

SHOW STOPPERS: MOVIE CENSORSHIP CONSIDERED AS A BUSINESS PROPOSITION

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Although censorship is usually interpreted as a matter of freedom of expression, censorship was also a major business concern during the heyday of the American movie industry. Manipulating censorship issues was essential to the industry's economic health. The Production Code Administration (PCA), the industry's in-house censorship agency, played a crucial role in maintaining order in Hollywood and fending off governmental control.

On a fine July day in 1894 an enterprising kinoscope operator was exhibiting his new entertainment sensation to vacationing crowds on the boardwalk in Asbury Park, New Jersey. Strolling with Mayor Ten Broeck, the founder of the resort city, U. S. Senator James Bradley, approached the exhibit. Two decades earlier, Bradley, a brush manufacturer, had been influential in creating Asbury Park as a resort for the abstemious middle class, and the town was a convenient, affordable sixty-mile train ride from New York City. The senator and the mayor now peered into the eager entrepreneur's oak-sheathed kinoscope. The first feature showed a bar room fight. The senator and the mayor concluded that picture was acceptable because it showed right triumphing over "the rougher element." Then they saw "Carmencita's Dance," a variation on the butterfly dance that was the rage in vaudeville houses. The terpsichorean display went smoothly until the end, when Carmencita gave a little kick, lifted her "silken draperies," and showed a flash of white lace and her "well turned ankles." Apoplectic, the senator and the mayor ordered the kinoscope man to ditch Carmencita or clear out of Asbury Park. Determined not to lose his lucrative site, he replaced the unfortunate Carmencita with a chaste new feature, "Boxing Cats."¹

Whether the pugilistic felines drew as well as Carmencita's ankles is not recorded. It seems unlikely. Even in Asbury Park, sex sells. The dust-up on the boardwalk captures several key strands of the business dilemmas that confronted the American motion picture business from its earliest days. An enterprising showman tries to give the paying public what it wants to see, pushing the boundary of what is publicly acceptable. Influential elite figures intervene to protect the moral tone of society. Eager to prove his respectability and protect his investment, the showman backtracks and substitutes an anodyne feature.

There are also major differences between the Asbury Park show stopper and later movie censorship. Proceedings on the boardwalk were decidedly informal; there was no notion of due process, and community standards were whatever the senator and the mayor thought they should be. The exhibitor was the focus of the censors; later, producers were usually (and logically) the censors' targets. They tried to create products that would avoid outright bans, as bans would entail a very costly loss of investment. Nonetheless, the Asbury Park imbroglio demonstrated that censorship—a matter of critical importance for freedom of expression—was also a major business consideration. Positioning itself in relation to censorship structures was a vital concern for the American movie industry from the early 1900s into the late 1960s.

In this paper I focus on two key developments—*Mutual v. Ohio*, the landmark 1915 Supreme Court decision that found censorship to be constitutional, and the formation of the industry's in-house censorship bureau, the Production Code Administration (PCA), in 1934.² Through the *Mutual* case, the industry sought protection from any governmental regulation of cinematic content. When that strategy failed, the vertically integrated industry used the PCA to police itself to avert tighter governmental regulation and possible box-office boycotts. Censorship proved to be an important business tool in maintaining order within classic Hollywood.

Movies' appeal and psychological suggestiveness made them a target of moral reformers from their earliest days. Alarmed by the movies' challenge to conventional moral order, reformers mobilized to control the new medium. Religious reformers and cultural conservatives were in the vanguard of these efforts, but many progressive reformers joined these campaigns as well. To a progressive such as Jane Addams of Chicago's Hull House, controlling the movies was as essential as monitoring meat packers or regulating wages and hours. Addams, a lifelong advocate of film censorship, equated starved youths' grasping at unhealthy food with "blundering into substances which are filthy and poisonous" in the movie house.³ Morals regulation was of a piece with economic control.

The first municipal censorship board was established in Chicago in 1907; many cities followed suit. Several states established censorship boards in the 1910s. Those in Pennsylvania and Ohio, the second and third most populous states respectively, were especially important.

For film production and distribution companies, state and municipal censorship boards were a colossal headache. The film business was increasingly national. The movie industry could no more tailor its products to myriad local regulations than could meat packers. Faced with this proliferation of censorship agencies, the movie industry turned to the courts for relief. In 1909, the Illinois Supreme Court unanimously rejected a challenge to the legality of the Chicago board.

64 In 1914, in what became the major constitutional test of early movie censorship, the Detroit-based Mutual Film Corporation ("Mutual") challenged the constitutionality of the Ohio censorship law. The company objected to the

inconvenience of having to submit its pictures for review and to the expense of having to pay a small fee to obtain permission to show them. Mutual's lawyers initially based their arguments chiefly on economic grounds, contending the Ohio law was unconstitutional because it burdened interstate commerce and negatively affected property rights. Their arguments failed in federal district court, despite *Lochner*-era judges' tendency to display a strong pro-business bias.⁴

Appealing directly to the United States Supreme Court, Mutual soft-pedaled the discredited economic stance. Instead, the company's lawyers argued that movie censorship violated the free speech guarantees of the U.S. Constitution. Mutual's brief devoted 51 of its 63 pages to a First Amendment claim. Not only was this the first movie censorship case to reach the Supreme Court; this was the most sweeping assertion of First Amendment protection that a corporation had made before the highest court to date. Mutual also tried to reassure the justices that government scrutiny was unnecessary, since its products were inoffensive and of high quality. The company did not want government regulation; it could be trusted to police itself. The film industry watched the case closely, and the Universal Film Manufacturing Company filed an *amicus curiae* brief.

Mutual failed. Ruling six weeks after hearing arguments, the Supreme Court unanimously rejected the company's arguments. The court spoke through Justice Joseph McKenna, an undistinguished jurist, in a meandering opinion. In an often quoted passage, he dismissed the movies as "a business pure and simple, originated and conducted for profit, like other spectacles, not to be regarded... as part of the press of the country or as organs of public opinion."⁵ To later scholars, this sentence grates. As First Amendment jurisprudence evolved, it seemed clueless or churlish to view the cinema as less worthy of protection than the press. In any case, the press was no less a business than the movies.

But the decision did not rest merely on the argument that movies were only a business. McKenna's opinion reflected the well-established juridical stance that the police power could be used to control entertainments of all kinds. He readily conceded Mutual's contention that the movies might convey ideas and could be considered "mediums of thought." But that was true also for theaters, circuses and other "spectacles." Like these entertainments, the cinema was "capable of evil." That capacity was what left these entertainments outside constitutional protection. He feared that, if the First Amendment were extended to the cinema, the same would have to be done for these other spectacles. The cinema's very character made it especially suspect. McKenna worried that the nature of movie exhibition, with men, women, and children sitting together, made films more "insidious in corruption." Indeed, "there are some things which should not have pictorial representation in public places and to all audiences." He concluded: "We cannot regard this [censorship] as beyond the power of government."⁶ Even for a pro-business court, morals trumped economic concerns.

Mutual is often misunderstood. Film historians dismiss the ruling as the product of backward-looking justices who did not understand, or feared, 65

this new medium. Legal historians often see it as either a step backward or an anomaly in First Amendment jurisprudence. But as John Wertheimer has shown, *Mutual* is novel not because the First Amendment argument failed but because it was advanced at all. The case fit easily with what William Novak has termed the “explosion” of morals regulation in the late nineteenth century. When sexually suggestive materials were banned from the mails under the Comstock laws, police chiefs sat in on suspect plays, and outraged patrons chased Richard Strauss’s *Salome* from the stage of the Metropolitan Opera, it was scarcely surprising that the cinema would succumb to censorship.⁷

Many contemporary observers hailed the decision. Social reformer Gilbert Montague lauded the ruling in *The Survey*, an influential progressive magazine. To him it was obvious that the government needed to regulate the cinema. (Other progressives, while not questioning the need for censorship, preferred to see it carried out through private means, such as the New York Board of Censorship, which later assumed the more felicitous name National Board of Review.) To Montague the ruling vindicated the power of the positive state. He termed *Mutual* “a great step forward in government regulation of business and social conditions.”⁸ If censorship did not interfere with personal liberty or property rights, neither did wage and hours legislation, regulation of meat packers, and similar measures. Pure film, pure food – to many progressives they went hand-in-hand.

Mutual made clear the industry would have to operate within a structure of governmental censorship. Whatever the ruling may have meant for freedom of expression, it was not necessarily a defeat for the industry’s business interests. Mutual Film Corporation was a distributor, not a producer of films. When the firm filed its suit, the industry had not yet congealed into the vertically integrated oligopoly that came to dominate in the 1920s. Maintaining order within an oligopoly is often difficult, and governmental structures may provide a framework within which companies operate. The oligopoly did not challenge the constitutionality of movie censorship. When the next constitutional challenge arose, it came from an independent exhibitor (*Burstyn v. Wilson*, 1952). A victory for Mutual presumably would have meant greater freedom of expression; it might also have meant financial chaos.

But if governmental censorship afforded some economic protection, the industry had to maneuver carefully to avert government intrusion that might become disastrous. However popular the movies might be, they also remained suspect. Movie stars’ antics made Hollywood appear a latter day Sodom. Most of the industry moguls were Jewish, and many were recent immigrants – unhelpful characteristics as nativism surged in 1920s America. Many smaller exhibitors resented the industry’s oligopolistic practices, which limited their choices and (they felt) increased their costs. Moral outrage and small business populism had the potential to threaten the industry’s tenuous economic structure. Holding the line against further governmental intervention became the industry’s priority.

The industry found sophisticated political help in Postmaster General
66 Will H. Hays, the architect of Warren Harding’s “return to normalcy” victory

in 1920. The major film companies chose Hays to head their newly created trade association, the Motion Picture Producers and Distributors Association (MPPDA), in 1922. (He retired in 1944.) They paid him an astronomical salary, variously reported at \$100,000 to \$250,000, above that of most corporate CEOs of the day. Hays was dubbed “the czar of all the rushes.” But he did not dictate to the egomaniacal movie moguls so much as use his negotiating wiles to harmonize the companies’ divergent interests and create a united front. A lawyer from little Sullivan, Indiana, Hays boasted impeccable Midwestern Republican and religious credentials (he was a Presbyterian elder). He blended Main Street boosterism with generic Protestant piety and preached a consumerist mantra that the movies only gave the public what it wanted to see. The movies were harmless, apolitical entertainment, he intoned. Hays skillfully aligned the industry with the “associational” stance promoted by Herbert Hoover in the 1920s, which emphasized industry self-regulation as an alternative to government regulation. The cognoscenti ridiculed Hays as a pious, hypocritical Babbitt and made the “Hays Office” a subject of scorn. But from a business perspective, Hays earned every cent of his salary, keeping his well-paying bosses free from disaster.⁹

Hays’s first major challenge was to defeat a referendum to establish a state censorship board in Massachusetts in 1922. As Hollywood stars’ scandals played into reformers’ hands, the New York legislature set up a state censorship board in 1922. Now New York, Pennsylvania, and Ohio—the three largest states and the key first-run markets—had censorship boards. The Massachusetts measure was especially threatening because, if the voters approved, movie reformers could argue censorship reflected the popular will. Had the Bay State voted for censorship, other states might well have followed, quilting a patchwork of damaging agencies with conflicting standards.

Hays deployed his formidable political talents in the Massachusetts campaign. It was estimated that the MPPDA poured \$150,000 into defeating the measure. Although a formidable alliance of churches supported the proposition, newspapers lined up almost unanimously against it. Hays was not above dirty tricks. He circulated a misleading pamphlet that had to be destroyed, and former GOP presidential candidate Charles Evans Hughes disavowed an anti-censorship quotation Hays used. A master of organization, Hays got theater employees to call their friends urging them to vote no, hired workers to hand out leaflets near the polls, and ran streams of automobiles carrying anti-censorship placards past polling places. The censorship measure went down to defeat, 563,173 to 208,252. No major state censorship laws were enacted after his triumph in the commonwealth.¹⁰

Hays knew holding political censorship at bay also depended on keeping the industry in line, or at least maintaining appearances. He worked closely with reform groups, especially some women’s groups, to give them an appearance of involvement and also plead the movies’ case. He shrewdly sensed the potential influence of the Roman Catholic hierarchy. The major first-run theaters were in urban areas with large working class audiences, many of whom were Catholic. Unlike his fractious fellow Protestants, Hays

knew the Catholic hierarchy maintained stronger discipline. His alliance with the Church, though often contentious, served both party's interests for several decades. Film censorship is often portrayed as the Church versus the industry, and controversies erupted between them, to be sure. But as historian Francis Couvares has explained, the relationship between the Church and Hollywood was not so much antagonism as "mutual embrace."¹¹ Prelates wanted moral order; film producers sought economic stability. Both preferred to settle things behind closed doors rather than in the messy public arena.

Through the 1920s, assisted by Hays's astute hand, the movie industry underwent a massive expansion and consolidation. Vertical integration was central to the industry; the major companies controlled every phase of the business, from production to distribution. The industry was dominated by eight companies—five major firms (Loew's, parent of MGM, Paramount, Warner Brothers, Twentieth Century-Fox, and Radio-Keith-Orpheum) and three lesser ones (Columbia, Universal, and United Artists). "Poverty row" studios, such as Monogram and Republic, turned out low-budget B pictures and relied on the majors' distribution networks. Some independent producers managed to operate; they relied on close ties with the majors for distribution. Barriers for entry into the industry were formidable. The studios bound their stars to seven-year contracts that gave the companies wide discretion in casting, managing, and monitoring their artists.¹²

Although pictures and movie stars were glamorous, the key to the industry's financial success was more mundane—exhibition and its associated real estate empire. As Mae Huettig pointed out in 1944, making pictures was but an end to the key determinant of business success—"domination of the theater market." The majors relied on national chains to distribute their products. The chains were concentrated in urban areas in the Northeast and Midwest. Companies concentrated in certain geographical areas; Warners was dominant in Pennsylvania, Loew's in New England and New York, Paramount in the Midwest and the South. The majors' affiliated chains owned about 20 percent of the theaters, but those were of disproportionate importance. They produced 50 to 80 percent of the exhibition revenues and could amortize 50 percent of a film's production costs. Underwriting the majors' dominance was their practice of clearance and zoning. The majors divided the theater market into thirty segments, with seven zones within each. The downtown palaces got the first run pictures and charged the highest prices. Pictures then moved to subsequent-run theaters, each getting movies longer after release and charging lower prices. A small town exhibitor might get a shopworn product a year after its release.¹³

"Movie palaces," often built at "recklessly extravagant" cost, became key prestige venues. The movie palaces promised democratized luxury. Bathed in red plush, gold plaster moldings, and classical motifs, the theaters offered art for the masses at popular prices and without the pretense of opera or art museums. Uniformed ushers escorted patrons to their seats, which were open to all, except for African Americans who were segregated in the balcony or restricted to crude Jim Crow theaters. To finance its building and acquisition

boom, the industry borrowed heavily; Warners groaned under a debt of \$113 million in 1930. The movie industry's greatest assets by far were in real estate – with liabilities to match. As Huettig pointed out: “The production of films, essentially fluid and experimental as a process, is harnessed to a form of organization which can rarely afford to be either experimental or speculative because of the regularity with which heavy fixed charges must be met.”¹⁴ Debt dictated artistic conservatism.

These huge real estate investments required the industry to strive for the largest possible market. Censorship in the United States might have had a very different history if the MPPDA had been willing to differentiate its audience, restricting some pictures to adults only. Movie reformers sometimes urged Hollywood to do this. (British theaters limited some movies to adult audiences. Adolescents were allowed at some shows only if accompanied by a parent or other “responsible adult”—a restriction that was probably widely evaded.) The production code explicitly acknowledged the economic need for undifferentiated audiences. “It is difficult to produce films intended for only certain classes of people,” the code said. “The exhibitors’ theaters are built for the masses, for the cultivated and the rude, the mature and the immature, the self-respecting and the criminal.” Playing to a mass audience, Hollywood had to craft pictures that would shield those presumed to be vulnerable and yet appeal to adults seeking adventure.¹⁵

The industry's structure had important implications for censorship. The chains' geographical concentration elevated censorship issues, since New York, Pennsylvania, Ohio, and Chicago not only were key markets but the sites of the principal censorship boards. These boards' influence radiated well beyond their immediate political jurisdictions because the companies' regional exchanges often extended beyond state or municipal boundaries. Paradoxically, the very concentration of chains in particular areas made companies vulnerable to boycotts or regional controversies. Even relatively small markets could exert leverage on producers wary of cutting off any potential box office. Though a relatively small market, the South exerted particular influence on portrayals of race.

Censorship controversies in the early 1930s, combined with the industry's parlous financial state, exposed the movie business to three severe threats.

First, federal censorship. Some reformers, frustrated by state and local regulation, advocated a national censorship board. The possibility could not be ruled out. The New Deal upended many inherited economic assumptions, and the Federal Theater Project and Federal Arts Project took the federal government into cultural activities in an unprecedented way. To Hays and the moguls, federal censorship was deeply troubling. Although national censorship would enforce a uniform standard, it would represent a threatening intrusion into industry affairs and render “associational” efforts to settle matters within the industry highly suspect. (Had federal bureaucrats grasped the scissors of censorship, it would have been amusing indeed to contemplate political campaigns being illuminated by charges and countercharges about who was soft on movie censorship.)

Second, ending block booking and its twins, blind selling and full-line forcing. Theater chains typically required independent exhibitors to contract for a package of films (“block booking”). These exhibitors had no choice; some of the films had not yet been produced—hence the term “blind selling.” The practice of “full-line forcing” required independents to take “shorts.” If controversy arose over particular features or they were duds, the independent exhibitor had no recourse. A boon to the oligopoly because they all but guaranteed a market for every production, block booking and blind selling were among the independent theater operators’ chief irritants. But since the major companies dominated the market so completely, the independents had no recourse. Bills were introduced in Congress and hearings held from time to time, but Hays ensured these measures died in committee. Allowing independents choice threatened to wreak havoc with Hollywood’s production and distribution system.¹⁶

Third, antitrust proceedings. As a vertically integrated oligopoly, the American movie industry was a prime target for antitrust proceedings. When Thurman Arnold reinvigorated the Justice Department’s antitrust division in the late 1930s, he targeted the industry with a suit in 1938. The case resulted in a three-year consent decree, under which the industry promised to reform some of its practices, but to little effect. The issue lay in abeyance during the war. It probably helped that the industry proved very useful to the Roosevelt administration by producing pro-interventionist pictures in the period 1939-1941 and cooperating with the Office of War Information in producing “message” pictures.¹⁷

If Hays were able to avert these three supreme threats, he nonetheless had a monumental headache in trying to maneuver through the shoals of censorship in the early 1930s. Censorship battles had been relatively quiet during the 1920s. He had induced the industry to adopt an informal list of “don’ts and be carefuls,” but enforcement was always uncertain. The addition of sound to film fundamentally changed the equation. Cuts in silent pictures had been relatively easy to make and rarely affected a film’s meaning drastically. But cuts in dialogue threatened to disrupt a film’s continuity, perhaps rendering key portions unintelligible.

Hays continued to insist the industry could be trusted to police itself. As a bona fide of Hollywood’s good intentions, he unveiled the “production code,” written in 1930 by Daniel J. Lord, a Jesuit from St. Louis. “The code” was not entirely new; Lord incorporated earlier guidelines, such as the “don’ts and be carefuls.” His code was more comprehensive, included an intellectual rationale for its prescriptions (heavily influenced by neo-Thomism), and laid down general principles rather than just a list of prohibitions. The code promised “no picture would lower the morals of anyone who sees it;” sin and crime would be punished in the end; and the pillars of society—family, church, and state—would be upheld. Hays professed to be delighted with Lord’s offering.¹⁸

70 Enforcing the code proved to be very difficult, however, particularly when the industry was hobbled by the Depression. Box office receipts plunged

from a peak of an estimated 80 million per week in 1930 to 55 million in 1933 – a staggering blow under any circumstances but particularly for companies larded with debt. By 1933 every big five company except Loew's (which had the classiest productions and had been more temperate about theater expansion) was bleeding red ink. Warners showed a deficit of \$14 million in 1932 and \$6 million in 1933. Having lost \$21 million in 1932, RKO went into bankruptcy, joined by Paramount, Fox, and Universal. The companies slashed costs, even temporarily trimming the moguls' extravagant salaries.¹⁹

Desperate to get people in the theaters' seats, the studios turned to the oldest maxim in show business: sex sells. Hollywood released a stream of daring pictures with sexual themes from 1930 to 1934, promoting actresses such as Jean Harlow, Greta Garbo, Marlene Dietrich, and Mae West. Gangster films also generated criticism, as did the occasional political message picture, but it was sex, especially as portrayed by knowing, desiring women, that triggered a barrage of criticism. Although these daring pictures brought the industry closer to disaster, each studio felt compelled to produce them for its immediate self-interest. The industry faced the classic dilemma of any cartel: how to enforce a uniform standard across the industry when individual members had every incentive to seek their own advantage by undercutting it.

Hays's Catholic connections grew frayed. Catholic critics felt Hays had betrayed them; the code was just another smokescreen while the studios carried on as before. In 1933 the Church established the Legion of Decency. Every parishioner was expected to sign a Legion pledge card once a year and abjure any movie the Church condemned. Angered in particular by Warner Brothers, the iron-willed Cardinal Dougherty of Philadelphia ordered the faithful to boycott the movies in his archdiocese. In some cases priests stood outside theaters noting down names of parishioners who violated Legion commands. The boycott seems to have been most effective in neighborhood theaters, cutting receipts by 15 to 20 percent; these were primarily independent venues whose owners were particularly vulnerable to box-office declines. If Dougherty's boycott went national, the industry would be in desperate straits. It seems doubtful the Church could have enforced a national boycott for more than a short period of time, but any further box-office cut would have been ruinous.²⁰

To make matters worse for the industry, censorship became not merely a matter of faith but of social science. In the late 1920s Frances Payne Bolton of Cleveland, heir to a Standard Oil fortune, decided to commit her Payne Fund to a major study of how the movies affected children. She eventually spent more than \$200,000 on the project. The Payne Fund was allied with the Motion Picture Research Council, which was one of the principal censorship advocates. Eminent social scientists from such universities as Ohio State, Chicago, Yale, Iowa, and Penn State contributed to the studies. John Dewey collaborated on the initial research design. Jane Addams lent her support, her prestige augmented by her receipt of the Nobel Peace Prize in 1931. Though superseded by later research, the Payne Fund studies were among the first social scientific studies of media influence. While the social scientists' conclusions

were nuanced and somewhat ambiguous, the public absorbed them through a sensationalized treatise, *Our Movie-Made Children*, by Henry James Forman, a journalist the Payne Fund engaged in 1933 to popularize the research. Forman contended the movies had a dramatic effect on shaping the character of the young, and he advanced what appeared to be scholarly backing for stricter censorship. To the Hays Office, they were the “Payneful studies.”²¹

Faced with a tsunami of moral outrage, Hays needed a way to protect the industry, which was still fragile economically. If the Catholic Church were a problem, it was also the solution. Hays authorized two Catholic laymen—Martin Quigley, publisher of the *Motion Picture Herald* in New York, and Joseph I. Breen, a former press agent for Peabody Coal Company in Chicago, who had worked for MPPDA’s Studio Relations Committee since 1932—to negotiate with the bishops. Breen could have been perceived as the bishops’ mole—he regularly sent damning reports on Hollywood’s antics to the clergy—but his ecclesiastical ties were very useful to Hays.

Quigley and Breen hammered out a deal at the residence of Archbishop John T. McNicholas of Cincinnati, who headed the Episcopal Committee on Motion Pictures, in the spring of 1934. The industry again pledged to abide by the code, whose enforcement had, in fact, been gradually tightened but still lacked the teeth reformers wanted. MPPDA established the Production Code Administration (PCA), which would vet all scripts and finished pictures; it also worked much more closely with the studios in crafting scripts than had the Studio Relations Committee. Making changes before production began reduced costs and promised more satisfactory products. To be handled through the major firms’ distribution chains, a picture had to bear the PCA’s seal. If a studio released a film without a seal, it would be fined \$25,000. A particularly important structural change was the abolition of the “jury system.” Previously if a studio dissented from the SRC’s judgments, it could appeal to the “jury,” composed of several Hollywood studio officials. Perhaps not surprisingly, the jury usually supported the appellant. A juror knew that the next appeal might come from him and he would need his fellow executives’ votes. Now appeals from the PCA’s judgment would be taken to the MPPDA Board of Directors in New York, a more hostile venue. New York business executives (who thought “the Coast” needed to be reigned in anyhow) were less likely to concede to the “creative” side, and Hays would be present to enforce a point of view about the interests of the industry as a whole. Appeals to the board were scarce and rarely successful.²²

Breen was elevated to head of the PCA, at the princely salary of \$60,000 a year. Joseph Ignatius Breen was the Church’s man in Hollywood, interpreting the code to its largely Jewish and Protestant filmmakers. The industry knew the Legion of Decency’s shillelagh was stored in his closet. But he was also Hollywood’s ambassador to the Church, able to explain the movie industry to the priests and, implicitly, to suggest that he was the best deal the bishops were likely to get in cinematic Sodom.

72 The PCA’s formation has often been interpreted as Hollywood’s capitulation to the Church. Some members of the movie colony rebelled at first.

Hollywood might as well “go into the milk business,” cried the exasperated producer Hal Wallis.²³ Breen’s first months heading the PCA were tumultuous. Using a combination of toughness, charm, and guile, he negotiated endlessly over projects, scripts, and rough cuts. He brought pictures closer to the letter of the seemingly draconian code while usually allowing sufficient indirection to retain much of the transgressive spirit that made American movies enticing.

But to interpret the PCA as simply a victory for the Church is to reinscribe the moral triumphalist narrative of the prelates and reformers. Whatever the scope of Hollywood’s new morality, it served an important business purpose. Hays welcomed this outcome, and may even have had some role in engendering it. Quigley said that, while Hays warned the moguls the anti-Hollywood campaign could destroy the business, the MPPDA head privately welcomed it.²⁴ Hays was too slippery to be pinned down, and even a politician of his skills had trouble navigating the moral maelstrom in 1933-1934. He sold the deal reached in Cincinnati to the moguls in New York. The PCA established the order that every cartel needs to survive. It ensured that no one member, seeking its own advantage, would undercut the organization as a whole. Although price cutting is a typical way to gain advantage in a cartel, in Hollywood producers might seek an advantage by making an illicit product.

The PCA seemed a master stroke. Newspaper editorialists overwhelmingly favored it. An internal MPPDA analysis showed 128 newspapers approved of the Legion of Decency campaign, 24 expressed qualified support, and only 20 opposed it. Newspapermen were not much more inclined to extend the First Amendment to the movies than were the Supreme Court justices in the *Mutual* case. Dissenters were alarmed by how readily the public accepted censorship. The National Council on Freedom from Censorship, an arm of the American Civil Liberties Union (ACLU), protested in July 1934. This group saw free speech as continuous across all media and, in its own slippery slope argument, feared the PCA precedent could be used to support censorship of the stage, radio, and the press.²⁵ (The Council ignored the long history of theater censorship and overlooked the informal censorship of radio.) The ACLU’s view eventually gained a commanding position in constitutional law and public opinion, but that moment had not arrived in 1934. The MPPDA was free to use censorship to enforce discipline within the industry.

Stability restored, Hollywood found the balance of the 1930s to be highly profitable. Attendance rose, perhaps regaining the 80-million level by 1936. World War II was even better. Flush with cash and with few places to spend it, hungry for escape from wartime realities, the public flooded the box office in unprecedented numbers. As many as 90 million people attended per week.²⁶ Movies were not as overtly transgressive as a few had been from 1930 to 1934. The pictures produced from the mid-1930s into the late 1940s represented the studio system’s apogee and the maturation of classic Hollywood’s particular style. Through a strategy of indirection, the studios satisfied censorship’s demands of not offending an undifferentiated mass audience. As Jack Ellis and Virginia Wright Wexman argue: “The indirection of content, like the stylization of technique, frequently adds to rather than

detracts from the charm and resonant effectiveness of the best films of the 1930s.”²⁷ It is perhaps more than coincidence that the golden age of classical Hollywood coincided with censorship.

The bloom was bound to fade. The Justice Department revived the dreaded antitrust suit, and in 1947 the Supreme Court ruled unanimously that the production and distribution arms of the business had to be divorced. Anticommunist witch hunts, highlighted by the sensational trial of the “Hollywood Ten,” who refused to testify before the House Un-American Activities Committee, revealed deep rifts in the movie colony. Television and alternative forms of entertainment gnawed at the industry’s foundations. Weekly attendance was cut in half by the mid-1950s, production costs soared, and American companies had more trouble extracting profits from overseas exhibition. Foreign films made increasing inroads in the U.S. market, rising from 19 percent of the major companies’ features shown in 1946 to 43 percent in 1956. Foreign artistic innovation, such as Italian neorealism and the French New Wave, gave moviegoers an alternative to Hollywood gloss. Hollywood was caught between an inherited censorship structure and the franker modes of expression that crept over all forms of cultural discourse.²⁸ By the 1950s classical Hollywood resembled its Westerns’ false fronts.

In 1952 the Supreme Court began to dismantle the constitutional censorship structure that had prevailed since the early 1900s. The court ruled that the movies were indeed protected by the First Amendment, thus implicitly reversing *Mutual*. The case was brought by Joseph Burstyn against the New York censorship board, which had banned *The Miracle*, an Italian picture, on the grounds it was blasphemous. It was notable that Burstyn was an independent exhibitor and wanted to show a non-Hollywood film. He stood outside the MPPDA system. But if the Court placed movies under the First Amendment, the justices did not say censorship was unconstitutional; the Court engaged in a lengthy, and often futile, attempt to define how “community standards” might govern expression in many media. The year after the *Miracle* decision, Otto Preminger, an iconoclastic producer, defied the PCA, which had declined to give him a seal for his slightly naughty comedy *The Moon Is Blue*, and released it through independent distribution channels. He made enough money to prove it was now possible to defy the oligopoly and flourish.²⁹

Miracle and *Moon* brought an end to the *Mutual* era. The Mutual Film Corporation’s failed attempt to assert First Amendment protection made the film industry seek other avenues to maintain its prerogatives. But Mutual’s defeat may have been, paradoxically, a boon to the industry. As the industry became more tightly organized in the 1920s – and particularly when it fused the production and distribution components – the threat of governmental censorship, along with moral protests, necessitated the very self policing that industries usually prefer. The major companies did not contemplate trying to overturn *Mutual* (an unlikely outcome, in any event, until after World War II). That challenge came from an independent exhibitor. Freedom from censorship might well have meant chaos. Instead, Hays and the moguls found censorship, as administered within Hollywood, a key to the industry’s stability.

NOTES

1. Gordon Hendricks, *The Kinetoscope: America's First Commercially Successful Motion Picture Exhibitor* (New York, 1966), 77-79, reprinting portions of a story from the *Newark Evening News*, July 17, 1894.
2. The story of movie censorship has often been told, but with relatively little attention to its business implications. A general treatment of movie censorship, emphasizing the role of the Roman Catholic Church, is Gregory D. Black's *Hollywood Censored: Morality Codes, Catholics, and the Movies* (New York, 1994). See also Lea Jacobs, *The Wages of Sin: Censorship and the Fallen Woman Film, 1928-1942* (Madison, WI, 1992).
3. Jane Addams, *The Spirit of Youth and the City Streets* (New York, 1909), chap. 4. All European countries established government censorship of the movies in the early 1900s. It was often more restrictive than in the United States. See Clayton Koppes, "Anglo-Saxon Movie Censorships: A Comparative Perspective, 1907-1939," paper read at American Historical Association Pacific Coast Branch annual meeting, Seattle, Aug. 12, 2011, and Sarah J. Smith, *Children, Cinema & Censorship: From Dracula to the Dead End Kids* (London, 2005).
4. John Wertheimer, "Mutual Film Reviewed: The Movies, Censorship, and Free Speech in Progressive America," *American Journal of Legal History*, 37 (April 1993), 158-89. On legal structures and the relationship of local and national markets, see Charles W. McCurdy, "American Law and the Marketing Structure of the Large Corporation, 1875-1890," *Journal of Economic History*, 38 (Sept. 1978), 631-49.
5. *Mutual Film Corporation v. Industrial Commission of Ohio*, 236 U.S. 230, at 242, 244.
6. *Ibid.*
7. Wertheimer, "Mutual Film Reviewed"; William Novak, *The Peoples' Welfare: Law and Regulation in Nineteenth century America* (Chapel Hill, 1996). See also David Rabban, *Free Speech in Its Forgotten Years* (Cambridge, 1999).
8. Gilbert Montague, *The Survey*, 34 (April 24, 1915), 82.
9. Will H. Hays, *The Autobiography of Will Hays* (Garden City, NY, 1955); Thomas Doherty, *Hollywood's Censor: Joseph I. Breen and the Production Code Administration* (New York, 2007), 34-37.
10. Garth Jowett, *Film: The Democratic Art* (Boston, 1976), 166-71.
11. Francis Couvares, "Hollywood, Main Street, and the Church: Trying to Censor the Movies before the Production Code," in Couvares, ed., *Movie Censorship and American Culture* (Washington, DC, 1996), 129.
12. Tino Balio, *Grand Design: Hollywood as a Modern Business Enterprise, 1930-1939*, vol 5., *History of the American Cinema* Charles Harpole, gen. ed. (New York, 1993), chaps 1-2.
13. Mae Huettig, *Economic Control of the Motion Picture Industry* (Philadelphia, 1944), is a basic source on industry economics.
14. Balio, *Grand Design*, 14-16.
15. The production code is available in many places. See Jowitt, *Film: The Democratic Art*, 465-472.
16. Balio, *Grand Design*, 19-21.

17. Balio, *Grand Design*, 36. Interestingly, when the Supreme Court's Paramount decree brought an end to block booking in 1947, a majority of exhibitors complained that the action had made their business more difficult, not less. See Simon N. Whitney, "Vertical Disintegration in the Motion Picture Industry," *American Economic Review* 45 (May 1955), 495.
18. Among several accounts of how the code was created see Maltby, "The Production Code and the Hays Office," and Frank Walsh, *Sin and Censorship: The Catholic Church and the Motion Picture Industry* (New Haven, 1996), chap. 3. For Hollywood pictures in the period 1939 to 1945 see Clayton Koppes, "Regulating the Screen: The Office of War Information and the Production Code Administration," in Thomas Schatz, *Boom and Bust: The American Cinema in the 1940s*, vol. 6, *History of the American Cinema*, Charles Harpole, gen. ed. (New York, 1997), 262-284, and Clayton R. Koppes and Gregory D. Black, *Hollywood Goes to War: How Politics, Profits, and Propaganda Shaped World War II Movies* (New York, 1987).
19. Balio, *Grand Design*, 15.
20. Walsh, *Sin and Censorship*, 113-17.
21. The most complete analysis of the Payne Fund studies is Garth S. Jowett, Ian C. Jarvie, and Kathryn H. Fuller, *Children and the Movies: Media Influence and the Payne Fund Controversy* (Cambridge, 1996).
22. Every study of movie censorship deals with the PCA's formation. See in particular Maltby, "The Production Code and the Hays Office," 59-63.
23. Wallis quoted in Koppes and Black, *Hollywood Goes to War*, 20.
24. John Trumbour, *Selling Hollywood to the World: U.S. and European Struggles for Mastery of the Global Film Industry, 1920-1950* (Cambridge, 2002), 56.
25. *Ibid.*, 52. Jack C. Ellis and Virginia Wright Wexman, *A History of Film* (Boston, 2002), 132. Censorship has its effects; that is the point. But how censors operate and creative producers respond is worth interrogation that goes beyond the usual binaries of freedom and repression. Lee Grieveson argues forcefully that *Mutual* was a disaster for American cinematic creativity, channeling it into a particular narrative mode and squelching independent (and presumably more experimental) film making. See his *Policing Cinema: Movies and Censorship in Early Twentieth-Century America* (Berkeley, 2004), esp. 213-215. This dichotomy has been questioned. See, for instance, Trumbour, *Selling Hollywood to the World*, 54.
26. Balio, *Grand Design*, 20.
27. On the postwar industry see Thomas Schatz, *Boom and Bust*, esp. chaps. 9-10, Jowett, *Film: The Democratic Art*, 344-347, Whitney, "Vertical Disintegration in the Motion Picture Industry"; Michael Conant, *Antitrust and the Motion Picture Industry* (Berkeley, 1960), and Tino Balio, *The Foreign Film Renaissance on American Screens, 1946-1973* (Madison, WI, 2011).
28. Balio, *The Foreign Film Renaissance on American Screens, 1946-1973*, chap. 1.
29. Laura Wittern-Keller, *Freedom of the Screen: Legal Challenges to State Film Censorship, 1915-1981* (Lexington, KY, 2008), chap. 6.