI agent to assist them in probing Fox West Coast for suspected pricing anomalies between independents and affiliated exhibitors.⁴⁶⁷

Roosevelt's Second Hundred Days

If the President still took some convincing about turning against monopolies in early 1937, by autumn things had changed in the White House. The promising economic indicators of spring had plateaued by May that year and started to worsen from August, a slide that gained momentum until in October “the stockmarket cracked,” outstripping in ferocity the freefall it experienced in 1929.⁴⁶⁸ The “Roosevelt Recession” had arrived. In his Fireside Chat of October 12, 1937, the President argued for an overhaul of antitrust legislation and the need to approach “the problem of monopoly from new angles,” building on long-running monitoring undertaken by government agencies. Similarly, business was just as unable to make predictions from the current “confusion of precedents and policy.” The White House was also coming around to the view that “the Department of Justice had no satisfactory standards by which cases may be selected for prosecution.”⁴⁶⁹

As the new year of 1938 drew nigh the recession deepened, and antitrust activists inside Justice lost patience with Roosevelt’s gradualist conversion to their cause. A cabal of New Dealers including influential Cabinet member Harold Ickes and interns from “The Harvard Crowd” (better known as “The Happy Hot Dogs,” after their mentor Felix Frankfurter), putatively risked Presidential censure in a series of provocative speeches allegedly not cleared by the White House that were designed to stir the pot and kickstart debate.⁴⁷⁰

Robert Jackson was drafted in as the mouthpiece for a brace of collectively written presentations that climaxed on December 29 with him attacking monopolists attempting to “skim all the cream off recovery”, slating corporate operators who had “simply priced themselves out of the market... [and] into a slump.” These business leaders’ activities (or more particularly their withholding of the economic stimuli of investment) amounted to a “capital strike” against Washington.⁴⁷¹ The next day Ickes went further, challenging Americans everywhere to call the bluff of that tiny plutocracy of entrenched wealth who threatened to create a “Big Business Fascist America.” Predictably, in the slow news week between Christmas and New Year’s Day this rhetoric ensured a media explosion, but as a

⁴⁶⁷ ‘Federal Investigators Start on West Coast’, *Motion Picture Herald*, 2 October, 1937, 19.

⁴⁶⁸ Kennedy, *Nothing To Fear*, 350.

⁴⁶⁹ ‘Films’ Interest in Trust Laws and Taxes’, *Motion Picture Herald*, 23 October, 1937, 28.

⁴⁷⁰ Hawley, *The New Deal*, 283, 391-3.

⁴⁷¹ Arthur Krock, *In the Nation: 1932-1966* (New York: Paperback Library, 1969)75.

fishing expedition to gauge public opinion it was successful, with much of the response being positive, including from Congressmen.

As their mini-campaign continued into early January 1938, Roosevelt moved to defend the Jackson and Licks attacks, affirming that anti-monopoly action was necessary against businesses seeking “unwarranted power.” The President pointedly “cited practices which reputedly have been employed in the motion picture” industry as targets, including the use of “patent laws, competition, excessive capitalisation and investment write-ups.” Yet at the same moment, the man whose job it was to discharge any action, Attorney-General Homer Cummings, played down the risk to industries outside “the daily life of all the people” in favour of targeting those where “the greatest public interest is involved,” namely food and building materials. In Washington pundits were left “frankly puzzled” by these seemingly uncoordinated statements, a confusion not unusual during the Roosevelt presidency.⁴⁷²

Contradictory statements of the “will-they-or-won’t they” nature permeated movie industry thinking, with the *Motion Picture Daily* dedicating its front page of January 16, 1938 to irreconcilable pronouncements from Justice of simultaneous antitrust initiatives and denials, a situation that the *Motion Picture Herald’s* Ramsaye bemoaned as a “constant muttering of menace” by officials against Hollywood. It is clear that the timing for Washington’s initiative had been settled by this point. January 1938 had been publicly targeted the previous September for legislative amendments to tighten up antitrust ahead of a nationwide campaign embracing oil, steel, cement, motion pictures and other large industries.⁴⁷³ But, according to one Justice officer speaking off the record in January 1938, Hollywood could enjoy a grace period of “at least six months” since there were “two or three industries... [that] should be taken care of before motion pictures are considered.” There was much to do just then and the Government, not wanting Hollywood “too stirred up,” was keen to hose down any excess jitters.⁴⁷⁴ This six months’ grace period produced an interval leading neatly to the July 1938 filing of the *Paramount* lawsuit. The government’s antitrust activism was running on schedule.

In the volatile spring of 1938 there was no shortage of distractions for White House watchers in the motion picture industry. The idea of introducing controls over Hollywood through a similar licencing system to that which governed the U.S. radio industry was gaining some momentum as a regulatory strategy. A bill to this effect jointly sponsored by Senators

⁴⁷² Hawley, *The New Deal*, 394-5; ‘Food and Building, Not Films, Are Immediate Trust Targets of U.S.’, *Motion Picture Herald*, 8 January, 1938, 56.

⁴⁷³ ‘Consent Decrees Seen Abandoned in Trust Suits’, *Motion Picture Herald*, 4 September, 1937, 26.

⁴⁷⁴ ‘Justice Department Denies Plan for Anti-Trust Attack on Films’, *Motion Picture Herald*, 22 January, 1938, 27.

Joseph O'Mahoney (D.-Wyoming) and William Borah (R.-Idaho) explicitly embraced the movie industry amongst its targets.⁴⁷⁵ While Roosevelt's goodwill message to radio's national convention in February innocuously extolled licencing's flexibility in changing social and economic times, the Borah-O'Mahoney bill aroused from one observer an outrage that was telling, in its global references, of contemporaneous anxieties.⁴⁷⁶ Such licencing would create "bureaucratic regimentation without parallel except in Fascist countries," warned author and free enterprise advocate James Cromwell, who foresaw American industry being "taught to goose-step."⁴⁷⁷

A more pressing threat came from Delaware liberal Senator Matthew Neely's long running anti-block booking bill being unexpectedly reintroduced in the Senate by the Interstate Commerce Committee on February 18.⁴⁷⁸ This surprise move unleashed a vituperative firestorm of old arguments forcefully restated by Fox president Sidney Kent and the MPPDA, while stalling tactics by several Committee members sympathetic to the industry soon put the bill in limbo.⁴⁷⁹ With 1938 being a full House of Representatives election year, the prevailing industry wisdom appeared to be that it was imperative that "no additions by way of controversial legislation" be added to the calendar, with prompt adjournment in June being essential to enable politicians of all persuasions to hit the campaign trail.⁴⁸⁰ Some adroit horse trading by Neely to secure the desired adjournment saw his bill finally pass in the Senate in May, after ten years in the legislative pipeline. The *Motion Picture Herald* rightly saw this as the anti-block booking proponents' "first real victory" in a decade. Neely's compromises included one brokered by Walt Disney to exclude short films and a second to eliminate a right of action for damages when features as delivered differed from their earlier synopses. In his triumphant speech to a nearly empty Senate chamber Neely sarcastically described Hays and Pettijohn as the "two very lovable but at the same time most efficient, legislative agents the world has ever seen" who, if they had worked "for the general welfare of the people" [instead of] the "eight money-grabbing tyrants which compose (sic) the moving picture trust," would be worth "millions."⁴⁸¹ By now Jackson had been succeeded as head of the antitrust division at Justice by Thurman Arnold, professor of law at Yale and market

⁴⁷⁵ 'Licencing Bill Seen Injurious to All Business', *Motion Picture Herald*, 5 March, 1938, 16.

⁴⁷⁶ 'Radio Men Warned on Monopoly; Censorship Opposed, Poll Shows', *Motion Picture Herald*, 19 February 1938, 13.

⁴⁷⁷ 'Licencing Bill Seen Injurious', *Motion Picture Herald*, 5 March, 1938, 16.

⁴⁷⁸ 'Neely Bill', *Motion Picture Herald*, 19 February, 1938, 8; 12 March 1938, 12.

⁴⁷⁹ 'Neely Bill Spells "Ruin" For Independents, Says Kent; Block Sales "Necessity", Says MPPDA', *Motion Picture Herald*, 12 March, 1938, 12-14; Senate Turns From Neely Bill; Jackson Acts in Dallas Case', *Motion Picture Herald*, 2 April 1938, 24.

⁴⁸⁰ 'Block Booking and Trust Bills Reported Heading for the Shelf', *Motion Picture Herald*, 16 April 1938, 19.

⁴⁸¹ 'Senate Passes Neely Block sales Bill; No Action Expected in House', *Motion Picture Herald*, 21 May 1938, 12.

philosopher (author of *Voltaire and the Cowboy*), who moved quickly to imprint his own stamp on this agenda. Arnold articulated a doctrine of pragmatism unfettered by slavish conformism to underlying legal principles, which in practice meant focusing on “results rather than the intent of competitive practices adopted by industries.”⁴⁸² He had a perfect opportunity to apply this in Hollywood’s context by referencing the *Texas Interstate* case which by then had reached the Supreme Court, with the familiar figure of Robert Jackson – now Solicitor-General – leading the prosecution.⁴⁸³ Because the case centred on second-runs in Texas and New Mexico being obliged to charge 25 cents admission, a higher rate than normal, as a condition of receiving films, plus the denial of movies to all subsequent-runs who wanted to employ a double bill format, it fit perfectly into Arnold’s pragmatic approach.

When he presented his long awaited anti-monopoly speech to Congress on May 6, FDR united Arnold’s imperatives and even echoed some of Allied’s rhetoric, promising legislation to eliminate the “evil effects” that trusts were having on industries. Extending Ickes’ December allusions looking across the ocean to Europe, Roosevelt claimed fascism was being risked in America through economic power being tightly concentrated in too few private hands. The President commissioned an enquiry by the economic regulatory agencies which explicitly excluded members of Congress, ostensibly to free them for campaigning.⁴⁸⁴ The Department of Justice also finally received the funding they had long fought for, as Roosevelt expanded their enforcement budget by \$200,000.⁴⁸⁵ As Congress rose for a summer of campaigning, Ed Kuykendall chose this moment to predict that Federal intervention in the industry was inevitable unless this ‘breathing spell’ between sessions of Congress afforded the industry an opportunity to revive his Ten Point Program. This was, as it would turn out, a prescient call.

Fargo

Windswept North Dakota, in America’s badlands, is about as far from the gilded circuits of entertainment industry lawyers and studio executives as it is possible to get without a passport. Yet in the summer of 1938 “(t)wo score lawyers, independent exhibitors, circuit owners and distributors” stepped off trains and buses blinking their eyes against its endless horizons.⁴⁸⁶ Their dislocation was an index of how much was at stake. Since April 1937

⁴⁸² ‘High Court Delays Dallas Ruling; Momand’s Charges Under Fire’, *Motion Picture Herald*, 30 April 1938, 26.

⁴⁸³ ‘President Asks Congress to Probe Monopoly and Investment Trusts’, *Motion Picture Herald*, 7 May 1938, 28.

⁴⁸⁴ ‘Block Booking and Trust Bills’, *Motion Picture Herald*, 16 April 1938.

⁴⁸⁵ ‘President Asks Congress’, *Motion Picture Herald*.

⁴⁸⁶ ‘Courts, United States Senate and Industry Discuss Trade Practices’, *Motion Picture Herald*, 11 June 1938, 21.

Allied had embarked on a national strategy of targeting states' law makers to secure divorcement of exhibition from the producer-distributors in Hollywood. Revealing independents' disillusion with Federal agencies, Al Steffes explained to *TIME* magazine that the new campaign followed "five years [when] we kidded ourselves that we could obtain at least a little relief from block booking and the other evils over the table through conference."⁴⁸⁷ North Dakota was the lead jurisdiction in Allied's plans, but comparable progress was being achieved in Minnesota and Wisconsin, both jurisdictions that had long been strongholds of progressive political activism in America. Fargo was the key beachhead in this campaign, and North Dakota's Allied-sponsored legislation to split major studios' exhibition from their distribution and production arms had passed the state's legislature, but was now under the scrutiny of the North Dakota Supreme Court on appeal from the industry.

To defend their industry's structure, from Hollywood came senior officers of the MPPDA, MGM, Warners, Fox, Paramount and UA in a spare-no-expenses attempt to quash the threat.⁴⁸⁸ They were matched by Allied's top brass, supported by individual exhibitor members who rose to Steffes' rousing call seeking volunteers to testify in Fargo, with which he had concluded Allied's Pittsburgh convention the previous month.⁴⁸⁹ None of the participants had any illusions about the case's broader implications, as the proceedings reflected very much a national perspective. Exhibitors charged monopoly, claiming the United States was divided into non-competing territories, and Allied representatives from as far afield as Texas and Minnesota stepped up to give evidence reinforcing this.

Just weeks earlier the Neely bill had grabbed the headlines and, being Federal legislation, if it were to succeed its impact would wipe the board clean at a stroke, obviating any need for anyone to be in Fargo. But the bill would still need to be reintroduced to the U.S. Senate if it continued on to success in the House, a far from foregone conclusion. North Dakota, despite being so economically insignificant that only one distributor – Paramount – serviced its markets, thus set a strong precedent. The major studios rightly saw it as the first domino in a potential wholesale unravelling of their tightly knit system of economic control. Another Midwestern jurisdiction, Minnesota, was also a pacesetter. When its theatre divorce bill cleared legislative hurdles in 1937, it was a harbinger of other heartland states building similar momentum.⁴⁹⁰ Nor could the trend be dismissed as merely regional in character since it had spread east, with New Jersey and New York taking similar steps.⁴⁹¹ The motion picture industry's appeal eventually failed in Fargo, allowing a triumphant Myers to reveal his

⁴⁸⁷ 'Al and Allied', *Business: TIME*, June 7, 1937, page unknown.

⁴⁸⁸ 'Await Trade Practice Discussion', *Motion Picture Herald*, 11 June 1938, 22.

⁴⁸⁹ 'Allied Hails Senate's Neely Vote', *Motion Picture Herald*, 21 May 1938, 14.

⁴⁹⁰ 'Action Awaited on Film Divorce Bills', *Motion Picture Herald*, 10 April 1937, 36.

⁴⁹¹ 'Bills to Divorce Companies From Theatres Are Up in Five States', *Motion Picture Herald*, 24 April 1937, 36.

plans to extend this push to each of the remaining 47 states.⁴⁹² The North Dakota outcome also enabled the court to clarify that its decision was entirely grounded in trade practices, not morals (for which read: screen content) at all. This judicial clarification confined the court from contemplating the oft-claimed linkage between industrial issues and screen content championed by moral crusaders.

The Paramount complaint emerges

The end of the game of feint and bluff between Washington and Hollywood, when it came (on schedule six months after the foreshadowed 'grace' period was mooted in January 1938), was full of the cant and bluster that characterised its build-up. Industry refutation of its monopoly power was not helped when, in the shadow of the Neely bill's passage in the Senate, it was reported that exhibitors were being threatened with loss of supply and other coercion unless they signed letters opposing the bill, the reward for which apostasy would be price and other concessions by the studios. Such carrot and stick tactics quickly became redundant as Congress adjourned in early June with the bill becoming blocked in committee by a key procedural gatekeeper long recognised as an industry "friend," Congressman Clarence F. Lea (D.-California), chair of the House Interstate Commerce Committee.⁴⁹³

Now at long last, despite ignoring repeated cajoling from Kuykendall, the organised industry roused itself to action on trade practices, seeing this recess as a breather in which it could regain the initiative.⁴⁹⁴ But there were signs it was already too late. The new "super" committee to investigate monopolies promised by the President in May explicitly listed motion pictures among its industry targets along with oil, steel and radio. More pointedly, in Washington the jungle drums of scuttlebutt claimed that Justice would pre-empt its handover of Hollywood files to the Monopoly Committee with an antitrust action of its own, for which it was already "forum shopping" for sympathetic court jurisdictions in the Midwest, where it had recently received a good hearing on oil. The trades reported that at least one "industry leader" had beaten a path to Thurman Arnold's door in Washington to plead for more time.⁴⁹⁵

The fog was lifting, too, on the incongruous politics of lumping entertainment industries in with the core economic engine room activities of oil and steel, given Hollywood's minimal (0.26% of GDP) contribution to the economy. Small business had noticeably missed out on the fruits of New Deal reform activity, and was still smarting from perceived administration

⁴⁹² "Divorcement" Law Ruled Legal; U.S. Salves "Fears" of Witness', *Motion Picture Herald*, 23 July 1938, 18.

⁴⁹³ 'Neely Supporters Demand Action; More Trust Probe Threats Heard', *Motion Picture Herald*, 4 June 1938, 12; *Pressure Boys*, 97.

⁴⁹⁴ 'Films Unscathed in 57th Congress But Radio Faces FCC Investigation', *Motion Picture Herald*, 18 June 1938, 18.

⁴⁹⁵ 'New Probe Talk is Heard at Capital', *Motion Picture Herald*, 25 June 1938, 42.

failures on promised tax and cheap loan incentives, all of which had come to a head in a disastrous small enterprise conference run by the Department of Commerce earlier in 1938. The small business sector's top lobbyist denounced the President's monopoly investigation as a pretence and "nothing more than a punitive expedition." But with electioneering politicians now on the campaign trail in droves, it was considered "good politics" for the Government to strike a blow on behalf of small cinema entrepreneurs while there was still time.⁴⁹⁶

A stunt on a smaller scale next drew cynical comment even from industry cheerleader Ramsaye. This came ahead of FDR inviting all the major studio heads and Hays to a Saturday parley in the White House, a sure sign that the situation for the industry was indeed grim. On the preceding Wednesday, June 22, Loews (MGM's corporate owner) head Nicholas Schenck had helped the President celebrate his birthday at his family seat in Hyde Park by jointly presenting him with a cheque for \$1,010,000 to fight polio on behalf of a select committee whose membership included FDR confidante Averill Harriman. As Ramsaye dryly observed, while it "may or may not have been something beyond coincidence... that was twice in one week" that Schenck met the President.⁴⁹⁷ In their allotted half hour on Saturday, Roosevelt did not duck the trade practices agenda that had them in its sights but nothing he said disturbed the moguls. Hays airily summed up the encounter stating "I believe the President in return received an encouraging picture... of the continued progress in self-regulation."⁴⁹⁸

Events now moved quickly, or at least appeared to. The following Tuesday the studios trumpeted the formation of a heavyweight committee headed by veteran industry tactician Kent to "study and develop a trade practice program."⁴⁹⁹ But underneath much high-sounding palaver there was nothing more than a dusting off of the MPTOA's Ten Point Program, as originally unveiled in April 1936, some 27 months earlier.⁵⁰⁰ In their unseemly rush to mount some window dressing, the studios' attention to stakeholder management also seemed to lack prudent consideration. Given the prickly nature of exhibitor-distributor relations it may have been understandable to exclude independents' representatives from initial negotiations, but Kent's public assurance that "we will get in touch" revealed a condescension that could be guaranteed not to play well. Nor was the disclaimer by an unnamed industry spokesman that, after all this time, the studios were not "miracle workers,"

⁴⁹⁶ Cassady, 'Monopoly in Motion Picture Production and Distribution', 113; Conant, *Antitrust in the Motion Picture Industry*, 33.

⁴⁹⁷ 'White House', *Motion Picture Herald*, 2 July 1938, 7.

⁴⁹⁸ "'The Majors' Go to Washington', *Motion Picture Herald*, 2 July 1938, 10.

⁴⁹⁹ 'Distributors Announce Committee to Effect Self-Regulation', *Motion Picture Herald*, 2 July 1938, 12.

⁵⁰⁰ 'Ten Point Program Will Be Basis', *Motion Picture Herald*, 2 July 1938, 13.

likely to be a salvo calculated to engender cooperation. Instead, Hollywood needed a miracle, as it appeared that Justice's pre-emptive antitrust strike would now strengthen rather than parallel the anti-monopoly super committee. Ominously for the industry, the recruitment of hotshot trial lawyers to prosecute such actions was now going into overdrive.⁵⁰¹ But this was not a Capra drama, with out of touch fat cats blind-siding the industrious little guy in the corridors of power. It was evident from the statements emanating from the major studios that the MPTOA Ten Point Program had not advanced since it had been shelved unceremoniously the previous year and their new initiative would make haste slowly, with any speed it might accumulate checked by risk-averse legal departments.⁵⁰²

On the other side of Washington, Myers was clearly irritated at his adversaries' access to the Chief Executive. He fired off a stinging missive to the new Monopoly Investigating Committee attacking "the 'billion dollar' film trust" and petulantly cabled Allied regional leaders across the country to tell them that their members should warn the President not to listen to the studio bosses.⁵⁰³ In the high dudgeon of an advocate spurned, he warned that "the degree of regimentation imposed by the motion picture trust... [was] a challenge to government itself." This was yet another contradictory fusillade from the very pro-regulatory Myers. His pique provoked a flurry of insider gossip that Allied would turn its back on the olive branch of self-regulation now being promoted by the organised industry and renew its "correction-by-legislation" attacks, a fear the lobbyist was quick to hose down.⁵⁰⁴

With nothing to add to the MPTOA's ten points, Kent's hastily convened industry reform group quickly extended an invitation to exhibitor representatives to plan formal talks. He foreshadowed a series of preliminary discussions designed to sound out the parties on their ambit and authority and in the process prevent any "chiselling" through backdoor deals. After all this time the recalcitrant Warner Bros. still remained outside the tent, but rumours were circulating that even they were considering coming on board to make the majors' push unanimous. An indication of the Government's true agenda simultaneously came through loud and clear with the appointment to the monopoly committee of Daniel Bertrand, a trenchant industry critic from the NRA who followed the Blue Eagle's grounding with "secret investigations" of his own, earning him the nickname "Uncle Sam's Sherlock of the Movies."⁵⁰⁵ But despite all the hubbub, Hollywood's antitrust hourglass had finally run out of

⁵⁰¹ 'Government Oiling Machinery for Probing Monopolies in "Big Business"', *Motion Picture Herald*, 2 July 1938, 13.

⁵⁰² 'Distributors Are Moving Along on Their Plan for Self-Regulation', *Motion Picture Herald*, 9 July 1938, 16.

⁵⁰³ 'Allied Asks Monopoly Committee for Investigation of Industry', *Motion Picture Herald*, 9 July 1938, 13.

⁵⁰⁴ 'Preliminary Meeting Planned', *Motion Picture Herald*, 16 July 1938, 14.

⁵⁰⁵ 'Allied Asks Monopoly Committee', *Motion Picture Herald*, 9 July 1938, 13. Bertrand was the co-author, with W. Duane Evans, and E. L. Blanchard, of *The Motion Picture Industry: A Pattern of Control, a Study Made for the*

sand. At 9am sharp on the drizzly grey summer morning of Wednesday July 20, 1938, Thurman Arnold entered the office of New York's antitrust division chief, John Amen, in Manhattan before dispatching the papers at 10.15 for what would become known in shorthand as the *Paramount* suit, which would, over time, break up the studio system. Likely tipped off, Hays had hurried back from the West Coast to New York, arriving the night before in time to polish a statement typically shrugging off any cataclysmic implications in favour of blandly welcoming this "opportunity for clarification of film trade customs."⁵⁰⁶

The *Paramount* suit was far from inevitable, and was very much a function of timing. Antitrust prosecutions are expensive, and Justice was in this time frequently complaining of being under resourced. But the moment and the actors coalesced. FDR's anti-monopoly push aligned with Thurman Arnold's progressive views on industrial democracy, and over a decade of news headlines, culminating with the Neely Inquiry, provided context for Washington's assault on Hollywood. Events were moving more quickly on the political stage at large, and were outpacing the legal manoeuvres required to get the lawsuit to trial. Even before its filing, the *Paramount* case was having an impact on screens, through its portent for Hollywood of the industry's great vulnerability to charges of acting in concert and demonstrating monopolistic behaviour. The resultant shift in the management of screen content, engineered under the auspices of the Harmon Inquiry, followed the *Paramount* case's shadow-boxing preliminaries but preceded most of the anti-fascist applications that the redrawn MPPDA boundaries anticipated. As 1938 gave way to 1939, it would become clear that this adjustment had not come too soon, because the screen was on the verge of unveiling its strongest anti-Nazi project yet.

Temporary National Economic Committee of the Senate, Investigating the Concentration of Economic Power, in 1941.

⁵⁰⁶ 'U.S. Sues Majors to Divorce Exhibition and End Block Sales', *Motion Picture Herald*, 23 July 1938, 12.

Chapter 7 – Hollywood’s peacetime attack on Germany: *Confessions of a Nazi Spy: 1939*

Will Hays was prescient to clarify and reinforce boundaries that affected the management of anti-fascist screen content in 1938, because the organised industry was about to receive its strongest challenge yet to official neutrality - a radical screen assault on an ostensibly neutral nation in peacetime: *Confessions of a Nazi Spy* (May 1939). As mainstream Hollywood’s first explicitly belligerent film of the conflict, this film occupies a pivotal place in the history of Hollywood’s peacetime output. Widely recognised as the American industry’s first explicitly anti-Nazi feature, *Confessions of a Nazi Spy* took accusations and condemnation of Germany’s regime beyond the geo-political and into the criminal sphere, and its representations of Nazis as gangsters would remain an enduring cinematic trope. Leading to this point in film history are a string of low budget spy thrillers, steadily pioneering anti-Hitler allusions through structural repetition, which this movie’s high profile as a spy caper both extended and legitimised. *Confessions of a Nazi Spy* is a radical movie and its innovation and extremism go beyond the fact of its overt propagandist intent appearing during the peacetime period, extending into its deep structure as a cinematic product.

Confessions of a Nazi Spy and the changed Industry Policy environment

As Hollywood’s content management gatekeepers in the MPPDA Executive in New York covertly relaxed their strictures on controversial content it was without the industry’s producers (let alone the public) being made aware that the goalposts had moved. Other claimants moved in to fill this vacuum. The screenwriter of *Confessions of a Nazi Spy*, leftist John Wexley, argued in an interview published in 1979 that, through citing various Nazi aggressions as justification, it was he who influenced Joseph Breen to take a more liberal stance on the film.⁵⁰⁷ In the new reality for Industry Policy in the wake of Francis Harmon’s inquiry, Breen was struggling to stay within the safe confines of his freshly enforced boundaries. Breen had had his authority diminished by the Harmon inquiry and, newly constrained, fell back on due process as often as he could during the content management negotiations for *Confessions of a Nazi Spy*. When German Consul Dr Georg Gyssling, in cordial tones, wrote to him personally about the project several times between October and December 1938, in each instance Breen merely passed Gyssling’s correspondence on in full

⁵⁰⁷ Eric J. Sandeen , ‘*Confessions of a Nazi Spy* and the German-American Bund’, *American Studies*, Vol.20, No. 2 (Fall 1979), 72.

to the studio without comment, advising the Consul to take any issues he may have direct to Warner Bros.⁵⁰⁸

Shortly after the Gyssling letters, Breen mapped out his thoughts for the obligatory correspondence to the studio by laying down his concerns in a five page memorandum which ultimately remained unsent, but which he lodged on the case file. Seeking reassurance against unwanted controversy, Breen pointedly alluded to the project's quasi-documentary legitimacy. Here he anticipated one key argument used by the studio, which is that the film was based on well known facts and that, as he wrote, "there is little which may be termed "new" about it."⁵⁰⁹ Extensive details of the script's provocative allegations and attacks on Nazi Germany follow in his memo, although none of them were ever aired by him. Shifting gears to acknowledge the big picture, Breen went on to tacitly recognise that the wider interest in the story extends to Washington, although in this regard, far from the White House:

In considering the problem, suggested by this story, it is of importance to note that indirect, if not direct, aid, assistance, and cooperation has been promised to Warner Bros. by certain important government officials; and the Federal judge, Knox, before whom the German agents were convicted, has permitted the company to photograph his courtroom, in which the trial took place.⁵¹⁰

Coalescing many of these thoughts, Breen eventually wrote to Warner Bros. in mid-December, copying the correspondence as a matter of course to Hays in New York. Moving quickly past standard practice, Breen advised the studio that although:

...we have this day sent you our formal and usual opinion, from the standpoint of the Production Code, and of political censorship, we desire to go a step farther and direct your attention to the important question of general industry policy [underlined in red], which is suggested by a story of this kind.

Having put the project in its wider context by citing Industry Policy, Breen pulled back and went on to say "it has been noted, of course, that much of the material, set forth in the script, is now common knowledge, chiefly because of the revelations brought forth in the recent trial."⁵¹¹ The film's factual basis was a core rationale in the studio's successful campaign to minimise excisions. This operated on two levels: the trial and its reportage plus a broader range of supporting anti-Nazi research material which Warner Bros had forwarded to the PCA,

⁵⁰⁸ *Confessions of a Nazi Spy* file, Production Code Administration Collection, Margaret Herrick Library Special Collections, Academy of Motion Picture Arts and Sciences, Beverly Hills, CA, 3.

⁵⁰⁹ *Confessions of a Nazi Spy* file, Margaret Herrick Library, 1.

⁵¹⁰ *Confessions of a Nazi Spy* file, Margaret Herrick Library, 1-2.

⁵¹¹ *Ibid.*

including a bibliography.⁵¹² *Confessions of a Nazi Spy* needed to entertain yet inspire confidence in its claims to accuracy. Several of its key gambits both on and off screen were strongly redolent of a different film category, which may have eased its passage through the industry's internal review processes. This was the dramatic historical re-enactments then enjoying resurgent popularity, and which Jennifer Smyth's study of the category calls "the industry's most innovative, prestigious, and controversial form of feature filmmaking."⁵¹³ Such a comparison is strengthened by both contrasts and correspondences. *Confessions'* production did tacitly align itself with the safe, uncontroversial historical films by conforming to the prevailing practice of foregrounding its research efforts to bolster and underpin the integrity of its assertions, and Warner Bros. forwarded to the PCA extensive dossiers of supporting documentation beyond the foundational trial transcript. In *Confessions*, newsreel-style inserts resist the chapterising of its story, which was their usual function in historical recreation movies, where they aided viewers to understand a timeline. But as a text focusing on a disturbing present, rather than displaying a narrative arc showing progress, this film needed to foreclose on any possibility that audiences would leave feeling that the Nazi question was settled or even being adequately addressed. Warners could not entirely pursue an alignment with the historical recreation genre because to do so would risk historicising its subject, Nazism, which would have implied it had ceased to be a problem in the present.

Breen concluded this advice to the studio by simultaneously raising the stakes and washing his hands of direct responsibility:

Aside and apart from this [factual accuracy], however, we raise, for your serious consideration, the question as to whether or not your studio, and the industry as a whole, should sponsor a motion picture, dealing with so highly controversial a subject. You understand, I think, that the Production Code Administration has neither the authority, nor responsibility, to pass upon a question of this kind, which is generally referred to as a "question of policy." Our responsibility, under our instructions from the President of the Association is to advise you, of our concern in this regard, and then to refer the matter for further examination and decision to Mr. Hays in New York.

Two and a half weeks later Breen continued this narrow interpretation of the film's suitability in a formal letter from the PCA, advising:

⁵¹² Michael E. Birdwell, *Celluloid Soldiers: Warner Bros.'s Campaign against Nazism* (New York: New York University Press, 1999), 72.

⁵¹³ J.E. Smyth, *Reconstructing American Historical Cinema: From Cimarron to Citizen Kane* (Lexington: The University Press of Kentucky, 2006), 6.

The material, in our judgement, is technically within the provisions of the Production Code, but appears to be questionable from the standpoint of political censorship, both in this country and abroad.

Citing the Code's Article X, "National Feelings," as "the major point for our consideration," he explicitly referenced the wide circulation of trial reporting "in public prints" and the supporting documentation provided by the production as being influential in the Production Code Administration's deliberations. Resting on this foundation of factual accuracy, he conveyed the PCA's official passing of the screenplay, reasoning that "the nation involved – Germany – seems to be represented honestly, and without fraud or misrepresentation."⁵¹⁴ In the Production Code there was in effect what Will Hays called a "balance principle," expressed as the rule of "compensating moral values." This amounted to an equation which allowed transgressive activities to be explored within limits in the interests of drama, provided the pendulum swung firmly against them to ensure prevailing moral values were reinforced in the audience's concluding impression of the film.⁵¹⁵ Against this background, Breen was satisfied that Germany and its citizens were portrayed "fairly" in *Confessions of a Nazi Spy*.

Extending deep into its structure as a filmic text, the rhetoric of "factual basis," the core of *Confessions*' content management strategy with the Production Code Authority, became an analogue for its script's central conceit. The filmmakers had their own subterfuge, and it was situated at *Confessions*' core: an insistent net-widening from a criminal trial prosecuting the small scale stateside activities of a few bungling amateurs, to an exposé attacking the Nazi regime's propaganda machine.

The cinematic operations of Confessions of a Nazi Spy

One of the most striking aspects of *Confessions of a Nazi Spy* is the series of abrupt shifts of its narrative throughout the length of the movie from scenes of conventional Hollywood filmmaking style to intrusive newsreel format segments. Each of these shifts integrates the "news" style footage with Hollywood studio-shot scenes of Nazi officials, most (but not all) of them restaged in English. The inserts appear at 16.13; 34.50 and 79.49 in this 99-minute movie and establish a sequence of exchanges between the individual characters' actions and the larger forces of world Nazism. Like their prototypes from actual newsreels, each insert utilises an omniscient voiceover commenting on the visuals. Such intertextuality was an innovation that did not go unremarked at the time. America's liberal weekly *The Nation* saw *Confessions* "blending documentary information and common story so perfectly that

⁵¹⁴ *Confessions of a Nazi Spy* file, Margaret Herrick Library, 4.

⁵¹⁵ Will H. Hays, *Memoirs*, 538.

almost a new style results, a kind of movie journalism.⁵¹⁶ This putative veracity was not only intentional, but comprised the core strategy behind the producers' content management negotiations with the Production Code Administration.

During the 1930s Hollywood was building its own self-contained universe using intertextuality, as practices and patterns of audience response were forming afresh in the early years of the sound films. A special place in the conventional "balanced program" exhibition model mixing features, cartoons and newsreels was occupied by the short film format. Ostensibly secondary in prestige to the feature, a quality short offered impresarios strong leverage to even out the flavour and temper of a bill that had to satisfy the whole family. It offered the possibility, for example, of placing a strong comedy short ahead of a serious drama, or vice versa. As audiences warmed to talkies, a highly popular thread within short film production was the directly referential satire of successful feature films, a form of parody that started with the title and never let up. Amongst this trend was MGM's *So Quiet on the Canine Front* (1931) and *20,000 Cheers for the Chain Gang* (1933) from Warner Bros., which used musical numbers to parody both *I Am A Fugitive From a Chain Gang* and the Michael Curtiz drama *20,000 Years in Sing Sing* (1932).⁵¹⁷ Intertextuality within a single feature film is a phenomenon that goes further than the truism of cinema embracing all the arts. More than the mere conjunction of texts, this narrative strategy creates a synergistic interplay, in which "textuality... is absorbed and transformed by other texts."⁵¹⁸ *Confessions of a Nazi Spy* applied the intertextual techniques of The Mercury Theatre's *War of the Worlds* (1938) inserting synthetic *March Of Time* sequences two years before Orson Welles' comparable work in 1941's *Citizen Kane*, but took them further than Welles did.⁵¹⁹ Its extra dimension was the insistence in the inserts in *Confessions* on changing the film's mode of address, and in the process rupturing its conventional diegesis, to produce a heterodiegesis of separate, albeit complementary, narratives which enlarged its capacity for propagandist effect.⁵²⁰

⁵¹⁶ Birdwell, *Celluloid Soldiers*, 77.

⁵¹⁷ Doherty, *Audiences*, 157-158.

⁵¹⁸ James Goodwin, *Akira Kurosawa and Intertextual Cinema* (Baltimore: The Johns Hopkins University Press, 1994), 9.

⁵¹⁹ A fully verbalised newsreel-style insert with voiceover could be deployed in a fiction but only as long as it is diegetic, thus ensuring that this does not disrupt the audience's traditional viewing position and challenge its subjectivity. This strategy is deployed in the beginning of *Bullets or Ballots* (Warner Bros., 1936), where a short film, whose style fuses *The March of Time* with MGM's *Crime Does Not Pay* series, is being shown in a cinema to an audience including gangsters Humphrey Bogart and Barton MacLane. The latter's character is named on the screen and shown in a putative reconstruction of his trial. Unlike in *Confessions of a Nazi Spy*, this fake newsreel conforms to established Hollywood narrative codes by limiting its address to the diegetic audience in the fictional cinema onscreen.

⁵²⁰ Sarah Kozlof, 'Humanizing "The Voice of God": Narration in "The Naked City"', *Cinema Journal*, Vol.23, No. 4 (Summer 1984), 41-53.

Confessions' political extremism pushed it into hyper-hybridisation. Marketed as a thriller, it spanned two subdivisions of that category alone, espionage and domestic crime. Its stylistic elements integrating the newsreel style did not function as a bridge linking its thriller mode to actuality elements as they so easily could have. Instead, they sat disjunctively outside the film's crime discourse. The inserts activated an alternative set of Classical Hollywood's generic norms by honouring several conventions of the historical re-enactment category of filmmaking, then experiencing a revival in popularity. This commonality includes not only the "news" inserts and their unusual length but also their unconventional placement in the screenplay (interacting with studio re-enactments) as well as their persistent late placement in the narrative. Thus they continue to function didactically, rather than as mere scene-setting.

The interpolation into movie narratives of news footage was not new; American filmmakers had long embraced event footage in their fictions as an alternative representational strategy to the conventional story-telling language of cinema. Such inserted news footage did not even have to be genuinely non-fiction, as long as it conformed to the documentary recording style of newsreels, thereby signifying a legitimacy for its visuals exceeding that of its fictional surrounds. This combination suggests incontrovertible proof, the credibility of which viewers can see – apparently without mediation – to be self-evident. By the mid-thirties, the recording of news on film for public consumption was an unexceptional feature of the screen, having long lost the novelty value it commanded when reality footage was a staple of the nickelodeons and sideshows of the early 20th century.⁵²¹ The format had settled into a pattern where novelty was the drawcard, with newsreels more inclined to present celebrity froth like "the talking puppet, the tousled wrestler, and the dancing beer cans" than geopolitics.⁵²² Such aversion to reportage of troubling developments has been linked to the slow dawning in America of the perils of Hitler, who by 1934 "was scarcely seen in any [U.S.] newsreel, and never in any context that might be considered unfavorable"⁵²³ *TIME* magazine's publisher Henry Luce entered into this vacuum in early 1935 with the risky gambit of a cinematic news magazine, *The March of Time*.

From its inception, Luce's "experiment in mass communication," quickly gained the status of a major breakthrough and paradigm-shift for journalism. The task that executive director Louis de Rochement and his producers set themselves was "to do on the screen ... what *TIME* did in print – tell a story with a background and insight and in a coherent form", which

⁵²¹ Robert T. Elson, 'Time Marches on the Screen', in Meran Barsam, Ed., *Non-Fiction Film Theory and Criticism* (New York: E. P. Dutton & Co., 1976), 97.

⁵²² Raymond Fielding, 'Time Flickers Out: Notes on the Passing of the "March of Time"', *The Quarterly of Film Radio and Television*, Vol.11, No. 4 (Summer 1957), 356.

⁵²³ Elson, 'Time Marches', 97.

made *The March of Time* virtually a different form from conventional newsreels.⁵²⁴

Observers of all political persuasions lauded the new arrival, perceiving *The March of Time* as upgrading the newsreel in America from its prevailing low standard. Regardless of where one stood politically, *The March of Time* always had a distinctive look and feel. What the leftist cinema group Nykino saw as its “imposition of a trade-mark style upon all subject matter,” Bosley Crowther in *The New York Times* called a “recognized conventional form.”⁵²⁵ One of *The March of Time*’s most distinctive elements was the vocal quality of its signature announcer, Westbrook van Voorhis, which was invariably described as stentorian. Typically bombastic and strident in style, de Rochement’s output was also editorially internationalist and anti-fascist well before its parent print magazines, themselves leaders in advocating such perspectives.

Warner Bros. is now considered to have been the Hollywood major studio most in the vanguard of anti-fascism in peacetime Hollywood. Intuitively it must have seemed to the brothers Jack and Harry Warner that the Luce product’s fit with Warner Bros.’ own interventionist agenda was a natural, since *The March of Time* “followed a definite and internationalist line.”⁵²⁶ The studio had a long awareness of the series and its potential to be interwoven into a strong dramatic narrative. Three years before *Confessions of a Nazi Spy* was released, Warner Bros. attempted to adopt a newsreel-insertion approach replicating *The March of Time* format in *Black Legion*.⁵²⁷ *TIME* in this instance refused to grant permission, and that film struggled on without a newsreel-style element, to its visual detriment.⁵²⁸

The espionage story of *Confessions of a Nazi Spy* is quite minimalist. American Nazi sympathiser Kurt Schneider, played by the passionately anti-German Czech Francis Lederer as a dishevelled, hen-pecked fantasist, launches only three simple initiatives – and on the third of these is caught. As David Wolff reacted in 1939 with some understatement, “we do not have the characteristic twists and obscurities of the usual spy film... no properties like fine little revolvers in ladies’ handbags, nor codes by means of music.”⁵²⁹ No doubt this adds to its verisimilitude, but *Confessions* earned its ostensible categorisation as a domestic

⁵²⁴ Elson, ‘Time Marches’, 95; 98.

⁵²⁵ Alexander, *Film on the Left*, 126.

⁵²⁶ Elson, ‘Time Marches’, 107.

⁵²⁷ Colgan, *Warner Bros.*, 106.

⁵²⁸ It is interesting to contemplate how *Black Legion* would have been improved by the inclusion of this feature, but its comparatively conventional nature, with a single protagonist who undergoes a conversion narrative, mitigates against speculation that it would have pre-empted *Confessions*, whose unusual structural repetition of news-style inserts over its entire length could not have been easily replicated in the standard one-arc narrative of the earlier film.

⁵²⁹ David Wolff, ‘Film Problems of the Quarter’, in *FILMS*, 82. He would only have to wait two years for *International Lady* to see this on “A” movie screens.

espionage movie on a bluff that crumbles when challenged. By doing a simple content audit we find this 97'35" (before credits) feature comprises a narrative consisting of only 46'30" of espionage activities, or less than half its running time. Explicit anti-Nazi propaganda represents 25'10," augmented by the less strident critique of implicit anti-Nazi propaganda (Nazis behaving badly) of 13'15", leaving 12'30" as connecting tissue.

Confessions' plot is progressed by familiar elements that tie it to the generic expectations of the crime thriller: undercover detectives tailing a suspect through city streets; an interrogation scene with inclined framing and deep shadows that anticipate the conventions of *film noir*; and most comfortably of all, a lengthy and climactic trial scene. While the title *Confessions of a Nazi Spy* immediately tilts the movie's reception towards espionage narratives, it shares no anchoring points with the contemporaneous benchmark for the Hollywood A-level spy movies, the Mata Hari cycle of the early-mid-30s, which relied on cross-cultural romantic frustrations and a romanticised World War One setting for their foundation. Neither does *Confessions* overlap more than marginally, through the device of smuggled military secrets, with the parade of low budget spy movies emanating from Poverty Row studios (as examined in Chapter 9 of this thesis).

As a "special," or A-feature, *Confessions'* primary task was to make money, no matter how much Jack, and especially Harry Warner, altruistically wanted to fight the Nazis with the opinion-forming weapons at their disposal.⁵³⁰ One key element that strengthened the project's box office potential linked *Confessions* more strongly to the crime genre: its casting of an iconic figurehead from the original Hollywood ethnicised gangster cycle as its FBI protagonist, Edward G. Robinson.⁵³¹ Just a few years earlier, a Production Code-driven eruption of new gangster films had enabled the original cycle's icons, "Warners' urban ethnics – Cagney, Muni, Robinson," to dust off their early 30s mannerisms on the right side of the law, this time in the G-Men cycle, a development that had direct implications for *Confessions of a Nazi Spy*.⁵³² Arguably the most prominent amongst the screen tough guys projecting shifting loyalties between G-Men and public enemies was Edward G. Robinson. Robinson's acting persona drew upon a dualism fundamental to his creation story, in which the actor's middle initial, 'G,' permanently retained a part of his origins – née Goldberg – on screen. A Janus-like quality was central to his work in a series of movies where he appeared (sometimes simultaneously, in split-screen) both as a criminal and as a law-abiding citizen,

⁵³⁰ Birdwell, *Celluloid Soldiers*, 28-36.

⁵³¹ For consistency with prevailing research "original" identifies the ethnicised gangster cycle which has *Public Enemy* (1931) *Scarface: The Shame of the Nation* (1932) and *Little Caesar* (1932) at its apogee, though even in sound films an earlier cycle of more gentlemanly gangster films can be found.

⁵³² Richard Maltby, 'It Happened One Night: The Recreation of the Patriarch', in Robert Sklar and Vito Zagarrio, Eds., *Frank Capra: Authorship and the Studio System* (Philadelphia: Temple University Press, 1998), 141.

an ambivalence which added political resonances to his role as the Nazi-hunting FBI agent in *Confessions*. One illustration is found in John Ford's 1935 hardboiled comedy of mistaken identity *The Whole Town's Talking* where Robinson plays the mobster doppelganger of a mousy office clerk. Robinson's key "fulcrum" role was in *Bullets or Ballots* (1936), in which he makes the same transition from bad to good guy that occurs for Cagney in *G-Men*.⁵³³ Later Robinson reversed this trajectory in *The Amazing Dr Clitterhouse* (1938), in which the interaction between his executive role as gangleader and status as a doctor strengthened and extended the strand of professionalism that courses through most of his pre-war roles. These are epitomised by *I Am The Law* (1938), *A Dispatch From Reuters* (1940), and *Dr Ehrlich's Magic Bullet* (1940).

With looks that functioned on camera as a tabula rasa for non-white racial types Robinson was, despite his "outsider ethnicity," certainly available to play a WASP, and thus sever, however temporarily, links to his legacy of Southern European gangsters.⁵³⁴ In *Confessions of a Nazi Spy* his FBI character, Edward Renard, is entirely unaccented, undemonstrative and calm, and almost obsessively devoid of the histrionics and exuberance Classical Hollywood ascribed to Mediterranean peoples generally, not just to gangsters. Nevertheless, a dual discourse operates around Robinson's ethnicity in *Confessions*. The character's name Renard, French for fox, reflects and amplifies the wiles and cunning he displays in besting the other characters, especially the hapless would-be spy Lederer. Its French origin also aligns Robinson's with the only ethnicity that is simultaneously Latin and an unambiguous anti-Axis ally of Britain and America.

Robinson's screen legacy of combining executive skill and outsider status is leveraged in Renard's introductory scene, which occurs late in the movie, at the 41-minutemark. A group of anonymously suited executive types inside the FBI express bewilderment at the Nazi situation before the camera pans to the previously unseen agent Renard (Robinson), puncturing their confusion by tying together the Bund training and Nazi propaganda, before concluding: "It's a new kind of war, but it's still war." Robinson, whose status is indicated here by his sitting apart from the others, is situated as one of them, but with a superior insight into criminality that inheres in the man, not in the FBI as an institution. Not pausing to explain his greater streetwise knowledge, the connotations of Robinson's persona fill out Renard's contours to yield a key resonance which the film draws on extensively to pillory the

⁵³³ *Bullets or Ballots* featured the same director/screenwriter pairing as *G-Men*: William Keighley and Seton I. Miller respectively.

⁵³⁴ Jonathan Munby, *Public Enemies, Public Heroes: Screening the Gangster from Little Caesar to Touch of Evil* (Chicago: University of Chicago Press, 1999), 107.

Nazis: in an adaptation of the adage attached to Robinson's ambivalent criminality, that "it takes a crook to know one," in *Confessions* it takes a fox to stalk this quarry.

Reinforcement for this allusion comes from Warners' own publicity materials in a lobby card (illustration follows) featuring a shadowy, undeniably threatening face which is much more like Robinson's than any other character in the film, and yet is also redolent of the shadowy threat of comic book Nazis. Nazi gangsterism was a connection Jack Warner attempted to make explicitly allegorical in *Confessions*' pressbook:

"With this picture, I hope to do for the persecuted victims of Germany – Jews and Catholics – what we did for law and order with *Public Enemy*. The immediate result of that picture was to arouse the public to the horrors of gangsterdom and put Al Capone behind bars."⁵³⁵



(Author's private collection)

Although *Confessions* would have been consumed to a great degree as a crime film, it in no way risked offending prevailing cultural standards as a conventional thriller might have done.

⁵³⁵ Russell Earl Shain, *An Analysis of Motion Pictures About War Released by the American Film Industry 1930-1970* (New York: Arno Press, 1976), 41.

Breen had earlier had problems with Robinson's crime comedy *The Whole Town's Talking* over excessive violence, gunplay and the idolatry of thinly disguised mobsters.⁵³⁶ That type of thriller found no counterparts in *Confessions*, as the issues aroused by the Gangster/G-Men cycle simply do not appear here. This is not surprising because criminality, of which there is little in the traditional sense, is not this film's primary concern. *Confessions of a Nazi Spy* was the first, and until Pearl Harbor the strongest, movie to show Nazism as what Wendell Willkie, appearing as lead advocate for the Hollywood studios in the Senate's *Propaganda Hearings* of 1941 (examined in Chapter 8 of this thesis), would describe as "a cruel, lustful, ruthless and cynical force."⁵³⁷ The film's criminalisation of the Nazis started on the plane of visual allusion, and extended to their psychological profile. Bullet-headed Gestapo agents linger menacingly at the back of a room in long trenchcoats; a shadowy fedora telegraphs to the audience that the Gestapo are waiting in ambush; and a strong visual analogue redolent of Hitchcock's *The 39 Steps* (1935) shows gangster types waiting under a streetlight beside a getaway car at night seen from the apartment window above. Much worse than traditional mobsters, whose victims typically succumbed to understandable temptations like the numbers racket or loan sharking, the Nazis subject innocent German-Americans to threats to their families who are still in Germany in order to make them collaborate.

While the film leveraged Robinson's ethnicity to limn Nazi criminality, it did the opposite with German ethnicity. The stridency of *Confessions'* anti-Nazi rhetoric reached an inflammatory pitch that would not be equalled until the actual wartime films of 1942-45, and unlike the structural approach taken to covertly accuse Germans of criminality in the low budget domestic espionage B-Spy movies, the explicitness and high profile of *Confessions* presented its creators with some timely challenges. One of the most immediate of these was distinguishing between culture and politics, between Germans and Nazis. *Confessions of a Nazi Spy* was careful to show German-Americans who were strongly anti-Nazi, several of whom themselves wound up as victims of the Gestapo in the film. To its credit, the film refuses to take the easy option of a cartoonish two-dimensional xenophobia, opting instead for a values-based approach to its inflammatory rhetoric, which prefigured the *Why We Fight* series of wartime propaganda films produced by Frank Capra. Recognising a connection to that series, especially its opener *Prelude To War*, which covered much of the same ground as *Confessions* in similar style, is less surprising when realising that *Confessions'* director

⁵³⁶ Carlos Clarens, *Crime Movies: An Illustrated History of the Gangster Genre from D. W. Griffith to Pulp Fiction* (Cambridge: Da Capo, 1997, 2nd edition), 115.

⁵³⁷ 'Propaganda in Motion Pictures': *Hearings Before A Subcommittee of the Committee on Interstate Commerce*, United States Senate, Seventy-Seventh Congress, First Session, September 9 to 26, 1941 (Washington: United States Government Printing Office, 1942), 20.

Anatole Litvak was the co-director of *Prelude To War*, along with Frank Capra. In both *Confessions* and *Prelude To War* the tightrope of a values-oriented rhetoric that is also inflammatory is reconciled. Litvak achieved this in *Confessions* through showing fundamental US values such as freedom of speech and assembly, the racial harmony of the melting pot and religious tolerance as principles of national independence that were placed under threat by Nazism. In *Confessions* the propaganda diatribes of Kassel, leader of the German-American Bund, attack these cornerstones of Americanism. The film's primary antagonist, Kassel is played by Paul Lukas as a Hitler manqué whom the narrative shows to be a duplicitous agitator, propagandist, adulterer and spy ringleader. Mirroring the project's comparative concerns between propaganda and espionage, Lukas dominates the screen more than Lederer's fumbling spy. Eschewing, for the most part, race in favour of ideology as the driver of evil in its analysis of the world crisis, *Confessions* took the moral high road of arguing values rather than demonising. While more difficult to sell to audiences, this principled approach also promised more enduring benefits as propaganda. Unlike the subsequent belligerency of combat films following Pearl Harbor, the *Confessions* project had the space and the ideological drive to carefully distinguish between the current political and cultural dimensions of Germany and not essay a one-sided, racist attack.

Hearing and seeing Confessions of a Nazi Spy

Following *Confessions*' credit-free opening title sequence (in industrial-strength font, underlining its gravitas) a blacked-out profile, cameo style, of the voiceover reporter appears. This protection of his appearance initiates a subtext of anonymity that reinforces the film's backstory of closed sets, actors listed on worksheets under false names and unusually high security at Warners in response to Nazi death threats. But this set-up also pays a convenient dividend: building the film's journalistic credibility. After its temporal setting is identified verbally as 1937, the factual basis of the story in what was popularly known as the *Rumrich* spy case after its chief defendant, Guenther Rumrich, is established by reference to the Federal Court of New York where, in the narrator's words, "some months ago..." The voiceover's profile is visualised at a microphone table like a radio reporter. This journalistic element is portrayed as both authoritative and impartial and becomes viewers' sole source of information since, as the *Motion Picture Herald's* review pointed out, the "brief and unadorned main title of "Confessions of a Nazi Spy" lacks the customary note to the effect that the characters displayed are fictional and that any similarity to real characters living or

dead is coincidental”; not only are these characters far from fictional, but this challenging opening portends no familiar cinematic comforts to viewers.⁵³⁸

In a series of exchanges, the journalistic device is used to thread *March Of Time* style inserts into the Hollywood style narrative by continuing the voice of the reporter over key early scenes of dramatic reconstruction. From here the narrative moves seamlessly into the newsreel segments. The effect is to aggrandise the authority of the real *March Of Time* for the synthetic reporter, who in turn confers this implicit legitimacy on the movie’s newsreel segments. Given the history of newsreel insertion in movies, without an alternative reading being made available, audiences would have been predisposed to accept the newsreel segments here as a stylistic device, albeit one that functioned within the frame of conventional Hollywood storytelling. But the status of the voiceover established as that of a reporter pushes the inserts, and by implication their provenance, firmly onto the site of journalism rather than Hollywood fiction. Voiceover has long been criticised on ideological grounds for colouring responses and foreclosing on the supposed impartiality of images.⁵³⁹ In *The March of Time* and particularly in *Confessions of a Nazi Spy*, its use denied what the news-style visuals promise: open readings.

The plot of *Confessions*, which purports to be a dramatic reconstruction employing conventional Hollywood authorial techniques and spectator positioning, has its assertions successively (and importantly for an audience of mixed sophistication, immediately) proved by the documentary footage. As a paradigm of the trial on which it is based, the film effectively tenders these quasi-newsreel inserts as evidence of its arguments, foreclosing viewers’ opportunity to dismiss the Hollywood version as unfounded fiction. The proximity of studio-style visuals to the real pushed their interaction to new reaches, with each of the *Confessions*’ inserts’ mini-narratives entwined tightly into the story unfolding around it.

The first insert lays the groundwork for Robinson’s keystone “tie the two together” introductory speech, which summarises the film’s overarching theme that German-derived/sourced material is deliberately destroying America’s domestic tranquillity. Precisely dated and located as Nuremberg (by voiceover), brief footage of a Nazi rally gives way to a studio shot of an unknown Nazi officer declaiming in German against the assimilation of Germans living abroad, translated by the voiceover. A dissolve takes us back to Bund leader Kassel (Paul Lukas), now in Nazi uniform for the first time, haranguing his New York audience on the same topic (German racial unity) and attacking the U.S. Constitution and

⁵³⁸ ‘Confessions of a Nazi Spy: Not Coincidental’, *Motion Picture Herald*, 29 April, 1939, 50.

⁵³⁹ Giseline Kuipers, ‘How National Institutions Mediate the Global: Screen Translation, Institutional Interdependencies, and the Production of National Difference in Four European Countries’, *American Sociological Review*, Vol. 80, No. 5 (October 2015), 988.

Bill of Rights, leading to a brutal brawl between brownshirts and the American veterans of the First World War and anti-Nazi German-Americans in the crowd. It is thus Germany that is exporting the propaganda which is disturbing America domestically. The much longer insert sequences which follow are similarly integrated with the progression of the surrounding plot, but go further into visual pyrotechnics and extreme accusations.

The repetition of the inserts represented a fresh, albeit risky, variation of the dual discourse tactic. The mutually reinforcing validations between studio re-enactments and actuality footage in *Confessions* lacked any external referent, and merely extended each others' status like a hall of mirrors. Style rather than content carried the greatest weight of authenticity, with most reception then and now allowing the film's quasi-documentary format to suffice for its credentials. Ensuring that they comment on each other cumulatively within the broader theatre program in which *Confessions* was consumed, the film's Hollywood narrative made the effort to recreate scenarios closely based on then recent event footage screened in actual newsreels. This included the notorious Madison Square Garden Bund rally on the anniversary of George Washington's birthday in February 1939, which, as in the movie, degenerated into a brownshirts' brawl, plus an outdoor Bund camp for U.S. Nazi children. These images were wisely were not restaged in *Confessions*' own newsreel-type inserts. They did not need to be. The diversity of the four-hour long cinema programs of the time meant that the "seemingly authentic depictions of world affairs the moviegoers found in the newsreels and *March Of Time* often served as 'factual' introductions to the fictionalized versions of the same events and themes they encountered in feature films."⁵⁴⁰ Restaging them as the same but different, *Confessions* was able to double-dip on actuality footage which strengthened the anti-Nazi arguments, effectively colonising those visuals. In his review for *The New Republic*, critic Otis Ferguson concluded that this effect delivered "a statement of sober, inevitable facts, so brilliantly realized that no one can hide from it; it happens before his eyes."⁵⁴¹

The deployment of actuality footage in Hollywood fictions up to this time conformed to certain tacit narrative conventions. Non-diegetic news imagery could be inserted into a fictional story, affording purely visual reinforcing comment that underlined the plot's thrust, provided it eschewed any voiceover, because that would challenge audience positioning. By contrast, the synthetic newsreels in *Confessions*, with their use of voiceover and placement commenting on plot points, achieve a directness of address that makes audience members *their* object. Now the onus of resolving the problem of Nazism is impossible to dislodge from

⁵⁴⁰ Richard W. Steele, *Propaganda In An Open Society: The Roosevelt Administration and the Media, 1933-41* (Westport Connecticut: Greenwood Press, 1985), 151.

⁵⁴¹ Robert Wilson, Ed., *The Film Criticism of Otis Ferguson* (Philadelphia: Temple University Press, 1971), 253.

the viewers on whom this responsibility been placed, directly insinuating audience members in its outcome. It was an impact recognised by Graham Greene when he noted how this film “does impose a kind of reality – the reality of ‘news’” upon the viewer.⁵⁴²

The unorthodox objectification of the viewer in *Confessions of a Nazi Spy* co-exists with another break from Hollywood narrative conventions, the centrality of a single protagonist. Pre-war U.S. thrillers’ predominantly male audiences traditionally expected a protagonist who would chart a path through the action. In *Confessions*, we initially follow the Bund leader (Lukas) whose opening scenes show him in Nazi contexts and trimmed moustache, ranting and haranguing an audience, making him an obvious Hitler analogue whose eventual undoing is anticipated and inevitable. The film’s mode of address initially achieves a seemingly conventional Hollywood subjectivity, first around the inept spy Schneider (Lederer), on whom it confers agency, thus situating him as a protagonist. This and the fact that he is victimised by the Gestapo suggests that a conversion narrative may ensue. Director Anatole Litvak’s framing of Schneider’s interrogation scene at the hands of FBI agent Robinson as a darkening, destabilising downwards spiral does maintain some hope for audience sympathy with the spy, until he confesses. But at this point, when his threat dissipates, Lederer’s agency is transferred to Robinson, and any appearance of the inept Nazi spy thereafter is as a degraded object, totally eviscerated. He soon disappears completely, returning only at the concluding trial as a mute replica, a simulacrum of the movie’s eponymous spy, seen mostly in long shot.

The disparate nature of *Confessions*’ narrative – being segmented by the inserts and Robinson’s late arrival rather than tracing one long, three act narrative arc – allows the story’s ambiguity to defer to the authority of the anti-Nazi inserts and their dogmatic, closed *March Of Time* style; no alternative readings can be countenanced. By the time Robinson’s Renard first appears at the 41-minute mark, a short and a long two-stage newsreel insert have already objectified viewers through their direct mode of address. In the Mercury Theatre’s *War of the Worlds* listeners reported that the use of regular, radio-style commercial breaks disoriented them from the posture of hearing a fictional story, and reoriented them to perceive a breaking news story being steadily updated.⁵⁴³ Similarly, in *Confessions of a Nazi Spy* audience subjectivity was undermined by the rhythm of its insertions occurring at regular intervals. Such a carefully spaced, steadily recurring didactic content as these inserts relentlessly targets the viewers. Only in the movie’s second half are viewers given the

⁵⁴² Greene, *The Pleasure Dome*, 229.

⁵⁴³ Hadley Cantrill, *The Invasion from Mars: A Study in the Psychology of Panic* (Princeton: Princeton University Press, 1947), 68-71; Charles Jackson, ‘The Night the Martians Came’, in *The Aspirin Age 1919-41*, Isabel Leighton, Ed. (Harmondsworth: Penguin Books, 1964), 448-449.

traditional opportunity of vicariously identifying with the action hero, as Robinson gives chase to Lukas and George Sanders' Gestapo agent, but even in this part of the film escapism is mitigated when the judge at the trial changes his form of address to direct to camera and continues to lecture audience members.

Robinson's achievement of agency much later in the film can be seen as deliberately ideological in design. It prevents the conventional action hero protagonist, around whom activities traditionally constellate, from dominating. The leftist screenwriter of the film, Seymour Krim, was affiliated with a radical East Coast cohort of writers and artists who privileged collectivism over individual agency. Within abandoning Hollywood's narrative codes, Krim used structural means to achieve a decentralisation of the protagonist's importance in the narrative. Ironically Krim's agenda coincided with that of the stridently anti-Communist FBI director Hoover (who was highly aggrieved that the individual agent, Leon Turrou, on whom Renard is based, wrested control of the Bureau's representation away from the agency itself by writing the book from which the film is derived). Hoover was at pains to prevent a vigilante response from growing on the part of citizens in response to a putative spy threat. Eroding the action protagonist hero in favour of collective effort thus served two ideologically divergent agendas, however inadvertently.

Confessions of a Nazi Spy broke new artistic ground, and in strictly cinematic terms would have been difficult to replicate, but still could have spawned a fresh cycle of movies explicitly attacking Nazi Germany. This appeared likely in its immediate wake. Simultaneously with the December 1938 announcement of *Storm over America* (as *Confessions* was originally known), Warner Bros also revealed plans to film *Concentration Camp*, from tabloid journalist and movie producer Mark Hellinger.⁵⁴⁴ In January 1939 the studio unveiled another anti-Nazi project, *The Bishop Who Walked with God*, which soon had Paul Muni attached.⁵⁴⁵ The world was technically at peace, and the organised movie industry would have been reliant on the Production Code and Industry Policy to manage such projects. In early March 1939, midway through the PCA's internal deliberation over *Confessions*, the Soviet anti-Nazi feature *Professor Mamlock* had been referred by Breen to New York for evaluation, as the impact of Harmon's 1938 inquiry took hold.⁵⁴⁶ The next month the antediluvian anti-Nazi attack, *Mad Dog of Europe*, was dusted off and resubmitted to the PCA for clearance. After strenuously protesting the project on its first submission in 1933, Breen now quickly gave it the green light in language very similar to that which he employed for *Confessions*,

⁵⁴⁴ 'Nazi Spy Trial in Film', *Motion Picture Herald*, 10 December, 1938, 42.

⁵⁴⁵ "'Totalitarian' States Put Further 'Squeeze' on Hollywood's Films", *Motion Picture Herald*, 28 January, 1939, 17; 'Distributors Set Sales Drives', *Motion Picture Herald*, 25 February, 1939, 14.

⁵⁴⁶ "Professor Mamlock", *Motion Picture Herald*, 4 March, 1939, 8.

describing *Mad Dog* as “fair” to the subjects. He added that its release would be “enormously dangerous” elsewhere in the world.⁵⁴⁷ Later that month, as Warners ramped up a major promotional campaign for *Confessions*, three studios still operating in Germany announced their own slates of anti-Nazi features. Among these was a revival of the aborted Sinclair Lewis novel, *It Can't Happen Here* from MGM, the resuscitation of which *The New York Times* reported the White House had no objection to.⁵⁴⁸

Confessions of a Nazi Spy's factual basis was the key to getting it past industry gatekeepers, and that precedent might have helped one of these proposed new films, *I Had A Comrade*, which was intended to be based on the concentration camp memoirs of Viscount Casselross (sic), but this was in a minority amongst the announced projects, most of which were fictionalised accounts.⁵⁴⁹ After its opening on May 8, *Confessions* only did strong business in the northeast seaboard states and, over Jack Warner's strenuous denials, would go on to be described in *The New York Times* in 1940 as “a disappointment at the box office.”⁵⁵⁰ That subjective view may reflect *New York Times* film critic Frank Nugent's antipathy for the movie, which he disparaged as ‘inflammatory,’ because against its total cost of \$681,000, the film made \$1,531,000, a not inconsiderable profit.⁵⁵¹ Nevertheless, and whether related to *Confessions' box-office* performance or not, all the studios, including Warner Bros, shelved their announced anti-Nazi projects, including *It Can't Happen Here*, within a fortnight of its early May release.⁵⁵²

In a fashion industry which must nevertheless provide a return for its investors, money cannot satisfactorily explain the sudden withdrawal of four of the Big Five major studios from anti-Nazi production in mid-1939. In her history of Warner Bros pre-war anti-fascist activities, Christine Colgan points out that MGM, Paramount and Fox were still present in the German market at the time, implying that a bargaining chip was being played to protect their market conditions.⁵⁵³ A trade practices analysis suggest that fictionalised narratives, which most of the withdrawn projects relied upon, posed more risks for screen content management by the Breen Office than Warner Bros. encountered with *Confessions*, and that on balance the benefits of breaking new ground in a sensitive environment were simply not worth the trouble.

⁵⁴⁷ Colgan, *Warner Bros.*, 421.

⁵⁴⁸ The announced projects were: *Heil America!* and *Invasion* (Paramount); *I Married A Nazi* (Fox); *Mortal Storm*, *Heroes*, *I Had A Comrade*, and *It Can't Happen Here* (MGM). Colgan, *Warner Bros.*, 422-423; 427.

⁵⁴⁹ Colgan, *Warner Bros.*, 423. This is probably a reference to Valentine Castlerosse, an associate of Lord Beaverbrook. See: Nicholas Rankin, *Churchill's Wizards: The British Genius for Deception, 1941-1945* (London: Faber and Faber, 2009), 271.

⁵⁵⁰ Giovacchini, *Hollywood Modernism*, 125; Colgan, *Warner Bros.*, 421.

⁵⁵¹ Colgan, *Warner Bros.*, 418; Welky, *The Moguls and the Dictators*, 130.

⁵⁵² Colgan, *Warner Bros.*, 426-427.

⁵⁵³ Colgan, *Warner Bros.*, 422.

In light of this industry's predilection for acting in concert, Colgan's suggestion remains the most likely explanation.

Chapter 8 –Hollywood on trial in 1940 and 1941

Two high profile assaults on Hollywood with national significance took the perpetually defensive motion picture industry's legal challenges to new lengths in the first two years of the 1940s. Although filed in July 1938, two years of legal wrangling and preparation meant that the trial of the *Paramount* litigation did not start until June 1940. This was a radically altered political environment where the threat to American interests of a triumphant Hitler marching through Europe took precedence over U.S. domestic issues.⁵⁵⁴ Such rapid recontextualisation dramatically changed the litigation's peacetime destiny.

By 1941 a martial, militarist media environment had become omnipresent in America.⁵⁵⁵ That summer both pro-interventionist and isolationist groups stumped the country campaigning on the question of war. Internal issues at leading isolationist body America First prompted its New York director John T. Flynn to deflect criticism by convincing a bloc of progressive Senators, many of whom were longstanding Hollywood foes, to launch a high profile, whole of industry attack centering on anti-fascist content that was potentially as threatening as the *Paramount* suit. This became known as the Senate *Propaganda Hearings*.

The Paramount suit Consent Decree

A prominent element in the *Paramount* case was the legal remedy of a consent decree, a legal instrument of mutual agreement that is "subject to judicial approval."⁵⁵⁶ References to the potential for resolution offered by the consent decree option featured strongly throughout the two years of the case's first, pre-war phase of development. Substantially co-written by Abram Myers on behalf of Allied States, the interests and rhetoric of the lobby for the independent exhibitors calling for greater freedom of choice were embedded in the *Paramount* complaint.⁵⁵⁷ The extent of this collaboration suffused the court document, with Hollywood lawyers expressing "surprise at the language [of the] complaint, asserting it lacked the usual precise legal language ... [instead, using] the non-legal language of the trade."⁵⁵⁸

That integration tacitly extended to the action's core legal strategy. Driving the case as head of the Antitrust Division of the Department of Justice, Thurman Arnold repeatedly argued for what he saw as inextricable links between freedom of action for domestic industry players

⁵⁵⁴ Maury Klein, *A Call to Arms: Mobilizing America for World War II* (New York: Bloomsbury Press, 2013), 22-23.

⁵⁵⁵ Michael Sherry, *In the Shadow of War: The United States since the 1930s* (New Haven: Yale University Press, 1995), 56-57.

⁵⁵⁶ 'U.S. Says Aim is Restoration', *Motion Picture Herald*, 23 July, 1938, 13.

⁵⁵⁷ Muscio, *Hollywood's New Deal*, 155.

⁵⁵⁸ 'Says Control is Up to the Courts', *Motion Picture Herald*, 30 July, 1938, 16.

and freedom of thought for the American citizenry who consumed cultural products. Its development and filing coincided with the moment in history when the Spanish Civil War was prompting U. S. audience calls for a greater degree of screen choice that offered a genuine degree of engagement with the issues of the day. During its preparation and well after its lodgement, anxieties about European fascism were threaded throughout the *Paramount* case's discourse. In *The New York World Telegram* columnist Heywood Broun greeted the 1938 litigation with an intemperate claim that that Will Hays' activities "to standardize expression... [are] in the Hitler tradition", citing recent criticisms by Thomas Mann. Arguing the industry's case to Secretary of Commerce Harry Hopkins in March 1939, Harry Warner pushed control of exhibition as crucial to ensuring film quality, which would be an essential aspect of cinema's "ideological role in the coming war." Countering that argument, Senator Matthew Neely's report on the movie industry in June 1939 concluded that Hollywood's "central control of public opinion... [is how] the European dictatorships have been able to maintain their hold on national sentiment."⁵⁵⁹

The anti-monopolist rhetoric of the Second New Deal was also deployed in the *Paramount* case to express an orientation towards privileging the interests of the consumer in the marketplace. While the case was in development, the prevailing policy sentiment of the White House was to attack concentrated economic power. As a recent history of the Depression has noted, these were years when "(a)ssailing bigness was fashionable."⁵⁶⁰ Supreme Court Justice Louis D. Brandeis, author of *The Curse of Bigness* (1934), endorsed Roosevelt's anti-monopolist reforms during the Second Hundred Days by saying the President "appreciated the evils of bigness."⁵⁶¹ This preoccupation dovetailed seamlessly with the localist ideals of Allied, helping to cement the case's cohesive political underpinnings into a pro-choice ideology that was shared between independent exhibitor advocates and Justice.

From the outset of the litigation strong legal remedies were sought and rigorously demanded by Thurman Arnold, primarily in the form of an order for the divestiture of theatres. This goal reified the conceptualisation which lay at the heart of the case: that the industry's vertically-integrated structure, sustained by unfair trade practices such as block booking and blind selling which disadvantaged independents, created an economic monopoly. In turn this enabled a "monopoly of discourse" on screen.⁵⁶² Barriers to entry yielded one voice, rather

⁵⁵⁹ 'It Seems to Me', *Motion Picture Herald*, 23 July, 1938, 7; Muscio, *Hollywood's New Deal*, 166; 'Asks Block Sale Ban to "Restore Not Innovate" Industry Practice', *Motion Picture Herald*, 10 June, 1939, 16.

⁵⁶⁰ Amity Shlaes, *The Forgotten Man: A New History of The Great Depression* (New York: Harper Perennial, 2008), 279.

⁵⁶¹ Mulder, *Insurgent Progressives*, 122.

⁵⁶² Muscio, *Hollywood's New Deal*, 148, 143.

than a community of voices whose diversity could provide a vigour that would be important in a time of national crisis. In the prevailing climate, the government “could not allow ‘a few groups’ to dominate the film industry” any longer, argued Arnold.⁵⁶³

Yet this perspective imported a contradiction into the heart of the action. Explaining the Antitrust Division’s broad public interest in his 1939 Annual Report, Arnold described *economic* classes of disadvantage whom his work sought to assist: consumers, home builders, small retailers and farmers.⁵⁶⁴ The rhetoric of traditional American individualism is built on just such stout bedrock. But only on the *cultural-political* plane of screen quality could his movie case seek a justificatory benefit because affordability was already maximised by the Run-Zone-Clearance system he sought to bring down. Giuliana Muscio has pointed out that the American consumer “would not have benefited in direct economic terms” as moviegoers’ costs were minimised by the interlocking system enabled by vertical integration, anchored by the exhibition oligopoly. As Arnold and Paul Williams developed their prosecution’s strategy this realisation dawned, and they saw that their argument in fact “involved a discussion of film quality and of federal censorship.”⁵⁶⁵

During the trial’s build-up, concerns about screen quality were voiced differently from varying perspectives. Two weeks before the litigation’s filing in July 1938, the President received a report from the National Resources Committee on issues arising from a “changing population” which described both radio and cinema to be “at a dead level of artistic production”, with each displaying “a strong trend towards standardization.”⁵⁶⁶ Allied moved towards the 1940 trial by continuing to decry “objectionable” pictures, maintaining a long thread of moral concerns over violent and salacious films. Such differences of interest grew to be one of the case’s weaknesses, as cracks in Arnold’s core formula linking structural freedom to freedom of discourse became apparent in practice. Williams was disillusioned when such avowedly independent creative artists and internal industry critics as Walter Wanger, Frank Capra, Samuel Goldwyn and even Communist Donald Ogden Stewart demurred from openly expressing support for the government’s case. As Wanger told Department of Justice lawyers, he “has to live with these people.”⁵⁶⁷ Another breakaway element was formed by the three “minors,” United Artists, Columbia and Universal, which did

⁵⁶³ ‘Government, Industry Open Battle in New York Federal Courthouse’, *Motion Picture Herald*, 8 June, 1940, 12.

⁵⁶⁴ ‘Arnold Says Consent Decree for Past Offences Has Been Abandoned’, *Motion Picture Herald*, 6 January, 1940, 27-28 (emphasis added).

⁵⁶⁵ Muscio, *Hollywood’s New Deal*, ‘ 143; 144.

⁵⁶⁶ ‘U.S. Looks to Hollywood for Aid in Nation’s Cultural Development’, *Motion Picture Herald*, 9 July, 1938, 21.

⁵⁶⁷ Muscio, *Hollywood’s New Deal*, 185; 170-171.

not own theatres and constantly argued they were not subject to the accusations and hence the remedies being sought by Justice.

As the body that policed the boundaries of screen discourse through its subsidiary the Production Code Administration, the MPPDA, sitting at the head of the putative monopolistic structure of Hollywood, appeared to inevitably be in the sights of this trust-busting action by Justice. Arnold and Williams, who developed and ran the case at trial, saw some of the MPPDA's activities as potentially illegal, primarily those concerning the regulation of screen content. In early 1936 the MPPDA Code Seal had been used to shut out backyard independent pornography productions labelled as hygiene or stag films not suitable for family audiences and limited to buccaneer grindhouses on the industry's and cities' outer limits.⁵⁶⁸ For the legal theorists at Justice such a "stamp of approval" as the Code Seal implied the existence of a body of other films that were excluded. This opened the door for accusations that the Production Code was a monopolistic tool denying screen access to more politically adventurous, and even anti-fascist, narratives. Such constraint was especially possible in light of prominent author Sinclair Lewis's then-recent experience with Hollywood. Williams speculated whether the MPPDA "exercised censorship over all pictures which went further than the suppression of pornography, for example, the suppression of [Lewis's] *It Can't Happen Here*."⁵⁶⁹ But despite earlier drafts of its bill of complaint prioritising the Hays Office at the head of the list of defendants in *Paramount*, at the last minute Arnold and Williams strategically backed off and removed the MPPDA from the indictment.

There was another dimension to the MPPDA's exclusion, which centred on distribution. The evolution in Justice's thinking here is demonstrated by the successive drafts of the case's Explanatory Memorandum. Initially this document, intended for public consumption as a layperson's guide to the salient aspects of the case, described cinema as a "medium," implying an artistic expression of importance to all members of the American polity, whether they were regular moviegoers or not. In this scenario the Hays Office was to be a defendant, because "occasional experimental pictures" would struggle to compete in an oligopolistic environment where distributors had an economic interest in pushing their own pictures from the studios. Subsequent drafts of the Memorandum downgraded movies to a "product" for "consumers," and removed the MPPDA. This view limned a pre-existing market whose boundaries were set voluntarily by demand, only excluding those who chose not to attend.⁵⁷⁰ This final version minimised the MPPDA's culpability, as Justice saw the industry body playing only a "minor, clearing house role in theatre acquisition." Ultimately Arnold and

⁵⁶⁸ 'The Hays Purity Seal a Symbol of Monopoly', *Harrison's Reports*, 22 February, 1936, 29.

⁵⁶⁹ Muscio, *Hollywood's New Deal*, 155.

⁵⁷⁰ Muscio, *Hollywood's New Deal*, 158.

Williams decided that including the MPPDA as a defendant could muddy the prosecution's waters. The main reason was that inclusion of censorship issues as provoked by the Seal risked enabling the industry to deflect the core industrial concerns to arguments centring on screen smut and violence, which were still provocative issues in the mainstream media.⁵⁷¹ Ostensibly at least, the Hays Office was off the hook.

Because it was not indicted, the MPPDA would not be represented at the trial, and a clear contrast emerged between strategies of the industry's peak public representative and the studios. Will Hays, enjoying considerable access to FDR, frequently sought out the President as a referee to suppress the "hostile" Thurman Arnold in favour of promoting the parallel investigations of the Department of Commerce, guided by its new Secretary Harry Hopkins.⁵⁷² Commerce's involvement in *Paramount* dated from Harry Warner's ten page letter to Hopkins in March 1939 arguing the industry's case. The department had long been floundering under the Democrats, having been subjected to a wholesale shakeup after 1933 when the incoming administration "sought to eradicate all vestiges of the Hoover regime."⁵⁷³ The department's situation changed for the better after the late December 1938 appointment of Works Progress Administration head Hopkins, a former social worker and Roosevelt favourite, who quickly brought them back into the mainstream of Washington influence. Shortly after receiving Warner's letter, Hopkins gained the President's agreement to his agency working to find a solution to the movie issue, and the Commerce Secretary quickly reached Hays who agreed to put all the industry's resources at their disposal.⁵⁷⁴ Commerce drew up a reform plan for Hollywood that was complete and more responsive to the industry's position, providing a cohesive alternative to the aggressive demands of Arnold at Justice. The Commerce plan called for blind selling to be replaced by trade screenings of upcoming titles; group sales of 5-8 pictures to replace block booking; elimination of forced selling of the shorter films including newsreels and trailers; a morals clause enabling cancellation of any picture; and an arbitration system to adjudicate on Run Zone Clearance conflicts between exhibitors and producer/distributors - but no divestiture. Hays naturally tried to exploit interdepartmental competition, and was duly attacked for this by Myers.⁵⁷⁵ The MPPDA head was restrained by the President, who insisted that the two federal agencies' positions be reconciled for an enduring, whole of government solution.⁵⁷⁶ In the often volatile debates that filled the two years between the July 1938 filing and the June

⁵⁷¹ Muscio, *Hollywood's New Deal*, 155-156; 154.

⁵⁷² Mary Gelsey Samuelson, *The Patriotic Play: Roosevelt, Antitrust, and the War Activities Committee of the Motion Picture Industry*, PhD Dissertation, University of California, Los Angeles, 2014, 242.

⁵⁷³ 'Commerce Bureau Changes Awaited in Washington', *Motion Picture Herald*, 14 January, 1939, 27.

⁵⁷⁴ Welky, *The Moguls and the Dictators*, 166; 143.

⁵⁷⁵ 'U.S. Gathers Data', *Motion Picture Herald*, 22 July, 1939, 18.

⁵⁷⁶ Muscio, *Hollywood's New Deal*, 155-156; 154; 174-175; 168-169.

1940 trial there were times when Commerce's plan seemed to fall off the negotiating table, but it never entirely disappeared.

Crucial to preserving the prosecution's strategy in the action was highlighting how independent producers were denied access to the market, because this would fuse the issues of originality of screen content with economic freedom. A key danger posed by the industry's vertically integrated structure, as Arnold saw it, was the impact of oligopoly "controlling the public taste" through an unchallenged flow of boilerplate product.⁵⁷⁷ In his opening trial statement Williams claimed that "desirable content" was in short supply on screen because "independents had been discouraged from producing films" by the Hollywood system's barriers to entry. Preceding Williams in the New York courtroom that morning of Monday June 3, 1940, and launching the government's salvo, Arnold foregrounded cinema's wartime propaganda potential as he explicitly drew together those two threads of the government's argument: "To preserve political democracy it is essential to secure industrial democracy" had become Arnold's mantra. The antitrust head went on to cite Germany as an example of a nation that had sacrificed its democracy, where "business had created monopolies in restraint of commerce." There was not an individual in Hollywood "who did not feel the heavy hand of someone" restricting his freedom, claimed Arnold, due to monopoly conditions "where an individual is not free to bring in new ideas." The comparison with Germany was too much for the court, and an objection to Arnold's tacit Nazi reference by Judge Thomas D. Thacher, appearing for Paramount and leading the defence, was sustained.⁵⁷⁸



*Paul Williams*⁵⁷⁹

Williams' more generalised concern for film quality here seemed more in step with exhibitors and other public interest advocates than with his boss's international perspective. Drawing

⁵⁷⁷ Muscio, *Hollywood's New Deal*, 178.

⁵⁷⁸ 'Government, Industry Open Battle', *Motion Picture Herald*, 8 June, 1940, 12.

⁵⁷⁹ 'The Federal Prosecuting Staff', *Motion Picture Herald*, 30 July, 1938, 17.

on the case files, Muscio cites an independent producer promising Washington “more originality” on screen if the Hollywood oligopoly coordinated by the MPPDA (named explicitly) can be replaced by an “open market” for cinema.⁵⁸⁰ Such a view was symptomatic of an environment where:

public interest was behind criticism of the studio system for producing *standardized* pictures and of trade practices such as block booking, which limited the freedom of choice for the local exhibitor and the community.⁵⁸¹

This argument had long enjoyed frequent public airings, even if the unaligned exhibitor bloc was not always portrayed as the saintly victim of the vertically-integrated Hollywood combine. Shortly after the litigation’s filing, *The Motion Picture Herald* gleefully picked up on the comments of Assistant Secretary of State A. A. Berle, a longtime FDR brainstruster, to the government’s contemporaneous monopoly enquiry that “the small business man is not necessarily the saint he has been pictured” and that moves for Federal licencing of interstate commerce risked creating “an economic dictator” in Washington.⁵⁸² In the *Paramount trial* Thacher articulated the corollary view that the consumers’ position was already optimised by the vertically integrated system and vigorously asserted that the government’s case was not designed to benefit the “public interest,” but merely the interests of independent exhibitors; it was not actually a trade practices suit, but a class action.⁵⁸³

During the brief, one week duration of the trial in July 1940, Judge Henry Goddard’s self-confessed difficulty in following the technical details of the prosecution’s arguments and theory repeatedly blunted the prosecution’s impact. At times his responses to Paul Williams’ arguments groped towards a common sense understanding and came out sounding like Hollywood’s position. The judge reacted to block booking’s description by asking: “why is that wrong, for a manufacturer of films or any other article, to try and sell his year’s output if he can?”⁵⁸⁴ Meeting the judge during the lunchtime recess of the trial’s fourth day, Williams

was amazed to find that after having listened to opening statements for four days, he [Goddard] had obtained no grasp of the case or of the operations of the motion picture industry, whatsoever, and frankly so stated... [Although] upright and honest, he will not be able to grasp the minute and complex ways in which restraints of trade

⁵⁸⁰ Muscio, *Hollywood’s New Deal*, 147

⁵⁸¹ Muscio, *Hollywood’s New Deal*, 144 – emphasis added.

⁵⁸² ‘Berle Expresses “Heretical” Views on Government Policy; Arnold Broadcasts Plea for Anti-trust Division Expansion’, *Motion Picture Herald*, 27 August, 1938, 23.

⁵⁸³ Samuelson, *The Patriotic Play*, 271.

⁵⁸⁴ Muscio, *Hollywood’s New Deal*, 178; 182; 179.

are brought about... [and] the whole issues of the case may be so confused by his handling... [that our] success on appeal may be greatly diminished.⁵⁸⁵

Beyond the internal courtroom environment, external events were also moving in a direction that ultimately suited Hollywood. Hitler's conquest of Europe was nearly complete, as from April to May 1940 first Denmark and Norway, then the Low Countries had fallen, and Panzers swarmed through France towards Paris. Seemingly overnight, comforting American verities of an ocean buffer, a safe Panama Canal, realistic isolationism, the "economic experimentation" of successive New Deals, compromising with labour unions, challenging big business and denying a war footing were all vanishing before Americans' eyes.⁵⁸⁶

American mobilisation had been proceeding fitfully for some time and during this epochal summer came to overwhelm everything else in Washington. Priorities were now changing rapidly, and the resurgence of antitrust activity which Arnold had kickstarted in 1938 appeared "too successful perhaps for its own perpetuation."⁵⁸⁷ As war seemed inevitable the President's preferences were returning to the central planning principles that had been a hallmark of the National Recovery Administration of 1933. That model proposed a framework for economic certainty and expressly disabled antitrust protections so as to ensure they did not disturb the effective functioning of large scale coordinated management. Now as Hitler rewrote the script of European war, political influence had shifted away from encouraging competition to favour the big business-sourced managers of the new defence agencies.⁵⁸⁸ With corporatist, big government principles once again in favour, Thurman Arnold was now facing his "gravest challenge... the practical nullification of antitrust in the face of the war planning."⁵⁸⁹

For motion pictures, the view was growing that a cohesive industrial structure enforced by monopoly conditions was more essential to ensuring the integrity of the messages – anti-isolationism and preparedness – desired by Washington than any benefit that could be achieved by using antitrust to promote competition.⁵⁹⁰ The Hollywood oligopoly's control of cinemas provided Washington with a single point of responsibility for opinion formation in the coming crisis. As the government's priorities rapidly changed from anti-monopoly to preparedness, the *Paramount* litigation's original analyses transformed from optimistic to

⁵⁸⁵ Muscio, *Hollywood's New Deal*, 182.

⁵⁸⁶ Klein, *A Call to Arms*, 20-23.

⁵⁸⁷ Gene M. Gressley, *Voltaire and the Cowboy: The Letters of Thurman Arnold* (Boulder: Colorado Associated University Press, 1977), 48-49.

⁵⁸⁸ Edward N. Kearny, *Thurman Arnold, Social Critic: The Satirical Challenge to Orthodoxy* (Albuquerque: University of New Mexico Press, 1970), 98.

⁵⁸⁹ Spencer Weber Waller, *Thurman Arnold: A Biography* (New York: New York University Press, 2005), 106.

⁵⁹⁰ Muscio, *Hollywood's New Deal*, 186-187; Welky, *The Moguls and the Dictators*, 176; 199.

ominous for Arnold. His complaint's assessment that "enough independent cinemas [existed] to furnish the basis for substantial competition with the majors" was the last thing defence planners requiring a predictable, professional industry promoting unified war messages wanted to hear in the new contingency.⁵⁹¹

The vigour of the industry lawyers' counterattack in *Paramount*, going much further and more aggressively than a mere defence, surprised leaders of the Justice team. At the end of the trial's first (and only) week, Williams summarised the prosecution's "weak spots" and recommended to Arnold that, from "the sole viewpoint of tactical advantage" a consent decree was the department's best option.⁵⁹² This operational realism more than any suspected *quid pro quo* between FDR and Hollywood offers the most defensible explanation for the trial's ultimate outcome: a Consent Decree which conspicuously excluded any divestiture of exhibition from Hollywood's production and distribution tiers, a remedy that was fundamentally based on the recommendations of the Department of Commerce. The White House had always maintained a healthy interest in the case and although Justice quickly refuted a *Variety* report of August 13 that the President had "ordered" a resolution of the situation, White House records dated August 19, 1940 indicating that Roosevelt had "urged" a solution on the parties logically reconciles these conflicting accounts, and provides the most likely explanation for the outcome of the case.⁵⁹³

Hays' support of the Roosevelt Administration's remilitarisation was always calculated to maximise his industry's benefit. In May 1940 he moved with alacrity to advance and centrally position a proposal from the Army's Signals Corps for closer cooperation with Hollywood. This built on ten years of a mutually beneficial arrangement that embedded one serviceman per year in various studios to learn the motion picture ropes. The Corps had expanded in the autumn of 1939 into Los Angeles to create a Hollywood-based unit capable of quick mobilisation and, seeking "closer cooperation" with the industry, called a meeting of studio chiefs at the Paramount studios the following May. Looking for ways to "fuse the industry's production, distribution and exhibition wings into a harmonized machine," they agreed to reconvene on June 5, 1940 in New York, where across town the *Paramount* trial was in its third day. Here Walter Wanger proposed a plan to integrate all of Hollywood's activities in order to satisfy Military Intelligence's request that "nothing gets into our pictures that tears down the foundation of proper defense for our country." With Sidney Kent and other decision makers agreeing, the MPPDA's Francis Harmon was selected as industry liaison for what became the Motion Picture Committee Cooperating for the National Defense (MPCC).

⁵⁹¹ 'U.S. Says Aim is "Restoration"', *Motion Picture Herald*, 23 July, 1938, 13.

⁵⁹² Muscio, *Hollywood's New Deal*, 181; 182.

⁵⁹³ Steele, *Propaganda in An Open Society*, 156-157; Welky, *The Moguls and the Dictators*, 239

Moving in the opposite direction to disassemble the vertically integrated structure of a reliable cinema exhibition facility, Arnold was now distinctly out of step with his ultimate boss in the White House. Later Arnold was philosophical, appreciating that the President “could only have one war at a time [and] was content to declare a truce in the fight against monopoly” in order to beat Hitler.⁵⁹⁴

Negotiations for the Consent Decree dragged on through the summer and autumn of 1940. In September a resigned Thurman Arnold conceded to reporters that his new “role of pacifier of trade disputes in the motion picture industry is not a happy one.”⁵⁹⁵ Allied was always steadfastly opposed to any mooted Consent Decree, and even before the trial began was looking more favourably on the proposed Neely Bill because it had “more teeth.”⁵⁹⁶ The Neely hearings were occurring in parallel to the *Paramount* proceedings that summer, providing a steady drumbeat of anti-Hollywood sentiment in the background. But the *Paramount* suit was the primary vehicle for reform desired by the antitrust faction in Washington, and if it successfully achieved the outcome desired by Arnold, that result would overtake and nullify anything emerging from Neely.⁵⁹⁷ This was the eventual outcome in October 1940 when a Consent Decree was agreed, with terms reproducing the Commerce blueprint almost exactly: block selling of features was limited to five or fewer titles; blind selling was replaced by trade screenings; dispute resolution would be handled by the American Arbitration Association; and a three year moratorium was imposed on any new program of theatre acquisitions.⁵⁹⁸ The latter was a clause of sufficient vagueness to not overly concern the majors, and was soon honoured in the breach, as cinema buying resumed. Meanwhile the three minors maintained their united front of resistance and refused to sign, prompting subsequent legal action from Justice that was still running in 1941.

Entirely absent from the Consent Decree’s eventual terms was the interest of independent producers and, by implication, the film quality and political engagement argument that underpinned this for activist audiences. The bigger picture of industry integrity, familiarity and dependability of practice, goodwill to Washington and continued economic health overcame more theoretical and abstract objectives and wishes. In the pro-competition climate of 1936-38 promises of an independent exhibition tier offered idealistic wish fulfilment, but by 1940 had transformed into the threat of a fragmented, querulous and unprofessional system of

⁵⁹⁴ Badger, *The New Deal*, 107.

⁵⁹⁵ Welky, *The Moguls and the Dictators*, 239.

⁵⁹⁶ ‘Comparison Finds New Neely Bill Showing More Teeth Than Arnold’, *Motion Picture Herald*, 18 May, 1940, 65.

⁵⁹⁷ Muscio, *Hollywood’s New Deal*, 184; 87; ‘U.S. and Majors Tell Court That Outlook Points to Consent Decree’, *Motion Picture Herald*, 29 June, 1940, 14

⁵⁹⁸ Welky, *The Moguls and the Dictators*, 239.

backwoods theatre outlets squabbling while Europe burned. In Washington the decision was unambiguous, and just one more box for the White House to tick off on the road to mobilisation.

The 1941 Propaganda Hearings—Monolithic Vision

As the Consent Decree was being negotiated through the summer and autumn of 1940, Americans reacted with “shock” to the fall of France before the advancing German forces in June.⁵⁹⁹ The surrender of the French forced a readjustment in many Americans’ thinking, which “helped the interventionist cause by shattering analogies between 1917, when France had stayed the course, and the new crisis of 1940.”⁶⁰⁰ During the years 1940-41 the public debate on intervention grew to become “one of the fiercest in U.S. history.”⁶⁰¹ Leading isolationist body the America First Committee (AFC) spearheaded the anti-interventionist movement and responded to the charged climate with a powerful publicity campaign whose star attraction was Charles Lindbergh. By this time “war was everywhere - the movies, the songs, even the terminology of sports.” In July 1941 America First agreed to fund the secretary of their New York chapter, writer John T. Flynn, to conduct research into any links between Hollywood and pro-interventionist propaganda. Flynn, a prolific author, journalist, columnist and radio commentator, was a high profile public intellectual whose core principles of individual autonomy, firmly protected by minimalist government authority against combines and corporatist abuse, aligned him with the 20th century Progressive movement.⁶⁰²

In the summer of 1941’s escalating controversy over America’s possible involvement in the European conflict, Lindbergh was especially prominent in attacking intervention, though initially steering clear of Hollywood.⁶⁰³ That opportunity was seized by Flynn. Pro-interventionists like the tabloid columnist and broadcaster Walter Winchell had been quick to label AFC the “Hitler First Committee,” and extended to them the broad tar brush of anti-Americanism, calling America First the “Nazi Transmission Belt,” which even Flynn’s old friend John Dewey endorsed.⁶⁰⁴ As growing attacks on the AFC in 1941 integrated anti-Semitism into their battery, the combative Flynn fought back, reasoning that his side needed specific targets if it was to get off the defensive. This evolved quickly from individual public

⁵⁹⁹ Donald F. Drummond, *The Passing of American Neutrality: 1937-1941* (New York: Greenwood Press, 1968 – reprinted from University of Michigan Press, 1955), 160.

⁶⁰⁰ Sherry, *In the Shadow of War*, 55.

⁶⁰¹ John E. Moser, *Right Turn: John T. Flynn and the Transformation of American Liberalism* (New York: New York University Press, 2005)130.

⁶⁰² Moser, *Right Turn*, 54; 134-135; 1-5.

⁶⁰³ Welky, *The Moguls and the Dictators*, 286

⁶⁰⁴ Stenehjem, *An American First*, 154; 127-129.

figures to the mass media – initially newspapers, and then radio (then widely promoting “national unity”) and finally the movies.⁶⁰⁵ On June 20, 1941 America First brought their campaign to a rally at the Hollywood Bowl, featuring Lindbergh and the isolationist Idaho Democrat D. Worth Clark.⁶⁰⁶ Leading interventionist body Fight For Freedom (FFF), formed in 1940 in the wake of Dunkirk, subsequently appeared at the same venue on July 23. With many leading Hollywood executives and producers in its ranks, FFF also boasted the services of Wendell Willkie, 1940 GOP Presidential candidate, as its keynote speaker at the Bowl. Several major Hollywood studios heavily promoted the FFF rally, underwriting the time off and pushing staff to attend.⁶⁰⁷

Flynn was ready for Hollywood. He had a plan and the words to drive it and in July convened a meeting of six prominent isolationist Senators and Congressmen representing both the major parties. From this convocation the powerful chair of the Senate’s Committee on Interstate Commerce, Burton K. Wheeler (D-Montana), already well known to Hollywood insiders as “The Man From Montana” in Capra’s *Mr Smith Goes To Washington* (1939), convened a sub-committee, drawing most of its members from this meeting, to investigate the movie industry’s alleged war mongering propaganda. Their inquisition was kickstarted into the public consciousness by a national radio broadcast rich in provocative accusations against Hollywood, the rhetoric and details of which were composed by Flynn and spoken by his old friend, Senator Gerald P. Nye.⁶⁰⁸

At the nationally broadcast St. Louis rally of America First, Nye articulated Flynn’s claims that America’s movies had “ceased to be an instrument of entertainment... [and] have become the most gigantic engines of propaganda in existence to rouse the war fever... [pulling the nation] into a dance of death.”⁶⁰⁹ Hollywood was falsely building in Americans’ minds the “fear that Hitler will come over here and capture them, that he will steal their trade.” Invoking the xenophobic trope of a small handful of unaccountable foreign-born men, Nye claimed the studio moguls “can address 80 million people a week, winningly and persistently inoculating them with the virus of war.”⁶¹⁰ Arguing that the film industry depended on the English market to survive, the speech accused Hollywood of “glorifying war” to save Great Britain from Hitler.⁶¹¹ Using the same words Flynn had uttered publicly at a rally the previous

⁶⁰⁵ Moser, *Right Turn*, 130-134.

⁶⁰⁶ Colgan, *Warner Bros.*, 676.

⁶⁰⁷ Welky, *The Moguls and the Dictators*, 290-291.

⁶⁰⁸ Moser, *Right Turn*, 134-135.

⁶⁰⁹ ‘Nye and Wheeler Again Sound Off Against Screen as a “War Monger”’, *Motion Picture Herald*, 9 August, 1941, 26.

⁶¹⁰ Colgan, *Warner Bros.*, 679; 681.

⁶¹¹ Bernard Dick, *The Star-Spangled Screen: The American World War II Film* (Lexington: University of Kentucky Press, 1985), 89-90.

December, Nye characterised the studios' militaristic output as a campaign tied to the White House, claiming the architects of this "propaganda machine [functioned] almost as if they were being operated by a central agency."⁶¹²

One day later Senate Resolution 152 was introduced to the upper house by co-sponsors Nye and Senator Bennett Champ Clark (D-Missouri). Drafted by Flynn, its several clauses carefully stepped through: the power of the screen *and radio*; accusations of these media's pro-war "purposes"; the one-sidedness of these messages; and their weekly reach to "the eyes and ears of a hundred million people." From this foundation, Wheeler's Committee was "directed to make, and to report to the Senate the results of a thorough and complete investigation of any propaganda disseminated by motion pictures and radio or any other activity" influencing the public to war.⁶¹³

As in the Famous Players-Lasky, *Paramount* and numerous other legal cases, in this inquiry the opposing imperatives were Hollywood's priority of maintaining and safeguarding its profitability, pitted against external forces seeking a greater control of the screen. A major distinction from the *Paramount* litigation of 1938, when encouraging business competition was the economic and ideological priority for the White House, was that now the interests of Washington and Hollywood converged. For both, the overriding concern in 1941 was to secure a monolithic national unity of purpose where messaging ran smoothly along clear pathways. The government needed to be confident of the reliability and cooperation of the mass media as it mobilised the nation for war, and the film industry needed to ensure it remained intact and unfragmented to protect its earnings when the need for military preparedness had faded.

There was considerable continuity in the participants of the *Propaganda Hearings* and earlier attacks on Hollywood. Burton Wheeler was one of the most prominent of the mid-century maverick politicians who came of age in the Progressive Era seeking social justice and a fairer distribution of wealth through fighting monopoly capitalism. In 1924 he had been the Vice Presidential candidate for the National Independent Progressive party, sharing the ticket with Robert La Follette, the longstanding Wisconsin independent. Particularly alert to media control and censorship, in 1937, as a Democrat, Wheeler's segment in a *March of Time* short rebuking Roosevelt's Supreme Court "packing" plan was cut by the Kansas state film censor and the Senator's outraged protests prompted a national furore over freedom of

⁶¹² Stenehjem, *An American First* 143; 'Nye and Wheeler Again Sound Off', *Motion Picture Herald*, 9 August, 1941, 26.

⁶¹³ Colgan, *Warner Bros.*, 678, emphasis added.

speech and centralised authority.⁶¹⁴ Extending his key concern of allowing equal time for different views, in December 1940 Wheeler accused Will Hays of “orchestrating a violent campaign intending to incite the American people” to war, and threatened legislation unless the movie industry “displays a more impartial attitude.”⁶¹⁵ By 1941, the isolationist Wheeler was chairing a Federal Communications Commission hearing where he continued to express his anger over America’s media oligopolies, including the national radio networks’ refusal to present opposing sides of the preparedness and interventionist debate.⁶¹⁶

The career of Resolution 152 co-sponsor Bennet Champ Clark paralleled Wheeler’s in some key respects. Each of these heartland politicians harboured a traditional populist antipathy to what they saw as Europe’s Old World corruption. Where one year before Pearl Harbor Wheeler attacked “foreign slackers, European royalty [and] princes and potentates” dragging America into another unnecessary war, after Hitler invaded Russia in 1941 Clark rejected “American boys being sent to their deaths singing ‘Onward Christian Soldiers’ under the bloody emblem of the Hammer and Sickle.”⁶¹⁷ Clark was amongst the Democrats alongside Wheeler who attacked the President’s court plan in *The March of Time* edition of 1937, and had been trying since 1938 to launch his own inquiry into Hollywood’s alleged war propaganda.⁶¹⁸ Both their wives also held key executive positions in *America First*.⁶¹⁹

The resolution’s other co-sponsor was Republican Senator Gerald Nye of North Dakota. His involvement in the *Propaganda Hearings* bore the stamp of the event that made his name and propelled him to national prominence, the Munitions Inquiry of 1934, for which Flynn was research director. That investigation into large corporate arms manufacturers developed into an attack on the Money Power bogey of the Progressive Era when Nye, like Wheeler and Clark, had cut his political teeth. The arms inquiry, which pilloried chemical giant Du Pont especially, inscribed in the national consciousness the Depression-era narrative of ethically corrupt corporations, unanswerable to the public, exploiting a national crisis to line their own pockets while sacrificing the interests of powerless citizens. This perspective of omnipotent corporate greed reappeared now in 1941 as the paradigm for these isolationists’ new attack on Hollywood.

Following the announcement of the Senate investigation on August 1, 1941, Will Hays quickly convened committees on both east and west coasts to prepare the industry response.

⁶¹⁴ ‘Censorship of Newsreel Made Political Football’, *Motion Picture Herald*, 24 April 1937, 13.

⁶¹⁵ Welky, *The Moguls and the Dictators*, 250-251.

⁶¹⁶ ‘Nye and Wheeler Again Sound Off Against Screen as “War Monger”’, *Motion Picture Herald*, 9 August, 1941, 26.

⁶¹⁷ Welky, *The Moguls and the Dictators*, 252; 278.

⁶¹⁸ Carr, *Hollywood and Anti-Semitism*, 252.

⁶¹⁹ Colgan, *Warner Bros.*, 684

In contrast to his immediate reaction to the *Paramount* litigation's filing in July 1938 welcoming the chance to "clear the air," Hays was now publicly silent for over four weeks.⁶²⁰ As in the June 1940 trial that heard the *Paramount* suit, Hollywood's initial posture was aggressive and defiant. Harry Warner demanded that Hays immediately take action against the isolationists. Among the roundtable of industry voices contemplating responses, Hays' placatory, small target line essentially denying the charges, was being drowned out by more combative voices. The MPPDA chief had already been drawn into the preparedness debate, albeit reluctantly. After releasing the MPPDA's 1941 Annual Report earlier that that summer and issuing a statement on July 20 foregrounding the traditional mantra of entertainment, his media statement's oblique criticism of message movies, chiding some producers who wanted to "muse rather than amuse," had been pounced on by leading newspaper columnists as an admission of the screen's propaganda for war.⁶²¹

The interventionist lobby at Fight For Freedom was taking a strong interest in the Senate investigation, and FFF chair Ulric Bell advised the industry to go at it "bare knuckled." In the background the White House was exercising a strong influence through FDR's media liaison Lowell Mellett and the President's secretary Stephen Early, who also advised on media affairs. Mellett was told by Walter Wanger and Darryl F. Zanuck, a mutual friend of his and also Bell's, that they were that worried Hays would undermine the industry's strong defence with "appeasements."⁶²² Paramount lawyer Austin Keough, one of Hays' MPPDA committee appointees, had taken the running internally and asked Hays to keep a low public profile, simultaneously reinforcing that sidelining by going to Mellett, who went on to tell FDR that "some of Hollywood's best men were tired of Hays' tactics."⁶²³ In a memo to the President, Mellett swung the axe on Hays, advising Roosevelt that unlike the MPPDA chief "the best men in the industry won't apologize – just the reverse."⁶²⁴ Ulric Bell then suggested Wendell Willkie take on the job as industry advocate against the Senators, an assignment partially midwifed by Early.⁶²⁵ If Hays was obliged by his position and inclined by temperament to straddle competing forces and reconcile opposing views, Willkie was under no such constraint. A strong internationalist and foe of the isolationists, Willkie's defeat by FDR the previous November ensured that his appointment shut down any line of criticism that Hollywood was merely another meek extension of the White House. Explaining publicly that Hays' inclusion on the sub-committee's witness list created a conflict of interest, the MPPDA

⁶²⁰ 'Says Control is Up to Courts, *Motion Picture Herald*, 30 July, 1938, 16.

⁶²¹ Welky, *The Moguls and the Dictators*, 296; 287.

⁶²² Carr, *Hollywood and Anti-Semitism*, 256.

⁶²³ Clayton R. Koppes and Gregory D. Black, *Hollywood Goes To War: How Politics, Profits and Propaganda Shaped World War II Movies* (Berkeley, University of California Press, 1990), 41-42.

⁶²⁴ Colgan, *Warner Bros.*, 687-689; 690; 688.

⁶²⁵ Welky, *The Moguls and the Dictators*, 298.

boss was quietly marginalised.⁶²⁶ In what sounded like a defensive message to his internal detractors seeking a more aggressive posture, Hays issued a press release asserting “there will be no apologetics, no supine attitude” before the Senators’ inquisition.⁶²⁷



John T Flynn

In this fresh attack on Hollywood the screen content management issues were no longer moral, in the sense that this term had long been used as a catch-all for prurient and violent movie fare. Now the concerns were essentially psychological, with testimony in the hearings airing and seemingly legitimising a concept that had been a powerful feature of 20th century America’s public conversation, the incompetent public, a discourse entrenched since the backlash over the Creel Committee’s influence over Americans in the Great War.⁶²⁸ The gullible public argument was often entwined with another long running discourse, the power of the screen, and during the Propaganda Hearings this latter was the basis for one of the isolationists’ most coherent criticisms of the industry, as articulated by Flynn. He described the moviegoer’s experience: “the lights go down and the darkness envelops them... [his] mind is completely open, all his defences are down... he is well softened up” [for movies that] “keep pounding at you like the man haranguing the mob in the streets, to get your hatreds in control of your reason.”⁶²⁹ Raising the spectre of the movies’ persuasive effect, a frequent element in the preparedness debate, meant going backwards and rhetorically refighting the last war, when naïve American politicians were hoodwinked by the British. But this stance failed to recognise over two decades of public scepticism and growing cynicism in America, which had evolved into a great wariness towards European pleading. Equally redolent of the Great War, Germany’s September 1939 attack on Poland marked the

⁶²⁶ Carr, *Hollywood and Anti-Semitism*, 256.

⁶²⁷ ‘Win with Willkie’, *Motion Picture Herald*, 30 August, 1941, 8.

⁶²⁸ Carr, *Hollywood and Anti-Semitism*, 264.

⁶²⁹ ‘Propaganda in Motion Pictures’: *Hearings Before A Subcommittee*, 108; 115

moment when Will Hays started uttering his mantra of “no hate films.”⁶³⁰ This was a slogan in much of the national arguments of the time which recalled in an admonitory sense the excesses of the Creel era of anti-Hun propaganda.⁶³¹ In the two years following the invasion of Poland, the growing martial atmosphere in America had become inescapable, “a propaganda din so pervasive and so diverse in its sources” that by late 1941 the country was approaching numbness.⁶³² It was certainly evident in the motion picture trade press, as any casual comparison between editions of 1939 and 1941 would reveal. By early 1941 politicians were factoring this atmosphere into calls for action against Hollywood, such as that by Lewis Thill (R-Wisconsin) who claimed the industry was restaging “the war propaganda role played by the movies prior to the last war.”⁶³³



December 1939 promotion targeting exhibitors ⁶³⁴

⁶³⁰ Welky, *The Moguls and the Dictators*, 159-161; ‘Beware Heavy Hand of Government, Says Hays’, *Motion Picture Herald*, 26 September, 1939, 26.

⁶³¹ Stenehjem, *An American First*, 145.

⁶³² Sherry, *In the Shadow of War*, 56.

⁶³³ Welky, *The Moguls and the Dictators*, 287.

⁶³⁴ Advertisement, *Motion Picture Herald*, 2 December, 1939, 53.

An argument as subjective as restaging the last war is hard to prosecute empirically. Willkie effectively parried the anti-interventionists' thrust by accurately, albeit disingenuously, acknowledging the relatively small number of Hollywood movies that explicitly referenced Nazism.⁶³⁵ These primarily comprised the domestic melodrama cycle of 1940-41 (*The Mortal Storm* (1940); *The Man I Married* (1940); *Escape* (1940); and *Underground* (1941) being prominent in this very small cycle). Flynn cited the same core titles in his ghost writing of Nye's St Louis speech and in his own Senate testimony. His thrust was derailed in the hearings however by his sub-committee colleagues' unstrategic distractions, which included debating the studio moguls' ethnicity and the Senators' ignorance of the movies cited. Nye especially performed poorly and siphoned off a lot of the opportunities for his side through incompetence. Attempting to deflect accusations of anti-Semitism, he only got himself twisted up in xenophobic knots; he misstated the title of one movie (*The Man I Married*, whose working title was *I Married A Nazi*, which he cited) and most embarrassingly of all, when cheekily reminded publicly by Harry Warner of his 1939 praise for *Confessions of a Nazi Spy*, which the isolationist Senator now vehemently condemned, Nye could not separate the context of its original release from the changed environment in which he attacked Hollywood two years later.

There was a potentially successful analysis for the isolationists here, and the smart observers realised this, but in practice found it difficult to prioritise it publicly above all the side issues taking place during the hearings and captivating the press. That potentially lethal danger to Hollywood was the way its oligopoly structure, maintained by efficient trade practices, ensured that only one perspective ever achieved public exposure, and that this now led to war. Just one month after Thurman Arnold launched the *Paramount* litigation in July 1938, a call had been made by pacifist group, the National Council for the Prevention of War to extend his prosecution's ambit into "the propaganda tie-up between the industry and the government."⁶³⁶ It was a danger that was recognised by the White House, whose preferences would not have been lost on Hollywood. Writing in 1938, leftist historians Charles and Mary Beard saw Roosevelt's anti-fascist 'quarantine' speech of October 5 1937, in which the President described a "reign of terror and international lawlessness," as the end of the administration's tolerance for pacifist views on America's screens. That summer had seen two examples of pacifist filmmaking, *They Gave Him A Gun* (1937) and the follow-up to anti-war landmark *All Quiet on the Western Front*, James Whale's *The Road Back* (1937). When in 1938 Paramount engaged Washington's cooperation for aviation picture *Men With Wings* (1938), it was reported in *The New York Times* that the studio had been obliged to

⁶³⁵ 'Propaganda in Motion Pictures': *Hearings Before A Subcommittee*, 18-22.

⁶³⁶ 'Anti-War Group Wants Inquiry', *Motion Picture Herald*, 27 August, 1938, 29.

drop the heroine's final peroration, a "vigorous denunciation of war," if they wanted access to the military's hardware. This ultimatum left the industry with the clear understanding that henceforth a tacit ban existed on any further dissident views on the subject of preparedness.⁶³⁷



*Co-chair Senator D Worth Clark at the Propaganda Hearings*⁶³⁸

The risk of collusion between vertically-integrated Hollywood and the White House was not lost on the isolationists behind the sub-committee. In the one-week interval before the hearings commenced, Resolution 152 was amended to include "any monopoly, real or potential, partial or whole, in the production, distribution, distribution and exhibition of motion pictures."⁶³⁹ As early as February 1941 public criticism had zeroed in on the enforcement weaknesses of the 1940 Consent Decree, with Congressman Lyle Boren (D-Oklahoma) claiming that the studios were already breaching its terms, as he introduced a bill for yet another Hollywood trade practices inquiry.⁶⁴⁰ But although Nye exhaustively read the Justice Department's complaint from *Paramount* into the record of the *Propaganda Hearings*, Thurman Arnold did not testify, and was only briefly quoted, and then only in the context of eighteen month old statements he made supporting the Neely hearings.⁶⁴¹ Arnold's

⁶³⁷ Charles A. Beard and Mary F. Beard, *America in Midpassage* (London: Jonathan Cape, 1939), 596-599.

⁶³⁸ James E McMillan, 'McFarland and the Movies: The 1941 Senate Propaganda Hearings', *The Journal of Arizona History*, Vol.29, No. 3 (Autumn 1988) 279.

⁶³⁹ 'Propaganda in Motion Pictures': *Hearings Before A Subcommittee*, 3.

⁶⁴⁰ Birdwell, *Celluloid Soldiers*, 155; Welky, *The Moguls and the Dictators*, 287.

⁶⁴¹ 'Propaganda in Motion Pictures': *Hearings Before A Subcommittee*, 25-32; 97-98.

Paramount refrain, of the necessity for grounding political democracy in industrial democracy, had long been expressed by him in practical terms as calling for more avenues for independent productions to reach the screen by loosening oligopoly control. This was in total accord with Wheeler's recurring complaint that equal time was denied to alternative voices in the community because of the corporate control enabled by monopoly. Wheeler was a shrewd and pugnacious political operator who would have used the high media profile of Resolution 152 to wring maximum publicity value from this complaint. But at the hearings it was left to Bennett Champ Clark to make this argument, which he did repeatedly and clearly. Clark was no Burton Wheeler, however, and without firebrands like Wheeler or Arnold at the Propaganda Hearings, this critique never took hold and the argument petered out. With the *Paramount* suit being only recently settled in October 1940, and the provisions of its Consent Decree (such as trade showings) still being bedded in during 1941, there was never any likelihood of the isolationists' hopes for the *Paramount* litigation to be revived ever gaining any traction, nor of its thrust for independent screen narratives gaining more pathways to American audiences. Too much of Washington's time and money had already been expended, and this crucial opinion-forming industry was now situated exactly where the White House wanted it: firmly inside the tent.

As Flynn recognised, there remained numerous easily digestible avenues for Hollywood to take on Hitler without provoking an exceptional public backlash. For several years the industry's production tier had been moving adroitly, though at only a trickling pace, to accommodate voices seeking engagement, without transgressing the official neutrality that was putative government policy and, according to opinion polls, popular preference. In June 1939, just weeks after the late April release of *Confessions of a Nazi Spy*, the upcoming 1939-40 season's slate of movies was previewed by the *Motion Picture Herald*. For the coming season American history would be prominent, along with expanded numbers of "political" and "family" series of films alongside the "war themes" that would spread across all Hollywood genres.⁶⁴² Under this umbrella it was relatively safe to mount domestic melodramas where anti-fascist messages could be personified and developed. Within this genre's parameters a critique of Nazism could be made that allowed more emotional and psychological subtlety, while ostensibly appearing familiar and not too uncomfortable to proponents of traditional family values. Cultural producers in other media were already moving in this direction by the late 30s, generating a number of anti-Nazi domestic dramas in fictional form which the studios could option for the screen. British author Phyllis Bottome's novel *The Mortal Storm* had been an MGM property since March 1938 and the same year the forerunner of Oscar Schisgall's novel *Swastika* (1939), the syndicated short story /

⁶⁴² 'Biographies, War Themes Highlight 1940 Product', *Motion Picture Herald*, 3 June, 1939, 13-14.

Married A Nazi, was in development at Twentieth-Century Fox.⁶⁴³ Both hit the screen in 1940, in June and August respectively (the latter as *The Man I Married*). There was a recurring pattern to the narratives of these and similar domestic melodramas like *Four Sons* (June 1940) and *Underground* (June 1941). In all of them, a fundamental dualism within the family unit leads to a conversion narrative: between two brothers in *The Mortal Storm*, *Four Sons* and *Underground*; and *within* the psyche of a German-American husband in *The Man I Married*. The former modelled an emotional pathway for audiences toward supporting anti-fascism and the latter provided an analysis of fascism's treacherous attraction. In these and other pre-war domestic melodramas like *Escape*, Nazi cruelty is thoroughly and diversely explored on the level of the individual, where Hollywood excelled, without resorting to geopolitical hectoring as in *Confessions of a Nazi Spy*.

The threat posed by the 1941 hearings vindicated Hollywood's instinctive caution in not risking its financial and political health and sticking its neck out with further preachments like *Confessions of a Nazi Spy*. Proof of Hollywood's industrial wisdom in this regard lay in the fact that the roster compiled by Flynn of films inciting war fever was substantially constituted by the domestic melodrama cycle.⁶⁴⁴ Yet even anti-Nazi domestic melodramas were not released without risk, as Breen recognised in his analysis of *The Man I Married*, which he viewed as one of a handful of "avowedly anti-German pictures [which] may serve as the spark to ignite a nation-wide conflagration of protest against the screen as an institution."⁶⁴⁵

Ultimately it was anti-Semitism that fatally damaged the *Propaganda Hearings*, through a self-inflicted wound by the isolationist side. Three days into the hearings Charles Lindbergh gave a speech in Des Moines in which he explicitly linked Jewishness to alleged Hollywood war mongering, the first time this alleged causality was articulated in public by a putatively responsible figure; even Wheeler publicly distanced himself. Flynn was appalled. He had worked assiduously to keep America First above the ruck of anti-Semitic affiliation, even denouncing suspect individuals from the stage in his anti-war speeches. The immediate furore that blew up over Lindbergh's Des Moines speech spilled over into the hearings'

⁶⁴³ Bernard Dick, 69; Welky, *The Moguls and the Dictators*, 161.

⁶⁴⁴ '17 Films Listed As Propaganda', *Motion Picture Herald*, 13 September, 1941, 24. The Hollywood films that were cited as the hearings began in September 1941 were listed by co-chair Bennett Champ Clark as: *Escape*; *The Mortal Storm*; *They Dare Not Love* (1941); *The Devil Commands* (1941); *Four Sons* (1940); *The Man I Married*; *Man Hunt* (1941); *Foreign Correspondent* (1940); *The Great Dictator* (1940); *So Ends Our Night* (1941); *One Night in Lisbon* (1941); and *Mystery Sea Raider* (1940). Another, *Man of Europe* was a misnomer that was never explained. Four British productions were also cited: *Voice in the Night – Two Cities* (1941); *Night Train* (1940); *Pastor Hall* (1940); and *Blackout* (1940).

⁶⁴⁵ Carr, *Hollywood and Anti-Semitism*, 254

media coverage, tainting the inquiry severely. Flynn, of necessity, abandoned his Senate brainchild, working frantically in New York to try and repair the damage to the AFC.⁶⁴⁶

On any objective assessment the Propaganda Hearings were a sideshow, a circus of indulgence. There were failures at all levels amongst the anti-interventionists, indicating that none of the isolationists except Flynn were heavily invested. What is noteworthy in assessing Resolution 152 is how unaware the extensive coverage of the Propaganda Hearings in the cinema studies literature is of the singlehandedness of its authorship by John T. Flynn. This emerges unmistakably from Flynn's two biographies, neither of which, unsurprisingly, come full circle to discuss the movies in question nor the deeper currents of Hollywood politics and industry practices then operative which affected the management of the Senate investigation.

Throughout his career Flynn was a poor delegator, and took too much on unilaterally. When he returned to New York to clean up after Lindbergh, the vacuum left behind in Washington was designed-in; it had been Flynn who wrote the anti-Hollywood speeches for Burton Wheeler, Gerald Nye and Bennett Champ Clark, none of whom were sufficiently engaged to think on their feet when challenged, and who then dropped the ball in various ways.⁶⁴⁷ Once Flynn decamped, the anti-interventionists' goal line was left undefended, whereupon a better prepared and vitally interested Hollywood scored repeated victories in the press and won the publicity battle. Rousing perorations at the hearings by Harry Warner and Darryl Zanuck in particular, vouchsafing pro-Americanism as core industry values, gained rapturous press notices. Burton Wheeler failed to show the leadership he demonstrated amongst liberal-progressives in opposition to Roosevelt's Supreme Court stacking only a few years earlier, and stayed in the wings during this movie investigation even though it had the potential to deliver on the complaints he had long made about the systemic denial of alternative viewpoints in the mass media. Wheeler's public insistence on guaranteeing that all opinions are aired in the national media takes on a note of hypocrisy in light of his blatant stacking of the sub-committee with safe, anti-interventionist Senators. Although no shrinking violet, the "acidic and confrontational" Bennett Champ Clark faithfully recited Flynn's lines but failed to make an impact.⁶⁴⁸ Most damaging of all, Gerald Nye was incapable of recognising Flynn's own argument around the corporatised media's overwhelming militarist recontextualising of the nation's screens and airwaves, so that when Harry Warner outed the Senator's praise for

⁶⁴⁶ Stenehjem, *An American First*, 137; 136-138.

⁶⁴⁷ Stenehjem, *An American First*, 122; 149.

⁶⁴⁸ Matthew Ware Coulter, *The Senate Munitions Inquiry of the 1930s: Beyond the Merchants of Death* (Westport Connecticut: Greenwood, 1997), 60; Koppes and Black, *Hollywood Goes To War*, 45-46.

Confessions of a Nazi Spy in the entirely different environment of 1939, it prompted a gleeful media lampooning of Nye in September 1941, which left him speechless and flat-footed.

On the defence table Will Hays was unfairly under-appreciated by his paymasters in Hollywood throughout this exercise. The duplicity of studio chieftains' willingness to abandon Hays shone through when, upon being sworn in, they all automatically trotted out the small target line Hays fearlessly advocated in private, but for which he was pilloried behind the scenes, right up to the White House. Willkie had everyone from the moguls to the media in his thrall, but he also relied on the "small handful of films" argument as his final, and true, line of defence. Staying on the sidelines, an invisible Thurman Arnold seemed unusually docile when the argument that he had laboured over for years in *Paramount* was briefly put on life support in this very public setting. For him, clearly Hollywood already had its result with the Consent Decree. Very quickly the funding for the hearings ran out even more completely for the isolationists than the public relations tide. With FDR sympathiser Scott Lucas (D-Illinois), chair of the Senate Audit and Control Committee, in the financial gatekeeper role of approving more spending, it was apparent that there would be no early resumption of the hearings.⁶⁴⁹ Pearl Harbor finally made their premature burial official (although the Propaganda Hearings were never officially suspended).

Resolution 152 was a lost opportunity for the anti-interventionist movement and also a victim of trade practices' timing. The isolationists' real evidence was not in the paltry few films they criticised, but in the anti-war movies that were *not* being made and could not be made because of the industry's oligopoly structure and rigorous enforcement of its boundaries through trade practices. Had U.S. neutrality lasted longer and the 1940 Consent Decree's compromises unravelled while resisting war still remained a possibility, the result of the Propaganda Hearings might have been very different. Pragmatism in Washington encouraged support for monolithic control of the crucial opinion-forming medium of cinema in the early 1940s, but when the martial requirement for national unity disappeared after the war, the antitrust arguments of 1938 resurfaced. As is well documented, before the end of the 1940s, the old Thurman Arnold push was revived by the federal government and the Hollywood studios faced forced divestiture by the Supreme Court, ending the Classical era of the movies forever.

The failure of Resolution 152 for Hollywood trade practices is consistent with the industry's instinctive small target response and its long history of trading off the ethics of screen content for the certainty of ensuring oligopolistic control. Had events transpired differently, despite their grandstanding, the studios would undoubtedly have meekly undertaken to

⁶⁴⁹ Stenehjem, *An American First*, 155.

acquiesce in public and continued to adjust their output to the prevailing winds. The modesty of the anti-Nazi domestic melodramas' impact on the national debate meant that Hollywood already had a pathway to ensure business as usual in this regard. As long as the turnstiles kept moving, for the corporate entertainment business, it would be ever thus.

Chapter 9 –Homefront espionage cinema: 1937-1941

A softening up of American citizens' resistance to military intervention abroad was possible without transgressing content management guidelines as reified in the Production Code. Whether intentionally or intuitively, such a process was occurring in the B-Spy movies. Examining this body of films as a whole over several years suggests a sharpening and increasingly direct warning to viewers that Germanic influences were eroding internal defences in America. Despite growing U.S. anti-Nazism through the late 30s, there is no evidence of any concern in the industry, either amongst exhibitors or the Breen office, at the intensifying maligning of Germanic influence and implicit scare mongering in the low budget espionage movies of those years. None of them appear to have been troubled by Article X of the Hays Code protecting cultural groups and nationalities, a catch-all designed primarily for religious affiliations.

Identifying the enemy within

Throughout the years preceding America's formal entry into World War II a cinema of "the enemy within," delivered through the domestic espionage strand of spy thrillers, was one of the most extensive subsets of war-related peacetime Hollywood movies. Although America outwardly projected a self-sufficient detachment in the face of the world's late 1930s geopolitical fears, inwardly she was looking over her shoulder, into her own shadow, for domestic threats.⁶⁵⁰ The guilty verdict in the Rumrich spy case in December 1938, which exposed traffic in U.S. military intelligence by Americans to Nazi agents, was highly publicised, removing any doubt such narratives were entirely the stuff of fiction. Shortly after the notorious Mercury Theatre *War of the Worlds* broadcast a month prior, *The New York Times* opened its December 1938 review of the low budget domestic espionage production *Cipher Bureau* by mischievously asking: "Now that the spy scare has passed (or has it?)...."⁶⁵¹ By decade's end, U.S. anxiety over alien penetration was no laughing matter. In his memoir of those times, Frederick Lewis Allen recalled how:

Among many liberals there was manifest a new and lively fear of Nazi influence within the United States; people who all their lives had laughed at Red Scares and had made light of the Russian connections of the Communist Party saw nothing to laugh at in Nazi propaganda in America and cried out that organizations with German connections must

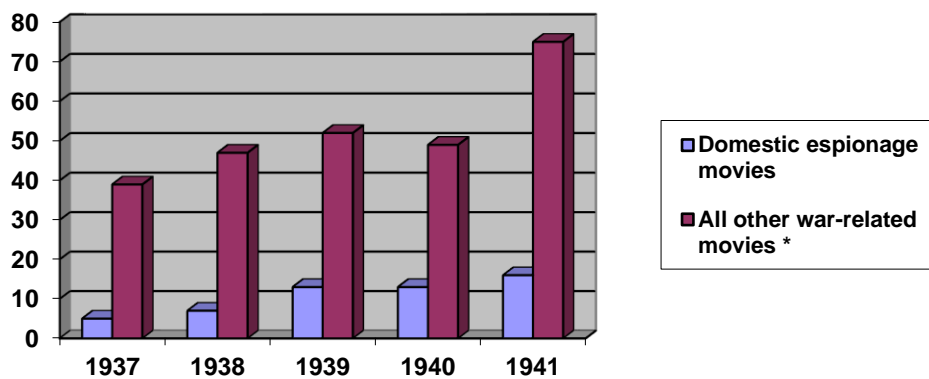
⁶⁵⁰ Kenneth Davis, *The American Experience of War: 1939-1945*, (London: Secker & Warburg, 1965), 5-6; Brett Gary, *The Nervous Liberals: Propaganda Anxieties from World War I to the Cold War*, (New York: Columbia University Press, 1999), 175; Jonas, *Isolationism in America*, 209-213; Edward A. Purcell Jr., *The Crisis of Democratic Theory: Scientific Naturalism and the Problem of Value*, Lexington: University Press of Kentucky, 1973), 130-134; Sherry, *In the Shadow of War*, 24; Sproule, *Propaganda and Democracy*, 164.

⁶⁵¹ Frank Nugent, 'Movies', *New York Times*, 14 December 1938.

be investigated and broken up. Dinner table conversations turned to the alarming increase in German trade with Latin American (*sic*) ... Many lovers of peace had become obsessed with a sense that the United States, along with the rest of the world, was on its way to an inevitable doom.⁶⁵²

Overwhelmingly produced for the lower ends of the era’s multi-tiered exhibition structure, the low budget domestic espionage movies constantly showed foreign interests operating within America’s borders propagating sabotage and intellectual property theft against her military-industrial sector. So dominant was this category of film that Shull and Wilt’s filmography described anti-espionage as “the third most prevalent” theme to be found amongst Hollywood’s war-related films from 1937 through 1941.⁶⁵³

Proportion of domestic espionage movies in annual war-related feature output



* war-related movie figures excludes ‘one-liners’ - features with only one passing direct reference to the war⁶⁵⁴.

This prominence of domestic espionage movies amongst the war-related films prior to Pearl Harbor made them effective vehicles for propaganda. The narrative of the secret agent, an enemy who moves easily among us because their belligerence is superficially unrecognisable, interacts with race-linked visuals as a cue for tribalism and indicators of ethnic affiliation. If it were to sow the seeds for preparedness, Hollywood needed to show that there was indeed “difference” between visually indistinguishable allies and enemies on either side of the English Channel. The spy genre’s facility with an absence of visual differentiation, a quality it turned to its advantage, made it a space where a specific “out

⁶⁵² Frederick Lewis Allen, *Since Yesterday: The 1930s in America, September 3, 1929-September 3, 1939* (New York: Perennial Library, Harper & Rowe, 1972), 263.

⁶⁵³ Shull & Wilt, *Filmography*, 42.

⁶⁵⁴ A significant proportion of the 500+ pre-war films in the Shull & Wilt *Filmography* qualify through their inclusion of a single, often very strong, reference to the war, Nazism, Hitler, etc.

group” could be legitimately targeted for wrongdoing. Xenophobic fears of the “melting pot” could be readily activated in fictional modes by directing such anxiety towards the threatening metaphor of a spy ring.⁶⁵⁵ At the “A” level, this facility was powerfully demonstrated in the espionage genre by Edward G. Robinson’s indeterminate ethnicity in *Confessions of a Nazi Spy*. In the peacetime years when explicit demonising was politically impossible, the lower-caste Hollywood of the B-Spy movie was able over several years to maintain the persistence of the nationalised spy (as German) into the new contingency of the late thirties. Against the background of Hollywood’s carefully crafted racial indeterminacy in which ethnic distinctions are elided, assigning cultural markers to screen spies offered a way to make one group stand out more clearly. Since recourse to visual signifiers was occluded, a focus on ethnicity materialised in the large category of spy movies through accents and surnames. Don Miller recalled how the: “villainous spies may have had German accents – or Russian, for that matter – but it was seldom that they would be forthrightly identified in the dialogue.”⁶⁵⁶

So did a ubiquity of European-accented spies, secretly attacking America at home, necessarily indicate that ideological propaganda was being consciously disseminated by commercial filmmakers? How feasible is it that the disparate, unaffiliated creators of one of the industry’s biggest exhibition categories – spy films - were simultaneously, yet unilaterally, devising representational strategies to foment an anti-Nazi stance in the peacetime U.S. audience? Were commercially competing producers seeking to outwit the industry’s and other gatekeepers opposed to such special pleading? The films themselves offer strong evidence. Most of them provide no real sign of deviation from the well-trodden narrative template long prevailing in the spy genre, particularly the presence of vaguely-accented European agents, covertly causing mayhem. Still less do they reveal unambiguous signs of propagandist content. Nevertheless, every year from 1937 onwards a significant number of these films did noticeably go a little further than the prevailing low-budget spy movie template in presenting Nazis as a threat to America. They did so through two means: either explicitly identifying contemporary Germany and/or its National Socialist leaders in contexts suggestive of complicity in anti-American spying or, alternatively, by tying contemporaneous onscreen villainy to Germany’s recent past of Great War malfeasance. This thesis argues that the remarkable textual consistency – in their “look and feel,” narrative and to a large extent ethnic representation – throughout the great body of pre-war domestic spy films was a condition that enabled a minority of its titles to deploy what Pete Stanfield calls a "generic play between 'repetition' and 'difference' " in order to raise the alarm about Nazism, leveraging a duality

⁶⁵⁵ Ruth Vasey, ‘Let ‘Em Have It’, in Lucia, Grundmann and Simon Eds., *The Wiley-Blackwell History of American Film*, 179-201.

⁶⁵⁶ Don Miller, *B Movies* (New York: Ballantine Books, 1987), 186.

which managed to “contaminate” the entire corpus.⁶⁵⁷ The net effect was the transformation of *all* of these texts into a pointedly anti-Nazi discourse, at least for those audiences willing to make such an interpretation across this genre’s titles.

The force of these movies derived from two broad influences, both containing a capacity to intensify the films’ impacts. One is their explicit content: what these movies delivered to screens, which itself is strongly affected by the significant inheritance that bore on these titles from early cinema, literature and American cultural history. Secondly, structural aspects of the industry affected how such movies were handled and perceived. The structure of this chapter follows this division.

Content: what the “Enemy Within” films delivered

The domestic espionage films’ repetitive template begins with stock characters. These are a group of audibly everyday American criminals who must, to satisfy one definition of the cinematic spy genre, stand for the “national... interest being in some way threatened by a foreign power.”⁶⁵⁸ These familiar-sounding hoodlums are often abetted by people of foreign origins (irrespective of whether they were naturalised as “new Americans”).⁶⁵⁹ This otherness is denoted by their names and/or accented speech rather than by visual signifiers of race. In many of the films specific Germanness is evident in audible cues of name and accent, although their most common trait is an evasively ambiguous “Mittel European” quality. The male ringleader is invariably the most obviously foreign in nature, and is always prosperous, well dressed and associated with high professional/managerial socio-economic status in the position which provides his cover story. All the foreigners are villainous and all the victims are innocent ordinary Americans, usually of a lower class status than their adversaries. The Americans are not weak, but often misguidedly complacent and overly open and trusting. This assortment of narrative conventions comprises a generic formation, and it is one that is eminently repeatable and recognisable. Such is apposite in a cinematic environment dependent on rigid formulas targeting an audience with “an almost endless quality to absorb extreme repetition.” At the lower level of exhibition, audiences’ preference was strongly geared to the reliability and predictability that ensured the repeatability in form, characterisation and outcome they demanded. By “deliberately remaining unoriginal,” Brian Taves observes, such predictable films satisfied audiences for whom “the familiarity of the most undemanding and rigid formulas was both expected and desired.”⁶⁶⁰

⁶⁵⁷ Peter Stanfield, *Hollywood, Westerns and the 1930s: The Lost Trail* (Exeter: University of Exeter Press, 2001), 6.

⁶⁵⁸ James Robert Parrish and Michael R. Pitts, *The Great Spy Pictures* (Metuchen, New Jersey: The Scarecrow Press, 1974), 10.

⁶⁵⁹ Citizenship status is an ellipsis that is never addressed in these films.

⁶⁶⁰ Brian Taves, ‘The B Film: Hollywood’s Other Half’ in Tino Balio, Ed., *Grand Design*, 333-334.

As a subset of the thriller, the domestic espionage movie inevitably centred on conflicts, but instead of rival gangs drawn from the criminal milieu, by acculturating the heroes and villains entire cultures could – and did – collide in these films. Compared to the Mexican Bad Man, another early Hollywood stereotype which is equally demeaning, the cultural representations in the budget spy films differ through having an external agenda – the recognition of the villains’ difference. It demonstrated that anti-American activities are located in specific nations, peoples and cultures, and through ellipsis, not in others. These films’ persistent characteristics blended spy stories’ longstanding familiarity of narrative content with American xenophobia expressed in cinematic portrayals of ethnicity. Spy fiction had long criminalised foreignness, but in a vague, safe kind of way. The singular achievement of the low-budget espionage pictures was to re-nationalise the requisite ethnicity, which they did by leveraging these films’ biggest artistic weakness – the sameness and predictability of their narrative(s) – as a strength.

The new dimension which sound brought to the movies enabled greater complexity in the representation of nuanced values compared to the silent cinema, which relied heavily upon visuals to encode characters’ attributes, such as the angelic blonde ingénue as opposed to the dark, hirsute ne’er do well. Sound quickly became such a flexible tool that even a dark villain of the silents like William Powell could be transformed through speech into the debonair lush of *The Thin Man*.⁶⁶¹ Values that had a political dimension were well within the reach of sound too. Unlike the intertitles of silent films, in the talkies “voice... makes dialogue matter, takes it out of purely narrative function and makes it sound.” In the radio dramas which pioneered this signification it was the sneering vocal mannerisms of the bad guy, every phrase dripping with menace, that laid the foundation for repetition. Filmgoers however “need to hear filmic speech in order to understand fully the use of language” in the medium.⁶⁶²

While accented speech was a notable feature of movie characters during the first decade of sound, its deployment was not necessarily used then to demonise foreigners. This was especially so in comedy, where screwball and other forms elaborated a tradition of American popular entertainment going back to vaudeville and the music hall which drew widely on foreigners’ speech idiosyncrasies for easy laughs. Hollywood relied on a variety of *patois* whose deliberate vagueness of provenance enabled the industry to minimise the risk of any particular overseas market or domestic lobby group taking sufficient offence that they would organise boycotts of its pictures. This was essential to ensure Hollywood’s wide reach, especially in the foreign markets on which its profits depended. In general the industry approached accented foreigners with a “calculated imprecision”, the ensuing

⁶⁶¹ Mark Winocur, *American Laughter: Immigrants, Ethnicity and 1930s Hollywood Film Comedy* (New York: St. Martin’s Press, 1996), 181.

⁶⁶² Christopher Beach, *Class, Language and American Film Comedy* (Cambridge: Cambridge University Press, 2002), 25.

deployment of which was not overtly ideological but rather provided exotic colouring in the case of comedies, while in its thrillers foreignness “became abstracted into an amorphous category of the alien” which could see place names like Mondavia put across, straight-faced, as locations.⁶⁶³

Malleable representation like this could also yield a sliding scale of demonisation, and do so on demand. Sound’s flexibility allowed Hollywood to deploy speech as an unseen mechanism to activate one of its longstanding tactics around competing representations of nationhood, which is to “particularize its ‘out-groups’ while universalizing its ‘in-groups.’”⁶⁶⁴ In the low-end spy films in question, while most of the espionage movies stick faithfully to the convention of indeterminacy, some pushed Teutonic speech characterisations to a borderline characterisation whose Germanness was virtually unmistakable, as Frank Nugent described in his *The New York Times* review of *Cipher Bureau*, noting the villains’ provenance in “a suspiciously Teutonic-sounding foreign power.”⁶⁶⁵ Two years later, employing more complexity, *Hidden Enemy* (1940) showed saboteurs from a variety of nationalities and, while accented speech distinguished some of them, their accents were an indeterminate Euro-pidgin serving only to characterise each as a non-American “other.” The critical exception was their leader, the Germanic Dr Werner, whose role enabled the film to particularise blame in only one nation. The visual poverty of these films’ sensory environment worked to strengthen accents’ distinctiveness; in a quickie spy-thriller there was rarely much of anything to distract viewers from pondering the significance of accented villains and reflecting on their place in the flat landscape.

Inheritance: legacy of early espionage media

Spy stories are a stable literary formation stretching back to the 19th century. The World War II sleuth Nick Carter originally appeared in 1886, and the essential design elements of the spy story can arguably be traced back as far as the Bible.⁶⁶⁶ As the form took shape at the beginning of the twentieth century, it was legitimised by the participation of such respected writers as Rudyard Kipling, Henry James and Joseph Conrad.⁶⁶⁷ By the 1930s spy stories were thoroughly entrenched as a staple in popular fiction, spanning a continuum from “penny dreadfuls” through John Buchan and Eric Ambler and on to Graham Greene. At the movies, driven by audience demand for escapist thrills, spy stories were a feature of the silent cinema, as far back as *Execution Of A Spanish Spy*

⁶⁶³ Beth Holmgren, ‘Cossack Cowboys, Mad Russians: The Émigré Actor in Studio-Era Hollywood’, in *The Russian Review* Vol. 64 (April 2005), 242; Vasey, *World According to Hollywood*, 101.

⁶⁶⁴ James Morrison, *Passport to Hollywood: Hollywood Films, European Directors* (Albany: State University of New York Press, 1998), 97.

⁶⁶⁵ Frank Nugent, ‘Movies’, *New York Times*, 14 December 1938.

⁶⁶⁶ Parrish and Pitts, *The Great Spy Pictures*, 10; John Cocchi, *Second Feature: The Best of the B’s* (New York: Citadel Press, 2000), 128.

⁶⁶⁷ James Naremore, Ed., *North by Northwest: Alfred Hitchcock, Director*, Rutgers Films in Print series (New Brunswick New Jersey: Rutgers University Press, 1993), 6.

(1898).⁶⁶⁸ Bosley Crowther underlined this in his derisory *New York Times* review of 1941's *International Lady*, headlined "An Old-School Spy Melodrama," when he described its plot as "positively in the tradition of spy pictures, circa 1922," with one saboteur who "sounds exactly as though he is reading a subtitle."⁶⁶⁹

Even before America's 1917-18 belligerency there was a succession of Hollywood spy movies explicitly featuring German antagonists, a stream which can be traced back as far as D.W. Griffith's *Prussian Spy* (1909), which gathered pace from 1915. After the Great War, anti-German espionage potboilers continued at a steady rate every year in the 1920s and early 30s, both in print and on the screen.⁶⁷⁰ Other nation's spies (like the Japanese agent, whose very existence waxed and waned before and after Japan joined the Allies in World War I) would come and go, but the Teutonic spy persisted as the default setting for the villain in American thriller-dramas of international espionage.⁶⁷¹

Domestic espionage at the movies was highly repeatable, feeding a seemingly unquenchable thirst on the part of the audience. In the pre-war years, movie serial characters Mr Moto, The Lone Wolf, Philo Vance, and Charlie Chan continually shuffled stock elements like exotic locations (Hawaii, the Berlin Olympics, the Panama Canal) and their McGuffins (hush-hush new weapons or secret formulae) to spin out successive repetitions of what were basically interchangeable instalments of the same story.

It was also a template steadily plying its repetitive wares for many years before the war concerns of the late 1930s, with a steady supply of conformist genre entries like *Son Of A Sailor* (1933), *Marie Galante* and *Mystery Plane* (both 1934), *Rip Roaring Riley* and *What Price Crime?*(1935), *Federal Agent* and *Murder Over New York* (1936). Operating at a higher artistic level was Alfred Hitchcock with his string of mid-30s espionage classics – *The Man Who Knew Too Much* (1934), *The 39 Steps* (1935) and *The Secret Agent* (1936).⁶⁷²

Serials such as *Flying G-Men* (1939) and *Sky Raiders* (1941) perpetuated the blueprint and made the pulp allusion literal. In these films' repetitively recurring motifs we sense some of the preoccupations of the period. Geographically there is a constant revisiting of the Panama Canal Zone as a setting for the stories, as it was then an area considered highly vulnerable to penetration

⁶⁶⁸ Daisuke Miyao, 'Doubleness: American Images of Japanese Men in Silent Spy Films', in *The Japanese Journal of American Studies*, no.9, 1998, 71.

⁶⁶⁹ *New York Times*, 11 November, 1941, 29. Crowther expressed surprise at the lavishness of the launch for what he saw as "a strictly grade-B film", given the "A" level trappings of its release.

⁶⁷⁰ Francis MacDonnell, *Insidious Foes: The Axis Fifth Column and the American Home Front* (Guilford, Connecticut: The Lyons Press, 2004), 28.

⁶⁷¹ Miyao, 'Doubleness', 71.

⁶⁷² Though not espionage, Hitchcock's *The Lady Vanishes* (1938), a hit in America, features border guards who are clearly Nazis, but bear no explicit markings.

by enemies of America.⁶⁷³ Aviation, still rich in novelty, was a recurrent theme in the preparedness debates of late 1930s America around how unprepared America was in terms of military aircraft, primarily in comparison with the Luftwaffe, and airborne military hardware dominated the 1930s spy movies with test pilots, experimental planes and secret new flight equipment prominent.

In the 1930s the question of how to handle the inherent Germanness of the spy story set in World War I became a complex one, and the middle of the decade was a period of uneasy experimentation for this subgenre. Espionage films now grew in prestige and shrank in number, the style accounting for one bill-topping production annually rather than a couple of genre pictures per year. Most of these were from MGM, whose range of approaches included: romancing the spy's victims (*Mata Hari*, MGM, 1931); a traitorous German dying for the love of a good British woman (*Passport To Hell*, Fox, 1932); empathy for German-Americans (*Ever In My Heart*, 1933, Warners); an agent of the Kaiser actually triumphant (*Stamboul Quest*, MGM, 1934); Imperial Germany's anti-American espionage raked over in forensic detail (*Rendezvous*, MGM, 1935); and espionage as a background to another plush overseas romance (*Suzy*, MGM, 1936). This antediluvian "spying Hun" subgenre of the thriller all but ran out of steam with the late entry *Lancer Spy* (October 1937, Fox).

The demise of the "spying Hun" films of Great War espionage was probably hastened by other Hollywood spy movies' espionage scenarios becoming updated to reflect current events, as well as by their untenable economic and political nature arising from representations of German agency. A subset of these films seemingly tried to overcome "the German problem" by explicitly identifying their spies as Austrians. Whether this was in deference to the rise of Nazism or just plain "villain fatigue" is hard to say. In most of these films (*Dishonoured*, Paramount, 1931; *Doomed Battalion*, Universal, 1932; *After Tonight*, RKO, 1933; *Madame Spy*, Universal, 1934; *Till We Meet Again*, Paramount, 1936; *Spy 77*, First Division/Alliance Atlantis, 1936; and *The Hotel Imperial*, Paramount, May 1939) the Austrian spends most of (usually her) energy falling in love with an opposing spy who is always of another (mostly Russian, but also Italian or British) nationality. Yet by maintaining an unbroken through-line for over two decades, this subgenre kept alive duplicitous representations of German agency in the spy films to come in 1937-39.

The spy movies readily adapted the dual discourse to their own ends, revealing in the process how transportable the tactic could be across genres. By the late 1930s, Hollywood had become very adept at applying this gambit to its storytelling. A remarkably refined strategic approach to anticipate and accommodate the concerns of bodies external to the industry like state censorship boards, the dual discourse worked to accommodate, at the textual level, the industry's great audience diversity through the integration of plausible

⁶⁷³ Parrish and Pitts, *The Great Spy Pictures*, 20

alternative readings into all screenplays which risked alienating any major audience segment. It strove to minimise material that was unambiguously offensive while maintaining the Hollywood narrative style which privileges closure. Reconciling this required a sufficiently broad range of possible understandings by different audiences responding variously to the provision of the same array of cues onscreen. Storyline arcs and character trajectories needed to be capable of viably resolving in end points that could be simultaneously credible to either innocent or worldly viewers.

In order to inoculate filmmakers from attack or blame for their content and claim the requisite clean hands or “deniability,” this strategy effectively worked to produce films sufficiently capable of multiple interpretations.⁶⁷⁴ It reversed the onus of interpretation by shifting this on to the viewer and away from the creator. In pursuit of this, Hollywood’s filmmakers leveraged their medium’s inherent diversity, making maximum use of its interplay of sound, visuals, prior associations and *mise-en-scene*, such as background signage, locations, speech, accents, puns, actors’ personas and their backstories.

From a production perspective the dualistic approach can be understood as targeting the “town versus country” dichotomy for one vast market where of necessity the “rube” and the sophisticate sit cheek by jowl. At the lower levels of movie budgets there was a considerable degree of regionalism built into films, and even entire low-budget series. An example is Republic’s series *The Weavers*, expressly tailored for the hinterland market segment for which literate, urbanised readings were extraneous to requirements.⁶⁷⁵ Of at least as much pragmatic interest was the industry’s need to reach the 1930s’ nuclear family out for a night of pre-television entertainment.

In this espionage subgenre, one pathway for dual discourse tactics was through interacting with spy movies’ generic framework. Relevant examples here are *Cipher Bureau* and *Down In San Diego* (1941). At a climactic moment in *Cipher Bureau*, a film which abounds in references to “alien hands” and “alien spies,” an ostensibly unnecessary exchange over Germanic aliases acts like a roll call of culture-specific deception due to their characters’ roles as saboteurs. In *Down In San Diego*, despite their quarry having a strong, unmistakably German accent, the Dead End Kids never make any mention of this factor adding to the spy’s culpability, but do pointedly mention an otherwise irrelevant female character’s southern accent, thus drawing attention to this characteristic of speech. Another pathway was to work outside the dual discourse, as in *The Man Who Wouldn’t Talk* (February 1940). Here the eponymous German antagonist’s name, Keller, is early on confused with “killer” for those failing to make the leap unaided. During Keller’s trial for

⁶⁷⁴ Vasey, *World According To Hollywood*, 107.

⁶⁷⁵ Miller, *B Movies*, 99.

espionage there is extensive newsreel footage of Germany's World War I aggression before a surprise witness, Otto Buchner, a heavily Teutonic-accented former spy appears, only to be bookended by repetitive footage of German bombing that is suggestive of the new European War then underway. The overall effect of *The Man Who Wouldn't Talk* is of an accumulating compendium of Germans' untrustworthiness and aggression.



Cipher Bureau "press mat" in pressbook ⁶⁷⁶

One way of enabling a dual discourse that is greatly advantaged by stable genre formations like this one is through deploying gaps which an audience can fill. A subject where audience memory could be prodded selectively so that viewers filled in a key gap – the origins of the belligerent activity leading to war – was World War I. Prior to America's 1917 entry into the Great War there had been an alarming sequence of sabotage incidents on US soil which were subsequently blamed on the Kaiser's forces, the most notorious being the bombing of the Black Tom munitions factory opposite the Statue of Liberty in 1916 by a suspected German agent, which resulted in the deaths of three adults and a child.⁶⁷⁷ In the new war build-up of the late 30s, films with domestic espionage themes

⁶⁷⁶ Author's collection.

⁶⁷⁷ Pierce O'Donnell, *In Time of War: Hitler's Terrorist Attack on America* (New York, The New Press, 2005), 36.

spanning a range of status levels repeatedly leveraged this twenty-year-old German campaign. *Navy Blues* (April 1937) made reference to domestic sabotage (that is, Germany's) being responsible for the "last war."⁶⁷⁸ The explosive prologue of *Espionage Agent* (September 1939) used spinning newspaper headlines and filmed recreations not only suggestive of Black Tom, but significantly more devastating, with a front page screaming "MANY DEAD." Fox's *The Man Who Wouldn't Talk* (February 1940) uses its trial sequence as a device to justify extensive newsreel footage of German attacks in the First World War, then links this to footage of more recent Nazi bombers. *Passport to Alcatraz* (June 1940) was virtually a semi-documentary account of the practice used by the Kaiser's forces of issuing false passports to enable German aliens in America to flee the U.S. in order to fight for the Fatherland, a practice illegal under American law.⁶⁷⁹

According to Lea Jacobs, "censorship built on narrative tendencies... the strategies of censorship relied upon a configuration of the [subject] which was already conventionalized."⁶⁸⁰ White-coated scientists would be naïve boffins, reporters were crusading but crass and any accented foreigner, especially if wearing a suit, would be dastardly. A stolen blueprint would always be the result of enemy activities, not failings in the security or personnel policies of a military supplier or the U.S. Government. Low-budget films' reliance on conventionalised representation of spies and foreigners made it possible to achieve the opposite of eliminations: the gradual accretion of material skirting close to the boundaries of permissibility, rather than its reduction. Overly prurient Hollywood movies required eliminations or alterations of sexually risky content, often in the form of a carefully calibrated attenuation in narrative progression in order to preserve some ambiguity of the "did they or didn't they?" variety. This capacity for different readings here allowed a domestic espionage film to elaborate an additional, albeit implicit, message. In *Hidden Enemy*, despite its plot being replete with generic clichés of thickly-accented foreigners undertaking their nefarious activities, nothing disturbs genre conventions until the film's final minute. Then the covert "good guy," actually a female government agent, waits until the spies' leader, the Germanic, monocle-wearing Dr Werner, is arrested, and spells it out for viewers:

"I'm not (a G-Woman). The United States doesn't employ women operatives in the espionage service... I work for a patriotic organisation that's interested in finding out about undesirable aliens. They haven't forgotten the factories that were blown up and the American workmen that

⁶⁷⁸ The convention utilised herein for dating films is to identify the release month and year for those titles of direct relevance, as gauged by their presence in the Shull & Wilt *Filmography*, with all others restricted to a release year alone.

⁶⁷⁹ Shull and Wilt, *Filmography*, 90; 45.

⁶⁸⁰ Lea Jacobs, *The Wages of Sin: Censorship and the Fallen Woman Film* (Berkeley: University of California Press, 1995), 50.

were killed in 1915 and '16 right in this country through sabotage... there's more in this than shows on the surface."⁶⁸¹

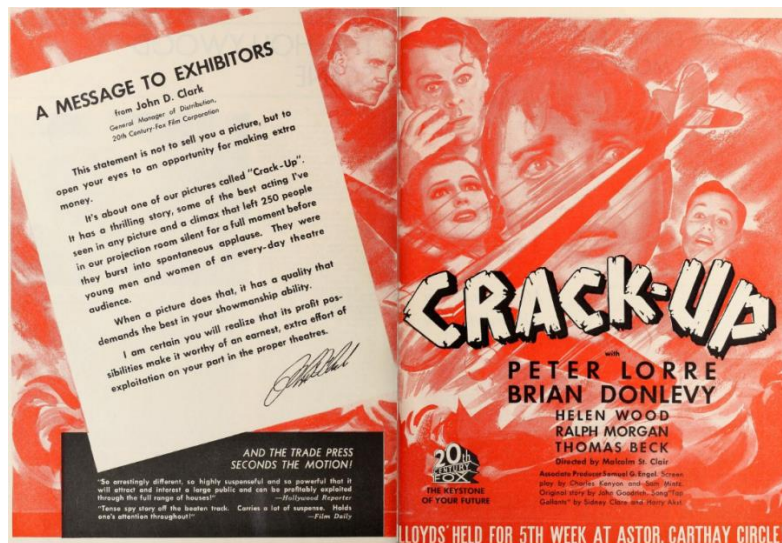
A similarly denouement-located speech in *Cipher Bureau* delivered direct to camera also clearly, but not explicitly, taints Germany with the movie saboteurs' actions. In *Hidden Enemy* there is no such breakout but the speech's final phrase ("there's more in this than shows on the surface") adds another clue for sophisticated viewers who may be alert to the film's likely intentions. Even the title, *Hidden Enemy*, works to cement the association without risking condemnation, a trend that was growing by the turn of the 1940s.⁶⁸² Through this body of films, audience collaboration via the references to notorious incidents like Black Tom, facilitated by a well ploughed narrative tradition, enabled "offensive" messages to be safely introduced to the screen. With just one "contaminating" scene with dialogue that colours the entire narrative, a routine spy yarn can be transformed into a narrative of highly specific condemnation at very low risk to the filmmakers. Relying instead on a proven, predictable narrative form, domestic spying films of the late 30s and early 40s used the conventions of genre to actively make specific allusions of hostility.

A critical element that transforms the routine domestic espionage potboilers into a meta-narrative of the enemy within is these films' eschewing of the readily available alternative narrative of American agency. If this corpus had included in its generic formation portrayals of Americans being involved on both sides of the espionage coin, then the Teutonic representation seen in many of the films may have seemed more even-handed and less pejorative. The absence of a levelling U.S. culpability through American initiative in counter-espionage interacts with the existence, in a few of these films, of explicit German responsibility for covert aggression. The narrative blueprint's repeatability thus enables this entire body of low-flying genre thrillers to be interpreted as one concerted ur-text in which America is being constantly threatened by Nazis during peacetime. In the spy movie's generic formation America, as well as her individual representatives, is always placed in a defensive posture and it is this vulnerability that is the plot's concern, not the success of any initiatives by American spies. Uncle Sam is not sending spies abroad, nor essaying any forays in military adventurism, nor even appearing to have spies. The absence of America's counter-espionage capacity is often bemoaned in these narratives by the films' domestic authority figures such as Federal agents, bureaucrats or politicians, in an editorialising discourse analogous to that of 1930s gangster movies like *G-Men* (1935), which called for expanded government intervention in the rackets.

⁶⁸¹ This would have been especially resonant as the enquiry concerning Black Tom finalised its findings in late 1930s.

⁶⁸² Besides *Hidden Enemy* there was also *Criminals Within* (June 1941), another spy caper, while the working title of *Murder in The Air* (June 1940), was actually *The Enemy Within*.

Despite these movies' insertions that suggest German accountability, the majority of domestic espionage films evince no ostensible references to Nazism. In the same month as *Crack-Up* came *Holy Terror*, whose foreign spy ringleader reveals nothing more than a mid-Atlantic accent. Similarly, *Smashing The Spy Ring* (December 1938) featured a moustachioed villain named Shuster who was sending secrets to "the homeland" in an accent patterned after Leo G. Carroll's comforting British tones. Even more anodyne, and hence timeless, are *The Lone Wolf Spy Hunt* (January 1939); *Navy Secrets* (February 1939); *They Made Her A Spy* (April 1939); *Exile Express* (May 1939); Jacques Tourneur's *Nick Carter, Master Detective* (December 1939); *Enemy Agent* (April 1940); *Criminals Within* (June 1941). All of these generic movies could arguably be seen to have operated cumulatively on a horizontal level where each served, through repetition, to reinforce the basic narrative paradigm they shared with *Crack-Up*, *Cipher Bureau* and similar, more politically-charged films. This persistence potentially helped the spy blueprint become charged with meaning since what culpability did emerge was slated home to a Nazi source. The ellipsis of unnamed foreign enemies in *Holy Terror*, *The Spy Ring* and the numerous other "harmless" films still retained the inherent potential to build an interlocking meta-narrative of causality, refreshing itself year after year.



Crack-Up two page spread in Motion Picture Herald⁶⁸³

In such small films as *Crack-Up*, *Hidden Enemy* and *Cipher Bureau*, where carefully situated insertions using the repeatability of genre conventions can be seen to taint German representation across an entire corpus, MPPDA script readers were unlikely to have felt too vulnerable to attack by outsiders. They could readily justify these films' ideologically-charged insertions, such as allusions to the Black Tom sabotage of World War I, by recourse to the "factual basis" argument. Producers could have argued that even where Germany is

⁶⁸³ Advertisement, *Motion Picture Herald*, 26 December, 1936, 42-43.

mentioned by name in some spy films (*Charlie Chan at the Olympics*, *Crack-Up*) it is not explicitly blamed, nor even linked directly to espionage, and viewers can make whatever connections they want. There was a recurring pattern of this evasion. Less than three years after his English-speaking debut in Alfred Hitchcock's 1934 hit *The Man Who Knew Too Much* as the first of his long series of unctuous Teutonic spies, Peter Lorre reprised that persona for Fox in *Crack-Up* (February 1937) where, although carefully leaving his nationality unclear (despite a Germanic name – Rudolf Maximillian Taggart), the plot explicitly identified Berlin as the destination for the experimental long distance American airplane whose blueprints he tries to steal. *Charlie Chan At The Olympics* (May 1937) takes this targeting a step further. After a prototype U.S. military plane is hijacked, Charlie tracks the culprits to Berlin, where he sees Hitler receiving a salute at the Olympic Games (portrayed through newsreel footage). In *Cipher Bureau* the enigmatic leader of a ring of spies with unusually heavy German accents is, predictably, caught in the movie's final scene. However at this point he breaks filmic conventions in a manner highly unusual amongst conservative genre movies by changing his mode of address to direct-to-audience, describing his espionage as "unfinished work," in a conspiratorial tone and leering grin straight to the camera. This address served to refute the closure that came with his capture, leaving a lingering impression of a USA that will continue to be "infested."

Geography allowed other evasions. Although firmly in the low-budget cohort with all its attendant aesthetic shortcomings, *Man At Large* cleverly leveraged Canada's role as a North American site that was openly anti-Nazi. Its plot concerns a German P.O.W. in Canada, and no mere foot soldier but an elite Luftwaffe pilot (a "Nazi ace"), who has escaped and crossed the border into the United States through which he moves freely, creating havoc. Whereas an anti-war ideology could have used this set-up to portray Canada itself, a belligerent nation just across a lengthy unsealed border, as a threat to Americans, *Man At Large* frames the enigmatic fugitive – he is never seen – as emblematic of a virus infecting an ailing body politic, as this elusive enemy activates an entire network of subversive American enemies within: "we are everywhere over here, just below the surface of everyday life, invisible and efficient." In case any viewers had missed the preceding German names and even music (the spies use Gynt's *In The Hall Of The Mountain King* as a code), the term "over here" locates the orientation of this speaker, a minor character, as offshore (from his homeland) while the word "efficient" in this quotation focuses that location by signifying a traditional German attribute. Yet, Canada apart, even these are all conventional signifiers of the

ideologically-inclined spy films that had been seen already by 1941.⁶⁸⁴ But *Man At Large* outdoes the others as an exercise in dual discourse when, two thirds in, at the 40 minute mark, it reveals the fugitive Nazi to be a hoax of British Intelligence! Having its cake and eating it, the film's overall impression of an America infested with subversives endures and audiences are not let off the hook by this face-saving plot device because the "we are everywhere" speech quoted above is held back until the 55-minute mark (of a 68-minute production). Despite being sneakily innovative, *Man At Large* raised questions that it was not big enough to answer: who is the real enemy here? What to do about indigenous subversives? Should this scenario promote or refute further intervention overseas? Such debates were outside the ken of what was, after all, a low-rent entertainment, however thoughtfully designed.

The movie matinee spies could also expand their horizons through the porous genre boundaries often found amongst the low budget entertainments. In her 1985 homefront memoir *For The Duration*, Lee Kennett recalls that: "By 1941, the sinister figure of the secret agent was so pervasive that he could be found even in Hollywood's westerns."⁶⁸⁵ Released in January 1940, the "B" western *Death Rides The Range* was the penultimate pre-war spy-western, and followed *Pals Of The Saddle* and *Western Jamboree* (1938), *South Of The Border* and *Chip Of The Flying U* (both 1939), before *Arizona Gangbusters* closed their frontier in September 1940. *Death Rides The Range* opens on an unusually cosmopolitan frontier. A French scientist, a middle-European refugee who sounds like Peter Lorre and an obviously no-good German - blond, scowling and sporting an Afrika Corps-style safari blouse – are introduced. Accents denote all their origins, with the French and German being self-described agents of their (still unnamed) governments. As is typical of B domestic espionage, in this spy-western there's collusion between accented "furriners" and shifty American villains. Its climax starts as an all-American struggle but when the German strongman turns up, with the exception of one villain, this unites all the Yanks in a row against him before the sheriff arrives to reveal the movie's cowboy protagonist is undercover FBI, and the jig is up.⁶⁸⁶

Despite their similarities, the spy-westerns and more conventional urban espionage-thrillers extended, by analogy, the rural/city divide of their domains to the commodity under threat in

⁶⁸⁴ This is a 20th Century Fox film, whose output was overseen by production head Darryl F. Zanuck, a passionate pro-interventionist who was one of the most influential Hollywood voices before and during the Senate *Propaganda Hearings*, as discussed in Chapter 8 of this thesis.

⁶⁸⁵ Lee Kennett, *For the Duration: The United States Goes to War, Pearl Harbor 1942* (New York: Charles Scribner's Sons, 1985), 157.

⁶⁸⁶ For a 21st century B-Western fan's perspective that is also alert to this movie's propaganda dimension see: <https://jamesreasoner.blogspot.com/2018/07/overlooked-movies-death-rides-range-1939.html> : accessed 18 August, 2018.

each. Unlike the secret weapons and military blueprints of the urban spy movie, what is at stake in these films are predominantly natural products like oil (*South Of The Border*), access to land (*Chip*), helium gas (*Western Jamboree* and *Death Rides The Range*) and even US invasion weak spots in *Arizona Gangbusters*, the locations of which are smuggled out on wild mustangs! These filmmakers did more than just swap fedoras for Stetsons, since the expanded threat here had the potential to extend the reach of audience concerns. By co-opting “B”-westerns the spy film was able to extend its demographic reach to regional America, where this genre was a major audience favourite, but more usefully, in political terms was also the stronghold of the isolationist movement.

Such intentionality is difficult to prove, as production records for low budget oaters like these, if kept, cannot be found. However there were surrounding texts that may provide clues. Few of these are available either, but fortunately one such is accessible to this study, the pressbook for *Cipher Bureau*, a film which is discussed elsewhere in this chapter in more detail. Released on October 26 for the prime winter viewing season, *Cipher Bureau* was, unusually for these “quickies,” reviewed in *The New York Times*, on December 14, 1938. Here Frank Nugent (soon to become John Ford’s screenwriter, where his anti-fascist sympathies would flourish) approached it with appropriate flippancy, noting the villains’ provenance in “a suspiciously Teutonic-sounding foreign power.” The pressbook clearly lays out when and for whom to be alert: “The inside on a plotting nation... [which] periled the lives of millions”; “Your newspapers shriek its story... [in] a mighty melodrama of the minute”; “The whole world’s a powderkeg... [in this] timely drama.” In this period when American values were being more vigorously promoted on the screen and in the arts more widely, here the nation’s roots in democracy and freedom are neatly conflated with interventionist action through use of the imperative sense: “Get the men who threaten the *foundation* of your country” (emphasis added). While far from conclusive of constructive interventionism by the creative elements here, such promotional entreaties do locate the movie’s narrative in a context that, through reinforcing each other, combine to intensify its anti-Nazi message, as Nugent indicated. The trade press was not slow to encourage a nexus between screen spies and war threats during the peacetime era, and exhibitors were frequently encouraged to push the spy movies’ connection with current events through exploiting news items for their promotional campaigns. The *Motion Picture Herald* advised that in Monogram’s Fay Wray vehicle, *Navy Secrets* (February 1939): “Exhibitors alert to interests of the day have here a picture about which they can write ad copy fashioned directly after the headlines in the

morning newspaper.” *Variety* saw in the same year’s *Espionage Agent*: “War headlines dramatized. Lots of openings for exploitation.”⁶⁸⁷

Industry structure and its influence on B-spy movies

Where Americans saw their movies in the late 1930s certainly exerted a strong influence on films’ perceived status. Hollywood’s financial health was based on maximising productions’ returns through the use and rigorous policing of its tiered distribution structure, in which every title moved steadily down the theatre rankings at stepped intervals to maximize profitability. The A-features were made for initial exposure at prestige screenings in the first-run, downtown theatres. Low-budget films rarely (but on occasion) graced these ornately framed screens whose single-feature programs were rounded out with selected short titles and newsreels. Moving out to the geographic margins beyond downtown, extending from the cities’ other districts to its suburbs and thence small towns and beyond to the hinterlands, a more variegated structure prevailed. Here “A” pictures would receive a subsequent run on bills where they would be combined with a potential menu of programmers or lesser features, plus shorts, newsreels and cartoons in diverse combinations that could run for over five hours in a single program. Very much the norm for the majority of American moviegoing audiences, this sub-prestige level core of exhibition had its own stratification. At its highest level were the “nabes,” the neighbourhood theatres in suburbs whose upper reaches aspired to emulate city centres’ prestige standards of presentation and decorum, some of which received late-first-run opportunities.⁶⁸⁸ They sat on top of a discrete middle level of exhibition whose lower reaches were probably best defined by what they were not: the next, and bottom, level of “sidestreet” theatres, also known as “grindhouses,” at whose patrons the lowest cost product was targeted.⁶⁸⁹ The majority of the American moviegoing experience occurred in this extensive range of cinemas receiving marquee titles after their first-run downtown engagements. Such were the venues where the double-bill was the norm and the low-budget movie found both its home and reason for existence.

A central factor enabling the smooth function of the meta-narrative in the spy films was the predictably structured nature of American motion pictures’ delivery of its industrial products. Almost without exception, domestic espionage films were designed to occupy the identical position on the double-bill format dominating the era. This allowed them to function longitudinally, over time, in a repetitive, aggregating manner, just as in the context of a single matinee program they were able to

⁶⁸⁷ Shull and Wilt, *Filmography*, 105; Leslie Halliwell, *Halliwell’s Film Guide*, 6th Edition (London: Paladin, 1988), 316.

⁶⁸⁸ Eric Smoodin, *Regarding Frank Capra: Audience, Celebrity and American Film Studies* (Durham, Duke University Press, 2004), 39.

⁶⁸⁹ Gene Fernet, *Poverty Row* (Satellite Beach, Florida: Coral Reef Publications, 1973), 6, 118.

function vertically, where for instance a film like *Charlie Chan at the Olympics* would have been able to interact with newsreels of Hitler. But what exactly was that common position?

The mid-to-late thirties timeframe of this thesis was the heyday of the double-bill, the exhibition practice the industry adopted to respond to the Depression's impact of cutting audience figures from over 100 million at their pre-Crash peak to under 40,000 at their nadir.⁶⁹⁰ In order to woo audiences back, value for money became the new marketing argument and the double-bill its structural expression. The aim was to get a larger crowd, with the exhibitor constructing one bill to play to different parts of the audience, predominantly distinguishing between men and women with, for example, an action movie and a romance. MPPDA correspondence makes it clear that the parallel meanings that needed to be available for contentious material provided varied interpretations that could simultaneously play to knowing adults and their innocent children and, moreover, be capable of satisfactory explanation by those parents to their charges. It appears that the greatest threat that the dual discourse stratagem sought to anticipate was the failure to provide such a cover story when movies needed one to work across audiences.

Despite initial opposition by the studios in the face of this innovation by independent exhibitors, by 1936 the moguls' resistance had crumbled and such programming had become the norm in 85% of U.S. cinemas, entrenching the wide reach of lesser movies on a double-bill. But was there actually such an entity as the "B" movie? From a production standpoint, the majors had "A" and "B" lines, but at the consumption end of the continuum, motion pictures' "A" or "B" status merely denoted the sequence of two films on the marquee of a single program using the double-bill format.⁶⁹¹

An entire sector of the industry was set up expressly to feed the lower spectrum of this exhibition structure and was also its greater component, at least in terms of the measurable scope of its machinery. The structure of production then, when annual output was typically around 500 films, could be essentially visualised as a pyramid. At its apex were the "superspecials," the very high cost productions, most frequently musicals, which had the highest risk and the highest returns, and were essentially the blockbusters of the Classical Hollywood system. Below them was the major tier of what we now think of as "A" movies: often called "Specials" and often featuring two stars. Below them were "programmers," likely to be single star vehicles capable of playing either half of a first- or second-run double bill. The pyramid's sturdy base was comprised of the 300 or so smaller pictures from independent production companies like Monogram and major studios' "B" units annually which, as a group, were responsible for the greatest proportion of Hollywood's output. This midrange was ambiguous, comprising Bs that could be considered aspirational, along with

⁶⁹⁰ *Film Daily Yearbook of 1934*, cited in Thomas Doherty, *Pre-Code Hollywood: Sex, Immorality, and Insurrection in American Cinema* (New York: Columbia University Press, 1999), 28.

⁶⁹¹ Taves, 'The B Film', 98.

other budget-driven product from the majors and better independents able to straddle the “A”/“B” divide. Don Miller describes several properties typical of this “slide area” in which a planned “B” could top a bill or even stand alone, including *Mister Dynamite* (1935) from a Dashiell Hammett story and *Fer-de-Lance*, the first of Rex Stout’s Nero Wolfe series. Half the eight majors’ and virtually all of the independents’ total output was directed here in the market’s centre, not at the “A” level, nor at its bottom.⁶⁹²

What is surprising today, especially since the 1970s’ romanticisation of the plucky “B” movie in accounts such as Don Miller’s and the *Kings of the Bs* anthology, is how fluid and unpoliced the pyramid’s borders were. In this space we find no “definitive guide to ‘A’ or ‘B’ status, and there are no clear lines of demarcation.”⁶⁹³ At the margins between status levels of “A” or “B” billing a snakes and ladders dynamic applied. The failure of an intended “A” product would quickly result in its demotion on marquees and the second-run market routinely saw many expensive high-end productions humbled into being the lesser drawcard on a double-bill. Conversely, products generally intended to open a double-bill, like the RKO’s *A Man To Remember* (1938) and Warner Bros.’ *The Payoff* (1935), found their unexpected success catapulted them to top billing.⁶⁹⁴ Appreciating this pragmatic commercial fluidity goes a long way to clarifying an industrial history featuring the highly porous product boundaries of the double-bill era. Apart from programmers Hollywood’s “low-budget” films were films consciously destined for a lower berth all the way from their assembly line conception to their eventual low-rent exhibition. Whereas a simple “A”/“B” nomenclature fails to capture the relativism of the era’s exhibition practices, contextualisation can restore the shadings and gradations which operated. So while it is true that a cheaply-made movie could top the bill in a “grindhouse,” and hence gain momentary “A” status, both caution and situational awareness must be exercised when considering its impact and reception, both to audiences, cultural gatekeepers and the press.

Ambiguous status is certainly element of the homefront spy movies. The Warner Bros. film *Espionage Agent* (September 1939) offered higher than “B” production values but middling star power (Joel McCrea and Brenda Marshall) and an 83-minute run time, qualifying it as a programmer built to move between “A” and “B” levels. Released five months after the incendiary *Confessions of a Nazi Spy*, *Espionage Agent* confused the issues with a muddled preachiness seemingly aimed at Congress that was sufficiently ambiguous to neither offend nor satisfy anyone. Although it included a German-accented and named villain and a Hitler-moustachioed spy, it pulled

⁶⁹² Miller, *B Movies*, 61, 52; Taves, ‘The B Film’, 98.

⁶⁹³ Todd McCarthy and Charles Flynn, Eds., *Kings of the Bs: Working Within the Hollywood System* (New York: E. P. Dutton & Co., 1975), 314.

⁶⁹⁴ Taves, ‘The B Film’, 315.

its punches by including Gestapo uniforms whose armbands are conspicuously shorn of swastikas. It does however stand out as the only film to *explicitly* identify the Black Tom sabotage.

The affectionate nickname “Poverty Row” for the parallel movie industry churning out program ballast accurately sums up the sub-“A” filmmakers’ priority: money, and the saving thereof. For the profit participants in an “A” level film, the studio and the exhibitors, the only limit on their potential financial return was the size of the audience, and for the studios this extended to the crucial offshore markets as well. Few “B” spy movies appear to have played offshore – Ronald Reagan’s domestic espionage *Murder In The Air* (June 1940) is a notable exception, and was translated into several languages for non-Anglophone markets.⁶⁹⁵ But in “the B Hive” a different system prevailed, the flat rental, a system particular to the domestic US market. Returns were thus guaranteed, but also strictly capped, encouraging and privileging filmmaking of an efficiency and ruthlessness, the priority of which was containing production costs. Over the five years of peace before 1942’s belligerence, the relative output of domestic espionage films between the two sectors of the “B” market, independent and studio unit, ran approximately 2:1 in favour of the majors.⁶⁹⁶

The question naturally arises: did the “A”/“B” ranking, with all its shadings and permutations, influence the degree of content management scrutiny experienced by different status levels of film? Was there an advantage in being a smaller movie, theoretically able to fly under the radar? Could subversively inclined creative personnel get away with greater political liberties here? There was ample opportunity in the B-movie production line, spanning all genres but especially Westerns, mysteries and family dramas, to learn the tricks of cinematic subterfuge. The stratum served as an industry training ground for numerous left-leaning neophytes, and a tiny handful of low budget pre-war movies with social justice themes embedded in their narrative did appear with credits that included 1930s leftist artists. This was the “great hope – or illusion, as [leftist screenwriter, Paul] Jarrico said later - of any left-wing writer... that he could somehow outsmart the producers and ‘censors’ in subtle ways that would permit an important minimum to ‘get said.’”⁶⁹⁷

As a function of low-budget movies’ release pattern being largely limited to the domestic market, content managers’ concerns were more focussed on the “A” films and how they “travelled” overseas. Influencing what made it to America’s screens during the Golden Age

⁶⁹⁵ Stephen Vaughn, ‘Spies, National Security, and the “Inertia Projector”’: The Secret Service Films of Ronald Reagan’, in *American Quarterly*, Vol. 39, No.3 (Autumn 1987), 371.

⁶⁹⁶ The annual breakdowns are: 1937 – 2 independent: 5 major studio; 1938 – 2:8; 1939 – 5:17; 1940 – 6:16; 1941 – 8:17; Shull and Wilt, *Filmography*, 87-138.

⁶⁹⁷ Ceplair and Englund, *Inquisition in Hollywood*, 85-86; 116; 306. Buhle and Wagner, *Red Hollywood*, 112-113; 158. Some examples of leftist screenwriters who succeeded in delivering pre-war low budget movies with overt social justice content are: Albert Maltz and George Sklar: *Afraid To Talk* (1932); Herbert J. Biberman: *King of Chinatown* (1939); and Samuel Ornitz: *Three Faces West* (1940). Another, Nathanel West’s *It Could Happen to You* (1939) is described in detail in this thesis on pp 222-226.

of Hollywood, even at the lower level, was never a sterile, acontextual process that can be understood in isolation, but rather a vigorously contested debate in the real world of cultural politics. Therefore we need to start by recognising the competing perceptions through which content management (as the industry saw it) and censorship (as it appeared to some external gatekeepers) was approached for low-budget motion pictures.

This study's timeframe places the question several years after the 1934 "crisis" which ushered in the Breen Office, as the Production Code Administration (PCA) became known, after which the content management processes and issues were to all extents and purposes settled and functioning smoothly with only minor skirmishes and hiccups, all well contained within the industry apparatus. Certainly by 1937 the threat of Federal Government intervention in films' content, though never entirely disappearing, was not a real concern anywhere. Will Hays' approach to managing content was essentially advocate-driven, as the history of the Legion of Decency's role in the tumultuous events of 1933-34 shows. If Hays was reactive, it was in a systemic way, as illustrated by his tactic of inviting the industry's most strenuous critics from the conservative heartland to function as his 'circle of advisors' by joining the Committee on Public Relations.⁶⁹⁸ This forum aimed to bring industry opponents "inside the tent," to paraphrase Hays' analysis of how another landmark cultural battle, Prohibition was won: by "elements outside, not inside the saloon."⁶⁹⁹ This is a strategy that today would be called stakeholder management. As the crisis over screen morals receded after Breen took charge in July 1934, such structures as the Committee on Public Relations grew increasingly redundant, having served their tactical purpose at the time.

What needs to be asked about screen content management then is: with these sly, subtly subversive "B-spy" films, who in the community needed placating? German-Americans? Many members of this community were anti-Nazi themselves, an orientation which grew in intensity during the interwar years. From the moment the Fuehrer was elected in 1933, Americans had expressed concerns over foreigners' fascism, including via the medium of cinema. The latter was seen prominently in the Marx Brothers' *Duck Soup* (1933) which, by harking back to the insanity of the previous world war (including the prevalence of spies) anticipated, with eerie prescience, in Rufus T. Firefly, the toothbrush-moustachioed autocrat behind the second. And as an offshoot of the between-wars pacifist movement, there was also a cycle of anti-war documentaries in 1933-34 which at several points in their anti-war

⁶⁹⁸ Francis G. Couvares, 'Hollywood, the Main Street, and the Church: Trying to Censor the Movies before the Production Code', in Francis G. Couvares, Ed., *Movie Censorship and American Culture*, 133-134; Vasey, *World According to Hollywood*, Chapter 2.

⁶⁹⁹ Maltby, 'To Prevent the Prevalent Type of Book', 113.

discourse warned against “the next one” and raised the alarm over the “Teutonic war machine.”⁷⁰⁰

Generally in the mid-1930s most Americans tried to remain oblivious to the Nazi threat. As American anxiety over Nazi persecution grew and spurred an attempted U.S. withdrawal from the 1936 Berlin Olympics, skilful manoeuvring by American Olympics Committee president Avery Brundage prevented any boycott, and the result was that American visitors to the carefully stage-managed event saw “a happy, healthy, friendly people united under Hitler,” who had temporarily eased his anti-Semitic rules and censorship.⁷⁰¹ When, one year later in October 1937, President Roosevelt issued his strongest warning yet of the threat posed by fascists with his landmark “quarantine” speech in Chicago, employing the metaphor of contagion to describe lawless nations, the ensuing public backlash revealed unambiguously how far ahead of public opinion he had travelled.⁷⁰² A sort of wilful optimism was still widespread in late-30s America, but the Munich Crisis of September 1938 ended that complacency and made U.S. military involvement seem a much more tangible reality. By 1939 most Americans had started to realise that they would actually need to take sides and act in some way to protect Great Britain in order to defend their own national interests. Whereas in January 1937 Gallup polling found that 62% of Americans believed they could stay out of another European war, by January 1939 the proportions had nearly reversed and 57% believed “the United States will be drawn in.”⁷⁰³

In the late thirties Will Hays had other concerns than Hitler, in the Neely Bill and the *Paramount* suit. This is not to say that Joseph Breen would have remained oblivious to a low-budget production provoking disquiet or complaints by a foreign country. His reactions to the Warner Bros’ quickie productions *Devil’s Island* (1939) and *West of Shanghai* (1937), which offended the French and Chinese governments respectively, show Breen took such situations extremely seriously and intervened personally. “I have set about, quite frankly, to cultivate the Chinese Consul,” he reported in the latter crisis.⁷⁰⁴

Breen was no less reluctant to quash a cultural or geo-political message that he disapproved of than he was an immoral scenario that offended him. The MPPDA had been exposed to anti-Nazi production intentions from as early as 1933, with the *Mad Dog of Europe* feature

⁷⁰⁰ Doherty, *Pre-Code Hollywood*, 205-7.

⁷⁰¹ Patrick Myler, *Ring of Hate: The Brown Bomber and Hitler’s Hero – Joe Louis v. Max Schmelling and the Bitter Propaganda War* (Edinburgh: Mainstream Publishing, 2006), 105.

⁷⁰² Robert A. Divine, *The Reluctant Belligerent: American Entry Into World War II* (Austin: The University of Texas, 1979, 2nd Edition), 48-49; 53.

⁷⁰³ Dr George H. Gallup, *The Gallup Poll, Public Opinion 1935-1971*, Volume One, 1935-1948, 1st edition, (New York: Random House, 1972), 46, 137.

⁷⁰⁴ Vasey, *World According to Hollywood*, 175.

film project of Herman Manciewicz and Sam Jaffe, which first Hays and then later Breen managed to prevent from going into production at the major studios.⁷⁰⁵ In 1933, Hays admonished these producers for their “selfishness,” citing the risk to the German market. When the property passed to agent Al Rosen in 1936 Breen explicitly warned that *Mad Dog* risked being offensive to the large body of people with “anti-Semitic feeling in this country.”⁷⁰⁶ If Jewish filmmakers in Hollywood succumbed to the temptation to slant movies for their “own personal propaganda purposes” argued Breen, it could open the floodgates for the screen being used for “less worthy” propaganda purposes.

In general, however, a routine spy yarn by gatekeepers (both within and outside the industry) from their scrutiny of a controversial prestige property, and any low-budget films that could be problematic would likely only reach Breen on a case-by-case basis. The PCA relied to a large extent on precedent, and a case-law legacy existed in the minds of the regulators, who were a stable and long-serving community. Beyond that, there was no systematic approach available to guide PCA staff, as the sensitive areas that the cheap spy films covered – espionage, sabotage and the like – were not yet major representational concerns of the MPPDA. The Code document itself, so rich in the permutations and possibilities for illicit sex and other immorality, was frankly unhelpful, being limited to the single reference to nations’ portrayals of Article X which required that the “history, institutions, prominent people and citizenry of other nations shall be represented fairly.”⁷⁰⁷

From a content management point of view, another by-product of this process was that purely cinematic aspects of a film like *mise-en-scene* and accented speech could evade scrutiny because a printed text, the screenplay, was the key site of clearance for all titles. In the anti-Nazi “A” and/or programmer level melodramas of the early 1940s like *The Man I Married* (1940), purely cinematic signification was able to provide numerous tactics for getting clandestine messages on screen through set design and other visual strategies.⁷⁰⁸ But in the context of the low-end spy films, it is likely that only in extreme situations of controversy or concern would pre-release reviewing processes be likely to go beyond routine assessing against the Code. A further stage in any film’s passage to full endorsement was the screening of MPPDA-supplied prints to the West Coast Previewing Committee, a body comprised of representatives of the “blue stocking” sectoral watchdogs most likely to cause Joe Breen trouble. But prominent early motion picture researcher Dorothy Jones noted the absence of these cheaper productions, observing that while movies “shown to this group are

⁷⁰⁵ Doherty, *Pre-Code Hollywood*, 100-102.

⁷⁰⁶ Carr, *Hollywood and Anti-Semitism*, 159.

⁷⁰⁷ Colgan, *Warner Bros.*, 320.

⁷⁰⁸ Jacobs, *The Wages of Sin*, 124.

representative of all major studios and include both A and B product... these showings do not present a program representative of the entire industry, since the run-of-the-mill westerns and mysteries (largely the product of smaller studios) are seldom represented."⁷⁰⁹ To quantify Jones' stratification, Leo Rosten's two-part 1941 study of the movie industry showed that, using a four-tier structure analogous to that used by Brian Taves, half (52.6%) of the total number of motion pictures were at found the lowest level and only 7.6% were at the top, with tiers two and three accounting for 23.9% and 15.9% respectively.⁷¹⁰ The lower half of this output, most of them relatively short features of little or no distinction, produced by a revolving door shuffle of the same second-string actors and technical crew, were made expressly for an industrial purpose. Their lowly status made it unlikely that any of the relatively subtle, sly allusions to German wrongdoing on U.S. soil that are encountered at the lowest levels in the spy films would have raised enough heat to even reach Breen.

For the pragmatic Hays (although not the more values-driven Breen), content management was not text-oriented in an absolute sense, but rather a process seen subjectively through the prism of what the pressure groups and moral guardians would object to. That the primary site of censorship scrutiny was scripts delivered a major efficiency advantage to producers, as problems could be caught early and avoid expensive reshooting, editing or even print recall, thus streamlining the process. But even a major studio through their B-unit, let alone the lesser independents, could still churn out films that were "produced too quickly... [for inhouse] research and preparation" but could still nevertheless wind up headlining the marquee in major big city markets, as happened with *Devil's Island*.⁷¹¹

The willingness of the American public to accept "the enemy within" as a credible concept by the end of the thirties was one profound contribution of the American cinema to the war, by providing an iconography for that belief, and attaching a specific ethnic identity to that iconography over the relatively short period of growing military preparedness. Xenophobia was not enough to constitute a dual discourse that provided a blind to screen content gatekeepers. What completed the equation was genre, with its ability to accommodate differing degrees and orientations of nationalisation and, in the cheap spy films, the inherent expectation that the enemy within were no one other than agents of the Germans. The ubiquity and adaptability of genre enabled these films to be a Trojan

⁷⁰⁹ Dorothy B. Jones, 'Quantitative Analysis of Motion Picture Content', *Public Opinion Quarterly*, Vol. 6, Fall 1942, 414. The cultural gatekeeper groups involved included the PTA, the Daughters of the American revolution, the General Federation of Women's Clubs, American Legion Auxiliary and committees charged with responsibility for monitoring Catholic, Protestant and Jewish interests onscreen.

⁷¹⁰ Leo C. Rosten, *Hollywood: The Movie Colony, The Movie Makers* (New York: Harcourt, Brace and Company, 2nd printing, 1942), 27.

⁷¹¹ Vasey, *World According to Hollywood*, 185; Miller, *B Movies*, 61.

Horse, which certain low-budget filmmakers were able to populate with just enough specificity to complete the bigger picture of a nation under alien threat.

Deliberateness and generic opportunity

The "enemy within" movies of the B-Spy genre operated at a site of reduced scrutiny by external interests and this contributed to their greater facility to "slip through the MPPDA's net" of screen content control.⁷¹² As in the parallel B-Western genre, these films' creators were able, if they were so motivated, to engineer what 1930s Westerns' chronicler Pete Stanfield identifies as "double-coding" in order to surreptitiously alert Americans to the threat of Nazism.⁷¹³ This chapter of the thesis argues that the B-Spy movies' incidence of such duality enabling anti-fascist content expanded steadily between 1937 and 1941. But the question remains as to just how much of their anti-Nazi content derived from active political motivation and how much was merely a passive nod to the dominant issues of the day.

The late thirties saw a rising tide of political activity in Hollywood, which historian Saverio Giovacchini describes as reaching "critical mass" in 1938 through the intersection of European refugees from Hitler in Hollywood coalescing with the concerns of American progressives, ultimately galvanised by *Kristallnacht* that November.⁷¹⁴ Those influences can help explain creative vectors, but in practice any activist screenplays still needed to negotiate the industrial realities of a highly capitalised corporate industry. Economic imperatives were too dominant in this industry and skilled writers, notwithstanding the Los Angeles film colony's growing political mobilisation, were too dispersed, and of necessity ruled by financial self-interest, for the situation to be any other way.

Of the 17 pre-war B-Spy films described in this chapter containing anti-Nazi content, most of their creators evinced no further anti-fascist track record or commitment through the course of their industrial histories. Four of the screenwriters so represented, virtually one quarter of this small sample, did successfully deliver further pre-war anti-fascist film projects. One of these was the prestige anti-Hitler "A" feature directed by James Whale, *The Road Back*, while another of these B-Spy writers contributed to the independent entry in the Black Legion cycle, *Nation Aflame* (discussed at pp. 83-85 of the thesis).⁷¹⁵ But the overwhelming majority

⁷¹² Vasey, *World According to Hollywood*, 179.

⁷¹³ Stanfield, *Hollywood, Westerns*, 225.

⁷¹⁴ Giovacchini, *Hollywood Modernism*, 98; Doherty, *Hollywood and Hitler*, 309.

⁷¹⁵ Writer of *Crack-Up*, Charles Kenyon, also wrote *The Road Back* (1937); writer of *Death Rides The Range*, William Lively, was a co-writer of *Nation Aflame*, and writer of *Arizona Gangbusters* (1940), *King of the Texas Rangers* (1941) and *Texas Manhunt* (released on 2 January 1942); writer of *The Man Who Wouldn't Talk* and *Charlie Chan At the Olympics*, Robert Ellis, was also the writer of *A Trip To Paris* (1938) and *City in Darkness* (1939); writer of *Western Jamboree* and *South of the Border*, Gerald Geraghty, also wrote *In Old Monterey*

of the creators of “contaminated” B-Spy movies described herein reveal no broader agenda. Their work suggests the extent to which the sturdiness of generic conventions, interacting within the limits of Hollywood’s representational boundaries, enabled “low cost” anti-Nazi film content to be presented to audiences. The intrinsic nature of low-budget generic espionage productions, with their alertness to the headlines of the day and quick development and delivery turnarounds, indicates that it was primarily the operation of the B-movie Hollywood system that yielded these briefly flowering anti-Nazi messages, rather than a concerted push by any substratum of insurgent creatives working insightfully below the radar of the industry’s screen content management system.

This realm of the industry, renowned for formulaic, disposable diversions was also its numerically superior base of the production pyramid and comprised by far Hollywood’s largest output of screen products. Marxist film critic Harry Potamkin lamented that Hollywood’s oligopolistic conditions meant that “the independent producer is forced to make cowboy pictures, fake Africans, and cheap sex films to edge into the market.”⁷¹⁶ But in a time of crisis such as that of Hitlerism this yielded some advantages for the committed creator. The low interest and even lower awareness by regulators including Thurman Arnold meant that America’s watchdogs weren’t even looking for activism in the places where a significant degree of anti-fascist screen content was being delivered to audiences. In the pre-war years of 1937-41 quality films had many barriers and hoops to jump through, but films with unambiguous anti-fascist content made in steady batches often got a relatively free pass to the screens of Middle America. The following case study serves to illustrate and amplify this point outside the generic constraints of espionage movies, while remaining within the industrial category of the B movie.

CASE STUDY

Nathanael West’s anti-fascism on screen: It Could Happen to You (1937)

Nathanael West had other targets in mind before he brutally satirised Hollywood in *The Day of the Locust* (1939). One was resurgent American demagoguery and its corollary, domestic totalitarianism. In his preceding novel, *A Cool Million* (1934), West followed the picaresque progress of a barely conscious pilgrim into the realm of the black/brown/grey/silver shirts’

(1939), notable for inserting a pro-interventionist short film which Gene Autry forces the inhabitants of a small Western town to sit and watch at gunpoint!

⁷¹⁶ James Dugan, ‘The Film Trust on Trial’, *New Masses*, 14 August, 1938, 5.

corrupt intolerance and xenophobia. It was an early entry in a mid-decade burst of warnings of fascism in the American midst that revealed:

a growing dread of men in groups... their irrationality, their immunity to abstraction and ideals, their resemblance to “sleep-walkers” marching silently and mechanically toward unseen and unknown goals.⁷¹⁷

In his lifetime all of West’s books were spectacularly unsuccessful and appreciated primarily by a handful of cognoscenti. In order to survive, he made a succession of forays to Hollywood to earn money as a screenwriter. A long stint at independent outfit Republic followed his first studio experience at Columbia. Although it was never filmed, West’s *A Cool Million* did midwife one of Hollywood’s most radical, obscure and early anti-Nazi movies, *It Could Happen to You* (June 1937).

Republic producer Leonard Fields saw the growth of fascism in America as a promising story idea, even though he had not read *A Cool Million*, West’s predictive novel burlesquing such a rise some three years earlier.⁷¹⁸ For contractual reasons Fields preferred an original screenplay to an adaptation of West’s “shirt group” novel, freeing the novelist cum screenwriter to further draw out connections between American and National Socialist fascism in a medium privileging popular accessibility over literary élan. Initially conceiving a movie charting Nazism’s rise in Berlin, Hamburg and Munich, but from a Poverty Row studio’s standpoint, Fields transposed the analysis of *It Could Happen to You* to New York.

Reflecting West’s and Republic’s precocious timing for an anti-Nazi film (two years before *Confessions of a Nazi Spy*), this was a period when the term “Nazi” could not be quite so readily invoked for attack. An interventionist German diplomatic corps was actively attempting to extinguish any anti-Nazi cinematic expression, irrespective of their sources’ industrial provenance. In April 1937 the German consul in St Louis, Reinold Freytag, protested that the film *Der Kampf (The Struggle)*, a Soviet riposte to Hitler’s *Mein Kampf*, was “inflammatory and insulting.”⁷¹⁹ Mayor Bernard Dickmann banned its screening at the city’s Municipal Auditorium, prompting protests from the St Louis Civil Liberties Committee, German-American Club and local Communist party who screened it “independently” at the St. Louis Hibernian Hall. The same month *The New York Times* foreshadowed official German government protest against the film *Modern German Christian Martyrs*, which the American Christian Committee for German Refugees was screening in thirteen eastern

⁷¹⁷ Richard H. Pells, *Radical Visions & American Dreams: Culture and Social Thought in the Depression Years* (Middletown, Connecticut: Wesleyan University Press, 1973), 225-226.

⁷¹⁸ Martin, *Nathanael West*, 279.

⁷¹⁹ ‘Fight on Four Fronts on Politics in Films’, *Motion Picture Herald*, 1 May, 1937, 13

states to raise funds from congregations.⁷²⁰ (Ironically this film's most prominent speaker, evangelist Dr Harry Emerson Fosdick, blamed fascism equally on the democracies and advocated appeasement.) At the same time Dr George Gyssling, German consul in Los Angeles, dispatched by registered mail 60 letters to the cast of Universal's sequel to *All Quiet on the Western Front*, James Whale's *The Road Back*, threatening them with bans in German-controlled markets for work "detrimental to the German nation."⁷²¹ Sitting between these commercial extremes, independent producer Republic could hardly have expected to get away with strong anti-Hitler representations. Nevertheless West's film leaves no opportunity untaken, nor room for doubt of its aim. A layered representational strategy brings home its message quite comprehensively while neatly sidestepping the pitfalls of Nazi – or any other – censorship in America.



It Could Happen To You lobby card⁷²²

As *It Could Happen to You* opens, Mittel European folk music is heard diegetically at a community picnic for the "Foreign American Institution," pointedly noted as its 19th annual

⁷²⁰ *New York Times*, 15 April, 1937 ; see also Robert W. Ross, *So It Was True: American Protestant Press and the Nazi Persecution of the Jews* (Eugene, Oregon: Wipf & Stock Publishers, 1998), 104.

⁷²¹ ' Nazis, Italy and Japan Allied for Film "War"', *Motion Picture Herald*, 17 April, 1937, 25-26.

⁷²² Author's collection.

event which, for 1937 audiences, situates its origins precisely at the end of the world war. Informed viewers might have recognised parallels between this fictional organisation and the Steuben Society, a community group seen as fellow travellers to the German-American Bund, the body which supported Nazi espionage and spread divisive propaganda throughout the U.S.⁷²³ Though set in New York (the Bronx is mentioned in dialogue), the community is portrayed as a semi-rural enclave where lederhosen, Tyrolean hats and Teutonic accents abound. They are presided over by Professor Hans Schwab who is quickly established as devious and manipulative, even though his agenda seems ambiguous. With his suspicious glances and slippery demeanour the professor is certainly not essaying Hollywood's cute ethnic German stereotype, the comfortably upholstered pomposity of the bumbling Sig Ruman variety. As events move to Schwab's office, we see his desk overshadowed by portraits of philosopher Friedrich Nietzsche and also Heinrich von Treitschke, the outspoken 19th century German nationalist and virulent anti-Semite.⁷²⁴ These flank a portrait of George Washington, not only the father of his country but, with his "avoid foreign entanglements" retirement speech, also the father of his country's isolationism.

Despite the reality that independent Republic's productions fed into the most marginal hinterland exhibition circuits, the professor exegetically describes for these backwoods and other American viewers the reasons for his idolatry of the two German philosophers. He explains that Nietzsche's "law of the jungle" philosophy provided ample justification for fascist expansionism ("if the meek will inherit the earth, you can take it away from them"), while von Treitschke "transmuted all of life into a battlefield, and Nietzsche was the tactician." Leaving nothing to chance, we shortly find the professor's pet bird (presently caged) is named Adolf!⁷²⁵ Professor Schwab's initially hazy agenda is clarified when he is shown running a devious criminal scheme through the ostensibly benign Foreign American Institution.⁷²⁶ The professor is using its safe cover to blackmail a blandly nativist young American couple, Robert and Laura, to ruthlessly extort the life savings of refugees fleeing the old country so that he can fund Nazism.

However interesting all this may be (it certainly explores directions undreamt of by *A Cool Million*), for the discussion in this thesis the key legacy of *It Could Happen to You* comes when Schwab, reflecting the "hard realism" he advocates to his young American blackmail

⁷²³ Sandeen, 'Confessions of a Nazi Spy', 78.

⁷²⁴ Nietzschean associations with peacetime fascists are a metonymic tactic that would be repeated in Warner Bros.' *Sea Wolf* (1941), linking Edward G. Robinson's dementedly authoritarian captain, Wolf Larsen, to Hitler through deployment of this author's titles on Larsen's bookshelf.

⁷²⁵ Future Hollywood Ten blacklisted Samuel Ornitz earned his co-screenwriter credit by adding "large doses of immigrant sociology" to West's script: Martin, *Nathanael West*, 279.

⁷²⁶ In this way the plot here echoes that of *Black Legion* in its deployment of a benign front to lure in naive Americans to unexpected political confrontations.

victims, gives them their “first *Nietzschean* lesson.” He tells them how he intends to use the illegally gained funds: “My mission is to prepare America for the next war – on the right side this time!” No other peacetime Hollywood movie ever suggested – let alone spelt out so explicitly – that Americans could be susceptible to unmistakably Nazi propaganda. In 1937 this was a danger that seemed increasingly feasible. New York’s German enclave Yorkville had long been a stronghold of Nazi activism as the base of the German-American Bund, the sort of group the professor extols as “singing organisations resplendent in uniforms” which his criminal proceeds will help fund.

It Could Happen to You is the sole filmic text from Hollywood that posits Americans as inherently vulnerable to foreign-derived fascist manipulation at home. In B-spy movies of this period (discussed earlier in this thesis) individual Americans can be duped into helping disguised Axis espionage agents, but always resolutely turn against their deceivers once revealed. By contrast at this movie’s end the young nativist couple have ceased to be threatened by the Nazi manipulator but rather by a lynch mob of refugees whom they were victimising, admittedly under duress, on the professor’s behalf. In other films innocent Americans can be seen corruptly whipped into a xenophobic fascistic frenzy grounded in false threats to their economic wellbeing (*Black Legion* and *Nation Aflame*). But only in *It Could Happen to You* did Hollywood ever explicitly identify the risk of susceptibility to Hitler as latently available in the national psyche, requiring neither exculpatory deception nor a mob mentality to foment.

CONCLUSION

In 1930s Hollywood screen content management was not a fixed framework articulating immanent moral precepts and community standards. Rather, it was a flexible industrial entity and a pragmatic tool designed to be adjusted and reset as required to remain responsive to external threats. As this language stressing protection implies, in the interwar years content management was a preventative tool for Hollywood. Its application was not entirely limited to this function, as the boundaries which the Production Code articulated were clearly pleasing and a source of satisfaction to many tastemakers, pundits and ordinary Americans. This made any significant modification to its component parts a sensitive issue requiring careful handling.

A by-product of this flexibility was that screen content management could be repositioned as required. This thesis argues that such a repositioning was effected by the MPPDA in the late thirties primarily in response to, and in anticipation of, the prevalence of anti-fascist cinema. The forces that Will Hays sought protection from were not the voices of anti-fascist members of the community complaining that escapist Hollywood was too frivolous. Those arguments were certainly raised, and taken seriously by the press of the day. It was the calls for government regulation, and most specifically the trustbusters in the Department of Justice, that Hays was most concerned about.

The model Hays had adopted in his design of the MPPDA was based on the associative state philosophy of industrial self-regulation championed by Herbert Hoover. Under such a regime cooperative conferences between industry parties were the preferred approach to achieve results with a minimum of bureaucratic involvement or interference, in order to maximise efficiency. The flexibility and autonomy promised by the associative state model enabled supple negotiations to occur in order to address issues of great sensitivity. Such challenges always abounded in an industry so firmly in the public spotlight as Hollywood, but never more so than during the years leading up to World War II.

Pursuing a different path than the MPPDA was Allied States, led by the sometimes contradictory but fundamentally pro-regulation Abram Myers, the former Federal Trade Commissioner. In the early 1930s, Myers had pursued a strategy of leveraging moral content for trade practices gains – particularly a flatter market advantaging poorer exhibitors – which was never likely to work. Rhetorically, this push relocated the movies' moral conscience to small town communities. Taken to its logical extreme, this would have meant content management tacitly devolving to local exhibitors and their constituents and cronies. The lowest common denominator of a narrow-minded cultural rump would have been entrusted

with guaranteeing safe fare on behalf of the putative family trade beyond the cities. Absent the informed inhouse screen content control of the Production Code Administration, state censor operations would also likely have revived and proliferated, returning the industry to its earlier unsophisticated censorship regimes.

There were both similarities and differences between the late thirties crisis of fascism and the decade's earlier struggles over the screen's enthusiasm for sex and violence.⁷²⁷ Once again a vocal minority was gaining attention from opinion makers more broadly – civic campaigners against sin then, and engaged politically aware activists protesting fascism in the latter half of the decade. The threat for Hollywood was in both instances the loss of the cherished industrial freedom of self-regulation which the studios relied upon to guarantee their economic model. Their operating procedure used trade practices to extract the maximum return from every production, and so ensured the studio system maintained the lavish production values that gave it the advantage in the global marketplace. Hays' and his studio paymasters' real fear was governmental control, an oft-threatened recourse from the industry's many enemies.

In early 1935, well before the NRA's Blue Eagle was grounded by the Supreme Court's *Schechter* decision mid-year, Hays embarked on secret negotiations with Justice Department leaders starting with Attorney-General Cummings and involving antitrust head, Thurman Arnold. Hays' goal to forge a new partnership with Washington would have enabled flexible, non-judicial dispute resolution to resolve amicably and efficiently the many trade practices issues that continually plagued the industry. The failure of this mission reveals the other key obstacle to industrial faced by the MPPDA besides Myers and Allied States: the intransigence and short sightedness of self-interest by the individual studios. Their reluctance and blocking prevented a breakthrough in the Justice Department negotiations, and ultimately convinced Arnold and his key associate, Paul Williams, that only strong judicial remedies could ensure real reforms in this industry.

Antitrust lawyers were harder to assuage than civic reformers, and when Justice launched its anti-monopolist *Paramount* lawsuit in 1938, the vertically integrated, oligopolistic industry's need for protection became greater than ever. A concern for screen content was also central to the *Paramount* litigation. In this instance it was a perceived lack of opportunity for independent narratives, fresh stories and above all else a choice for consumers amongst varying points of view on screen that concerned Washington in 1938, a time when variety of

⁷²⁷ Richard Maltby, 'The Production Code', 52-57.

opinion seemed essential for reinforcing democracy just as political freedom was imperilled in Europe.⁷²⁸

As the industry's chief spokesperson and coordinator of its public affairs, Hays could not do much for creativity, but he could ensure that perceptions of roadblocks for new messages were banished as fully as possible. The outcome in practice of Hays' minimising any perception that Hollywood promoted obstacles to expression was startling. This was the arrival in May 1939 of the screen's explicit attack during peacetime on a foreign nation by a major Hollywood studio, *Confessions of a Nazi Spy*. However impolitic, and also idiosyncratic, this cultural event was, it inadvertently functioned to neuter criticism from activists alleging Hollywood's indifference or timidity in the face of the crisis of fascism. The extremes of its attack (including terms like "crazy" for Germany's government leaders) put this beyond doubt. What no one outside a handful of MPPDA officers knew was that it was the anti-monopoly threat of divesting Hollywood's lucrative exhibition tier from its tied production and distribution arms that had underpinned this movie's unusually liberal content management, and allowed it to vociferously make a stand attacking Nazi Germany. When the immediate dust from this landmark film settled, Hollywood reacted as if it had earned a breather. Mooted anti-Nazi follow-ups were shelved almost as quickly as they were announced and Hays officially instigated an interregnum preventing further strident anti-fascism content from hitting screens.⁷²⁹

More importantly, Washington's thinking had moved on. Suddenly, and with increasing seriousness, by the summer of 1940 the ideal of a varied marketplace offering a competition for ideas was very much outmoded by the need to maintain morale as the nation turned to preparedness, a wholesale re-orientation driven as cautiously possible by the White House. Now a one stop shop style of management for the machine age's most powerful medium of persuasion and opinion formation had become the overriding priority in Washington as far as cinema was concerned. Two years after the *Paramount* suit and one year on from *Confessions*, Washington and Hollywood recognised that they had a vital shared interest in the monolithic administration of the screen by a trustworthy regulator. Luck continued to run Hays' way because protracted preparations for the *Paramount* antitrust suit meant the trial opened in June 1940, just as the fall of France changed the world war narrative completely and, for Americans, shockingly.⁷³⁰ Without the heavy hand of executive interference in the judicial system that was hearing the case, the White House nevertheless let its preferences

⁷²⁸ Alpers, *Dictators*, 96.

⁷²⁹ Welky, *The Moguls and the Dictators*, 159-161; Giovacchini, *Hollywood Modernism*, 109; Hays Office Wants War Films 'Neutral', *Motion Picture Herald*, 4 November, 1939, 18.

⁷³⁰ Saul Friedlander, *Prelude to Downfall: Hitler and the United States, 1939-1941* (New York: Alfred A. Knopf, 1967), 91; Welky, *The Moguls and the Dictators*, 193.

be clearly known. The result was that minor administrative reforms through a consent decree were agreed as the best resolution for the industrial issues at stake. Hollywood trade practices and anti-fascism on screen continued to march in lockstep, although their gait was now zigzagging unpredictably.

Further illustration of this unpredictability came in a significantly threatening institutional response to the milder, and only modest in number, string of anti-Nazi movies that followed *Confessions of a Nazi Spy*. These films predominantly utilised the domestic melodrama genre to mount critiques against Nazism on a small scale, where issues at the family level enabled the dangers of fascism to be personified for easy audience identification. Whilst less provocative on their own than *Confessions*, even their small recurrence in a cycle numbering approximately a dozen entries across 1940-41 was sufficient to supply an alleged evidence base for a major Senate inquiry manipulated by isolationists that came to be known as the Propaganda Hearings in 1941. Its brief history reveals how a minor intellectual celebrity from New York with powerful friends in Washington can oblige a major industry to mount a sweeping and highly costly defence of its trade practices in the context of war related screen content.

Hollywood's peacetime anti-fascist movies were neither widely popular nor extensive in number, two symptoms not unrelated to this industry being in the business of selling popular expression, not conscious-pricking art. Excavating more details of the industry's screen content management operations on such films affords a clearer understanding of the contribution this process made to ensuring productions actually reached the screen, and hence a paying audience, in a form likely to minimise community backlash over controversial issues. Rather than preventing their creators getting their messages heard, this industrial function was a living instrument, and central, if unheralded, to the legacy of Classical Hollywood.

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