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More Sinned Against than Sinning: The Fabrications of "Pre-Code Cinema"

by Richard Maltby



Will Hays

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This essay is also an introduction to a season of films entitled "Hazing the Hays Code: Hollywood's pre-Code' Era" programmed by the Melbourne Cinémathèque and screening in December. The author will be presenting a lecture on pre-Code Hollywood at ACMI on December 10, 6pm prior to the screening of *The Public Enemy*. For further articles on this season, please refer to this issue's [CTEQ: Annotations on Film](#).

Most people know two things about the Hays Code. One is that the bedrooms of all married couples could contain only twin beds, which had to be at least 27 inches apart. The other is that although the Code was written in 1930, it was not enforced until 1934, and that as a result, the "pre-Code cinema" of the early 1930s violated its rules with impunity in a series of "wildly unconventional films" that were "more unbridled, salacious, subversive, and just plain bizarre" than in any other period of Hollywood's history (1).

Neither of these things is true.

The "Code to Govern the Making of Talking, Synchronized and Silent Motion Pictures" adopted by the Board of Directors of the Motion Picture Producers and Distributors of America, Inc. (MPPDA) in March 1930 contained a set of "General Principles" and a list of "Particular Applications". In the section on "Locations", it observed, "The treatment of bedrooms must be governed by good taste and delicacy". Such statements obviously themselves required interpretation, and much of the work of the Code's administrators was a matter of negotiating the application of the Code's generalised statements to particular instances. In developing the detailed operation of the Code, its administrators relied heavily on their knowledge of the practices of the various national, state and municipal censor boards that regulated two-thirds of Hollywood's American market and almost every major foreign country. Hollywood's married movie stars slept in single beds to meet a requirement of the British Board of Film Censors.

The Code is remembered with nostalgic contempt for the trivia of its requirements, and it has often been blamed for Hollywood's lack of realism and political timidity. These charges both overestimate and underestimate its influence. The Code contributed significantly to Hollywood's avoidance of contentious subject matter, but it did so as the instrument of an agreed industry-wide policy, not as the originating source of that policy. Within its own sphere of influence, however, the Code was a determining force on the construction of narrative and the delineation of character in every studio-produced film after 1931. Public arguments about the Code's application – over Clark

Gable's last line in *Gone with the Wind*, for example – have themselves tended to be over trivia, and have supported claims that the Code was a trivialising document. The agreements that underlay the Code have received much less attention, but they amounted to a consensus between the industry's corporations and legislative and civic authorities over what constituted appropriate entertainment for the undifferentiated mass audience in America and, by default, the rest of the world.

Hollywood's "self-regulation" was not primarily about controlling the content of movies at the level of forbidden words or actions, or inhibiting the freedom of expression of individual producers. The cultural anxieties that brought the Code into being addressed more fundamental social issues than a few bawdy Mae West jokes, the length of a hemline, or the condoning of sin in an "unmoral" ending. Rather, they concerned the cultural function of entertainment, and the possession of cultural power. The Production Code was a sign of Classical Hollywood's cultural centrality, and its history is a history of the attempts by cultural elites to exercise a controlling surveillance over the mass culture of industrial capitalism.

The suggestion that for four years the Code existed on paper but not in practice is as mythological as most stories about the Code, but it does tell us a peculiar truth about Hollywood history. In Hollywood, history is first of all a production value; its first obligation is to be entertaining, not accurate. MPPDA president Will Hays was fond of declaring that "No story ever written for the screen is as dramatic as the story of the screen itself", and most of what passes for film history continues to be written under the curious expectation that the history of entertainment must itself be entertaining. Hollywood's history is too often written as a melodrama of rags to riches to heartbreak, or of creative virtue triumphing over the moustachioed villains of corporate capitalism and the moral repressions of conspiratorial reactionaries.

There are really two versions of the "pre-Code cinema" myth. They tell the same story but interpret it very differently. One held sway for about as long as the Production Code itself did, from the mid-1930s until the late 1960s. Like the Code itself, this "official" history served the industry's interests. According to this version, Hollywood was established by immigrants untutored in the finer manners of corporate capitalism, who occasionally had to be reminded to their civic responsibilities. One such reminder occurred after a series of scandals among leading Hollywood personnel, and led to the establishment of the MPPDA in 1922, with Hays as its first president. During the 1920s, Hays worked with civic and religious groups to improve their opinion of the movies, a policy that culminated in the writing of the Production Code in 1930. But as every Hollywood melodrama requires, a misfortune – the Depression – intervened. Needing to maintain income in the face of declining audiences, producers returned to their old sinful ways, exploiting their audiences' baser instincts with a flood of sexually suggestive and violent films. Without adequate powers to enforce the Code, the MPPDA was unable to prevent this, and the crisis was only averted by the Catholic Church, which established the Legion of Decency in April 1934 and threatened to boycott Hollywood. Almost immediately, the producers surrendered, agreeing to a strict enforcement of the Code under the administration of prominent Catholic layman Joseph Breen.

After the Code itself had been abandoned in 1968, a second version of this history came to predominate. The events in this second version were the same as in the official history, but their values were inverted, most evocatively in historian Robert Sklar's description of the early 1930s as Hollywood's "Golden Age of Turbulence". Instead of Hollywood the fallen woman being rescued from sin and federal censorship by virtuous hero Joe Breen riding at the head of the Legion of Decency, Sklar argued that

In the first half decade of the Great Depression, Hollywood's movie-makers perpetrated one of the most remarkable challenges to traditional values in the history of mass commercial entertainment. The movies called into question sexual propriety, social decorum and the institutions of law and order (2).

This is an extraordinary claim. Why would an industry that claimed to be the fourth largest capitalist enterprise in the United States, intricately linked to Wall St. finance capital, produce “one of the most remarkable challenges to traditional values in the history of mass commercial entertainment” at the very moment of perhaps the greatest social and political instability the U.S. had experienced? Such an improbable account of the industry's activities can gain credence only because it provides a version of history that many of Hollywood's critics are eager to accept. The idea of a “Pre-Code cinema” conforms to the need to situate Hollywood within a critical melodrama of daring creative heroes and reactionary villains, because the only version of Hollywood its critics can truly love is an “un-American” anti-Hollywood, populated by rebel creators challenging and subverting the industrial system. Ironically, much contemporary criticism has been as concerned to investigate the subversive potential of Hollywood cinema as were the anti-Communists of the 1950s, and although they come to praise the authors' subversion, not to incarcerate them, their critical methodologies are strikingly similar.

Robert Sklar was writing in the early 1970s, when conventional wisdom suggested that few written records had escaped the studio shredder. Within a decade, however, film scholars gained access to several major archives containing a surfeit of documents detailing the bureaucratic operations of the Dream Factory. The Production Code Administration (PCA) Archive is one of the richest of these sources, describing the negotiations between PCA officials and the studios, movie by movie, script draft by script draft. In complete contradiction to the mythology of the Code not functioning during the early 1930s, its records reveal that this period actually saw by far the most interesting negotiations between the studios and the Code administrators over the nature of movie content, as the Code was implemented with increasing efficiency and strictness after 1930. Throughout the period, movie content was changed – sometimes fundamentally – to conform to the Code's evolving case law.

A number of authoritative books – Lea Jacobs' *The Wages of Sin*, Tino Balio's *Grand Design: Hollywood as a Modern Business Enterprise*, Ruth Vasey's *The World According to Hollywood* – have established quite unequivocally that the old account must be discarded, since it is demonstrably incorrect to suggest that movies made between 1930 and 1934 were “uncensored” (3). Individual recommendations might be disputed, often in hyperbolic language, but the Code's role in the production process was not a matter of contention, and studio personnel did not resist its implementation. Instead, this period saw the more gradual, more complex and less melodramatic evolution of systems of convention in representation. And that, you might have thought, would have been that. But the Frankenstein monster of Pre-Code cinema that these heroes of the archives had slain and staked through the heart has once again risen from its grave. As one of the historians whose painstaking scholarship is brushed aside by the recurrence of the myth, I'm bound to wonder at its persistence.

There are two explanations. One has to do with the commercial value in repackaging material from Hollywood's past to suit present entertainment needs. In its new guise, “Pre-Code cinema” has been re-invented as a critics' genre, much like “*film noir*” or “melodrama”, with no roots in industry practice. For this I blame Ted Turner. Over the last decade, the growth of satellite and cable television stations such as Turner Classic Movies has provided new outlets for the circulation of movies previously almost unseen since their initial release. The promiscuous scheduling policies of these stations encourage the construction of vague generic systems of classification, around which seasons can be thematically strung. Because the industry suppressed the circulation of many early 1930s movies after 1934 in conformity with the “official” history of the Code's implementation, many movies from this period have only recently surfaced from obscurity. Sklar's account of the Golden Age of Turbulence relied on an analysis of about 25 movies, or approximately one percent of Hollywood's total output of feature pictures between 1930 and 1934. The critical canon of “pre-Code cinema” to be found in the schedules of American Movie Classics, the virtual pages of Reel.com and the plot synopses of several recent books is now perhaps ten times that size. Regardless of these movies' cultural status at the time of their initial release, they continue to be

critically configured as a "Forbidden Hollywood", a subversive body of work that represents, as one book puts it, a "road not taken" by later Classical Hollywood (4).

By comparison to the commercial investment in conceptions of genre by the audio-visual, broadcasting and publishing industries, there is no investment in the veracities of a more complex historical narrative. Instead, just as some stars and some movies have acquired a cult critical status unrelated to their box-office earnings, some periods of Hollywood's history – the late 1940s, 1968–74, as well as the early 1930s – have come to be understood as more reflective of their cultural moment than others. Curiously, these tend to be periods of economic uncertainty, declining audiences and "turbulence" in Hollywood's conventions of representation. On the face of it, it is difficult to see why movies produced during such periods should be regarded as more *zeitgeistig* than those produced in periods of larger, more stable audiences and under more secure representational regimes, but these periods attract critics because they are often seen as giving rise to new forms, like *film noir*, that have an obvious appeal as objects of critical study. In what almost inevitably become self-fulfilling analyses, these periods of turbulence come to be perceived as doubly rewarding for study, since their innovative movies were also *zeitgeistig* – one historian describes *I Am a Fugitive from a Chain Gang* as "the perfect expression of the national mood in 1932: despair, suffering, hopelessness ... The film *was* 1932: hopelessness" (5).

These accounts propose an odd, hybrid history, suggesting that movie genres have their own



I Am a Fugitive from a Chain Gang

internal histories of textual relations and stylistic influence, but that at the same time they also *reflect* the social and political history of their moment, so that early 1930s gangster movies, for example, tell us something about early Depression America although critics disagree about whether audiences were meant to see gangsters as rebellious social bandits or as monstrous emblems of the rapacious capitalism that had caused the Depression. Such interpretations, of course, serve as a means to keep these old movies relevant for new audiences, but their bowdlerisation of history and romantic refusal to recognise that the

motion picture industry operates like any other major capitalist enterprise ensures that most Hollywood history remains no more than a form of entertainment. Even as they are incorporated into a larger version of social history, the movies remain under the obligation to entertain: in history textbooks describing the Depression, accounts of *I Am a Fugitive from a Chain Gang* or *Scarface* appear as diverting boxed features on "social realism in the movies", alleviating the tedium of unemployment statistics and banking reform.

The early 1930s is, indeed, one of Hollywood's Golden Ages of Turbulence, like the early 1970s and the early 1990s, when a combination of economic conditions and technological developments destabilised the established patterns of audience preference, creating opportunities for greater experimentation and variation from Hollywood's established norms. This variation, however, occurred within strict limits and existed, in large part, to test, negotiate and reconfigure the boundaries of Hollywood's conventions. The two principal factors that brought this situation into being were the revolution in content, source material and mode of production brought about by the adoption of sound technology after 1928, and the economic collapse of the leisure market after the 1929 Wall Street Crash.

In the late 1920s, as sound cinema spread out of the cities into neighbourhood and rural cinemas, sections of the American middle class grew increasingly vocal in their reaction against what they saw as the moral excesses of the post-war decade. The spread of sound seemed to confirm the widespread conviction that movies were a major source of influence on the behaviour, attitudes and morals of their audience, particularly the young and uneducated. The movies' relatively permissive

representations of sex and violence became one of the sites at which an increasingly insecure Protestant provincial middle-class felt its cultural hegemony, its command of public life was threatened by the incursions of a modernist, metropolitan culture – a largely Jewish and Catholic culture – which the provincials regarded as alien. Throughout the 1920s Broadway had been castigated for its “realism” and “sophistication”, particularly in its representation of sexual mores and improprieties. With the coming of sound, and Hollywood's increasing adaptation of Broadway plays, provincial morality perceived that the threat had moved much closer to home. Broadway's dubious dialogue and “sophisticated” plot material was now playing on Main Street for the children to see and hear.

The industry's financial crisis drove it to concentrate on making product for its most profitable market, the young urban audiences in the first-run theatres owned by the major companies. Complaints about the shortage of movies suitable for children or the over-production of “sophisticated” material unacceptable to small-town audiences were a form of market response to the shortage of appropriate content for other sectors of the audience, but they were most often couched in moralistic terms, and attached to demands for federal censorship.

There is little evidence that there was any widespread concern *among moviegoers* about the moral quality of the entertainment they consumed in the early 1930s. There is, however, a good deal of evidence of concern about *moviegoing* in the period, although the groups and people most vociferously complaining about the moral viciousness of Hollywood were not themselves part of the audience. Contrary to the mythology of “Pre-Code cinema”, the early 1930s was in fact a period of increasing moral conservatism in American culture, in which the movie industry, along with other institutions of representation, failed to keep pace with a growing demand for a “return to decency” in American life. The protests about movies by women's organisations and Parent-Teacher Associations was a moral panic expressing class and cultural anxieties at a time of social, economic and political uncertainty; movie content was the site of this moral panic, rather than the cause of it.

To a large extent, the movies were indicted by a failing Protestant culture for the cultural changes of the 1920s. As the movies had been a prominent success in the '20s, they were a prominent target of the general questioning of business morality that followed the Crash. The Protestant attacks on the industry combined a critique of the movies' moral content with an even more savage critique of the immorality of the industry's business methods – the distribution contracts that underpinned the majors' control of both production and exhibition and forced immoral product on independent neighbourhood exhibitors obliged to show “sex-smut” regardless of his or his community's preferences.

Faced with an alliance of small exhibitors, small-town Protestant conservatives and Progressive reformers wanting to extend Federal Regulation, and unable to recruit a sufficiently authoritative Protestant voice to endorse its program of self-regulation, the MPPDA turned to the Catholic Church as one of its oldest and most faithful friends. The Legion of Decency was by no means the first large-scale activity relating to movies undertaken by the Catholic Church. Throughout the 1920s, Catholic groups had co-operated enthusiastically with Hays, and they remained aligned with the MPPDA in the late 1920s when Protestant and other civic groups began to demand federal regulation of the industry. In the absence of reliable support from Protestant bodies, the MPPDA began to offer the Catholic Church an opportunity to act as a moral and cultural broker between the city and provincial Protestant morality. Prominent Catholics were involved in writing and promoting the Code; Joe Breen began working for the MPPDA in 1930, and was effectively in charge of the Code's administration for at least a year before it was allegedly implemented in July 1934.

The Catholic Church seized the opportunity to “clean up” the movies as part of a wider project of cultural assertiveness, connected to their emergence into greater political prominence. Under the

banner of "Catholic Action", Catholic intellectuals put themselves forward as the saviours of American ideals, maintaining an instrumentalist view of culture – that it should demonstrate how people ought to behave, rather than what they did – far more effectively than any other group. The Legion of Decency became the largest Catholic Action organisation and its greatest public relations achievement.

The real danger the industry faced in the early 1930s was from the passage of legislation outlawing block booking and imposing federal regulation of the industry's business practices. For all industry parties, the issues of monopoly control and trading practices were economically much more important than questions of censorship. But questions of censorship were of greater public interest and concern, and could, if necessary, be resolved at less risk to the majors' monopoly interests. The MPPDA's awareness of this encouraged it to displace the public debate from the economic base of distribution practices to the ideological superstructure of movie content. But since movie content itself was not the fundamental cause of the crisis, the crisis could not be resolved by changing content alone. Rather, the crisis in the public perception of the industry had to be resolved through the industry's manipulations of its public relations.

By late 1933, when The Payne Fund Studies into "Motion Picture and Youth" added further fuel to the arguments in favour of government regulation of the industry, it had become evident that the industry could redeem itself only by a public act of atonement before an identifiable moral authority, and through the Legion of Decency the Catholic Church provided it with an opportunity. The Legion of Decency campaign was neither a spontaneous expression of public opinion nor a conspiracy to establish Catholic control over the movies. The "organised industry" acquiesced in the limited Catholic attack on its morals in order to protect its more fundamental economic interests, while the Legion claimed the glory of reforming the movies for Catholic Action. In going through a public act of contrition, the industry succeeded in separating the issues of trade practices and profitability from the question of moral content, and silencing the voices calling for more fundamental reforms.

There was no fundamental shift of Code policy in July 1934. The apparent changes brought about by the negotiations with the Legion of Decency were in fact mainly cosmetic, and had much more to do with the movies appearing to make a public act of recantation than with substantive changes in the practice of self-regulation. There was a further tightening up of practice, but this had occurred on at least three other occasions since 1931, and Breen was not given any new or arbitrary powers to cut or ban movies. The differences between movies made in the early 1930s and those made later in the decade are undeniable, but the change was gradual rather than cataclysmic, the result of the development of a system of conventional representation that was constructed by experiment and expedient in the first half of the decade and maintained in the second. From this perspective, Mae West, the great exponent of the double entendre, can be seen as a half-way point between the naive sophistication of, say, "the unspeakable Constance Bennett" in *The Easiest Way*, and the highly sophisticated innocence of the discourse on sexuality in late 1930s screwball comedies, Astaire-Rogers musicals or, for that matter, the equally sophisticated innocence, what Graham Greene called the "dimpled depravity" of Shirley Temple in *Wee Willie Winkie* (1937). The Code forced Hollywood to be ambiguous, and gave it a set of mechanisms for creating ambiguity, while viewers learned to imagine the acts of misconduct that the Code had made unmentionable.



Mae West

This system of representation had two governing principles. One was stated in the Code itself: that "No picture shall be produced which will lower the moral standards of those who see it". Under this law a strict moral accountancy was imposed on Hollywood's plots, by which a calculus of

retribution or coincidence invariably punished the guilty and declared sympathetic characters innocent. The Code's other principle permitted producers to deny responsibility for a movie's content, through a particular kind of ambiguity, a textual indeterminacy that shifted the responsibility for determining what the movie's content was away from the producer to the individual spectator. As the Code's first administrator, Jason Joy, explained, studios had to develop a system of representational conventions "from which conclusions might be drawn by the sophisticated mind, but which would mean nothing to the unsophisticated and inexperienced". Much of the work of self-regulation lay in the maintenance of this system of conventions, and as such, it operated, however perversely, as an enabling mechanism at the same time that it was a repressive one.

The rules of both conduct and representation under these conditions were perhaps most cogently articulated by F. Scott Fitzgerald's Monroe Stahr in *The Last Tycoon*, explaining to his scriptwriters how the audience is to understand their heroine's motivation:

At all times, at all moments when she is on the screen in our sight, she wants to sleep with Ken Willard ... Whatever she does, it is in place of sleeping with Ken Willard. If she walks down the street she is walking to sleep with Ken Willard, if she eats her food it is to give her enough strength to sleep with Ken Willard. But at no time do you give the impression that she would even consider sleeping with Ken Willard unless they were properly sanctified (6).



The Production Code was a consequence of commercialism, and of the particular understanding of the audience and its desires that the industry's commercialism promoted. As such it was a symptom of the lack of aesthetic or ideological radicalism in Hollywood, not the underlying cause. For Hollywood to produce movies different from those it actually produced would have needed changes far more substantial than the alteration or even abolition of the Code; it would have needed a redefinition of the cultural function of entertainment, and that was a task beyond the limits of responsibility the industry set itself.

The cultural function of cinema and the permissible boundaries of representation were under constant negotiation inside the movie industry and in a wider public arena in the early 1930s, and the history of those debates is quite exactly inscribed in the movies themselves. The movies, of course, now exist independently of that history, and can be enjoyed and examined without reference to it. To reduce the history of their circulation to a simplistic melodrama of subversion and repression, however, is to perpetuate the misunderstanding of American cinema history as nothing more than a form of entertainment (7).

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This article was refereed.

Endnotes:

1. Doherty, Back cover description, Thomas Doherty, *Pre-Code Hollywood, Sex, Immorality and Insurrection in American Cinema, 1930-1934*, Columbia University Press, New York, 1999 
2. Robert Sklar, *Movie-Made America: A Cultural History of American Movies*, Random House, New York, 1975, p. 175 
3. Lea Jacobs, *The Wages of Sin: Censorship and the Fllen Woman Film, 1928–1942*, University of Wisconsin Press, Madison, 1991; Richard Maltby, "The Production Code and the Hays Office", in Tino Balio, *Grand Design: Hollywood as a Modern Business Enterprise, 1930–*

1939, Scribner's, New York, 1993; Ruth Vasey, *The World According to Hollywood, 1918–1939*, University of Exeter Press, Exeter, 1997 ▲

4. *Forbidden Hollywood* was the title given to a series of Laserdiscs featuring early 1930s Warner Bros. movies released by the Turner corporation in the late 1990s; Doherty, p. 2. ▲
5. Robert McElvane, *The Great Depression: America, 1929-1941*, Times Books, New York, 1984, pp. 208, 213 ▲
6. F. Scott Fitzgerald, *The Last Tycoon* (Harmondsworth, 1960), pp.51-2 ▲
7. In addition to the works cited in the text, readers wishing to explore the history of the Production Code and the debates over that history might consult:

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