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CULTURE ON TRIAL: LAW, MORALITY, AND THE PERFORMANCE TRIAL IN
THE SHADOW OF WORLD WAR I

by

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ABSTRACT OF THE DISSERTATION

Culture on Trial: Law, Morality, and the Performance Trial in the Shadow of
World War I

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This dissertation analyzes three specific American trials, each taking place between 1921 and 1926: the *State of Tennessee v. John T. Scopes*; the murder trial of Frances Stevens Hall; and the murder trial(s) of silent film star Roscoe “Fatty” Arbuckle. Despite the trials’ disparate facts, each became prominent nationally, covered by a variety of media and heavily attended by live audiences. This was not unprecedented. Throughout American history, trials have often been subjects of public fascination. At times, individual cases have become cultural phenomena, followed and discussed by onlookers across the country, reaching a point of national cultural relevance. I call these types of trials “performance trials” and argue that they are valuable and overlooked resources for historians.

The three trials analyzed in this dissertation are especially instructive. The 1920s are a fertile time for performance trials, evidenced in part by this cluster of three such trials taking place within five years of each other. In the wake of World War I and the

culmination of reform efforts such as Prohibition and the woman's suffrage movement, the early 1920s were a time of cultural fragmentation and reorganization. Various groups—including Protestants, moral reformers, women, scientists, “modernists,” businesspeople, and “laypeople” alike—were struggling to find their place in the shifting culture and preserve their power within it. These three trials became phenomena because they captured one part of that cultural negotiation: the argument over the moral future of American culture and where moral authority should rest.

Through the use of newspaper reports, trial transcripts, audience reactions, and other sources, this dissertation presents the narratives of these trials and analyzes them in order to illuminate these cultural skirmishes over moral authority. The dissertation presents and breaks down the competing versions of modernity offered by the various groups, including both those who embraced the new culture and those who argued that a new moral reform movement was needed in order to rein it in. Viewing the trials through the eyes of Americans responding to an early version of the “culture wars,” the dissertation provides insight into the cultural turmoil of the early 1920s.

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INTRODUCTION

The crowd pushed towards the outdoor stage, each member jostling for a prime seat on one of the backless wooden benches closest to the action. There were more people than seats on this particular afternoon, ensuring that it would be a standing room only performance. Some spectators stood in the grass behind those lucky enough to get a seat, cooling themselves with a soda or ice cream purchased from vendors. Others found a spot on the ground to sit, under the shade of towering maple trees. Still others sat in the windows of local buildings, dangling their feet over second-floor ledges. This was the sight so many had traveled hundreds of miles to see. The performance was about to begin.¹

The crowd would witness high drama on the afternoon of July 20, 1925, but it was not attending a play. It had, as the Atlanta Constitution described it, the “formal air of a Chautauqua debate,” but it was neither a debate nor a Chautauqua meeting.² It was a trial; more specifically, it was the seventh day of the trial of John T. Scopes for the teaching of evolution in Dayton, Tennessee. Moved outside for the afternoon due to structural concerns about the Rhea County Courthouse, the Scopes trial for at least one day looked more like a public performance than a legal proceeding, a perception that was not far from the truth.

The scene outside the courthouse was not unprecedented. Throughout American history trials have often become public performances. By the 1920s, American trials—

¹ “Big Crowd Watches Trial Under Trees,” *New York Times*, July 21, 1925, 1. Also “Bryan and Darrow in Bitter Religious Clash as Commoner is Quizzed on his Bible Views,” *The Atlanta Constitution*, July 21, 1925, 1.

² “‘Read Your Bible’ Banner Removed from Jury’s Sight,” *The Atlanta Constitution*, July 21, 1925, 2.

particularly those involving gruesome crimes—had long been subjects of public interest.³ Traditionally open to the public in the United States, trials could provide the public access to an important social institution—the law—as well serve as a form of entertainment featuring drama, oration, and mystery. Individuals in the 1920s took full advantage of both functions, perhaps most obviously embracing a trial’s value as entertainment. Newspapermen began attending certain trials by the hundreds, not only to report the gory details of the crimes, but increasingly to provide a daily update to their readers on the happenings *inside* the courtroom. The inherent entertainment appeal of trials is not hard to understand. Narrative has always been an important part of human experience and trials, at their foundation, provide a series of competing narratives, each side attempting to convince the decision-maker (usually a jury in the most famous cases) that its “story” is closest to the “truth.” As the legal historian Lawrence Friedman put it, “[Criminal trials] were lush dramas, embroidered with juicy details (some of them fake) in the daily press. These trials satisfied some deep-seated hunger of the bourgeoisie. The newspapers clucked and scolded and pretended to be appalled; but these sordid affairs gave off the rotting perfume of forbidden fruit.”⁴ A criminal trial is, as Friedman concludes, “almost inherently dramatic.”⁵

While this is certainly true, the significance of a certain type of trial in U.S. history goes still deeper. When a trial becomes as notorious or popular as the scene described in Dayton, it reaches the point of cultural relevance. It is no longer simply

³ On the popularity of trial report pamphlets, see Karen Halttunen, *Murder Most Foul: The Killer and the American Gothic Imagination* (Cambridge: Harvard University Press, 1998). For discussion of the importance of crime and trial in penny press, see Andie Tucher, *Froth and Scum: Truth, Beauty, and the Ax Murder in America’s First Mass Medium* (Chapel Hill: The University of North Carolina Press, 1994).

⁴ Lawrence M. Friedman, *American Law in the 20th Century* (New Haven: Yale University Press, 2002), 87.

⁵ *Ibid.*

compelling drama, frivolous entertainment, or a sterile method of legal determination; it instead provides an opportunity to participate in a shared cultural moment. Not all trials become social spectacles. Many trials—particularly criminal trials—have all of the traits Friedman described yet proceed without fanfare in largely empty courtrooms. There is necessarily something different, then, about a trial that packs a courtroom beyond capacity, dominates national press coverage, and for a period of time becomes a reference point for the country’s cultural conversation. In order to break onto the national scene in such a dramatic way, a trial must capture the public’s attention for a particular reason. Understanding that reason can provide important insight into the trial itself and, more important, the society that embraced it.

I call such a trial a “performance trial”—a trial that becomes a national spectacle, one in which the public’s interest in and discussions about the trial overshadow the legal proceeding itself.⁶ This is a trial the public follows as it would a serial mystery, engrossed in the performances of participants and discussing plot and character developments as they occur. In these cases, the characters—attorneys, witnesses, and officers of the court—no longer perform exclusively (or even primarily) for the jury, but instead for the assembled audience as well as for radio microphones, newspaper reporters, and, more recently, television cameras.⁷ It is more than a legal contest; it is a cultural drama unfolding on a national stage.

In such a case, the wider cultural context in which the trial occurs becomes crucial. Shaped by formal legal rules and procedures, these trials are simultaneously

⁶ See, for example, Robert A. Ferguson, *The Trial in American Life* (Chicago: University of Chicago Press, 2007) for a discussion of the role of stereotypes in the presentation of courtroom narratives.

⁷ Again see Ferguson, *Trial in American Life* for a discussion of the impact of cameras in contemporary courtrooms.

performed—often through various forms of media—for a general public audience, an audience that will receive and develop informal messages and responses from that performance. Those messages often do not come from formal legal decisions. While the legal ramifications of a trial can be life-altering for the direct participants, for the wider audience the importance of the formal legal result is often fleeting. But as more and more “lay people” become invested in the proceedings, the trial’s informal activities and representations—the information that has little legal relevance but is pertinent to the public’s understanding of the case, from courtroom utterances to the participants’ physical appearances to coverage of the trial in various media—gain greater importance. In the process, these informal conversations surrounding the trial often dwarf the formal legal proceeding itself. These important conversations are rooted in the cultural context of the trial’s time period and concern the key social concerns of the day.

Indeed, the trials I will be analyzing may, at first, appear to have few broad legal implications. For the principals in the cases, of course, the legal outcomes are of the utmost importance: freedom versus incarceration, “justice” versus an unsolved murder. But these are trials, not appellate proceedings; the ultimate decisions carry no precedential weight. From a social standpoint, laws did not change based solely on the outcomes of these trials. But at an “informal” legal level, they provided an opportunity for large numbers of onlookers to participate in the process and thereby access important and otherwise inaccessible social dilemmas. In a discussion about the limits of local and state authority to keep certain scientific concepts from being taught in public high schools, for example, or a conversation about how to balance the importance of free expression with concerns about the moral impact of that freedom, the trials I will analyze

allowed a concrete point of entry to some of the most important cultural issues of a key time period in the development of American culture.

Of course, many historians have taken notice of the value of trials as historical resources. Legal historians, for example, are directly interested with the law and legal institutions. But while some legal historians have turned their attention to trials, most have tended towards examinations of legal proceedings that had important doctrinal ramifications, particularly those that rose to the level of the U.S. Supreme Court and that revealed the development of formal legal theories and practices over time.⁸ Trials, which lack precedential value, carry more lasting social than legal weight. As a result, social historians of the law have used trials explicitly as a means to understand life “on the ground.”⁹ Still, these studies have generally focused less on the proceedings themselves and more on the formal legal and social ramifications of the very existence of particular legal proceedings. They have advanced our understanding of law, trial, and society in important ways, pointing out, for example, that the simple instigation of a legal proceeding represents agency and can itself be seen as an important social act. But they rarely consider the cultural impact of the individual proceedings themselves, particularly those that become social spectacles. Even more recently, cultural historians have also turned to trials.¹⁰ These works have taken a much less legalistic approach, focusing on the underlying crimes or examining the cultural context of the trials rather than the legal

⁸ One of many examples in my time period is Morton J. Horwitz, *The Transformation of American Law 1870-1960: The Crisis of Legal Orthodoxy* (New York: Oxford University Press, 1992). Horwitz’s examination is thorough and fascinating, but primarily focuses on elite legal thought and trends within legal theory.

⁹ An excellent example is Hendrik Hartog’s history of American marriage and divorce. Hendrik Hartog, *Man and Wife in America: A History* (Cambridge: Harvard University Press, 2000).

¹⁰ An important example here using a key series of trials in the 1930s is James Goodman, *Stories of Scottsboro* (New York: Vintage Books, 1994).

proceedings themselves.¹¹ Here, however, the trial itself is often undervalued; the narratives are examined, but the importance and legitimizing potential of the institution of the trial itself—what actually happens inside the courtroom—is largely left alone.

This dissertation will combine aspects of all of these approaches to analyze three specific performance trials, all taking place during a key historical moment: the *State of Tennessee v. John T. Scopes*; the murder trial of Frances Stevens Hall; and the murder trial(s) of silent film star Roscoe “Fatty” Arbuckle. By examining these three trials, I hope to illuminate lingering cultural skirmishes over moral authority in the post-World War I United States. While all three trials took place between 1921 and 1926, they may at first appear to have little in common. Each took place in a different part of the country: one in rural Tennessee, one in central New Jersey, and one in San Francisco. The narrative facts of each case also varied widely. In *The State of Tennessee vs. John Scopes*, a small town high school teacher was accused of teaching his students the theory of evolution, in violation of the newly enacted state Butler Act. It was ultimately a misdemeanor, punishable by a fine of \$100—a crime with vastly different consequences than the alleged crimes in the other two cases. In the Hall-Mills trial, the most notable defendant, Frances Stevens Hall, was accused (along with her two brothers) of murdering her husband and his lover, then arranging their bodies in a field in New Brunswick, New Jersey. The Roscoe “Fatty” Arbuckle trial(s) also involved a charge of murder, but in that case the silent film star Arbuckle was not an aggrieved spouse, but rather an alleged

¹¹ Of course, I would not suggest that no-one has ever done work approximating what I attempt to do. The best example may be Charles Rosenberg’s classic look at crime and the insanity plea, using the trial of Charles Guiteau for assassinating President James Garfield. Charles Rosenberg, *The Trial of the Assassin Guiteau: Psychiatry and the Law in the Gilded Age* (Chicago: The University of Chicago Press, 1995). Also see Martha Umphrey’s series of articles on the Harry Thaw/Stanford White murder trial. Martha M. Umphrey, “The Trouble with Harry Thaw,” *Radical History Review* 62 (1995): 9-23.

predator, charged with sexually assaulting and murdering an actress at an alcohol-fueled party.

The results of the three cases were also mixed. Scopes was found guilty (though the decision was later vacated on appeal), while both Hall and Arbuckle were found not guilty, in Arbuckle's case only after two mistrials. Finally, the defendants themselves were vastly different people, from an unassuming schoolteacher, to a "society woman" who was an heir to the Johnson & Johnson fortune, to a well-known Hollywood star famous for his roles in slapstick comedies. But despite their disparate facts, each trial became prominent nationally, covered by a variety of media and heavily attended by live audiences. This was in part because each involved colorful characters and, in the case of Frances Hall and Roscoe Arbuckle, at least, scandalous facts. But they also had something else in common: each centered on a number of social and legal issues crucial to an important and unsettled time period, allowing valuable entrance into debates about the roles of such values as Protestant belief and the Progressive tradition of moral uplift reform in a changing cultural landscape. As a result, these trials provide an opportunity for us to see how the concept of reform, such an important part of the first two decades of the twentieth century, continued to be relevant in the 1920s. In many ways, as we will see, this was the dominant theme driving the interest in these three performance trials: the extent to which a new moral reform movement was needed to rein in a rapidly changing modern culture.

A performance trial is, by definition, a product of its time. It becomes a phenomenon, after all, precisely because it captures a theme crucial to its time period. And these three trials were no exception. Certainly, such trials were not unprecedented;

performance trials have a long history that begins well before the 1920s. Almost 50 years earlier, for example, the nation had been transfixed by the civil trial of the Protestant minister Henry Ward Beecher for adultery.¹² Thirty years after the Beecher trial, closer to the turn of the century, the trial of Harry Thaw for the murder of Stanford White, the violent conclusion of a scandalous love triangle involving teenager Evelyn Nesbit, was also a sensation.¹³ Both were spectacular performances, followed by large audiences and became the topics of national conversation. But the early 1920s, a time when a significant cluster of trials reached national prominence, is a particularly appropriate historical moment to view through the lens of the performance trial.¹⁴ A sometimes inscrutable decade, the “Roaring ’20s” lacks major defining events or political moments and has as a result too often been portrayed as an anomaly or an aside in popular histories. But as more recent historiography, informed by cultural and social history, has shown, the 1920s were a time of important cultural fragmentation and adjustment.¹⁵ As the decade began, a number of factors coalesced to challenge the prior cultural consensus. In particular, the recent experience of war, the passage of two Constitutional Amendments that would have significant social impact, and the continued development and rapid expansion of communications, press, and media technologies, would come together to cause the splintering of the “Progressive consensus” of the early 1900s. A cultural realignment would begin to take shape, in the process challenging some of the

¹² See Richard Wigtman Fox, *Trials of Intimacy: Love and Loss in the Beecher-Tilden Scandal* (Chicago: University of Chicago Press, 2000) for a good description of the facts of this case.

¹³ A number of books have been written on this trial, but the best account is in Martha Umphrey’s series of articles. Martha M. Umphrey, “The Trouble with Harry Thaw,” *Radical History Review* 62 (1995): 9-23.

¹⁴ In addition to the three I will analyze, the Sacco-Vanzetti trial took place in 1921 and the trial of Nathan Leopold and Richard Loeb three years later in 1924. While both are deserving of further study, I have not included them in this analysis because the issues driving their popularity—particularly anarchism and the insanity defense, as well as the death penalty—are of a different type than those in these three trials.

¹⁵ Paula Fass, *The Damned and the Beautiful: American Youth in the 1920s* (New York: Oxford University Press, 1977). Fass notes, for example, that the 1920s were defined by an adjustment to change.

values—particularly those concerning the social foundations of moral behavior—the previous consensus took for granted. The three performance trials I will analyze in this dissertation arose in the context of that cultural turmoil, each facilitating conversations that arose in response to the changes, particularly focusing on issues concerning morality. These were debates that would eventually help shape a new cultural consensus and thereby help define the development of American culture for the rest of the century. These particular trials, then, allow us new insight into an important cultural moment in U.S. history.

“Culture” can be a thorny concept. It is, broadly, the norms, values, prejudices, and aspirations that govern a society, as well as the resources people use to manage their interactions with each other, such as gender, class, race, and moral code. While World War I was not fought on American soil, experiences with mobilization, the war economy, war policies, and particularly wartime curtailments on civil and press liberties challenged such values and aspirations cherished by many Americans—from a foundational belief in a free press to the explosion of the myth that the U.S. could isolate itself from world conflicts.¹⁶ The debate over whether to enter the war—and the eventual war experience itself—split many constituencies, with a particularly dramatic impact on progressives. The Sedition Act of 1918, outlawing, among other things, “disloyal” language “about the form of government of the United States or the Constitution of the United States, or the flag of the United States” was, to many, a particularly dangerous overreach.¹⁷ Concerns among those on the Left would grow even deeper when President Woodrow Wilson—elected as a Democrat—proposed in December 1919 a peacetime sedition act to replace

¹⁶ On the U.S. experience in World War I, see David M. Kennedy, *Over Here: The First World War and American Society* (New York: Oxford University Press, 1980).

¹⁷ Kennedy, *Over Here*, 80.

the wartime one, which was due to expire in 1921.¹⁸ A new language of civil liberties began to arise in opposition, a nascent challenge to the priority of moral uplift as a progressive ideal. Still, as the 1920s began, it seemed that some influential American values had not changed. In particular, it appeared that Progressivism itself—the social, cultural, and political movement that had had such a dramatic impact in the first two decades of the twentieth century—and its fundamental underpinnings in moral uplift could remain intact.¹⁹ In fact, two of the movement’s greatest apparent victories came in the years following the end of World War I, two Constitutional amendments that were each the culmination of decades-long reform movements—Prohibition and women’s suffrage. But rather than push the movement forward, it quickly became clear that each of these victories would have significant and perhaps unforeseen consequences and would instead become both drivers and symbols of the cultural fragmentation that provided the context for the Scopes, Hall-Mills, and Arbuckle trials.

The first was Prohibition. Aided by arguments that support of the alcohol industry—particularly the beer industry and its largely German roots—was unpatriotic, Prohibition supporters fought hard during World War I to make their goal of nationwide prohibition of alcohol a reality. In December 1917, their efforts were rewarded when Congress passed a resolution sending the Eighteenth Amendment to the states for ratification. Just over a year later, in January 1919, the process was complete and one

¹⁸ *Ibid.*, 87.

¹⁹ Historiographical periodization of the Progressive Era remains the subject of much debate. The first major and still classic take on the Progressive Era was Richard Hofstadter, *The Age of Reform* (New York: Vintage Books, 1955). Since that time, multiple historians have adjusted and reconsidered the periodization of the Progressive Era, the goals of the movement, and even whether an identifiable movement can even be considered to exist. Two more recent takes are Daniel T. Rodgers, *Atlantic Crossings* (Cambridge: The Belknap Press, 1998). Also Michael A. McGerr, *A Fierce Discontent: The Rise and Fall of the Progressive Movement, 1870-1920* (New York: Oxford University Press, 2003). Finally, David Kennedy provides a useful, if dated, summary of the early Progressive historiography: David Kennedy, “An Overview: The Progressive Era,” *The Historian* 37 (1975), 453-469.

year after that, on January 17, 1920, the nationwide ban on alcohol took effect.²⁰ It was a commanding victory for many supporters of moral reform. But the victory would prove illusory. Almost immediately, state and federal officials found that the provisions of the amendment—and the Volstead Act, which set out the details of its implementation—were largely ignored and nearly impossible to enforce. More important, a significant number of Americans, including many middle-class liberals and the members of many urban communities, saw the effort as significant example—alongside the wartime sedition acts—of the increasing overreach of both governmental intrusion and moral reform efforts.²¹ The result was a further breakdown of the progressive consensus, with many liberal reformers, in part as a result of their dismay over such overreaches, increasingly coming to favor reform language that privileged individual freedom rather than moral uplift.²² Meanwhile, for those who whole-heartedly supported Prohibition, the response was alarming. Many Prohibition supporters took for granted the moral propriety of their position. For most evangelical Protestants, in particular, the evils of alcohol consumption seemed clear. To them, questioning Prohibition was analogous to questioning the entire concept of a Bible-based moral reform effort—a dangerous precedent.

Of course, not all supporters of Prohibition were religious. Many had more secular justifications for their support. A large number of women's groups, for example, coupled their support for women's suffrage with assistance for both temperance and Prohibition campaigns. For these women, traditionally charged with maintaining and

²⁰ I have previously written on the historiography of the Prohibition movement. Kristoffer Shields, "The Opposition: Labor, Liquor, and Democrats," in *A Companion to Warren G. Harding, Calvin Coolidge, and Herbert Hoover*, ed. Kathleen Sibley (Chichester: John Wiley & Sons, Inc., 2014), 132-50.

²¹ David E. Kyvig, *Repealing National Prohibition*, Kent: Kent State University Press, 2000, 2nd ed. Also see Michael Lerner, *Dry Manhattan: Prohibition in New York City*, Cambridge: Harvard University Press, 2007.

²² On civil liberties violations in World War I, see David Kennedy, *Over There*. On the shift from moral to practical language of reform, see Richard Hofstadter, *Age of Reform*, 302.

protecting the domestic sphere, alcohol was a potential threat. Saloons became a particular enemy. Many of these women were financially dependent on men and money spent at the saloon could not be spent on necessities. These largely middle to upper class moral reformers also viewed such saloons—particularly working class saloons—as breeding grounds for drunken violence, which could also, they feared, represent physical danger to a woman when her husband returned home. As a result, in some ways, the Prohibition effort and the women’s suffrage campaign became linked—though, it is important to note, in significantly complex ways.²³ It is not surprising that the two efforts reached success at the same time, each also aided by arguments coming out of the war effort. Indeed, eight months after Prohibition took effect, the nation officially ratified the Nineteenth Amendment, ensuring women the right to vote. It was unclear, at first, what impact this might have on American political culture. But at the very least, universal suffrage was an important symbol of increased social power for women, one that was expected to have a strong moral component. Already the moral protectors of the home, in this view, women could now moralize the political process and make the political world “homier.” But for those who saw the fight in these terms of uplift, this victory, too, had its unexpected consequences. No longer linked by the common goal of suffrage, the movement’s success accentuated differences among women, changing what it meant to be a “New Woman.”²⁴ The culture of consumption filled some of the gap: a modern American middle-class woman was one who bought the right brands and had the right gadgets.²⁵ But underneath the surface, it was becoming increasingly clear that the “New

²³ Nancy F. Cott, *The Grounding of Modern Feminism*, New Haven: Yale University Press, 1987.

²⁴ *Ibid.*

²⁵ On the role of media and advertising on helping to define the new American woman, see Jennifer Scanlon, *Inarticulate Longings: The Ladies’ Home Journal, Gender, and the Promises of Consumer*

Woman” was in many ways a myth. There were multitudes of ways to be a “New Woman” in the 1920s, and many women took full advantage of those social and cultural (if not always professional) opportunities.²⁶ For these women, individual liberty, rather than the general moral uplift of prior decades, was becoming the priority; their fight was to be the upwardly mobile, sexually active, socially dynamic woman they wanted to be—though still, of course, within significant social boundaries.²⁷ This was a challenge not only to the women’s movements, but also to the entire concept of the home as the center of moral authority. In perhaps the most dramatic example of the fracturing of these always-tenuous alliances, as the 1920s progressed, a number of women’s groups—turning away from a perceived role as moral protectors—took the lead in the political movement calling for Prohibition’s repeal.²⁸

Finally, scientific discoveries and technological advancements in the early years of the decade also gave people a new lens through which to see the world and new metaphors with which to describe it.²⁹ Invented earlier, but becoming more culturally relevant in the 1920s, technologies such as radio and movies continued to promote cultural consolidation. American communities were growing more connected as national radio programs developed, movies appeared at the same time at theaters across the

Culture, New York: Routledge, 1995. On the role of makeup and the women’s health industry in redefining womanhood in the decade, see Kathy Peiss, *Hope in a Jar: The Making of America’s Beauty Culture*, New York: Henry Holt and Company, 1998. Finally, on the role of advertising in shaping culture more broadly, see Jackson Lears, *Fables of Abundance: A Cultural History of Advertising in America*, New York: Basic Books, 1994.

²⁶ Martha H. Patterson, *The American New Woman Revisited, A Reader, 1894-1930*, New Brunswick: Rutgers University Press, 2008.

²⁷ Nancy Cott, *Grounding of Modern Feminism*.

²⁸ *Ibid.* Also Catherine Murdock, *Domesticating Drink: Women, Men, and Alcohol in America 1870-1940* (Baltimore: Johns Hopkins Press, 1998).

²⁹ On the relationship between technology and modernity in the early twentieth century, see Mikael Hard and Andrew Jamison, ed., *The Intellectual Appropriation of Technology: Discourses on Modernity, 1900-1939* (Cambridge: The MIT Press, 1998). On the development of communications technology and the standardization of culture, see Erik Barnow, *A Tower in Babel: A History of American Broadcasting to 1933, Vol. 1*, Oxford: Oxford University Press, 1966.

country, and national brands and advertisements continued to proliferate. Movies, in particular, presented a challenge to the previous consensus on where moral authority should reside. This visual form of entertainment had the power to appear across the country simultaneously, in the process further nationalizing entertainment choices. Movies also created movie stars and celebrities, each becoming famous across the country, a relatively new form of cultural currency. In the process, the movie industry challenged the prior cultural consensus from another front, providing broad exposure to new and potentially scandalous ways of acting—both in the content of the movies that played on screens and the sometimes salacious “behind-the-scenes” stories about the actors who created them. The nation, in other words, was becoming more centralized, not only through the proliferation of conglomerate corporations and increased federal political power, but also culturally via communications technology, the growth of the movie and entertainment industry, and increased connections between urban and rural areas.³⁰ As Americans adjusted to these new values and norms, many found themselves more concerned with consumption, individual liberty, and practical reform than the moral uplift efforts of the early twentieth century.³¹ In other words, in the wake of all of these social developments—the war experience, the seeming overreach of Prohibition, the fragmentation of the women’s movement, and the centralizing effect of technological advancement—a new type of reform energy was developing, based on individual rights

³⁰ Lynn Dumenil, *The Modern Temper: American Culture and Society in the 1920s* (New York: Hill and Wang, 1995), 16. Also see Elisabeth Cohen, *Making a New Deal: Industrial Workers in Chicago, 1919-1939* (Cambridge: Cambridge University Press, 1990) for a discussion of cultural consolidation in the 1920s.

³¹ Paul V. Murphy, *The New Era: American Thought and Culture in the 1920s* (Lanham: Rowman & Littlefield, 2012).

and offering practical assistance to those who needed it, rather than a goal of broad moral uplift.³²

This was the fractured cultural context in which the Scopes, Hall-Mills, and Arbuckle trials became national sensations. These particular performance trials therefore provide an ideal lens through which to view this crucial cultural reorganization and the fears and priorities of the people who were experiencing it. These trials became popular because they captured—each in a different way—a particular challenge presented by the cultural fragmentation: where moral authority should be located in the new and changing culture and whether a moral crisis loomed as a result of the seeming disintegration of previous institutions of moral authority. In Scopes, for example, the role of Protestant theology as the basis of moral behavior came under review, as did the question of who would have the authority to teach morality and moral behavior to children. In Hall-Mills, the proliferation of types of “new women” and the freedoms they represented brought the status of the family as the basic moral unit—and the woman’s role in protecting that morality—into question. And in Arbuckle, the issue became who, if anyone, should monitor the increasingly nationalized entertainment industry to ensure that it would meet the proper moral standards of American citizens. Together, they provide a rich picture of one of the key aspects of the cultural turmoil occurring in the early 1920s, making these trials particularly useful cultural texts with which to better understand the broader transitional cultural moment. Just as important, they also provide insight into both the people who encouraged that transition and those who resisted it.

³² It was an energy that would come to full fruition in the guise of the New Deal in the early 1930s, by then guided in large part, of course, by the exigencies of the Great Depression. See Richard Hofstadter, *Age of Reform*.

Indeed, not all Americans were comfortable with these changing values. Specifically, some citizens feared that the trend away from an emphasis on moral reform left the nation unmoored from its traditional moral foundation, leaving the U.S. on the precipice of moral disaster. They were particularly concerned for American youth, fearing that new, modern entertainment choices, particularly Hollywood movies, could present dangerous messages, particularly to children. They were further alarmed by the social trends of young Americans, especially increased sexual activity, and the impact they perceived such activity could have on women and on family stability.³³ More broadly, they feared scientific and technological advances that raised questions about the foundational structure of the Bible, concerned that such challenges could threaten the role of both religion and the traditional family unit in the creation of social values. Finally, they remained committed to the concept of reform as a way to challenge these perceived ills, with many continuing to support Prohibition, for example, and fight for its enforcement. It is tempting for historians to dismiss these people, as many of their contemporaries did, as backward “hicks,” or vestiges of an older, traditional time period that was no longer relevant—to argue that they simply were not “modern” and had little to no impact on the development of modern American culture. But to do so would be a mistake.

Like “culture,” the terms “modern,” “modernism,” and perhaps most of all “modernity” are tricky ones. They are both colloquial and terms of art, referring to historical periods as well as cultural concepts (often, but not always, overlapping). But

³³ May, *Great Expectations*.

by virtually any definition, these moral reformers were not “traditional.”³⁴ Because the changes taking place in the 1920s represented new values and priorities, it was common to refer to those changes as “modern,” or (using an even more loaded term) progress, in order to differentiate them from the ideals of the past. This left anyone standing in the way of these “advancements” as “traditional,” the antiquated side of a modern/traditional dichotomy. But this is a mischaracterization of the classical concept of the traditional. These moral reformers did not view themselves or their worlds as directed by external forces. They, instead, believed in the power of the liberal autonomous self to make explicit choices, whether about religious beliefs, sex partners, or entertainment. They embraced such modern concepts as democracy, capitalism, and the ability to be “born again.” While they occasionally used traditional concepts, such as the miracle, to support their cause, they did so for particular reasons. But when fundamentalists wanted to ensure that their children would continue to accept the miracle of creation, for example, they used the most modern of methods: they lobbied for and passed a state statute.

Rather than traditional, then, these moral reformers were themselves modern; they were simply arguing for a different vision of modernity than the one they saw developing. To them, the nineteenth century provided the ideal model: a modern society based on social institutions such as the Church, the Bible, and the family unit. They turned largely to the modern language of reform—an approach that had been successful earlier in the century and as recently as the debate over Prohibition—to make these concerns public. Whether using direct legal action to protect what they saw as “Truth” in the classroom, taking a stand against changing sexual mores, demanding the increased

³⁴ For a discussion of the classic definition of “modern,” see Max Weber, *The Protestant Ethic and the Spirit of Capitalism*, transl. Talcott Parsons (Mineola: Dover Publications, 2003).

enforcement of national Prohibition, or attempting to use federal law to contain the “moral excesses” of Hollywood, these moral reformers used both the language and strategy of earlier reform movements to resist the cultural changes that threatened what they saw as foundational moral institutions. These reformers were seeking space in which to resist cultural changes and fight for their own vision of a seemingly declining form of modernity. They needed a forum in which to do so and for at least three key moments in the 1920s, that stage became the courtroom.

This is not to suggest that these moral reformers were in any way homogeneous. Indeed, I intend to suggest just the opposite. One of the reasons these arguments are so hard to understand and to make visible is that the groups of moral reformers making them are constantly shifting, often ambivalent, and have no clear boundaries. It is a category that encompasses different groups of people at different times, from rural Protestant fundamentalists, to East Coast society women, to West Coast clubwomen, to other religious and social groups entirely.³⁵ As we will see, these groups often had dramatically different priorities and preferred different solutions, each concerned about the moral future of the country, but manifesting that concern differently. The group is so disparate and the goals are so diffuse that a “movement” is often impossible to locate, making the conversation and resulting cultural negotiation difficult for an historian to access and easy for onlookers to dismiss. But these three trials—Scopes, Hall-Mills, and Arbuckle—bring the discussions and concerns to the forefront, providing a language for

³⁵ As with the Progressives, these “moral reformers” shared some basic demographic characteristics. In particular, as these are largely groups attempting to “protect” traditional cultural power, they are overwhelmingly white. This is not to suggest that race was not a key part of performance trials in the twentieth century. Race and racial theory play important and complicated roles in Scopes, for example. And as the century developed, race became a central factor in many, if not most, performance trials. Such a story could start, for example, with Kevin Boyle’s excellent book on a 1925 murder case. Kevin Boyle, *Arc of Justice: A Saga of Race, Civil Rights, and Murder in the Jazz Age* (New York: Henry Holt and Co., LLC, 2004). Also see Goodman, *Stories of Scottsboro*, on the Scottsboro Boys trials of the 1930s.

these moral reformers to use to illuminate the various versions of alternate modernities they supported. By examining these three trials, we can start to see the similarities and complications among these groups—as well as the ways in which they successfully criticized and challenged the dominant version of modernity—in the process better understanding the culture as they saw it and the ways they ultimately helped shape it.

Finally, the 1920s moral reformers faced another significant challenge. For many of the reformers, particularly those driven by religious motivations, the topics at stake in these arguments—sexual morality, adultery, promiscuity, alcoholic depravity, even the depiction of sex in movies—were by their very nature inappropriate for public conversation. They were, then, faced with the question of how to highlight the encroachment of the immoral without drawing even more attention—and interest—to it. How could, for example, a moral reformer raise the issue of adultery or sex in Hollywood movies without glorifying the act itself, or being accused of titillation under the guise of criticism? To what extent was it appropriate to discuss sex, violence, or even evolution in church sermons and public speeches? It would, as we will see in the Arbuckle case, become a significant issue. But once again, these trials created an opportunity. Courtrooms provide an official institution to use as cover to have a conversation that could otherwise be too stimulating to be proper. Discussing adultery on its own, for example, may be gossip, but discussing the national story of the moment, a trial in which the defendant was a woman scorned, was an appropriate entrance into the conversation.

Each of these three trials, in other words, provided people with differing concepts of an idyllic modern culture the opportunity to safely discuss aspects of those visions in a public forum. More important, each trial does so in a different way, focusing on different

themes and groups of people. When taken together, the trials provide both a clearer overall picture of the cultural stakes and a suitably complicated look at the interested “sides,” including the ways in which members of the rising dominant culture both defended the cultural changes and adjusted them in response to these reformers’ criticism. I therefore spend equal time—two chapters each—on each trial, in an attempt to not only provide the story of the trial but also to analyze the specific issues at stake and how they fit with various visions of modern culture. I start with the Scopes trial. While it is not the first chronologically in this study, it represents what many of the moral reformers saw as the broadest attack on their foundations of morality. The Bible and the “old time religion” that places its trust in that book’s inerrancy are the basis of the type of nineteenth century modernity this particular group of moral reformers—primarily Protestant fundamentalists—saw slipping away. In many ways, then, while Scopes is not the first to be tried, it is the foundation of the larger argument taking place. First understanding and analyzing that trial will help us better understand the sometimes subtler arguments taking place in Hall-Mills and Arbuckle.

Scopes is also the most enduringly famous of the trials I will examine. Many scholars have studied the Scopes trial, but the most famous (and effective) treatment is that of the historian of religion Edward Larson.³⁶ Larson does an excellent job of providing the Scopes story, highlighting the issues, and analyzing some of the more intense debates. But Larson’s interests lie primarily in the role the trial plays in religious

³⁶ Edward J. Larson, *Summer for the Gods: The Scopes Trial and America’s Continuing Debate Over Science and Religion* (New York: Basic Books, 1997). For another important treatment of the Scopes trial, see Ray Ginger, *Six Days or Forever?: Tennessee vs. John Thomas Scopes* (Beacon Hill: Beacon Press, 1958). Writing in the wake of the release of *Inherit the Wind*, Ginger attempts to reclaim the facts Scopes story, and place it in its own cultural context, but ultimately concludes that the trial represented the “death of fundamentalism.”

history, specifically the internal Protestant battle between fundamentalists and Modernist preachers, who were attempting to incorporate evolution into Protestant theory. This is, of course, an important part of the story, as is the more traditional depiction of Scopes as a pure fight of religion vs. science. But I attempt, building off of Larson's work, to recontextualize Scopes, analyzing its broader cultural significance. Most of the moral reformers involved with the Scopes trial were indeed intensely interested in promoting fundamentalism and, especially, the antievolution movement. But they were also concerned with other issues they saw as threats to their vision of a moral modern culture, particularly the dangers of increased social secularization and the potential moral ramifications of centralizing control of public schools, thereby removing curriculum decisions from local rule. Further, the trial symbolized the trend of fundamentalists to attempt to expand their fight; no longer content to fight for reform within Protestant religion, fundamentalists were increasingly seeing the battle as one over the moral soul of American culture more broadly. Meanwhile, the high-profile Scopes defense team, led by famous attorney Clarence Darrow, also fought for its competing vision of modernity. The defense team exemplified how many Americans turned to science to explain world around them—at times with potentially positivist results—both in an attempt to rationalize the natural world and, for some, to secularize American culture. Rethinking the Scopes trial in this way will show how such a trial can provide access to complex themes and arguments, as well as set the scene for the related, but not identical, concerns with modern culture raised in the other two trials.

Turning then to an examination of the Hall-Mills trial, we will quickly find that the themes of this trial went far beyond adultery and the revenge of a “woman scorned.”

The conversation sparked by the Hall-Mills trial concerned, in large part, the transitional challenges faced by moral reform movements, particularly the woman's movement, within the post-war culture. For some, this required redefining goals, as reform-minded elites faced new challenges. The rise of the concept of numerous 1920s "new women," for example, represented more than a new wing of the woman's movement. It was, in some ways, a generational challenge to the traditional woman's movement itself—a movement in search of direction and coalescence in the wake of the successful enfranchisement effort.³⁷ For still other women, embracing and promoting the new culture, it represented a welcome opportunity to experiment with various definitions of womanhood and femininity.³⁸ More than anything, the trial was about the shifting role of (mostly white, middle to upper class) women in modern culture and the dangers that an apparently freer role for younger women could create, both morally and in terms of a loss of cultural power for some traditional groups of women.

The Arbuckle trial—the first to take place, but the third to be examined here—also occurred in the context of reform and also concerned a threat to women, though in a more literal sense. Beyond the danger Arbuckle himself allegedly posed, however, the trial was in truth about the moral hazards represented by Hollywood. For moral reformers, Arbuckle became a symbol of Hollywood, itself a symbol of modern culture's moral decline. From inappropriate depictions of women and sexuality on the screen to reports of debauchery among actors themselves (such as the party at which Arbuckle's alleged victim died), moral reformers worried that, left unchecked, Hollywood would glorify and promote such moral decay. Involving a disparate group of moral reformers—

³⁷ See, for example, Nancy F. Cott, *The Grounding of Modern Feminism* (New Haven: Yale University Press, 1987).

³⁸ Martha Patterson, *American New Woman Revisited*.

including both women's groups and religious leaders—the argument became specifically about movie censorship and more broadly about who would properly be the caretakers of American morality. Notably, it all took place in the context of the early years of that most successful of reform efforts—Prohibition. In this trial, alcohol was a prominent feature of the party at which Arbuckle was alleged to have violated and killed the victim; ultimately, violation of Prohibition was the only crime for which he would face punishment. But Prohibition played a more nuanced role in the case, as well, as many pro-Prohibition forces attempted to build on that movement's successes in their pro-censorship campaign. Movie industry leaders, meanwhile, relied on arguments that the industry—and its audience—could self-censor, that government intrusion was unnecessary and that, consistent with what they saw as modern, individuals had the right to determine for themselves what movies to attend.

Taking these three trials together, we can begin to see the broad outlines of a 1920s era culture war, based on competing visions of modern culture. But to consider the struggle a two-sided war between nineteenth and twentieth century versions of modernity would be to simply replace one dichotomy with another. In truth, on an individual level, the sides did not break down so neatly. Among the moral reformers, for example, while there were many similarities, there were also a number of important differences: the moral concerns of the Tennessee fundamentalists, for example, were much different than those of Frances Hall and the women she represented. Similarly, Clarence Darrow and the scientists he called as witnesses in the Scopes trial had a different set of motivations than did leaders of the movie industry in their fight against censorship. More important, many Americans were not entirely invested in either of these visions of modern culture.

These were citizens less committed to fighting for a specific version of modernity and instead focused simply on searching for understanding the new cultural context, trying to find their footing in the changing landscape. For these people, these trials also served a pedagogical function; they learned some of the intricacies of both local and national culture simply by following the trials. And, of course, many people fit into more than one of these categories and filled different cultural roles at different times.

These three trials provided space for all of these participants. At times, the voices of diverse opinions came through clearly and boldly. Many scientists and religious leaders active in Dayton during the Scopes trial, for example, believed that evolutionary theory and Protestant Christianity were entirely compatible—there was room within modern culture for both. Individuals such as Unitarian minister Charles Francis Potter and Scopes defense team member Dudley Field Malone made these views clear in open court and in speeches around Dayton. But others belonged to the “silent majority.” These were the everyday people, who attended or followed the trials, but not to use them as a pulpit to put forward a point of view. As historians, we can still access these actors, but we must work, to some extent, from inference. As in any crowd, individual trial onlookers had varying points of view and we can, for the most part, only access them through the filter of the press. But there are moments in each trial when these crowds respond unpredictably and when they make their voices heard. Whether it is a group of fundamentalists rushing the agnostic attorney Clarence Darrow to shake his hand or a group of clubwomen congratulating Roscoe Arbuckle on a procedural victory, there are moments in which we can glimpse the diversity of opinions and responses to 1920s culture. In the process, we can see how these trials create an opportunity for a

conversation that is more about negotiating the new cultural terrain than it is about a zero sum culture war. One of the true values of a performance trial, in fact, is the opportunity it provides for people to move beyond the rhetoric of the extremes and create valuable and safe space in between. In the process, the trials also provide historians the opportunity to go beyond sources that privilege the most extreme voices.

This dissertation attempts to access all of these spaces by breaking down the barriers between the formal and informal aspects of these three performance trials in order to better understand the cultural fragmentation and reorganization of the early 1920s. Most prior academic and popular studies of these particular trials have focused on their formal aspects, particularly the evidence presented, who wins, and who, if anyone, goes to jail. As a result, in the popular imagination (perhaps largely guided by the play and film *Inherit the Wind*), Scopes becomes little more than a showdown between science and religion with clear and inevitable winners and losers.³⁹ Hall-Mills becomes a “whodunit” mystery; treatments of the Hall-Mills trial generally have a final chapter with the author’s “theory of the case.”⁴⁰ And for Arbuckle, in addition to questioning whether he did it, there is also a genre of popular books sympathetic to Arbuckle, chronicling the impact the “false” accusations had on his life and career.⁴¹ I attempt to avoid these traps. While science and religion are inescapable in Scopes, I will also consider the importance of the trial to those who considered themselves neither strict fundamentalists nor

³⁹ Again, for the best discussion of Scopes, see Edward J. Larson, *Summer for the Gods*.

⁴⁰ Famed attorney William Kunstler provides the most complete example, but written with an eye towards solving the mystery. William M. Kunstler, *The Hall-Mills Murder Case: The Minister and the Choir Singer* (New Brunswick: Rutgers University Press, 1964).

⁴¹ David Yallop’s work on the Arbuckle trial is, for example, extremely sympathetic to the defendant. David Yallop, *The Day the Laughter Stopped* (New York: St. Martin’s Press, 1976). More recently, Hilary Hallett has providing a fascinating cultural examination of the Arbuckle case in a chapter of her work on gender in early Hollywood. She provides particularly interesting discussion of the various and shifting representations of the alleged victim. Hilary Hallett, *Go West, Young Women: The Rise of Early Hollywood* (Berkeley: University of California Press, 2013).

scientists, as well as attempt to break down those very categories. I will not provide a theory on who murdered Edward Hall and Eleanor Mills, nor on what “really happened” in Roscoe Arbuckle’s hotel room. All of these are important formal questions; they define both the legal results and ramifications of these trials that are, after all, modes of legal conflict resolution. But I focus on their informal aspects—the establishment of each trial as a spectacle worthy of cultural comment and the social debates that they thereby made possible. It is in facilitating those conversations that these trials had their greatest cultural impact and studying them in this way can help us better understand the cultural negotiations of the time period.

To do this, I primarily use newspaper resources, as those are the same reports most contemporary onlookers were reading. I also use trial transcripts, where available and useful, as well as archival information that adds to the overall scene and understanding. The reactions of audiences within the trials are also instructive. In particular, breaking unpredictable reactions down helps us understand that they are only unpredictable if we assume the audiences are ideologically homogeneous; again, the reactions themselves are evidence of the diversity of views taking part in the debate. But it is ultimately the newspaper accounts that framed the national conversation. Indeed, due to the use of wire services, many times readers in different parts of the country were reading substantially the same words, though some newspapers included more information than others. Where there are multiple sources I could rely on, I have attempted to cite a geographical variety of newspapers to show the national nature of the coverage. For the most part, then, in order to understand the context of the cultural

moment, I attempt to use the same sources those at the time used in framing their own understanding.

In the end, this dissertation is about spectacular stories. To honor that subject matter, I use a narrative approach, highlighting the importance of character, story, and plot within the trials and how those elements gave the trials their cultural power. To this end, the first chapter for each trial provides the trial's background, the story that drew the audience in and created the spectacle, with a nod towards the issues that would become so crucial. In the second, I provide analysis of the conversation the trial allowed, in the process breaking down the "sides" and providing historical context. Of course, it does not always break down so nicely. But throughout, I try to remain true to a narrative approach as much as possible, in part for historical reasons, but also in the perhaps optimistic hope that such an approach will allow us to take a more considered look at our own narratives.

Indeed, just as the performance trial did not originate in the 1920s, it also did not disappear at the end of the decade. Throughout the twentieth century—and into the twenty-first—we have continued to experience cultural fragmentation and reorganization; it is in many ways part of the modern experience. And famous trials have continued to play an important role in understanding that experience. While there have not been many prominent clusters of sensational trials, as in the early 1920s, individual trials have continued to become public spectacles and have many times returned to some of the same basic themes present in Scopes, Hall-Mills, and Arbuckle. In 1954, for example, two years after the publication of Alfred Kinsey's famous second volume on his study of human sexuality, *Sexual Behavior in the Human Female*, Ohio doctor Sam Sheppard was

convicted of murdering his pregnant wife in a spectacle of a trial that turned on questions of adultery, marital sexual relations, and sex in the American suburbs. Concerns about the morality of American youth have also continued to proliferate, perhaps most pointedly during the turbulence of the late 1960s and early 1970s. The 1969 trial of the Chicago Seven for the disruption of the 1968 Democratic Convention put one version of that youth culture on trial, and accordingly on display for public comment. For those of my own generation, one performance trial stands above all others: the 1995 trial of O.J. Simpson for the murders of his ex-wife Nicole Brown Simpson and her boyfriend Ronald Goldman, and the inescapable questions about race and violence that it raised.

Today, we face continuing battles over such topics as the sexualization of popular culture and racial violence and inequality. The “culture wars” have evolved, certainly, and manifested in different ways. The composition of the groups of moral reformers worried about American morality continues to shift and new communications and entertainment technologies have raised new and different moral and cultural questions. But the roots of many of the cultural dilemmas that we face even today can be seen in the cultural skirmishes—and performance trials—of the 1920s. As we continue to struggle with our version of these culture wars, perhaps we can find some guidance in the various ways non-extremists used the Scopes, Hall-Mills, and Arbuckle trials to both understand their cultural surroundings and take control of their situations. Most of all, as we face a culture that appears to have left us unmoored ourselves, maybe we can learn from that hard work Americans in the early 1920s undertook to understand and shape a changing culture, even when we disagree with their goals. Perhaps the quietly complicated nature

of these trials can help show the middle way—that precious space in between—to those interested not in the destruction of current culture, but in the creation of a vibrant future.

CHAPTER ONE

Scopes: Creating a Scene

It was a surreal scene: Louise Hunter, prima donna of the Atlanta Municipal Light Opera, sat on a couch next to a well-dressed chimpanzee named ‘Spooky.’ They were not on stage, nor filming a movie, and there would be no public singing—at least, not from the soprano. It was a performance of a different sort that brought these two together, a performance that was to take place weeks later and hundreds of miles away. As the reporter Paul Stevenson put it in his article about this almost certainly made-for-press encounter, “Here is beauty, likewise the beast. They should be used as exhibits ‘A’ and ‘B’ in that notable farce comedy ‘Was Darwin Right?’ or ‘Who Was Darwin, Anyway?’ which is opening for an indefinite run at the Courthouse theater, Dayton, Tenn.”¹

Whether farce or tragedy, *The State of Tennessee vs. John Scopes* was indeed a performance. Today, it almost goes without saying that “celebrity” trials are cultural events.² That fascination did not begin with Scopes—the lineage of American interest in trial extends well beyond the 1920s. But even in that context of a deep-seated American interest in trial, the Scopes trial is still jarring. It is true that both before and after Scopes, there have been examples of trials in which the informal pomp of the proceedings—from the ballyhoo surrounding them, to the performances themselves, to the media coverage of

¹ Paul Stevenson, “Pretty Opera Star Reads About Evolution To ‘Spooky,’ One of the Topics of Dissent,” *Atlanta Constitution*, July 5, 1925, 7.

² See, for example, Robert A. Ferguson, *The Trial in American Life* (Chicago: The University of Chicago Press, 2007). Ferguson studies a series of high-profile trials (including an abbreviated discussion of *Scopes*, though *Scopes* is not one of the trials he chooses to focus on), attempting to assess both their legal significance and their cultural impact.

the events—came to overshadow the formal legal case itself. But Scopes took this one step further: in Scopes, there was virtually no legal case at all. The participants in the Scopes trial were rarely concerned about performing for the jury, the judge, or other legal decision-makers. Instead, the external performances, for the audience, the press, and, for the first time, radio microphones, were the point; it was a trial created and litigated with its informal aspects consistently at the forefront. The future of the defendant himself was, at best, secondary to broader social issues such as local control of schools, the relationship between evolutionary theory and Protestant Christianity, and the potential moral dangers in a culture facing shifting priorities. As a result, Scopes became one of the most famous and enduring performance trials in American history, the perfect example of how a legal proceeding can become instead a cultural moment—and opportunity. It is, in some ways, the epitome of a performance trial. And yet, Scopes is also a reminder even the most spectacular of performance trials are still entrenched in formal law; that is the feature of the forum that gives it such legitimacy. Indeed, the Scopes drama would never have happened without, first, the passage of a state statute, one of the most formal legal actions possible.

Tennessee was not the first state to attempt to criminalize the teaching of evolution. Three years earlier, the Kentucky legislature considered a bill that would have outlawed the teaching of evolution in that state, coincidentally the home state of future defendant John Scopes. It was an effort that made some strategic sense; it was a natural progression.³ It was 1922, after all, and the nation remained squarely in the shadow of the most successful attempt to use law to enforce morality in American history: the

³ See Jeffrey P. Moran, *The Scopes Trial: A Brief History with Documents* (Boston: Bedford/St. Martin's, 2002).

passage of the Prohibition Amendment. While that success would eventually, of course, be undone, at the time the precedent was clear: moral reform via legislative action could be tremendously successful. The antievolutionists could position themselves as reformers, using the law much as the Progressives and Prohibitionists had before them. Led by fundamentalist Protestants, the primary goal was to resist what they saw as an attack on Biblical literalism and supremacy, a critical threat because to them it was an attack on the Biblical foundation of a national moral code. Still, the opposition in Kentucky was strong and organized, and despite the support of antievolution crusader William Jennings Bryan, including his appearance in front of the Kentucky legislature, the measure failed by two votes.

It was a setback for the antievolutionists, but not a permanent one. Led by Bryan, fundamentalists in a number of states, particularly Oklahoma and Florida, pushed for antievolution statutes in 1923, but could only pass non-binding resolutions (in Florida's case) and amendments to textbook laws (in Oklahoma).⁴ Attention then turned to Tennessee and North Carolina, with Tennessee providing a particularly compelling target. And in January 1925, a Tennessee state representative named John Washington Butler officially brought antievolution legislation back to national prominence. Butler proposed what became known as the Butler Act, a law that would prohibit the teaching of evolution in Tennessee public schools. There was significant debate over the structure of the legislation. Bryan, still on the front lines of the effort, in particular argued against including criminal penalties in the bill, concerned that such penalties could provide a

⁴ Edward J. Larson, *Summer for the Gods: The Scopes Trial and America's Continuing Debate Over Science and Religion* (New York: Basic Books, 1997), 47-48.

convenient focus for the law's opponents.⁵ But when Tennessee Governor Austin Peay signed the Butler Act into law in March of 1925, the hard-liners had won. It became a misdemeanor in the state to teach "any theory that denies the story of the Divine creation of man as taught in the Bible, and to teach instead that man has descended from a lower order of animals."⁶

The opposition did not disappear with the passage of the law, however. In particular, the American Civil Liberties Union responded quickly, issuing a statement searching for a teacher willing to serve as a defendant in a test case challenging the law.⁷ The details of how Scopes himself became that defendant are somewhat murky, as the story of his entrance into the drama has become apocryphal. But George Rappleyea, a Dayton resident and former New Yorker who managed local mines, apparently saw the A.C.L.U.'s press release and brought it to the attention of two other Dayton leaders, the town druggist (and school board member) Frank E. Robinson and School Superintendent Walter White.⁸ While the three had varying views of the law itself, they each saw the opportunity for publicity and profit for Dayton and contacted the A.C.L.U. to indicate their interest in hosting such a trial. Days later, they summoned the 24-year-old local science teacher John T. Scopes to the drugstore. When he arrived, a number of Dayton residents were discussing the law. The New York Times later reported, "Professor Scopes stated that Dr. J. [sic] W. Rappleyea asked if he would be willing to submit to arrest to test the law, and he consented."⁹

⁵ Larson, *Summer for the Gods*, 54.

⁶ "Fights Evolution to Uphold Bible," *New York Times*, July 6, 1925, E1.

⁷ Larson, *Summer for the Gods*, 83.

⁸ Larson has a good description of this version of the events. Larson, *Summer for the Gods*, 88-89.

⁹ "Scopes Explains His Evolution View," *New York Times*, March 28, 1925, 3.

In every other famous criminal trial of the early twentieth century, the defendant was the star. Scopes, however, was an accidental defendant from the beginning. A first-year teacher at Central High School in Dayton, Scopes was not the regular biology teacher; he taught chemistry, algebra, and physics and coached the football team. Scopes later recalled that he was not even supposed to be in Dayton after the conclusion of the school year. He stayed behind to help two of his students who had been injured in a car accident and because a young woman in whom he had an interest invited him to a church social.¹⁰ His accidental presence, then, made him a potential defendant. Even more convenient, Scopes *had* taught biology near the end of the school year—he had covered classes for the ill regular biology teacher, Mr. Ferguson, who was also the school principal, though it was unclear whether the units Scopes covered had actually included evolutionary theory. As Scopes himself admitted, “I didn’t know, technically, whether I had violated the law or not.”¹¹ Regardless, finally, and most important, Scopes was willing to serve as defendant. He opposed the law and had little personally to lose. As Scopes later wrote of the principal Ferguson, who was married and had children, “He had something tangible to lose, and he felt first responsibility to his family, as he should have. After him, I was the next logical defendant. I was a bachelor.”¹²

In the end, it did not much matter who the defendant was; Scopes himself was largely an afterthought. The trial planning had, at the very least, begun by the time he consented to be tried—Rappleyea, Robinson, and Wright contacted the ACLU before they even summoned Scopes to the drugstore. Scopes was a churchgoer, though it’s not

¹⁰ John T. Scopes and James Presley, *Center of the Storm: Memoirs of John T. Scopes* (New York: Holt, Reinhart and Winston, 1967).

¹¹ Scopes and Presley, *Center of the Storm*, 59.

¹² Scopes and Presley, *Center of the Storm*, 62.

clear how serious a believer. And he opposed the Butler Act, though it is also unclear whether he realized the magnitude of the debate into which he was inserting himself. Ultimately, while the name “Scopes” would in some ways come to signify nearly the entire debate between religion and science for the next century, the man himself was little more than a curiosity before and after the trial. During the trial itself he hardly mattered. He did not take the stand in his own defense and did not participate in any of the important portions of the trial. Scopes spoke only once in court—after the verdict had been read and he had been sentenced, saying, “Your Honor, I feel that I have been convicted of violating an unjust statute,” and promising to continue to oppose the law “in any way I can.”¹³ With the exception of that statement, Scopes’s presence in the courtroom was hardly necessary.

Still, now that Dayton had found its defendant, the trial effort—and the performance surrounding it—could push forward. Preparations hit a roadblock early in the process, when it appeared the trial might be moved to a federal court in Chattanooga. But on the afternoon of July 6, 1925, Dayton received the news the town longed to hear. Fittingly, the news would spread from Robinson’s drug store, the site where the plan was initially hatched. According to the Atlanta Constitution, “Just before dinnertime,” the clerk of the drugstore emerged from the shop with a bucket of paint and put the message on the window that the town wanted to hear: “Judge Gore refuses to grant injunction.”¹⁴

¹³ *The World’s Most Famous Court Trial: State of Tennessee v. John Thomas Scopes, Complete Stenographic Report of the Court Test of the Tennessee Anti-Evolution Act* (New York: Da Capo Press, 1971), 313. Hereinafter noted as *Transcript*.

¹⁴ “Dayton’s Pride and Pocket Saved by Gore’s Decision,” *The Atlanta Constitution*, July 7, 1925, 3.

Dayton residents knew what this meant: Dayton “was going to be able to make good of her boast of being the ‘center of the world’s attention.’”¹⁵

Indeed, as the trial approached, the attention, both for Dayton and for Scopes himself, reached national proportions. Scores of reporters and onlookers flocked to Dayton, including more than a few actual monkeys and at least one giant ape.¹⁶ Newspapers described the scene, as entrepreneurs and theater groups set up stage shows and monkey exhibits on the Dayton town lawn, while “Children play about with lifelike monkeys with long tails. The moving-picture men got a group of pretty girls this morning, decorated them with monkeys and took their pictures.”¹⁷ The town went so far as to request National Guard troops in preparation for the crowd.¹⁸ The Guard would not, in the end, be necessary; the crowd was, by the standards set by Dayton town leaders, disappointingly small. But that very standard itself sets Scopes apart from any trial that preceded it. Indeed, when determining the level of excitement in the town or number of observers who turned out to watch, onlookers did not compare Scopes to other trials, legal proceedings, or community affairs events. Instead, reporters looked to a different type of event: a prizefight, specifically the fight between Jack Dempsey and Tommy Gibbons held in Shelby, Montana two years earlier.¹⁹ By those standards, the crowd may have been disappointing. But the very fact that a trial was being held to those standards was significant. This truly was an eagerly anticipated prizefight, seemingly between evolution and “old-time” religion, waged in public, in a highly regulated performing space that left room for plenty of spectacle. The public’s anticipation of and fascination

¹⁵ *Ibid.*

¹⁶ “Giant Ape En Route to Trial of Scopes Will Be Shown Off,” *The Atlanta Constitution*, July 14, 1925, 2.

¹⁷ “Dayton Keyed Up For Opening Today of Scopes Trial,” *The New York Times*, July 10, 1925, 1.

¹⁸ “Evolution Trial Troops Refused,” *The Atlanta Constitution*, June 21, 1925, 4.

¹⁹ “Excitement of Shelby Missing in Dayton on Eve of Trial,” *The Atlanta Constitution*, July 10, 1925, 1.

with the Scopes trial was hard to deny. All that was left was the proceeding itself and it would, like any American trial, begin with its most formal interaction with the public: the selection of the jury.

The American trial's use of the jury has long been the source of great fascination. In some ways the most important people in the courtroom, jurors also have the least training in formal legal procedures and rules.²⁰ At times unpredictable, the jury is the source of much of the drama in a typical case; it is, after all, the primary audience. Further, the presence of a "jury of your peers" brings laypeople into the courtroom, providing a site at which the legal process and its informal onlookers officially cross paths. It is, in short, where formal law and informal legal and cultural observations meet and intersect in a typical case. The Judge determines questions of formal law and the attorneys, as officers of the court, are constrained by formal legal rules. But in the end, it is the jury, guided by its own sometimes surprising perspective, derived by its members' informal understandings of the legal issues, that makes the most important decision.

Here again, the performance trial, especially Scopes, is different. Even more striking than the near-absence of Scopes himself from the trial record, in fact, was the near-absence of the jury from the vast majority of the proceedings. There was some drama in the selection of the jury—the defense used a peremptory challenge to eliminate one juror, for example, who indicated a strong stance on evolution and, after some legal wrangling, a local minister was dismissed from the jury by the court.²¹ But by the end of the first day, jury selection was complete. While, for procedural reasons, the jury would not officially be sworn until the second day of the trial, the jury selection process itself

²⁰ Friedman, *American Lawn in the 20th Century*, 87. See also Robert A. Ferguson, *The Trial in American Life*, p. 52.

²¹ *Transcript*, 15, 21

took only one afternoon session. And once it was complete, the jury's time as the most important people in the courtroom was over.

In fact, the jury of “nine farmers, one school teacher and farmer combined, one fruit grower and one shipping clerk,”²² missed the vast majority of the trial's testimony. The jury was not present for any of the scientific testimony, all of which was ultimately ruled inadmissible as irrelevant to the question of Scopes's guilt, a crucial point in a case that served as a forum for a cultural dialogue about creation and evolution, as well as religion and science more broadly. Ultimately, the Scopes trial lasted for eight days' worth of court time. In that time, the jury was present in the courtroom for a total of just over 3 *hours*. When it came time for the jury to do its job, its irrelevance again became apparent. The jury deliberated only nine minutes before finding Scopes guilty.²³ It was, in effect, instructed to find for the prosecution, not only by the court, but also by the defense attorneys. As lead defense attorney Clarence Darrow put it,

We have all been here quite a while and I say it in perfectly good faith, we have no witnesses to offer, no proof to offer on the issues that the court has laid down here, that Mr. Scopes did teach what the children said he taught, that man descended from a lower order of animals—we do not mean to contradict that, and I think to save time we will ask the court to bring in the jury and instruct the jury to find the defendant guilty.²⁴

More than anything else in the trial, then, the insignificance of the defendant and the jury mark the Scopes case as a rare type of legal performance. The guilt or innocence of Scopes was never the primary focus of the trial. As a result, the courtroom, which had often come to play a dual role in high-profile cases, in *this* case was almost exclusively a stage. But one other key fact shows that the Scopes participants almost certainly

²² “Jury Selected in Scopes Case,” *Christian Science Monitor*, July 11, 1925, 4.

²³ *Transcript*, 312.

²⁴ *Transcript*, 306.

understood that this courtroom was more a site of cultural performance than of legal determination: the room itself was rearranged to allow for the broadest possible audience. The jury box was moved from its customary central location to make space for three microphones, which broadcast the proceedings to loudspeakers outside the courthouse, to three public auditoriums around town, and to the airwaves of Chicago, via special telephone lines paid for by WGN; it was the first time in American history that a trial would be broadcast live via radio.²⁵ This audience, then, while physically outside the courtroom, was given a central location, a better “seat” than the jury. In fact, given the jury’s almost complete absence from the courtroom, the jurors likely “saw” less of the performance than virtually anyone else in town—or even observers in an entirely different part of the country. The jury would still “decide” Scopes’s guilt or innocence, but the broader cultural role in this trial was transferred to the public at large, to be discussed and negotiated for decades. This performance, in other words, was no longer for the jury, but was instead for the audience, whether within the gallery itself or following via radio or newspaper from a distance. Further, the presence of the radio microphones was particularly notable to the local Scopes audience for another reason. The popularity of radio was growing rapidly in the mid 1920s, particularly among religious leaders and churches. As the historian Tona J. Hangen has noted, “By 1924, a church or religious organization held one out of every 14 licenses; the number of stations operated by religious groups climbed from 29 in 1924 to 71 in 1925. In that year churches or other religious organizations controlled 10 percent of the more than 600 radio

²⁵ Larson, *Summer for the Gods*, 140.

stations in the United States.”²⁶ Given this context, there is little doubt that the Scopes audience understood the communicative power this new medium represented and the symbolic importance of its central location in the courtroom.

Radio’s presence in the courtroom was, of course, neither inevitable nor an accident. The decision to allow radio came from the one man who had the power to restrict the scope of the trial to its formal questions. Judge John T. Raulston presided over Scopes from the beginning of the trial. He issued numerous formal rulings during the course of the case, ranging from allowing the radio microphones to rulings on the admissibility of expert testimony (most of which he ruled inadmissible), to whether the jury would be present to witness key moments, to the punishment Scopes would ultimately face (a \$100 fine). The courtroom, in other words, was under his control. How could he, then, have allowed the trial to drift so far from the facts, to allow the performative aspects of the trial to so overwhelm the legal? How and why, in other words, did Raulston allow himself to go from Judge to Master of Ceremonies?

A partial answer may have crystallized after the trial was over. Raulston, it turns out, was a fundamentalist. In addition to insisting that court open each day with a prayer (which was custom in some southern courtrooms, but certainly not required), Raulston also referred to his religious beliefs throughout the trial.²⁷ After the trial, his beliefs became even clearer. In a series of articles, he challenged evolution and those who believed in it, including publishing a list of questions about the theory for Scopes defense

²⁶ Tona J. Hangen, *Redeeming the Dial: Radio, Religion, & Popular Culture in America* (Chapel Hill: The University of North Carolina Press, 2002), 22. On the social impact of listening to the radio in the 1920s, see Susan J. Douglas, *Listening In: Radio and the American Imagination* (Minneapolis: University of Minnesota Press, 1999), 55. On the institutional development of radio as a commercial business in the 1920s, see John Durham Peters, *Speaking Into the Air: A History of the Idea of Communications* (Chicago: University of Chicago Press, 1999), 206.

²⁷ *Transcript*, 226.

attorneys to answer.²⁸ Raulston, then, may have had an interest in giving antievolutionists this public forum in which to present (and perform) their case and defend their beliefs, led by prosecution team guest Bryan, the leading antievolutionist figure of the day. Indeed, after the conclusion of the trial, Bryan made a point of visiting Raulston's hometown, Winchester, Tennessee, to host a luncheon and speech with 132 "gentlemen of Winchester and three adjoining towns."²⁹ While a full guest list is not available, Bryan's wife, Mary Baird Bryan, notes that she enjoyed lunch that day with a particular special guest—"Mrs. Judge Raulston and other friends."³⁰

Scopes's lead defense attorney Clarence Darrow, meanwhile, believed Raulston had a different motivation. Raulston, Darrow pointed out, was up for re-election in the fall of 1925. As Darrow put it, "The trial was part of his campaign."³¹ Raulston would, in fact, eventually consider running for Governor of Tennessee, primarily on an antievolution platform.³² Like the trial's other performers, then, Raulston's motives appear to be a combination of sincere belief and opportunism; he wanted the discourse to take place and wanted to be an important part of the drama.

With the Judge embracing the trial's spectacle and the jury and defendant playing unusually diminished roles, the stage was set for the participants who would become the true stars of the performance: the lawyers. Clarence Darrow was one of the most famous trial lawyers in the United States. He had been involved in numerous high-profile cases,

²⁸ "Raulston Quizzes Evolution Champions Through the Press," *Atlanta Constitution*, August 26, 1925, 1.

²⁹ William Jennings Bryan and Mary Baird Bryan, *The Memoirs of William Jennings Bryan* (Chicago: The John Winston Co., 1925). These memoirs were begun by William Jennings Bryan, then completed by his wife Mary Baird Bryan after his death. This section was written by Mary Baird Bryan.

³⁰ *Ibid.*

³¹ "Raulston Charged with Using Trial as Reelection Aid," *Atlanta Constitution*, August 12, 1925, 1.

³² "Scopes Judge My Run for Governor of Tennessee," *Atlanta Constitution*, October 7, 1925, 11.

gaining a reputation as a “champion of the minority” with a “passion for lost causes.”³³

He had access to virtually every public forum and newspaper in the country. Tiny Dayton, Tennessee was not necessarily a logical place for his next big trial. And yet, neither Scopes nor Rappleyea had to work hard to convince Darrow to take the case. Darrow, in fact, contacted them to volunteer his services.³⁴ Once Scopes accepted the offer (after some discussion with the A.C.L.U., which was unsure about having a confirmed agnostic on the defense team), Darrow became the lead defense attorney, active throughout the case both in the courtroom itself and in a variety of public forums around Dayton.

The star member of the prosecution, meanwhile, was even more famous than Darrow. William Jennings Bryan was a three-time Presidential candidate famous for his oratory and his status as a larger-than-life “man of the people”—his nickname, often used in coverage of the Scopes trial, was “the Great Commoner.” Bryan, too, was a willing participant in the trial. In some ways, in fact, his participation was the key. Dayton’s town boosters knew that Bryan had been vocal in his fundamentalist beliefs and an outspoken supporter of the Butler Act (as well as the prior attempts at antievolution legislation in other states). They also knew that if they could convince him to come to Dayton for the trial, their goal of creating an event that would publicize the town would be much more realistic. It was rare for an outside counsel to join the prosecution—typically, the case would be prosecuted by the local District Attorney. But Bryan was an exception, and his arrival ensured that the Scopes trial would not be an ordinary one. Unlike Darrow, Bryan did not frequently participate in the proceedings themselves. But

³³ Russell Owen, “Darrow Likes to Fight for Lost Causes,” *New York Times*, July 26, 1925, SM3.

³⁴ “Dudley and Malone Ready to Aid Scopes,” *Atlanta Constitution*, May 28, 1925.

his presence was enough. Defense attorneys referred to Bryan several times throughout the trial, making him a central figure in the case.³⁵ Bryan also maintained a visible public presence throughout the trial, primarily through strong quotes given to the assembled reporters and speeches throughout the area on days when the court was adjourned.³⁶

The best example of the central role these key figures played, however, came on the afternoon of the trial's most fascinating day. Monday, July 20, 1925 was a unique day, even by Scopes trial standards. At the beginning of the afternoon session, Judge Raulston announced that the court would adjourn and reconvene "down in the yard."³⁷ The announcement must have surprised and excited the crowd outside. After days of being relegated to listening to the proceedings via loudspeakers, those who could not get into the courtroom would finally have the opportunity to see the action first-hand. The day would only get more compelling. After reading a series of scientific opinions into the record, the defense made a stunning announcement: they wanted to call William Jennings Bryan to the stand as an expert witness on the Bible.³⁸ It was highly unorthodox, the defense calling a member of the prosecution team to the stand to testify on an issue that had little, if any, relevance to the guilt or innocence of the defendant. Yet Judge Raulston allowed it, outside the presence of the jury (though, by one reporter's estimate, the jury was "seated hardly fifty feet away on benches and able to hear Mr. Bryan when he raised his voice in defense of his belief").³⁹

³⁵ *Transcript*, 159, for example.

³⁶ "Darrow Charges Bryan Fled From Issue in Scopes' Trial; Bryan Defends Judge's Ruling," *Atlanta Constitution*, July 18, 1925, 16.

³⁷ *Transcript*, 227.

³⁸ *Transcript*, 284.

³⁹ "Big Crowd Watches Trial Under Trees," *New York Times*, July 21, 1925, 1.

This is what the crowd had come to see—Darrow directly challenging Bryan on various aspects of Bryan’s fundamentalist beliefs—and it enjoyed every minute. Onlookers reportedly “pushed close to the wooden platform beside the courthouse as the verbal sword of the two clashed time and again, sending off flashes that drew volleys of hand-clapping and booming mountain fox calls.”⁴⁰ It was the climax of the trial and would be a one-time opportunity. Though Darrow had not finished his questioning by the end of the session (and, in fact, Bryan intended to call Darrow to the stand in response), Judge Raulston ended the performance the next morning, declaring the questioning inadmissible.⁴¹ To the crowd, however, that formal legal ruling did not matter. The performance had been for their benefit from the beginning, after all, and they had already witnessed it.

The audience is a crucial part of any performance, but it is particularly important in a performance trial—there cannot be a public discourse unless the public is involved. While the crowds never reached the proportions the Dayton elite hoped they would, large numbers of spectators did gather outside the courtroom in a carnival atmosphere, singing, preaching, carrying signs, and at times celebrating the absurd. But this was not solely a spectacle, and not only a local discourse, such as that which took place every day within drugstores, schools, and churches. It became instead a national conversation on an enormous stage. The conversation stretched across the courtroom, into the courtyard, onto the pages of the nation’s newspapers, and across at least some radio airwaves. In many ways, a courtroom was particularly well suited to create such a public space as the legal formality provided a legitimacy that no other space could provide. WGN would not

⁴⁰ “Bryan and Darrow in Bitter Religious Clash as Commoner is Quizzed on his Bible Views,” *Atlanta Constitution*, July 21, 1925, 1.

⁴¹ *Transcript*, 305.

have spent \$1,000 a day to broadcast a debate among locals in a drugstore, for example, and no church speech could draw a crowd this diverse.

The Scopes audience used this space in a variety of ways. It would be easy to dismiss the audience as a passive participant but as with most performance trials, that was not the case in Scopes. In fact, the trial's audience consistently made its presence known, often, as we will see, in unexpected ways. In the process, the crowd helped illuminate the complex nature of the issues at stake in the trial, and redefined both what the trial meant and what it was "about." In that way, the audience may have been the most important participant in the Scopes trial, as the question of what Scopes was "about" is more complicated than it may seem.

Of course, most dramatically and obviously, the Scopes trial publicized and promoted a brewing debate between religion and science. This is the most traditional reading of the trial and the most common justification for its historical relevance and resilience. Certainly, as the historian of religion Edward Larson has most effectively shown, this is a crucial part of the Scopes trial's legacy.⁴² But Scopes also enabled a much more complex cultural discussion that went well beyond the dualistic science/religion debate. While Chapter Two will consider this in much more detail, for now it is sufficient to note that the Scopes trial was in part a conversation about cultural transition, in particular about a shift in the key priorities and values of modern American culture and concern from some parts of the population about the moral ramifications of that change. By placing Scopes into this context we can better understand the conversation it facilitated, as well as the parties involved. For some, at the extremes, it was a battle for survival, whether for either evangelical Protestant religion or the future of

⁴² Larson, *Summer for the Gods*.

scientific thought. For others, the trial was instead a way to attempt to come to terms with a seemingly fractured—or at least shifting—culture, to better understand the role of religion and science (as well as other institutions) in that new reality, and to challenge what could be perceived as the dangers of pure reliance on either extreme. Further, by considering the broader context of the trial, we can begin to see a number of foundational issues lurking below the science/religion debate. From the defense team’s strong support for and reliance on expert testimony to the prosecution’s support for local control of education, for example, a number of these important issues will become clearer when we consider the trial in this framework.

One of these issues has, like the science/religion debate, frequently caught the attention of historians: the lingering memory of the Civil War and its role in the continued sectional fractures in the United States of the mid-1920s. Scopes himself recalled in his memoirs that, growing up, “The Civil War remained a vivid memory even then, and the North-South division was a real one that still inspired occasional violence.”⁴³ Even someone as young as Scopes had grown up in the shadow of the Civil War, a memory that remained in his consciousness even into the 1960s, when he wrote his memoir. While the existence of regional differences and tensions is no surprise—they are with us still today—the trial was indeed a rare opportunity for people to get a broader national view of the fractures and discuss them openly, perhaps in the process gaining a better understanding of the reasons for their persistence.

On the surface, the regional implications of the Scopes trial seem relatively clear. All of the attorneys representing Scopes, for example, were from the North. Darrow himself was from Chicago and Stephen Dudley Malone, his second-in-command, was

⁴³ Scopes and Presley, *Center of the Storm*, 18.

from New York City. The prosecution, on the other hand, was predominantly local (and therefore Southern), with the exception of Bryan, who lived in Florida but was born in Nebraska. The division could not be ignored. It was referred to virtually every day the court was in session, usually thinly shrouded in a layer of irony. There were multiple references to “the way you do things up there” and “the gentlemen from the North.”⁴⁴ In one striking example, on the fifth day of the proceedings, prosecutor Sue K. Hicks argued against the admissibility of expert testimony by stating:

I do not know about where these foreign gentlemen come from, but I say this in defense of the state...the most ignorant man of Tennessee is a highly educated, polished gentleman compared to the most ignorant man in some of our northern states, because of the fact that the ignorant man in Tennessee is a man without an opportunity, but the men in our northern states, the northern man in some of our larger northern cities have the opportunity without the brain.⁴⁵

The transcript notes that the comment was met with laughter. This type of needling was common in the trial. Darrow’s appearance became a common topic of fascination, for example. Just as Northern newspapers commented on the style of dress of the rural audience, Southern newspapers noticed Darrow’s slightly more formal attire. The banter over his ever-present suspenders became a common enough topic of conversation that Darrow’s wife, Ruby, teased him about it from afar, attaching a light-hearted and (perhaps surprisingly) friendly Chattanooga Times article analyzing Darrow’s ever-present “galluses” and Northern style of dress to a letter she sent from Chicago.⁴⁶ Of course, Bryan’s method of holding up his pants did not escape its own attention, from the New York Times. Compared to Darrow, who wore his suspenders and shirt-sleeves unabashedly, “Bryan, it is alleged, has been not exactly honest in the matter of

⁴⁴ Some particularly strong examples: *Transcript*, 97, 165, 221.

⁴⁵ *Transcript*, 165.

⁴⁶ Darrow Family Scrapbooks, Box 4, *Clarence Darrow Papers* (Newberry Library, Chicago).

suspenders, for he is accused of wearing a new kind which go under the shirt.”⁴⁷ These tongue-partially-in-cheek moments were meant to lighten the tension, in some ways, but did so by playing up the regional and cultural differences between the two legal teams. At the same time, they referred to cultural signifiers that were universal enough to draw laughter not just from an elite Northern attorney and his family, but also an audience full of mostly rural Southerners.

Of course, the newspapers themselves also provided examples of the sectional fractures and assumptions that dominated the Scopes context. The New York Times covered the trial closely, reporting on it every day while it was in session. In virtually every article, there was some sectional language. In particular, the Times frequently described the rural visitors to Dayton, who came from all over the South, as hillbillies and mountain men. The newspaper’s coverage of the first day of the trial began, for example, “Tennessee came to Dayton today in overalls, gingham and black to attend the trial of John Thomas Scopes for the teaching of evolution.”⁴⁸ Days later, the paper reported that, by the third day of the trial, the crowd was different. “[A]t least it appeared different. They were better dressed. Instead of overalls and gingham, worn as if the spectators had just left field and kitchen, today’s crowd came in Sunday clothes.” Unable to leave it at that, the article continues, “They were, to be sure, in shirt sleeves, but that is good form here, where the ‘best people’ eat their Sunday dinners so.”⁴⁹ Indeed, even the headlines show the importance of sectionalism in the discourse about the trial. New York Times headlines about the case included “Dayton’s Remote Mountaineers Fear

⁴⁷ “Excitement of Shelby Missing in Dayton on Eve of Trial,” *The New York Times*, July 10, 1925, 1.

⁴⁸ “Cranks and Freaks Flock to Dayton,” *New York Times*, July 11, 1925, 1.

⁴⁹ “Crowds Jam Court to See Champions,” *New York Times*, July 14, 1925, 1.

Science”⁵⁰ and “Mountaineers Won’t Hear Arguments on Evolution.”⁵¹ Similarly, on the day the jury was selected, the New York Times article was headlined “Farmers Will Try Teacher.”⁵² For comparison’s sake, the headline of the Christian Science Monitor on the same day was the much more generic: “Jury Selected in Scopes Case.”⁵³ The New York Times was not alone. H.L. Mencken, the famous syndicated columnist and editor of The American Mercury was particularly brutal, reportedly referring to the Tennesseans publicly as “morons,” “hillbillies,” “yokels,” and “peasants.”⁵⁴ Enough “newspapermen” criticized the town and, by extension, the region, in fact, that Bryan told a crowd gathered in Pikeville, Tennessee, 20 miles from Dayton, “I wish that I could have dragged them here and placed them face to face with a humanity they cannot imitate.”⁵⁵ These Southern “hillbillies” may be less polished, in other words, than their Northern counterparts, but they were also the guardians of true, authentic humanity. Each side was certain that the other was simply ignorant; they had not experienced, and therefore did not understand, the superiority of Northern culture or, alternatively, Southern humanity. The trial and the opportunity for publicity surrounding it were an occasion to put the best of each culture on display.

Scopes, then, does indeed provide a convenient snapshot of the sectional fractures of the early 1920s. But the trial did more than simply put those surface cracks on display. It also provided a way to begin to break them down, to better understand the roots of the disputes that existed beneath the surface. First, while it is true that the sectional context

⁵⁰ “Dayton’s Remote Mountaineers Fear Science,” *New York Times*, July 19, 1925, XX3.

⁵¹ “Mountaineers Won’t Hear Arguments on Evolution,” *New York Times*, July 12, 1925, X16.

⁵² “Farmers Will Try Teacher,” *New York Times*, July 11, 1925.

⁵³ “Jury Selected in Scopes Case,” *Christian Science Monitor*, July 11, 1925, 4. Notably, the subheading for this article was: “Nine of Panel are Farmers and Only One is Not Member of Some Church.”

⁵⁴ “Mencken Epithets Rouse Dayton’s Ire,” *New York Times*, July 17, 1925, 3.

⁵⁵ “Tennessee Culture Defended by Bryan,” *New York Times*, July 20, 1925, 2.

of the trial matters, Scopes also shows that this context was not static. The development of a more unified national culture was challenging the traditionally understood North/South cultural dichotomy in ways that were unsettling to some, particularly those seemingly on the “losing” side of the change. The trial, in part, not only put the sectional dichotomy on display but also allowed an opportunity for those who felt threatened by the cultural changes surrounding the unification to present their defense. This was due in part to the presence of the cadre of print reporters from around the country, interacting with each other and locals and, at times accidentally, allowing participants like Bryan to give his throaty defense of the culture of the Tennesseans.

Just as important, though in a somewhat subtler manner, the presence of the WGN microphones also provided a way to challenge Northern assumptions about Southerners. These microphones did more than transmit the proceedings to an audience in Chicago. They, in the process, allowed that Northern audience entrance into the courtroom, a key Southern cultural site. It was not an unfiltered experience—the broadcast had a host, Quin Ryan, who included commentary at times. And it was not complete; the wires were not always reliable and the broadcast’s clarity depended on the power of the microphones themselves. Finally, the audience was, to an extent, self-selecting and difficult to define or estimate. But while few specific numbers exist to approximate the exact radio audience for the Scopes trial, the trial took place during an explosion in popularity for the medium, particularly in Chicago. Months before the Scopes trial, in November of 1924, almost 140,000 people attended the Chicago Radio Show to view over 250 exhibits dedicated to radio technology and products, situating the

city as the “radio hub of the world.”⁵⁶ Over 600 radio stations existed in the United States by 1925, though many were unregulated.⁵⁷ By some estimates, over 3 million radio sets were being used by 1924 to listen to baseball games, prize fights, dances, and radio shows, joined in 1925 by the Grand Ol’ Opry. For the first time, a trial joined the list of broadcast cultural events. The microphones were an invitation into the courtroom, an opportunity to not only hear the attorneys themselves but also hear the audience’s reaction—reactions that, as we will see, were not always predictable. The Northern audiences got a front row seat to a Southern cultural tradition—one familiar to them, certainly, but one in which they could also understand the differences. No audience had ever experienced a trial in this way, as Scopes was the first broadcast in any capacity via radio. It was a new type of radio drama and an early example of how this new media could make the country “smaller,” allowing multiple disparate audiences to experience the same cultural moment at the same time, even if coded in different ways.

But perhaps most important, the trial challenged the assumptions of traditional sectionalism by exhibiting that, by the 1920s (if not before), the divide was in fact not primarily regional. Even the dichotomy itself had become more complex. Rather than being easily delineated as specifically North versus South, the split had become primarily cultural: the rural vs. the urban, the country vs. the city. In this way, it was fitting that Bryan had become the strongest symbol of the trial. The only non-local member of the prosecution team, Bryan was himself not strictly Southern. Bryan, instead, was best

⁵⁶ “Welcome to the Third Annual Chicago Radio Show,” accessed June 21, 2015, Xroads.virginia.edu/~ug00/3on1/radioshow/1924show.htm.

⁵⁷ Hangen, *Redeeming the Dial*, 22. See also Susan J. Douglas, *Inventing American Broadcasting, 1899-1922* (Baltimore: Johns Hopkins University Press, 1987). See also John Durham Peters, *Speaking Into the Air*.

known as a Populist—itself a label that historians have complicated in recent years.⁵⁸

More than with a region, Bryan was most closely identified with a way of life—rural, agricultural, and traditional, though, notably, not antimodern.

On close examination, all of this came through in Bryan's participation in the trial, though perhaps most effectively symbolized by a speech he would not deliver in court. Having been embarrassed by how he represented himself on the famous "Outdoor Day," Bryan set out to make a strong statement by delivering the prosecution's closing argument. He wrote a lengthy speech, emotionally spanning a number of issues—he intended for it to be his defining moment in the trial. But he began the statement in a particular way: by lauding the "circumstances that have committed the trial to a community like this and entrusted the decision to a jury made up largely of the yeomanry of the state."⁵⁹ He went on to praise those who live "near to nature" and "the sturdy honesty and independence of those who come into daily contact with the earth."⁶⁰ Bryan, as he often did, understood the "sectional" difference as a cultural one. The "country" is where authentic resisters to the new, modernist order remained. It was, then, a fitting setting for this performance.

In the event, Bryan would never get the opportunity to make this speech in court. Darrow, perhaps knowing that Bryan would have something of this sort prepared and certainly content to allow his performance stand on the Outdoor Day, waived his right to a closing argument, meaning that the prosecution would also be denied such an opportunity. Darrow, in other words, used the procedures of formal legal culture to both keep Bryan's speech out of the formal trial record, and perhaps more important, out of

⁵⁸ Charles Postel, *The Populist Vision* (Oxford: The Oxford University Press, 2007).

⁵⁹ *Transcript*, 321.

⁶⁰ *Ibid.*

the view of the trial's audience and thereby out of the informal record, as well. Bryan would, in fact, go on to perform the speech after the trial, but without the trial to provide both a diverse audience and a sense of legitimization, it would not have the power it could have had in open court.

It is clear, then, that the Scopes trial was about much more than just law, the guilt of a young teacher, the Butler Act, or even evolution itself. It is not a coincidence that, of all the trials taking place during the same time, it is this trial's memory that has endured in popular culture, often taking on a life of its own. It is still used as one of the prototypical examples of the "famous American trial," often misremembered as little more than a fight between backward fundamentalists and clear-thinking modernists.⁶¹ All of the participants and audience members left Dayton (or, for those at home, left their kitchen tables and radios) affected by the performance, different than they were when they arrived. Even Dayton itself was changed. After the trial was complete and the crowds had left, F.E. Robinson, the druggist who owned the drugstore where the entire drama began, said, "The town has a number of improvements that will be permanent assets at small cost to town and county, while the visit of the well-informed persons attending the trial has added to our mental equipment."⁶²

And yet, one of the primary and most-overlooked lessons of Scopes is its status as a performance trial. Certainly, it is understood and assumed that the Scopes trial was "famous," a spectacle, and even historically significant. But rarely do we consider how the cultural importance of this momentous event goes beyond the religious and sectional debates apparent on the surface. Content to focus on the extremes in the debate and

⁶¹ The film version of *Inherit the Wind*, for example, is particularly guilty of this.

⁶² "Dayton Back to 'Normalcy'; Little Left of Carnival Air," *Atlanta Constitution*, July 23, 1925, 5.

position the trial as a simple showdown between traditional, Southern religious extremists and forward-looking, Northern scientific rationalists, we fail to ask some of the key questions: What, precisely, did Robinson mean when he said the trial added to the onlookers' "mental equipment"? Who were these onlookers and what guided their interest in the trial? What were the moral concerns at stake and how did those concerned use the trial to bring them to the forefront? How did the participants use the trial both to understand and to shape the cultural changes taking place around them? And finally, what did the performance reveal about a key cultural tension of its time? By expanding our focus beyond the extremes and embracing the idea that Scopes, like any performance trial, was not simply a formal legal battleground, but rather an opportunity for people to air their social and moral concerns, come to terms with the world changing around them, and better understand their place within a changing cultural context, we can use the Scopes trial to better understand the changes taking place in the early and mid 1920s.

CHAPTER TWO

Scopes: Complicating the Stakes

On June 26, 1925, precisely one month before *The State of Tennessee vs. John Scopes* would begin, a member of the Scopes defense team, Dudley Field Malone, attended a luncheon in Atlanta, Georgia. Predictably, Tennessee's anti-evolution law and the imminent trial of high school science teacher John Scopes for violating that law was the primary topic of conversation. Even on that occasion, the battle lines were clear. Malone intended, both at the luncheon and at the trial, to attack the antievolutionist beliefs of Protestant fundamentalism, particularly as led and represented by prosecution team member William Jennings Bryan. As Malone put it, "I admire Bryan personally very much and think the man is sincere in his views on the Bible. The anti-evolution law, however, I believe was passed through the hypnotic influence Bryan is always able to exercise over people who do not think for themselves."¹

But on closer examination, the intricacies lurking behind the battle lines were also clear that afternoon. Malone, ultimately, was relatively moderate in his remarks that day, notably emphasizing that he considered himself a true Christian and that his offer to help defend Scopes was not an attack on religion, but rather "because he believes the statute undemocratic, un-American, and a matter which affects the entire nation."² He attempted to distance himself from a direct clash between science and Christianity in general and instead limited his attack to a certain type of religion, the one promoted via Bryan's

¹ "Bryan is Capitalizing Views on Christianity, Says Malone," *Atlanta Constitution*, June 26, 1925.

² *Ibid.*

“hypnotic influence.” Most important, it was crucial to Malone that he identify himself not just as an evolutionist, but also as a “Christian.” In the process, Malone became a perfect symbol of the Scopes trial itself—given the opportunity to create his own representation, Malone chose not to be singularly labeled as a “modernist” or a “Christian.” He was both. It was a fitting preview for the trial to come. While the Scopes trial may seem at first glance to be a battleground for a fight between two poles, it in fact left extensive space between the extremes. Like Malone, many of the trial’s participants and onlookers—even the controversial Bryan himself—did not fit as neatly into their predetermined roles as we might assume. The motives of the “traditional moral reformers” and the “pro-science modernists” often intersected, evolved, and even overlapped, with both sides frequently using similar language to make their cases. Finally, even the most extremist fundamentalists were not, in fact, “traditional.” Indeed, much of the power—and, perhaps, danger—in their arguments came from their effective use of modern language and approaches. There were indeed “sides” in Dayton, Tennessee, but as Malone’s ambivalence suggests, those sides were more complicated than a simple duality can capture. A significant portion of the value of the trial as a cultural text is located within those complications.

At its foundation, of course, the Scopes trial was indeed a key symbol in a continuing fight between science and Protestant Christian fundamentalism. From the makeshift stage outside the Rhea County Courthouse on which Protestant ministers gave daily sermons to the giant “Read Your Bible” banner displayed on the nearby town green, religion was never far from the center of the trial’s public face.³ Even today, the memory of the trial is often used to represent the seemingly never-ending debate between various

³ “Big Crowd Watches Trial Under Trees,” *New York Times*, July 21, 1925, 1.

versions of creationism and evolution, particularly in the educational setting. And certainly, many of the contemporary participants consciously emphasized and symbolized that clash. But as Malone's statement suggests, the issues in Scopes went much deeper—a depth that the trial's audience and participants readily understood. In fact, many of the deeper issues had been percolating for decades and had gone through transformational changes in the years during and after World War I. The trial simply provided an opportunity for the conversations to burst onto a public stage.

The most pressing of these conversations concerned the changing American moral landscape. Academic discussions of American “modernity” often rightly focus on the mid-nineteenth century; the turn of the twentieth century; and/or the period of an apparent decline (and, arguably the move to postmodernity) after World War II. But the Scopes trial shows that the struggle over defining modern culture was alive and well in the 1920s. It was, in fact, a central moment. While the United States was decidedly “modern” by the time of the Scopes trial, the term remained in flux; as always, it was contingent, subject to change. Many Americans—specifically many of the antievolutionists—perceived that the version of modern culture with which they were both accustomed and comfortable had begun to face a significant threat. In particular, their view of modern culture, dominant in the nineteenth century, appeared to be disintegrating in the 1920s, particularly symbolized by attacks on what they saw as the moral bases of a functioning modern culture—the Bible and the family unit. Scientific theories such as evolution, in other words, were not just an attack on their religious beliefs, they were attacks on their perception of the moral basis of American culture. And in the context of the Scopes trial, it was a perceived attack specifically on their right

to bequeath their moral beliefs to their own children. For these fundamentalists, while they would occasionally use traditional language in an attempt to differentiate themselves from the evolutionists, they were in truth fighting for a different vision of modernity. The trial was primarily a battleground in a larger fight to define the source of morality in modern American culture.

Those who supported and promoted evolutionary theory also understood this context. It was, for them, too, an argument that went beyond the defense of a single scientific theory. The evolutionists, for example, situated their argument—and, in the process, their vision of modern American culture—as synonymous with progress, solidifying their own social power within the new culture.⁴ It was their duty to bring this progress to the rest of the nation. In the process, they at times inaccurately portrayed the fundamentalists as traditionalists, backward-looking anachronisms outside the borders of the modern. As Malone's reference to hypnosis suggests, for example, evolutionists often situated their "side"—and Scopes in particular—as a contest between the rationalizing potential of a scientifically informed world and the backward mysticism of a rural South still clinging to some aspects of traditionalism. In this paternalistic view, the "country" lagged behind the "city" and it was the duty of those in the modern world to provide the "country folk" with the uplift they needed—thereby equating themselves with the future and the "traditionalists" with an inevitably obsolete past. The culture of the "country," in this view, simply needed to catch up. In the words of H.L. Mencken, writing during the trial:

⁴ In this, they relied (perhaps consciously) on the work of philosophers such as John Fiske. John Fiske, *Outlines of Cosmic Philosophy* (1874), Internet Archive, accessed August 23, 2015, <https://archive.org/details/outlinescosmicp04fiskgoog>.

These Tennessee mountaineers are not more stupid than the city proletariat; they are only less informed. If Darrow, Malone, and Hays [another member of the defense team] could make a month's stumping tour in Rhea county I believe that fully a fourth of the population would repudiate fundamentalism, and that not a few of the clergy now in practice would be restored to their old jobs on the railroad.⁵

Perhaps surprisingly, the leading antievolutionists (led by fundamentalist Protestants) seemed to accept these terms of debate, often highlighting the most traditional aspects of their culture, particularly an origin narrative they proudly referred to as a "miracle."⁶ They likely did so not because they misunderstood the ramifications of the evolutionists' argument, nor because they thought of themselves as less than modern, but because they needed to present a clear challenge to the scientists' rationalist vision of the march of modern "progress." By presenting a clear alternative to a cold process of rationalization—an alternative their audience would find safe, warm, and familiar—fundamentalists could clearly articulate a different cultural path.

It was not a coincidence that evolution would be the battleground where fundamentalists would take their stand. By the time of the Scopes trial, evolution had already become a nearly universal and deeply ingrained symbol among fundamentalists of the dangers this cultural shift represented. Indeed, the issue was a key organizing principle of the movement from the beginning. The fundamentalist movement in many ways got its start with the publication of a series of paperbacks critical of encroaching modernist thought in many Protestant churches. This series, titled *The Fundamentals*, outlined a new approach to Protestantism that would rely on a return to the old ways of

⁵ "Malone the Victor Even Though Court Sides With Opponents, Mencken Says," *Baltimore Evening Sun*, July 17, 1925.

⁶ "Miracles Have Place in Religion, Says Grant," *Atlanta Constitution*, May 8, 1925.

worship. Even then, over ten years before the Scopes trial, Darwin's theory was among their most identifiable enemies. Writing of the dangers of modernist religious thought in one of the volumes, for example, the Rev. Henry Beach stated, "The teaching of Darwinism, as an approved science, to the children and youth of the schools of the world is the most deplorable feature of the whole wretched propaganda."⁷ While those words (and others) had a powerful impact within the quarters of evangelicalism that would become the fundamentalist movement, the paperback series itself did not have a significant cultural impact. Even within the wider religious subculture, the series did not make a significant impact, largely ignored by religious journals.⁸ A decade later, then, the Scopes trial would be the opportunity, finally, to take this argument against that "deplorable feature" to a stage that would have a national presence.

In other words, many of the trial's participants themselves had an interest in representing the proceedings in dualistic terms of moral uplift: one side representing itself as the force of modern rational thought seeking to bring a lagging part of the nation into the twentieth century and the other seeking to maintain what it saw as crucial and familiar aspects of Protestant morality within a culture that was otherwise decaying and increasingly dangerous. Of course, while we must listen to them carefully, we cannot entirely take these actors at their word and simply accept their simplified version of the conflict. In Scopes, it is particularly tempting to accept the view of the modernists and dismiss the fundamentalists as zealots or extremists, stuck in the past while the world changed around them. With the perspective of history, we can see that they were

⁷ Henry H. Beach, "The Decadence of Darwinism," in *The Fundamentals*, ed. R. A. Torrey, A. C. Dixon, et. al., *Evangelicalism and Fundamentalism: A Documentary Reader*, ed. Barry Hankins (New York: New York University Press, 2008), 79.

⁸ George M. Marsden, *Fundamentalism and American Culture: The Shaping of Twentieth-Century Evangelicalism 1870-1925* (Oxford: Oxford University Press, 1980).

mistaken about evolution, in particular, and that many of the moral concerns of the most strident fundamentalists now seem, at best, outdated. But on closer examination, these forceful fundamentalists were not, as Mencken suggested, backward “hicks;” they were making sophisticated arguments using the language of modernity. Their references to tradition and the past were attempts to use the new modern culture as a contrast to the future they envisioned—a future that was, itself, modern, but maintained a Protestant vision of Christianity as its moral basis. While we may indeed dismiss much of the substance of their arguments, we should not dismiss them as individuals who had an impact in shaping modern culture.

Further, while there were fundamentalists in Dayton singularly focused on fighting evolution and promoting Biblical inerrancy, many others on the side of moral reform were, like the group of “modernists” who sought to combine science and Christianity, more nuanced. By focusing on the informal aspects of the trial—the actions the trial’s participants performed for the audience rather than the legal decision-makers; the reactions of that audience; and the discussions taking place outside the courtroom, for example—we find that the concerns of many of these moral reformers extended beyond a bald defense of the literal truth of the Bible and instead contained reformist, even progressive, elements. Some, for example, were concerned about the potential political implications a strict positivist adherence to Darwinism—and its offshoot Social Darwinism and its “might makes right” philosophy—could have for the poor and powerless. Others feared that what they saw as a near-religious reverence for science itself could arguably impede the concepts of charity and social uplift. While the “Social Gospel,” for example, was controversial among the strictest of fundamentalists, the

concept of “social concern” was not—and, anyway, many of the moral reformers in question were less strict in their fundamentalism and followed Social Gospel tradition.⁹ There were voices that were strident and oppressive, of course, but not all of the onlookers, indeed not all of the “fundamentalists,” were uniform in their beliefs. The Scopes trial provided the opportunity for all of these voices to gather around the same event, each side using the language of the other, in search of an understanding of the new cultural norms. Examining the informal aspects of the trial provides access to these onlookers. More than anything else, the Scopes trial is a way to understand that the debate over the direction of cultural change in the 1920s was not a simple, two-sided one, but rather a discourse defined by internal divisions and compromises on both sides.

Within the Protestant community, for example, the Scopes trial provided an opportunity to shed new light on an existing internal transition and struggle. Arguments about morality, modernity, and modernism were nothing new within Christianity. For much of the nineteenth century, Protestant evangelicals—defined primarily by their belief in the Bible as the ultimate authority; the power of personal conversion; and the crucifixion and resurrection of Jesus Christ—were a dominant force in American religious life.¹⁰ Indeed, as the historian of religion George Marsden writes, from “their dominant perspective, the nineteenth century had been marked by successive advances of evangelicalism, the American nation, and hence the kingdom of God.”¹¹ In their eyes, the United States was a Christian nation, and since the Great Awakening and amidst the strong influence of revivalism, it was their version of Christianity that was dominant. By the late nineteenth century, however, a challenge to evangelical dominance had arisen. A

⁹ Marsden, *Fundamentalism and American Culture*, 92-93.

¹⁰ Hankins, *Evangelicalism and Fundamentalism*, 2.

¹¹ Marsden, *Fundamentalism and American Culture*.

new approach to Protestantism—theological modernism—began making gains, particularly in the urban Northeast. As the name would suggest, Modernism was an effort to incorporate aspects of modern culture—including, most prominently, scientific discovery—into Protestant theology, in the process dismissing traditional aspects of Christianity that no longer fit with more recent discoveries, in an attempt to keep evangelical Christianity relevant.¹² Embracing Darwinism, for example, this school of religious philosophy supported the idea that religion, too, could “evolve,” that the Bible was simply an early form of Christianity. Ministers such as Henry Ward Beecher pushed this approach, implicitly denying the infallibility of the Bible by making the literal crucifixion and resurrection of Christ non-essential. These clergy, as the historian of religion Barry Hankins put it, “emphasized the incarnation, the idea that God was in Christ, more than the crucifixion, and they believed that God dwelled in all humans in much the same way God lived within Christ. Christ was merely the best model of what all humans could be.”¹³

Faced with this challenge, and dismissing the idea that Christianity could (or needed to) evolve, a group of evangelicals organized a resistance to the encroachment of modernist theology. Because modernist religious thought was initially confined to the urban North—in the South, evangelicalism remained dominant until the 1920s—these evangelicals primarily focused on Northern Presbyterian and Baptist (and, to a lesser extent, Methodist) congregations.¹⁴ They gathered in these congregations, held meetings, gave public speeches, and published materials—including *The Fundamentals*—re-affirming doctrinal principles based on traditional evangelical thought. They would come

¹² Hankins, *Evangelicalism and Fundamentalism*, 3.

¹³ *Ibid.*, 4.

¹⁴ *Ibid.*

to be known as fundamentalists. As Marsden summarized it, “Fundamentalists were evangelical Christians, close to the traditions of the dominant American revivalist establishment of the nineteenth century, who in the twentieth century militantly opposed both modernism in theology and the cultural changes that modernism endorsed.”¹⁵

At first, much of that opposition would in fact be less than militant, with moderate forces in search of reconciliation between the two sides paving the way for modernist victories at most national religious meetings. The tone of the opposition would change, however, in the wake of World War I. In fact, it was the World War that gave the fundamentalist movement its identifiable status.¹⁶ To fundamentalists, the militaristic nature of German culture was a direct result of German theology, particularly German “rationalism.” Germany, in other words, was an example of what happened to a culture when Protestant values were dismissed in favor of rationalist modernist thought. As a result, the fundamentalist cause became more than simply an argument within the church. Now, the future of American morality was at stake.¹⁷ That was the power of an event as dramatic and scarring as a world war, even one taking place a continent away. Consciously staying away from political activity before the experience of war, in the wake of World War I this new group of fundamentalists saw no choice but to take a political stand. Marsden writes, “German barbarism could be explained as the result of an evolutionary ‘might is right’ superman philosophy. The argument was clear—the same thing could happen in America.”¹⁸

¹⁵ Marsden, *Fundamentalism and American Culture*, 4.

¹⁶ *Ibid.*

¹⁷ *Ibid.*, 149.

¹⁸ *Ibid.*

The growing intensity of this internal Protestant friction was on full display in Dayton. While fundamentalist preachers were certainly vocal in town during the trial, their religious nemeses were also present. Modernist preachers received significant press coverage during the trial and spoke in various forums around town. One of the most famous of them, Unitarian Rev. Charles Francis Potter, was even invited to give the opening prayer in court before one of the trial's sessions, though not until after the defense had objected to the presence of the prayers and, losing that objection, offered a petition from Unitarians, Jews and Congregationalists (signed by Potter himself) requesting that non-fundamentalist preachers also be considered as courtroom prayer leaders.¹⁹ While certainly not alone, Potter was a convenient symbol of this relatively new approach to religion, one that wanted to maintain traditional religious theology, but embrace modern knowledge and rational thought. In a sermon Potter intended to give at the Dayton Methodist Episcopal Church (but which was canceled when parishioners protested the decision to allow him to preach there), Potter criticized fundamental religion for being too focused on "other-worldliness" and not sufficiently concerned with improving "our" world. Writing about himself as a proponent of "liberal religion," he wrote, "Liberal religion has been concerned with this world. The fundamentalists have called us worldly. We are glad to be worldly. We are more concerned for the salvation of men's minds than for the salvation of the souls."²⁰ Like Malone, Potter did not easily represent either side of the debate; he was neither a scientific rationalist nor a fundamentalist. He was an example of a participant at neither extreme, searching to find

¹⁹ *The World's Most Famous Court Trial: State of Tennessee v. John Thomas Scopes, Complete Stenographic Report of the Court Test of the Tennessee Anti-Evolution Act* (New York: Da Capo Press, 1971), 93. Hereinafter cited as *Transcript*.

²⁰ "Pastor of Dayton Church Quits When Congregation Bans Modernist Lecture," *Atlanta Constitution*, July 13, 1925, 1.

common ground between religion and modernity. The battle, from this view, was not purely science versus religion, but rather included what figures such as Potter saw as a third way, a compromise between the two sides.

But from the perspective of fundamentalist leaders, preachers like Potter *were* extreme; indeed, they were a significant threat. It was important that these modernist preachers be placed on the opposing side of a religion/science dichotomy, as any perceived alignment between religion and science was too dangerous even to contemplate. Science, after all, while not a new threat, was a perfect symbol of the multitude of threats posed by this new version of modern culture. Science promised the ability of Man to control and subdue Nature, and promoted the rationalization of American society by quantifying and revealing processes that had not previously been understood. It is therefore no surprise that these reformers would position science as their primary secular target, leaving no room for those who would compromise with the discipline. Given what they interpreted as the disastrous German experience with rationality in mind, fundamentalist leaders fought particularly hard to maintain the “mystical” aspects of their religion. Even many non-fundamentalist religious leaders understood the importance of maintaining aspects and language of the supernatural as part of modern religion. It was a crucial part of allowing Christianity to maintain a link with its past, even in its modern form. As Dr. Frederick Grant, editor of the Anglican Theological Review, said only a few weeks before the start of the Scopes trial, “It is impossible for Christianity to dispense with the supernatural and remain Christianity, the historical and traditional religion the world has known for almost 20 centuries.”²¹

²¹ “Miracles Have Place in Religion, Says Grant,” *Atlanta Constitution*, May 8, 1925, 5.

But miracles had an especially important role in fundamentalist thought, and church leaders strongly resisted any attempt to rationalize them away. Speaking at the same gathering as Grant, Rev. John Groton, rector of Grace Church in New Bedford, Massachusetts, said, “The miracle has great significance for religion and belief in miracle is bound up with belief in a living God.”²² Most directly, in a particularly strong speech given in Atlanta less than two weeks before Scopes began, the prominent Methodist preacher Dr. Sam Small pointedly grouped prominent modernist preachers with the agnostic pro-science defense attorney Clarence Darrow. Small said, “If the evolution theory contended for by Darrow, Osborne, and Shailer Matthews be true, it wipes out all necessity for God.” He continued, “There can be no logical escape from the result that, if we believe the evolutionists, we must denounce Christ and destroy the system of Christian religion.”²³ For fundamentalists such as Small, this was a battle for survival for Christian creationism, and therefore of Christianity itself. The willingness of modernist preachers to turn their backs, to any extent, on the mystical notion of the miracle situated them as a clear enemy.

Left at that, then, Scopes could have simply been an extension of the internal effort by fundamentalist preachers to protect the mystical properties of traditional religion against the threat of both science and modernist religious thought. But, in the wake of the alarm sounded by World War I, fundamentalists now placed a greater emphasis on politicizing the movement beyond the halls of the church. Scopes was an opportunity for these fundamentalists to become activists—to “stage” their movement for a general audience. It, in the perhaps over-simplified words of the sociologist Michael Lienesch,

²² *Ibid.*

²³ “Dr. Small Sees Clash Between Bible and Science,” *Atlanta Constitution*, July 13, 1925, 2.

“provided the setting for the dazzling use of strategic dramaturgy.”²⁴ It is true that Scopes offered fundamentalists an unprecedented opportunity to perform their dramaturgy publicly, but they did not manufacture it alone. Indeed, both sides understood the magnitude of the opportunity in front of them. Like the fundamentalists, secular modernists also had an interest in dramatizing Scopes on a national stage. These modernists saw an opportunity to be active promoters of what they viewed as progress, attempting to push society forward by bringing modern science to the rural South. Outside the courtroom, of course, pro-evolution journalists such as Mencken made their motives clear, persistently representing themselves as modernizing forces. But inside the courtroom, as well, the defense lawyers did all they could clearly to present their argument as one promoting enlightened science as opposed to the outdated theology of religious fundamentalists. Both sides understood that they could benefit from the publicity this trial would provide.

But most important, there was a third group that actively participated in elevating the trial to the level of cultural performance: the audience. Scopes became a phenomenon—and a performance trial—in part because, as Lienesch suggests, the participants wanted it to be. But what separates Scopes from trials that did not achieve such notoriety is that it had a willing audience—an audience that did not always necessarily fit perfectly on either “side.” Trials become performance trials when they involve an issue of cultural importance of interest to an audience wider than the participants themselves. Here, the importance of the “new” cultural battle over modernity struck a chord with the audience, whether in the courtroom, on the green, or in

²⁴ Michael Lienesch, *In the Beginning: Fundamentalism, the Scopes Trial and the Making of the Antievolution Movement* (Chapel Hill: University of North Carolina Press, 2007).

front of newspapers or radios. It was an interest that manifested itself in the dramatic and sometimes unpredictable ways the audience responded to the proceedings. Many of the members of the audience were both religious and interested in moral reform.

Fundamentalist or not, and representing different levels of piety, they were concerned about the moral future of the country, particularly given the dangers they saw manifesting in modern culture. But their reasons for concern were complicated and not always uniformly shared. For many, the Bible's fallibility or infallibility was largely beside the point; their immediate concerns, as we will see, were much more concrete and local.

Who would have the authority to determine what their children would learn in school, for example? And to what extent would the new modern culture leave the poor and powerless behind? The individuals and groups raising these questions were not homogenous or even always consistent. Indeed, the audience as a whole represented the spectrum of positions in between the extremes, and therefore is the key to the trial's complexity.

Of course, as Malone's ambivalence suggests, the audience was not the only part of the Scopes trial that can be difficult to classify: most of the trial's participants also had more depth than may seem obvious. Fundamentalist leaders, too, fully understood that a two-sided construction of the debate was far too simple. For one thing, the fundamentalists realized that any attempt to set the boundaries of the debate as "modern vs. traditional" was immediately complicated by the fact that their world was, indeed, already modern. Writing two decades earlier, Max Weber had argued that, for better or worse, "rational conduct" was "one of the fundamental elements of the spirit of modern

capitalism, and not only that but of all modern culture.’’²⁵ That process of rationalization, set in motion by the development of Calvinist thought, became secularized into what Weber called the spirit of capitalism, defined by a pursuit of self-interest that helped lead to the development of markets. Weber himself was ambivalent about the likely results of that spirit, but he regardless saw the demystification of religion as a hallmark of western progress.

By the time of the Scopes trial, the “modern moment,” in a Weberian sense, had long since passed—the United States was clearly a modern country. And modernity and Protestantism—even fundamentalism—were certainly not mutually exclusive; indeed, Protestantism was itself a product of modern thought and explicitly used a modernist vocabulary. The fundamentalist leaders were, then, “modern men,” fact they fully understood. One of the most visible fundamentalist preachers in Dayton during the Scopes trial, for example, was a Baptist evangelist named T.T. Martin. Martin was one of the most virulent antievolutionists, setting up shop in Dayton throughout the entire trial. More than anything, Martin was present to distribute a book he had written three years earlier laying out his argument against evolution broadly and in support of the Butler Act specifically. It was titled Hell and the High School and it was one of the strongest, most passionate antievolution volumes ever written. Martin did not hold back in the tome, couching the battle in the language of survival. He wrote, “What is a war, what is an epidemic that sweeps people away by the hundred thousand, compared to this scourge that under the guise of ‘science,’ when it is not science at all, is sweeping our

²⁵ Max Weber, *The Protestant Ethic and the Spirit of Capitalism*, Trans. Talcott Parsons, (Mineola: Dover Publications, 2003).

sons and daughters away from God, away from God's word, taking them from their Redeemer and Saviour, to spend eternity in hell?"²⁶

But even this most zealous advocate of fundamentalism clearly presented his argument in modern terms. First, he made clear that he was not opposing science in general, pointing out that, historically, many scientists themselves, including Lord Kelvin, had opposed evolution.²⁷ Instead, foreshadowing an argument Bryan would make later in the trial, Martin argued that evolution was simply bad science. More striking, Martin was prepared to offer a solution, in a chapter titled "The Only Hope." That prescription was two-fold. First, fundamentalists should elect to the local Board of Trustees of every public school people who would protect the students from evolution theory. Second, antievolutionists should be certain to elect members of state legislatures who would ensure that public schools that taught evolution would be cut off from state funding.²⁸ Martin, like most fundamentalists, believed intently in the Bible as a revelation from God. But this was the argument—and battle plan—of a modern man fighting not for the destruction of modern culture, but for the protection of some form of modernity that placed its trust in the Bible. And in that fight, he argued for the use of the strategies of modern reform movements such as politics and making good choices in local elections.

Martin represented the most extreme type of evangelist present in Dayton. He and fundamentalists like him made their arguments in the most heightened language possible. By framing the issue as a war declared on religion by a particular branch of

²⁶ T.T. Martin, *Hell and the High School* (1922). Available online at http://darrow.law.umn.edu/documents/Hell_and_the_High_Schools_OCR_Opt.pdf.

²⁷ *Ibid.*, p. 17.

²⁸ *Ibid.*, p. 156

science, fundamentalists could make clear the seriousness of the stakes for which they were fighting. In particular, Martin could artificially create a clear choice: a Bible-based culture with the weight of history on its side, or an unknown future driven by science. But Martin also clearly understood that he could not seriously argue that a return to true traditionalism was possible (or even desirable). He and the fundamentalists he represented understood that these were just two of a range of possibilities within modern culture. The Scopes trial, in other words, was an occasion of conflict among a multitude of different potential visions of modern culture. True, many fundamentalists saw World War I as a warning of the possible violent ramifications of over-rationalization and called for maintaining an element of mysticism in religion and culture, in the context of a new post-war modern world. And many of the modernists generally supported what they saw as the continuation of an inevitable process: modern progress meant scientific rationalization of the world, including religion. But there was plenty of cultural space and room for negotiation between those two visions, space the audience could both represent and help fill.

So while it may have been convenient, and even appealing, to many of the participants to dramatize the argument as two-sided, they (and the audience) recognized that such a construction was ultimately a fiction and an oversimplification. We should, as well. Indeed, a closer look at the dominant fundamentalist symbol of the trial—William Jennings Bryan—suggests how complicated the issues truly were. While a leader—the national figurehead, even—of the antievolution movement, Bryan was not a true fundamentalist. Instead, as he became more prominent in the religious community in the early decades of the 1900s, Bryan was not a leader in the nascent fundamentalist

movement, but rather an adherent of an early nineteenth century evangelical tradition, in which Christianity and American progress went hand-in-hand.²⁹ While strict fundamentalist leaders, for example, shunned and distrusted “Social Gospel” theory, Bryan embraced it. According to Bryan biographer Michael Kazin, “In his view, the prime duty of pietists was to side with the common man and woman in their perpetual battles with the defenders of privilege, corruption, and big money.”³⁰ In this way, Bryan had more in common with such Social Gospel leaders as the modernist Shailer Mathews than he did with the leading fundamentalists. Mathews, a liberal Christian, believed strongly that religion and science—even evolution—could not only co-exist, but thrive. He was representative of theologians who believed Christianity should adjust to scientific discovery, or would risk becoming obsolete. In *The Faith of Modernism*, published one year before the Scopes trial would begin, Mathews wrote, “A religion that cannot meet the deepest longings of restless hearts, that fears freedom of speech, that distrusts social reconstruction, that makes respectability its morality, that would muzzle scientific inquiry will be ignored by a world that has outgrown it.”³¹ Bryan was not a liberal theologian and would, obviously, strongly disagree with Mathews on evolution, but in terms of the social role Christianity could and should play, Bryan’s views were, initially, at least, closer to Mathews’s than they were to the leading fundamentalists.³²

Like many of the Scopes trial onlookers he represented, then, Bryan’s presence and participation in the trial embody the complexity of the arguments and issues at stake. He shared the fundamentalists’ concerns that American culture both inside and outside

²⁹ Marsden, *Fundamentalism and American Culture*, 132.

³⁰ Michael Kazin, *A Godly Hero: The Life of William Jennings Bryan* (New York: Alfred A. Knopf, 2006), 124.

³¹ Shailer Mathews, *The Faith of Modernism* (1924), p. 2.

³² *Ibid.*

the church was drifting dangerously afar from the teachings of the Bible and he considered evolutionary thought the main culprit. But he was not primarily focused on the details of the Bible's "facts," a fact that would come to be crucially important on the witness stand when his lack of intricate Biblical knowledge became apparent. As Kazin put it, "Certainly, he wanted ministers to preach the opening chapters of Genesis as a factual narrative rather than an ancient Semitic myth. But that conviction stemmed primarily from a fear that skepticism was the handmaiden of inhumane, aggressive power."³³ Similarly, the historian of reform Elizabeth Sanders has written that while Bryan's interest in Scopes was certainly in large part due to his "commitments to evangelical Protestantism and strong local religious communities, [it] had more to do with the political reform impulse than has generally been recognized."³⁴ Bryan was, as he had always been, a reformer and remained driven by those impulses rather than by devout belief. In fact, Bryan had a curiosity for at least some types of science, particularly applied science, and used technology to spread his message. He was even a member of the American Association for the Advancement of Science—a fact he took care to mention during the trial itself.³⁵ True, he had just joined in 1924, most likely for reasons of appearance, but even that motive suggests that it was important to Bryan that he not be seen as taking a public stance against the discipline on the whole.³⁶

More important, Bryan took great care not to use the Scopes opportunity to challenge science in general, but instead to distinguish Darwinism from "legitimate" science. "Evolution is not a theory," he declared to the Court in his longest (and most

³³ *Ibid.*, 264.

³⁴ Elizabeth Sanders, *Roots of Reform: Farmers, Workers, and the American State, 1877-1917* (Chicago: University of Chicago Press, 1999), 158.

³⁵ *Transcript*, 177.

³⁶ Kazin, *A Godly Hero*, 273.

well-received) monologue, “it is a hypothesis”; he then took care to then lay out the reasons Darwinism could not rise to the level of a scientific theory.³⁷ It was a certain type of science—particularly “any research in biology or geology that denied the supernatural” that concerned him, primarily for moral reasons.³⁸ Evolution and its offshoot, Social Darwinism, would pose a particularly dangerous threat to the weak and powerless and thus, in Bryan’s view, deserved the upmost scrutiny as an amoral outgrowth of science. As Bryan himself put it in the closing statement that he prepared for the trial but did not have the opportunity to deliver in court,

Science is a magnificent material force, but it is not a teacher of morals. It can perfect machinery, but it adds no moral restraints to protect society from the misuse of the machine. It can also build gigantic intellectual ships, but it constructs no moral rudders for the control of storm-tossed vessels. It not only fails to supply the spiritual element needed but some of its unproven hypotheses rob the ship of its compass and thus endangers its cargo.³⁹

Bryan’s views on science and mysticality in the modern world, in other words, were complicated. The ambivalence that emerges from Bryan—and his audience—during the Scopes trial is a symptom of the cultural change taking place, as well as the myriad ways that people came to terms with that change. Taking a lead from post-colonialist historians, the historian Michael Saler has written that a binary approach to the concepts of modern and traditional seems unsatisfactory as modernity itself is increasingly seen as open to various types of “alternative modernities.”⁴⁰ Bryan and the people he represented are ideal examples of the inadequacy of that binary approach. By

³⁷ *Transcript*, 177.

³⁸ *Ibid.*

³⁹ *Ibid.*, 338.

⁴⁰ Michael Saler, “Modernity and Enchantment: A Historiographic Overview,” *American Historical Review* 111 (June 2006), 692-716, 692.

this definition neither “traditional” nor “modern,” Bryan used the concepts and language of modernity to support both “modern” and “traditional” causes. In doing so, he called upon his Populist past. As the historian Charles Postel has written, the Populists of the turn of the twentieth century, long romanticized as economic traditionalists clinging to an agricultural past, were not actually attempting to work outside the system, but instead harness the transformative power of scientific and technological innovations for their own advancement.⁴¹ Further, they did not consider themselves romantic traditionalists, but rather embraced the concept of modern progress. As Postel wrote, “Because they believed in the logic of modernity, the Populist ‘clodhoppers’ attempted to fashion an alternative modernity suitable to their own interests.”⁴² Decades later, Bryan remained focused on that goal, this time in a cultural context, pushing the boundaries of what could and should be considered modern. Understanding the Populists—and Bryan and the fundamentalists—in this way helps break down the duality and better understand the cultural pressures that combined to create the version of modernity that emerged. As Saler wrote, “Indeed, the binary and dialectical approaches are in the process of being replaced by the recognition that modernity is characterized by fruitful tensions between seemingly irreconcilable forces and ideas.”⁴³

It is these “fruitful tensions” that were on display inside the Dayton County Courthouse when Bryan attacked Darwinism and its challenge to the creation miracle while also taking care to separate the “hypothesis” from “legitimate science.” But on closer examination, these tensions also manifested themselves among the trial’s observers—even those seemingly most invested in creating the artificial science/religion

⁴¹ Charles Postel, *The Populist Vision* (Oxford: Oxford University Press, 2007).

⁴² Charles Postel, *The Populist Vision*, 4.

⁴³ Saler, “Modernity and Enchantment,” 701.

dichotomy. The conversation that took place within the religious community, for example, cannot be reduced to purely a continuation of the take-no-prisoners feud between fundamentalist preachers and their modernist counterparts. When the modernist Potter was banned from speaking in the Dayton Methodist Episcopal Church, for example, Rev. Howard Gale Byrd, the fundamentalist preacher of the church who had initially invited Potter to speak, resigned in protest. Or, more accurately, he said, “I have quit. I have not resigned—I have quit!”⁴⁴ More strikingly, Potter was later scheduled to speak on the courthouse lawn, sharing time with Rev. T. T. Martin, by then the field secretary of the Anti-Evolution League. When Martin heard that Potter’s earlier speech had been canceled, he approached Potter and told him, “I am going to give you the whole time at the courthouse tonight; I want to see you get a square deal.”⁴⁵ These fundamentalist preachers clearly believed strongly in the importance of their religion’s traditions, but they also valued the opportunity to debate the proper role for the church in a modernizing society. It was, of course, crucially important to the fundamentalist clergy that they “win” the argument. But given the opportunity to silence the opposition, they instead took active measures to ensure that modernist preachers would be heard. Even some of the strictest fundamentalists saw value in the conversation.

Most important, the motives of the largely white, rural, Southern, Protestant audience were even more complicated. Certainly, part of the motivation of much of the crowd was a sincere belief in literal creationism, the conviction that evolution was simply incorrect. In this, as with the fundamentalist leaders, it is easy to dismiss them as mistaken—while debate does continue in some quarters, the evidence today is

⁴⁴ “Pastor of Dayton Church Quits When Congregation Bans Modernist Lecture,” *Atlanta Constitution*, July 13, 1925, 1.

⁴⁵ *Ibid.*

overwhelming that Darwin's theory, with some modifications, was correct. But we should not, in the process, dismiss the entire audience, nor the overall complexity of its motivations. In fact, the audience frequently reacted to the trial in ways that may seem unpredictable. When Darrow attacked Bryan's fundamentalist beliefs, for example, on the crucial "outdoor day," the crowd did not rally behind Bryan. Instead, they cheered and booed and let loose "booming mountain fox calls" when either made a particularly effective point; most contemporary accounts, in fact, made clear that Darrow won the day.⁴⁶ Indeed, by the end of the trial, after the Judge read the verdict and attorneys made their final statements, according to the New York Times, the crowd, the "so-called Fundamentalists of Tennessee, who had seemed so overwhelming in favor of the law, who had cheered the utterances of counsel defending faith in the Bible against the 'heresies' of scientists, stormed Clarence Darrow to shake his hand."⁴⁷

The audience reacted this way because it was not homogeneous and did not attend the trial simply to support pure fundamentalism; the stakes were much more complex. It was a group of people simultaneously resisting, altering, and coming to terms with new (and frequently changing) forms of modernity. They came to be heard, certainly, but also to listen, to attempt to better understand the changing cultural context. Once again, it becomes clear that the trial was more than a battleground, and a number of cultural issues were at stake. In particular, reform-minded antievolutionists—again led by Bryan—had two particular concerns that were related to, but extended beyond, an interest in fundamentalist theology. First, they were concerned that modern culture (and evolution theory in particular) was causing young people, including their own children, to turn

⁴⁶ "Bryan and Darrow in Bitter Religious Clash as Commoner is Quizzed on his Bible Views," *Atlanta Constitution*, July 21, 1925, 1.

⁴⁷ "Crowd at the End Surges to Darrow," *New York Times*, July 22, 1925, 2.

away from the Bible and the traditional moral code for which it provided a foundation. In fact, in Bryan's memoirs, his wife Mary Baird Bryan, finishing the volume after Bryan's death, claims that this is what drove Bryan to the issue in the first place. She writes that after a number of encounters with young people, his curiosity was piqued. "Upon investigation he became convinced that the teaching of evolution as a fact instead of a theory caused the students to lose faith in the Bible, first, in the story of creation, and later in other doctrines which underlie the Christian religion."⁴⁸ In other words, parents were concerned that the demystification of the origin story eventually led to the demystification of the remainder of Christianity, ultimately leading children away not only from the Bible, but from the entire moral structure on which these parents based their worlds.

This would become a crucial issue in the Scopes trial, driving the debate over school control. In the prosecution's opening statement, in fact, Assistant Prosecutor Ben McKenzie made the implication plain that the local schools should not be controlled by "foreign" sources. Responding to New York attorney Arthur Garfield Hays's opening statement for the defense, McKenzie said, "I don't know what they do up in his country. It has been held by the supreme court that the Tennessee legislature has the right to arbitrate and to judge as to how they shall proceed in the operation of the schools."⁴⁹ More than just a jab at Hays's outsider status, McKenzie's opening was a clear statement of the stakes: who has the power to control what your children will learn at school? While this was of particular concern to the fundamentalists in the crowd, framing the issue in this way made it accessible to the more moderate onlookers, as well. If Northern,

⁴⁸ William Jennings Bryan and Mary Baird Bryan, *The Memoirs of William Jennings Bryan* (Chicago: The John C. Winston Company, 1925), 479.

⁴⁹ *Transcript*, 57.

urban attorneys had the ability to control this aspect of their children's education, what could be next? In this reasoning, the use of the state legislature to ensure local (or, at least, state) control was not only defensible, it was proper and in the strong tradition of moral uplift reform.

The defense understood this concern and fought hard during the trial to combat it. But it would, of course, frame the issue in a different way. From a legal standpoint, the most important witnesses in the trial—really, legally speaking, the *only* important witnesses in the trial—were students who had been in Scopes's class. Two students would ultimately testify in the trial before the attorneys agreed that any further student testimony would simply be repetitive: 14-year-old Howard Morgan and 17-year-old Harry Shelton. With the younger witness, Darrow, after briefly reviewing the classification of mammals and the rudiments of evolution, simply asked Morgan if what Scopes taught in the class "hurt" him. "No, sir," the witness replied.⁵⁰ But with the elder Shelton, Darrow was able to make his point more sharply, via the following exchange:

Q: Prof. Scopes said that all forms of life came from a single cell, didn't he?

A: Yes, sir.

Q: Did anybody ever tell you before?

A: No, sir.

Q: That is all you remember that he told you about biology, wasn't it?

A: Yes, sir.

Q: Are you a church member?

A: Sir?

Q: Are you a church member?

A: Yes, sir.

Q: Do you still belong?

A: Yes, sir.

Q: You didn't leave church when he told you all forms of life began with a single cell?

A: No, sir.

⁵⁰ *Ibid.*, 128.

Darrow: That is all.

Judge Raulston: No talking in the courtroom.⁵¹

Darrow's only goal in his cross-examination of Shelton was to alleviate fears about the impact of teaching evolution to students. Based on the judge's admonition to the room immediately following the questioning, this attempt did not go unnoticed.

Later in the trial, fellow defense attorney Malone would get his opportunity to address the issue of education, as well. In a celebrated speech in support of allowing the defense's expert scientists to testify, Malone turned the fundamentalists' argument on its head. He asked, "[A]re the teachers and scientists of this country in a combination to destroy the morals of the children to whom they have dedicated their lives? Are preachers the only ones in America who care about our youth? Is the church the only source of morality in the country?"⁵² Malone then proceeded deftly to refer to World War I—the root of so much of the fundamentalists' angst—to create the moralistic argument in *favor* of teaching evolution.

The least that this [adult] generation can do, your honor, is to give the next generation all the facts, all the available data, all the theories, all the information that learning, that study, that observation has produced—give it to the children in the hope of heaven that they will make a better world of this than we have been able to make with it. We have just had a war with twenty-million dead. Civilization is not so proud of the work of the adults. Civilization need not be so proud of what the grown ups have done. For God's sake let the children have their minds kept open—close no doors to their knowledge; shut no door from them.⁵³

Less a statement in favor of the theory itself, Malone's argument was one of academic freedom, a direct response to the idea that exposing children to non-Biblical scientific

⁵¹ *Ibid.*, 129.

⁵² *Ibid.*, 187.

⁵³ *Ibid.*

theories was a moral hazard. This message, too, was received; Malone received such a strong positive reaction from the supposedly hostile crowd that the response itself was front-page news.⁵⁴

Antievolutionists had another moral concern about the teaching of Darwin's theory. Again based in part on the World War I experience, many antievolution leaders, Bryan included, feared that Darwinism—particularly when applied to social theory—would inevitably have dangerous results for those lacking social power. This was of particular concern in the context of the rising popularity of eugenics—the idea, based on work by English philosopher Herbert Spencer, English social scientist Sir Francis Galton, and Darwin himself, that the human (and, notably, national) condition could be improved by promoting the “survival of the fittest.” It was not an idle worry. Eugenics and its close counterpart “social Darwinism” were pervasive in the 1920s, including among many progressives.⁵⁵

Relating, and often conflating, biological evolutionary theory with Social Darwinism and eugenics, Bryan was particularly sensitive towards arguments that used any reading of Darwinist ideas to exploit the less powerful or, more important, stand in the way of reform.⁵⁶ Bryan was prepared to make this an important part of his argument in Dayton. In his unused closing argument, Bryan laid out his substantive reasoning for the importance of opposing evolution. At times misunderstanding, or misstating, the theory, Bryan railed against evolution's attack on the Bible and, in particular, the miraculous aspects of the Bible's Truth. But he also highlighted what he saw as the

⁵⁴ Raymond Clapper, “Bryan and Malone Clash in Argument on Evolution While Courtroom Cheers,” *Atlanta Constitution*, July 17, 1925, 1.

⁵⁵ Daylanne K. English, *Unnatural Selections: Eugenics in American Modernism and the Harlem Renaissance*, (Chapel Hill: University of North Carolina Press, 2004), 2.

⁵⁶ Sanders, *Roots of Reform*, 158.

danger in a Darwin-based world order. “Our fourth indictment against the evolutionary hypothesis,” he wrote, “is that, by paralyzing the hope of reform, it discourages those who labor for the improvement on man’s condition.”⁵⁷ He was arguing that the deterministic nature of Darwinism eliminated the possibility that people could make an immediate impact on their world, in the process destroying the concept of reform.

This, certainly, is a misreading of biological evolution; nothing in evolutionary theory would suggest that social reform efforts are futile. But in other cases, his discomfort was better grounded. Bryan’s fifth argument against evolution was that, “if taken seriously and made the basis of a philosophy of life, it would eliminate love and carry man back to a struggle of tooth and claw.”⁵⁸ This, too, seems like an exaggeration. But this time, Bryan was able to point to the work of evolutionary scientists and, most notably, Darwin himself to confirm the danger. Quoting *The Descent of Man*, Bryan said, “Darwin speaks with approval of the savage custom of eliminating the weak so that only the strong will survive and complains that ‘we civilized men do our utmost to check the process of elimination.’ How inhuman such a doctrine as this!”⁵⁹ Antievolutionists such as Bryan saw a true threat in a world that revolved around Darwinist thought, dominated by a “might makes right” philosophy. It was an argument that conflated evolution and Social Darwinism, two theories that shared some adherents, but were certainly not coterminous. But it was a powerful argument, nonetheless, especially with Bryan able to use Darwin’s own words against him, furthering the audience’s distrust of the theory. Further, it was a threat that had particular relevance to the local Scopes trial audience. Arguments promoting eugenics were common in the 1920s, including

⁵⁷ *Transcript*, 333.

⁵⁸ *Transcript*, 335.

⁵⁹ *Ibid.*

sterilization campaigns, largely performed on the rural white Americans Bryan represented.⁶⁰ Finally, it was a threat that seems less than overstated in retrospect; 24 states enacted statutes allowing compulsory sterilization in certain circumstances in the first three decades of the 21st century, statutes that would later become models for the Nazi Sterilization Law of 1934.⁶¹ In any case, it is clear that it was an argument that went beyond the protection of mystical, fundamentalist ideology. Instead, in this case, antievolutionists used the language of reform—concern for the weak, the importance of moral uplift, and the legitimate use of state power to protect defenseless classes—to argue against a modernity shaped primarily by social theories relying on Darwinist thought. In this way, the antievolutionist “side” contained space not just for ardent fundamentalists, but also for moral reformers concerned about the potential impact of modern, scientific thought on the poor and powerless.

The arguments of the scientists and evolutionists on the other side were also more complicated than they first appear. Indeed, on closer examination, it is not hard to see why some antievolutionists feared the positivist potential of fervent reverence for science. In another attack on the modern/traditional dichotomy, sociologist Bruno Latour has suggested that the distinction between concepts such as modernity and traditional, or enchantment and disenchantment, is no longer useful because modernity has its own version of “magic” and miracle—that it has itself become enchanted.⁶² Perhaps anticipating Latour without realizing it, antievolutionists explicitly argued that this line was indeed blurred in Dayton—that science itself had reached enchanted, mythical status.

⁶⁰ English, *Unnatural Selections*, 15.

⁶¹ *Ibid.*, 10.

⁶² Bruno Latour, *We Have Never Been Modern*, trans. Catherine Porter (Cambridge: Harvard University Press, 1993).

While science, certainly, was primarily portrayed as a rational force in the Scopes trial, fundamentalists were quick to point out that there was also plenty in the science of evolution that itself carried an element of mysticism. As Dr. J. Frank Norris, who would later help with the Scopes prosecution, put it at a meeting of the National Organization of the Baptist Union:

The scientists now say that everything came from the amoeba and that it would take a man 250,000 years to count a pile of them the size of a pinhead. After billions and trillions and quadrillions of years some of them put on scales and some of them developed fins and some of them feathers and some of them feet and tail and then went swinging in the branches of the trees. And some of the little ones got chased out of the trees and went and hid in caves and lost their hair and got bald-headed. And then they put on clothes and became professors at Chicago University.⁶³

The sarcasm in Norris's statement cannot hide the charge of mysticism he is leveling at the scientists. And his charge of scientific enchantment rings true. There is something "enchanted" about the way the evolutionists revered their science. For many of these scientists—even those who were religious—it was science that could perfect, or at least enhance, God's world. As Dr. Jacob Lipman, Dean of the College of Agriculture at Rutgers University, put it on the Scopes witness stand, "Man has learned to use [scientific] knowledge to improve his condition, and in following the laws laid down by the diving Creator, he has been able to fashion more perfect forms of plant and animal life."⁶⁴

Bryan, too, noticed the tendency of evolutionists to speak of science in these mystical terms. During the heart of Scopes, Bryan wrote a column in the July 1925 issue of the New York magazine *Forum* responding to an article by Professor Henry Fairfield

⁶³ "Baptists Consider New Organization," *Atlanta Constitution*, July 5, 1925, 5.

⁶⁴ *Transcript*, p. 234

Osborn, an evolution supporter, President of the American Museum of Natural History, and potential Scopes expert witness. Bryan referred to both Osborne and other evolutionists in his article, noting, “The more inflated of his class do not hesitate to claim an infallibility which they deny to the Bible, and think themselves better informed on ethics than Christ.”⁶⁵ He went on to write, “The Professor’s logic leaks at every link, but is no worse than that of his boon companions who, having rejected the authority of the word of God, are like frightened men in the dark, feeling around for something that they can lean upon.”⁶⁶

Perhaps this is simply an attempt by antievolutionists to discredit their opponents by turning their own language against them. But Bryan’s attack does not entirely miss the mark. Separating himself and other scientists from the likes of Bryan, Osborne wrote in his original column, “To these serious and earnest seekers after the Truth, from 500 B.C. to the present time, we have the contrasting attitude of the Great Commoner; if all the evidence for the Truth were piled as high as Ossa upon Pelion; if proof were heaped upon proof, the Truth would not prevail with him, because all the natural avenues of the Truth are tightly closed.”⁶⁷ Osborn did present the argument as light against dark, with the admonition that his Truth (notably capitalized) would inevitably overcome. He, certainly, was not alone. In an editorial in another New York periodical, *The Independent*, the editors criticized the spectacle of the trial, writing “Nobody believes that a Tennessee jury or Legislature can long obscure that truth which we are told is mighty

⁶⁵ William Jennings Bryan, “Mr. Bryan Speaks to Darwin,” *Forum (1886-1930)* LXXIV (07, 1925), 101.

⁶⁶ *Ibid.*

⁶⁷ Henry Fairfield Osborn, “The Earth Speaks to Bryan,” *Forum (1886-1930)* LXXIII (06, 1925), 796.

and will prevail.”⁶⁸ In elevating science—and evolution in particular—to an almost mystical level of Truth, these evolutionists felt that victory was thereby inevitable.

The mystical reverence for scientific fact also appeared during the trial itself, primarily in the march of scientists Scopes’s defense team attempted to use to support their case. It was crucial to the evolutionists not so much that they win the case (getting the court to declare Scopes innocent, as they realized, would be virtually impossible) but that they use science to pursue victory. Science was to march into a courtroom in rural Tennessee and displace the remnants of enchanted thought. Science, in other words, became their *deus ex machina*, their explanation for existence. This became most evident during the legal fight over whether scientists would be permitted to testify as experts on evolutionary theory. After hearing the testimony of one evolutionary scientist, the zoologist Maynard Metcalf, Judge Raulston declared the entirety of the scientific evidence—including the remainder of the scientists scheduled to testify—inadmissible. The judge, however, consistent with court protocol, allowed the defense team the opportunity to submit affidavits describing what the remaining experts would have testified in order to preserve the record for a potential appeal. This set off an extended debate over whether the defense would simply submit the affidavits to be included in the official record or would read the affidavits into the record in open court. The prosecution argued, rightly, that it made little formal legal difference; either way, the excluded testimony would appear in its entirety in the record, accessible to an appeals court. But the defense was adamant that they be permitted to read the affidavits into the record. They struggled to construct a formal legal argument as to why this was so important. They repeatedly claimed, for example, a need to “preserve the record,” but that was

⁶⁸ “The Scopes Trial,” *Independent*, July 25, 1925, 115, 3921.

immaterial. Directly asked the point of reading them in open court, Darrow responded, “We are just trying to make the record, nothing else.” Hays added, “We are entitled to make this record in our own way as long as it is in accord with the practice of Tennessee and the constitution.”⁶⁹ The prosecution, confused by the defense’s insistence, noted that the Court had already deemed the evidence inadmissible and that it would be preserved in the record either way; the prosecutors were concerned that the defense was attempting to sneak their argument back in front of the judge through a back door.

In truth, they were almost correct. The defense did want to sneak their argument back into Court, but not for formal legal reasons. This was simply a signal that the defense understood the importance of the informal fight. This was their opportunity to perform science’s enlightening potential on a national stage. Submitting the affidavits might work from the standpoint of the formal appeal, but it would deny them the opportunity to use the moment to lead the significant Scopes audience out of the darkness. Science was the magical force that could change minds, but only if they were able to present it. It was an opportunity they would receive, as they ultimately convinced the judge to allow them one hour to read the evidence into the record in open court.⁷⁰

While the outdoor questioning of Bryan is generally remembered as the trial’s defining moment, winning this argument may have been the defense’s most overlooked victory. Their attempt to elevate science to a cultural role above (or, at least apart from) religion would not be possible unless they were able to present their scientific evidence and perform their scientific argument. The lack of a jury was immaterial; they intended to reach more than twelve men. As Darrow put it after the verdict was read, notably

⁶⁹ *Transcript*, 223.

⁷⁰ *Ibid.*

referencing the darkness of the Salem witch trials of the 17th century, “I think this case will be remembered because it is the first case of this sort since we stopped trying people in America for witchcraft because here we have done our best to turn back the tide that has sought to force itself...upon this modern world, of testing every fact in science by a religious dictum.”⁷¹ While winning the case was out of reach, they had done their best to situate science as a modern replacement for religion.

Finally, the modernists’ reverence for science played a key role on that all-important “outdoor day,” as well. The hot sunny day on the stage outside the courtroom when Darrow called Bryan to the stand as a Biblical expert, whether as a wry joke or a nod to Bryan’s ego, would in fact be another opportunity to replace religion with science.⁷² The quick and intense questioning was directly related to the ability of science to substitute for religion as a belief structure. True, Darrow ruthlessly attacked Bryan’s views, asking him such questions as how old he believed the Earth was, whether the creation story in Genesis referred to 24-hour days, and whether Jonah was literally swallowed by a whale.⁷³ Darrow’s intention was clear: to directly challenge fundamentalism and make Bryan look like a foolish relic. But the largely unspoken inference behind the questioning was that science could step in to better explain all of these phenomena. This manner of questioning framed the contest the way Darrow wanted to—in fact, Darrow had been attempting to frame the entire debate in this way for years. He had published a list of questions for Bryan in the Chicago Tribune years before anyone had even heard of John Scopes—a list of questions virtually identical to the list

⁷¹ *Ibid.*, 317.

⁷² *Ibid.*, 284.

⁷³ *Ibid.*

he read that afternoon in Dayton.⁷⁴ The questions clearly intended to reveal the absurdity of fundamentalist thought, but just as important, to introduce its replacement. These questions, whether in print or on stage, that Bryan could not answer could all be answered rationally by science. Science was the future, in Darrow's eyes. Not only could science prove the fundamentalist claims to be inaccurate, but it also provided its own answers and explanations; here, a substitute origin story.

Darrow never received much of a response from Bryan to the questions he published in the Tribune. But given a stage like the one he was presented in Dayton, he finally managed to construct the showdown he craved. That was the power of a famous trial; it presented on a broad, public stage a conversation that was previously taking place much more quietly. Finally, Darrow could present to the world—and to us—his argument concerning the relative importance of science and religion, between the tradition of creation and the miracle of evolution.

We cannot turn to Scopes to provide clear and complete definitions of the various versions of modern culture present in the minds of trial onlookers. But the beauty of Scopes lies precisely in the way it muddies these already difficult terms. Bryan and the fundamentalists used some traditional and conservative language, yet their arguments contained clearly progressive sentiments; the scientists and modernists saw themselves as rationalizing forces, yet embraced the enchanting potential of science to answer natural mysteries. The trial challenges the periodization of modernity by illuminating a point in time in which different versions of modernity collide as fundamentalists and moral reformers attempted to construct an alternative modern culture free of Darwinist thought.

⁷⁴ Darrow Family Scrapbooks, Box 4, *Clarence Darrow Papers* (Newberry Library, Chicago). The historian Ray Ginger also mentions this list of questions in Ray Ginger, *Six Days or Forever?: Tennessee vs. John Thomas Scopes* (Beacon Hill: Beacon Press, 1958).

More important, it puts the power of that challenge in the hands of lawyers from Chicago, of citizens of a small town in Tennessee, of radio listeners and newspaper readers across the country, of small-town judges and state legislatures. From the perspective of Dayton town leaders, Scopes started as a publicity stunt, an attempt to put a small town on the map. For the defense team, it was an opportunity to challenge formal law; it was intended to be a test case, to be moved up the appeals court ladder, ideally with the Supreme Court eventually determining the constitutionality of the Butler Act.

Ultimately, however, Scopes's audience transformed it into something completely different; the audience determined what the trial would "be." As a result, the formal law aspects of Scopes became secondary, at best. It was, in the end, a test case that would never substantively go beyond the trial court—the Tennessee Supreme Court overturned Scopes's conviction on a technicality, stating that the jury rather than Judge Raultson should have fixed the amount of the fine, and suggested that the case be "nolle prossed" (not re-tried).⁷⁵ As a result, the case could not be further appealed and no higher court would issue a substantive ruling. It would have no precedential value, no opinion written by a Justice of the U.S. Supreme Court. Yet it endures nonetheless; today Scopes is as well known as the most famous Supreme Court cases. This is not because of Darrow's orations or Bryan's omissions, as impressive as both were. It is because the trial allowed non-lawyers to have their moment, from local students on the witness stand to preachers, doctors of religion, and orators outside the courtroom, to the audience, whether from the hills of Tennessee or the newsrooms of New York. It was their opportunity to put themselves "on the record." They may not have seen themselves as challenging (or supporting) the cultural changes "modernity" had wrought. But they were using the tools

⁷⁵ "Scopes Goes Free But Law is Upheld," *New York Times*, January 16, 1927, 1.

available to them to attempt to shape their surroundings; they were seizing the opportunity of a national stage to bring what they saw as a question of morality to the forefront. Ultimately, in fact, it was perhaps the defendant himself, who had been so quiet for so much of the trial, who best summarized the importance of the event. In a letter to the editor published by *The Forum* roughly a month after the trial ended, Scopes wrote, “The real significance of the case, as I see it, is not to decide any of these issues, or other issues that have been discussed pro and con, but to bring a better understanding between the various factions involved.”⁷⁶ Scopes is in many ways the archetype of how a trial can provide this opportunity.

Of course, that does not mean that Scopes is entirely unique. At times of cultural upheaval, in particular, performance trials become more common, and such was the context of the early 1920s. As culturally powerful as the Scopes trial was, it could not alone resolve the questions raised by the sometimes loosely defined group of moral reformers challenging the country’s cultural path. Indeed, in the wake of the cultural turmoil raised by World War I, a number of trials reached the national public consciousness. Two, in particular, provided similar opportunities for onlookers to wrestle with questions of morality and modern culture—a recurring theme that was not a coincidence, but rather guided by the cultural context of the time. In one such case, the crime—the salacious murder of a married religious leader and his adulterous lover—had actually occurred three years earlier, in September 1922. But the trial—often referred to as the “next Scopes trial”—would not take place until the fall of 1926, more than a year after Scopes had ended. It is likely that many in Dayton during the “summer of Scopes” had heard of that victim’s widow, Frances Stevens Hall, who was suspected of being

⁷⁶ John Thomas Scopes, “Letter to the Editor,” *Forum*, LXXIV (No. 2, August 1925).

involved in his murder. But none could have known the starring role she was about to play, as modern American culture prepared to stand trial once again.

CHAPTER THREE

Hall-Mills: A Curious Affair

It started with a simple, one-column headline on the front page of The New York Times on Sunday, September 17, 1922: “Rector and Woman Choir Singer Found Murdered in Field.”¹ Two local teenagers claiming to be searching a field for mushrooms had instead found the bodies of Rev. Edward W. Hall, the rector of the Protestant Episcopal Church of St. John the Evangelist, and Eleanor Mills, a member of the church’s choir, shot to death and displayed under a crabapple tree on the outskirts of New Brunswick, New Jersey. The article described the crime scene, including its eccentricities: the bodies seemed to have been carefully arranged, for example, and papers, including love letters between the two victims, were scattered around the field. The account was long and detailed and gave hints of the sensation the murder would become, but at the time the case seemed simple enough. The victims, both married, were adulterous lovers and Hall’s wallet was missing, as well as his valuable gold watch. It made for juicy gossip, in other words, but the motive of the crime seemed relatively clear: it was either a case of simple robbery or of violent jealousy. It was the type of incident likely to be a topic of curiosity for a brief period of time, then largely disappear from the public consciousness.

And yet, the Hall-Mills case became so much more. The murder set off a nearly five-year saga with multiple twists and turns, theories and drama. Hundreds of newspapers across the United States would follow the strange situation of the murder of

¹ “Rector and Woman Choir Singer Found Murdered in Field,” *The New York Times*, September 17, 1922, 1.

the priest and the choir member, often day-by-day when the case was particularly active. By the end of 1926, over four years later, readers had been introduced to scores of potential witnesses to the murder, theories of the case put forward by everyone from professional investigators to amateur sleuths to multiple “spiritualists,” and detailed information and innuendo about the families at the heart of the drama. More than once during the period, the case would seem at an unequivocal dead end and yet each time something would happen to revive it; it was almost as if people willed the case to continue. Over the course of the investigation, multiple suspects were arrested and subsequently released, until finally, four years and two months after the bodies had been found, three suspects finally stood trial for the murders. Even then, the case would not find a satisfying conclusion: all three were found not guilty and released. No other suspect would ever be arrested for the murders and the case remains officially unsolved to this day.

There is, at first glance, much to differentiate the Hall-Mills trial from a trial such as Scopes. In Scopes, very little was at stake from a legal standpoint. While Scopes would, of course, come to have deep and lasting cultural importance, it started as a publicity stunt; everyone involved knew that its real importance lay in its informal aspects—in the message it sent outside the courtroom. That was not entirely the case with Hall-Mills. This was a true (though largely inept) murder investigation. Lives were turned upside down by the Hall-Mills murders, most with permanent consequences. Certainly, as with Scopes, publicity played a major and at times even decisive role in both the investigation and the trial, but here, at each step there were real-world implications. There were true, identifiable victims in this case—two bodies in a field

arranged under a crabapple tree. Further, in the trial itself, the defendants, unlike John Scopes, were fighting for their literal freedom. A conviction would mean, at the very least, a long jail sentence. On the other side of the courtroom, the prosecution fought for what it saw as justice for the victims. In other words, the formal legal consequences of the Hall-Mills trial were much more serious than those in Scopes. There would, of course, be no lasting precedential value—trial court proceedings, unlike appeals courts, apply existing law rather than create new binding law. But the legal determinations to be made in this case were substantive and important to those involved.

And yet the informal, or cultural, value of the trial would still prove to overshadow even these serious stakes. While the question of guilt or innocence would never be far from the minds of the defendants themselves, for many onlookers such questions would become secondary to the overall narrative of the trial and the wider cultural questions about marriage, the home, and womanhood that it raised. The vast majority of the “followers” of the trial did not know the defendants or the victims personally and surely, for many newspaper readers, there were murder investigations and trials taking place much closer to home. But something about this particular story, the characters involved, and the investigation behind it struck a chord with many Americans, enough such that interest in the trial had a noticeable impact on newspaper circulation rates. The informal legal aspects of the trial—the physical appearances of the witnesses, how the participants acted in the courtroom, the ways the trial’s characters were represented (and represented themselves) in the press, and the personal peccadilloes of the various parties and proceedings—rather than formal rules of evidence or, even, the ultimate legal resolution, came to dominate this interest. Put simply, the Hall-Mills trial

became a phenomenon because it was a compelling drama that, as we will see, captured a particular cultural moment. As a result, understanding the intricacies behind the interest in the case can, as in *Scopes*, provide insight into the cultural conversations this particular legal performance helped bring to the surface.

On that surface, Hall-Mills provided the same drama that lies at the center of many American murder trials. The crime was serious and scandalous, but was not unique. It appeared to be a crime of passion and/or greed, notable for its salacious details, but unlikely to rise past the level of local gossip. Certainly, it was not the only such case that could have captured the nation's imagination at the time. In fact, there were several similar investigations and trials taking place in various police stations and courtrooms across the country, as some newspapers even pointed out.² And yet, interest in Hall-Mills elevated far above any of these parallel cases. First, the intensity of the interest in the case, while not unprecedented, was rare. National and international newspapers, from large cities and small communities, covered the case.³ Again, this coverage was not unique and initially most used reports obtained from news wire services, rather than sending reporters to New Brunswick (at least until the trial four years later). But the detail with which they covered this case was notable; these papers ran daily accounts of the various twists and turns of the investigation, including stories on developments as short-lived and obscure as the theory that the victims had been lured to a "haunted house," murdered there, and then transported to the farm where their bodies were found.⁴ Stories ran every time a new suspect was suggested and when there were

² "Eternal Triangle Forms Base in Nine Tragedies," *Salt Lake Telegram*, October 24, 1922, 1.

³ For an example of the international interest, see "Carta de Nueva York," *Revista de Yucatan*, November 4, 1922, 3.

⁴ "Slain at Haunted House," *Tulsa World*, September 21, 1922, 7.

no developments to report, the papers reported on the lack of progress itself.⁵ During the trial, newspapers ran lengthy and detailed daily reports, often including full transcripts of the day's testimony.⁶ In fact, the press would get so close to the Hall-Mills case, it would repeatedly play a substantive part in the investigation. This level of attention set Hall-Mills apart from other contemporary murder cases. While newspapers mentioned, for example, the Los Angeles trial of Clara Phillips, "accused of beating Alberta Meadows to death with a hammer," or the trial of movie director George Cline, Alice Thornton, and Charles Scullion "for the murder of John Bergen, motion picture actor," none were followed with the detail or fascination as was Hall-Mills.⁷

The trial itself was an even bigger phenomenon, ultimately becoming one of the most sensational courtroom dramas of the 1920s. Hundreds of reporters flocked to Somerville, New Jersey, to cover the proceedings, sending reports back to readers across the United States. Frederick Lewis Allen, in his 1931 attempt at a first informal history of the 1920s, referred to Hall-Mills as the "most sensational trial of the decade," having wrested that mantle from Scopes itself, which had taken place a year and a half earlier.⁸ Allen notes that twice as many reporters were in Somerville than had been in Dayton, Tennessee, and marvels at the number of words written about just the trial itself in the nation's newspapers.⁹ Indeed, as he put it, so much was written about the case during both the investigation and the trial, "It was an illiterate American who did not shortly

⁵ "Police 'All at Sea' in Mysterious Double Slaying After Hayes' Release," *St. Albans Daily Messenger*, October 13, 1922, 1.

⁶ "Mrs. Gibson Gravely Ill, Can't Appear; Fingerprints Accuse Willie Stevens; Gorsline and Girl Tell of Shots Heard," *New York Times*, November 5, 1926, 1.

⁷ *Ibid.*

⁸ Frederick Lewis Allen, *Only Yesterday: An Informal History of the Nineteen-Twenties* (New York: Harper & Row, 1931), 213.

⁹ *Ibid.*, 214.

become acquainted” with the Hall-Mills affair.¹⁰ Certainly, some of the most literate of Americans took notice: F. Scott Fitzgerald, the American novelist, apparently took such an interest in the case that he may have incorporated it into his most famous novel, *The Great Gatsby*. According to the literature scholar Henry C. Phelps, Fitzgerald was so fascinated with the Hall-Mills murders that the case provided the basis for an important *Gatsby* subplot—the turbulent and ultimately violent relationship between George and Myrtle Wilson.¹¹

It is clear, then, that the Hall-Mills story was a cultural phenomenon, much more so than any other similar trial of its time period. The important question becomes why this case, as opposed to the others, became so enduring, why it became a performance while other trials, so similar in detail, did not. Allen suggests that the reason the trial became such a sensation rested in the salacious details of the case. He is partly correct. There is no doubt that the facts of the crime were compelling, from the victims’ relationship to the way the bodies were arranged. It is also likely that the unsolved nature of the case added to its intrigue; most books written on the subject, with authors as notable as the famed Chicago Seven attorney William Kunstler, have a chapter including the author’s theory of “how it might have happened.”¹² But the interest in Hall-Mills went beyond simple rubbernecking or second-hand sleuthing. Many other salacious crimes entered and exited the nation’s collective consciousness, after all, and many other mysteries were never solved, yet most faded away relatively quickly. The Hall-Mills

¹⁰ *Ibid.*, 82.

¹¹ Henry C. Phelps, “Literary History/Unsolved Mystery: The Great Gatsby and the Hall-Mills Murder Case,” *ANQ: A Quarterly Journal of Short Articles, Notes and Reviews* 14:3 (2001), 33-39.

¹² See William M. Kunstler, *Hall-Mills Murder Case: The Minister and the Choir Singer* (New Brunswick: Rutgers University Press, 1980). Another less well known example is Gerald Tomlinson, *Fatal Tryst: Who Killed the Minister and the Choir Singer?* Lake Hopatcong, N.J.: Home Run Press, 1999. Tomlinson suspects Hall’s brother Willie is the perpetrator who pulled the trigger.

case, meanwhile, would not disappear. For years, the public remained desperate for information about the case and the press was all too eager to provide (or in some cases invent) it. Rather than dismissing it as a riddle to be solved, a quirky curiosity, or a simple example of the “age of ballyhoo,” it is worth seriously examining the intense interest in the case to reveal the deeper significance of that interest, understand what the trial came to represent, and learn what it can teach us about the time period more generally.

Ultimately, the Hall-Mills trial garnered so much of the country’s attention because, like Scopes, it was able to provide a forum in which to discuss a key cultural insecurity of the time, another manifestation of the cultural fragmentation that was taking place in the early 1920s. In many ways, in fact, it was an extension of the same conversation that had come to the surface a year and a half earlier in Dayton, but with a different focal point and driven by a different group of moral reformers. Religion, of course, played an important role, just as it had in Dayton. The victims’ relationship with their church in many ways defined them in the media coverage and led naturally to a discussion of the state of the nation’s moral standards. But there was another dimension of the wider conversation about changing notions of morality that stands out more starkly in the Hall-Mills case: the impact changing roles, representations, and social actions of women could have on the traditional family unit as the foundational basis of morality. Like the Scopes coverage, much of the reporting on the Hall-Mills trial focused on the trial’s characters. This time, however, it was not the lawyers who generated the most interest. It was instead the participants in the story itself: the victims and their families, suspects and eventual defendants, and an ever-increasing cast of witnesses. From Pearl

Bahmer, the young woman who found the bodies, to the state's star witness Jane Gibson, to the defendants themselves, the popular characters of the Hall-Mills case—almost entirely women—were always center stage. They were more than witnesses or litigants; they were performers. And the ways they represented themselves (and were represented by onlookers and the media) came to dominate the entire narrative. Those representations revolved almost universally around the “types” of women the various characters represented—whether out-of-control youth, “flappers,” staid Victorian housewives, or other manifestations of the growing variety of “new women” developing in the decade—and how the proliferation of such “types” defined the future of both the women's movement and American morality.¹³

It was a theme that situated the case in a broader context, a large part of what made it almost universally culturally relevant, and one that appeared in the coverage of the investigation almost immediately—as early as October 1922. “Nine tragedies stand out as dramatic spectacles in the news of America today,” the Associated Press report for October 24, 1922, stated, “and all of them present women in the leading roles.”¹⁴ Eight of these tragedies would fade from the public sphere, with Hall-Mills remaining to represent the “new” class of cases with women at the center. Viewed through the lens of its characters, Hall-Mills would come to provide a national stage for a continuing conversation about changing gender norms, the limits of those changes, various modes of womanhood in the 1920s, and, for some moral reformers, the moral hazards associated with young women's pursuit of frivolous goals. As with Scopes, the conversation had numerous layers, befitting a case as full of twists and turns as the Hall-Mills murder

¹³ On the different types of “new woman” representations, see Martha H. Patterson, *The American New Woman Revisited, A Reader, 1894-1930*, New Brunswick: Rutgers University Press, 2008.

¹⁴ “Eternal Triangle Forms Base in Nine Tragedies,” *Salt Lake Telegram*, October 24, 1922, 1.

mystery. But before we can fully begin to understand the ramifications and opportunities of Hall-Mills as a cultural event, we must first step back and understand what actually happened.

The Hall-Mills murder investigation was clouded by complications from the very beginning. Reverend Hall and Eleanor Mills were prominent New Brunswick residents and were found in an area known locally as the town's "lovers' lane." Raymond Schneider and Pearl Bahmer, the teenagers who found the bodies, were also New Brunswick residents, but the bodies were technically outside town limits. More important, they were also outside the county's borders—about 350 feet over the border, in Somerset County.¹⁵ Further complicating matters, due to the careful way the bodies were arranged and tire tracks allegedly found near the scene, investigators at first suspected that the murders may have taken place elsewhere—likely in New Brunswick, the county seat of Middlesex County—with the bodies then moved to the site on which they were found. As a result, there was immediate confusion over who would investigate and ultimately prosecute the case, specifically whether it should remain with the New Brunswick police, who initially responded to the gruesome discovery, and thereby the Middlesex County prosecutor or whether it should be turned over to the Somerset County authorities. The decision was quickly made to transfer the investigation at least temporarily to the Somerset County officials—Prosecutor Azariah Beekman and County Detective George C. Totten—even though the assumption at the time was that any future trial would take place in New Brunswick.¹⁶

¹⁵ "Rector and Woman Choir Singer Found Murdered in Field," *New York Times*, September 17, 1922, 1.

¹⁶ *Ibid.*

Forensic tests would eventually show that the crime, in fact, likely took place on the same farm where the bodies were found, meaning the crime indeed took place in Somerset County.¹⁷ As a result, the eventual trial took place not in New Brunswick, but rather in Somerville, New Jersey, Somerset's county seat. But more important, the initial confusion had a number of ramifications. The crime scene itself, for example, was never properly secured and at times reportedly "resembled a circus a lot more than a farm," with locals setting up shop with "balloons, pop corn, peanuts, and soft drinks."¹⁸ Tourists came in automobiles from numerous states and even removed various items, many of them potential pieces of evidence. The New York Times reported, "The curiosity seekers took everything they could get their hands on as souvenirs, and denuded the murder tree of its branches and leaves."¹⁹ Over time the "souvenir hunters' would grow even bolder. Armed with saws and pocket knives, they would take virtually the entire crabapple tree itself. Indeed, according to a report in the Ft. Worth Star-Telegram, "By nightfall the slender trunk had been chipped off and hacked almost to the ground, which itself was trampled bare of brush, goldenrod and even the grass blades."²⁰ Investigators, as a result, could not know for certain whether key pieces of evidence such as the murder weapon had been removed by the murderer or by treasure-seekers. And tourists were not the only interlopers at the crime scene. Early in the investigation, reporters asked Totten if he had searched two wells in on the farm for the murder weapon(s). His response, and the ensuing flurry of activity, summed up the state of the initial Hall-Mills investigation:

¹⁷ Forensic Report, Hall-Mills Case File, Box 1, Folder 6 (Rutgers Special Collections, New Brunswick, N.J.)

¹⁸ "Hall Wired Woman He Would Meet Her in Apartment Here," *New York Times*, October 23, 1922, 1.

¹⁹ *Ibid.*

²⁰ Robert Tompkins, "Morbidity souvenir hunters strip scene of Hall-Mills crime, including apple tree," *Fort Worth Star-Telegram*, October 30, 1922, 13.

“No,” he replied, “but, by gum, that’s a crackerjack idea. I never thought of that before.”

The prosecutor engaged John Hart, a well digger of South River, but before Hart reached the farm a group of reporters, armed with shovels, rakes and axes, which they had bought for the purpose, were at work. They were joined by the State detectives and soon the wells were emptied without disclosing a trace of pistol or knife.²¹

Adding to the confusion, questions about which agency would lead the investigation also led to the occasional existence of concurrent investigations and frequent miscommunication between authorities. Evidence was passed back and forth between various agencies, with key pieces often getting lost, left behind, or damaged in the process, sometimes not to be recovered until years later.²²

More than anything else, however, two aspects of the initial investigation symbolized the deficiencies in the entire process. First, in addition to the overall crime scene, authorities also treated the bodies themselves with surprising nonchalance. The corpses of Hall and Mills, in fact, were buried without undergoing serious examination. Weeks later, in late September 1922, Mills’s body was exhumed and an autopsy shockingly discovered that “in addition to three bullet holes in her head, Mrs. Mills’s throat had been cut and the jugular vein, the wind pipe and the carotid artery severed.”²³ While a scarf covered Mills’s neck at the crime scene itself, it is difficult to understand how the initial forensic examination of the bodies could have missed such crucial details. The Somerset County Coroner, by way of explanation, stated “that he had made no real autopsy on the body of Mrs. Mills, Prosecutor Beekman having instructed him not to, and that he merely had made a cursory examination and submitted a report, which did not

²¹ “Widow of Rector had Clothing Dyed,” *New York Times*, October 3, 1922, 1.

²² “Gives Up Records in Hall-Mills Case,” *New York Times*, August 14, 1926, 3.

²³ “Bodies of Slain Pastor and Choir Leader to be Exhumed and Autopsy Made,” *Fort Worth Star-Telegram*, September 29, 1922, 16.

purport to be more than a general statement on the condition of the body.”²⁴ Authorities eventually exhumed and examined Hall’s body, as well, and while there were no revelations as shocking as those concerning Mills, this was a key mistake committed by the initial investigation team that helped lead to the circus atmosphere surrounding the entire investigation.

Further, the investigation’s treatment of living suspects also raised questions. While investigators questioned the most logical initial suspects—the aggrieved spouses of the victims—immediately after the discovery of the bodies, prosecutors from both counties inexplicably moved on to other possibilities quickly. As early as September 25, 1922, only eight days after the bodies had been discovered, investigators indicated that they had absolved Frances Stevens Hall, the wife of Reverend Hall, for the murder. Newspapers reported, “Questioning by detectives and police has resulted in an explanation, satisfactory to them, of Mrs. Hall’s time from Wednesday, the day before the double murder is believed to have been committed, until Saturday when the bodies were found.”²⁵ This was not because they had discovered a more promising lead. Indeed, the prosecutors admitted, every clue concerning the case “had carried them into nothing more than a labyrinth of theories, leading nowhere.”²⁶ Investigators were never clear why that labyrinth led them away from Hall or, for that matter, the female victim’s husband, James Mills, or why they did not more aggressively investigate the spouses’ alibis at that time. But within a couple of weeks, under mounting pressure to make an arrest, they would follow one of those winding paths in an entirely different direction.

²⁴ “Throat of Pretty Choir Singer Cut,” *Morning Oregonian*, September 20, 1922, 3.

²⁵ “Murder Mystery Baffles Sleuths,” *The Miami Herald*, September 25, 1922, 1.

²⁶ “Rector’s Widow Absolved of Complicity in Murder,” *Colorado Springs Gazette*, September 25, 1922, 3.

On October 8, 1922, detectives reexamined Pearl Bahmer and Raymond Schneider, the witnesses who had found the bodies, as well as two of their acquaintances, Clifford Hayes and Leon Kaufmann. Detectives questioned the teenagers individually throughout the day and late into the night.²⁷ From this questioning emerged a story that Kaufmann, Hayes, and Schneider had spent the evening of the Hall-Mills murders following Bahmer and her father, drunk at the time, around New Brunswick. The three young men, allegedly armed with a pistol, intended to confront Mr. Bahmer over allegations that he had abused Pearl and, ultimately, raped her. Eventually, after hours of questioning, Schneider signed a statement stating that the trio had happened upon Hall and Mills late that night. Mistaking them in the darkness for the Bahmers, Schneider claimed, Clifford Hayes had fired a number of shots, accidentally killing Hall and Mills.²⁸ The next morning, Somerset county officials arrested Hayes for the Hall-Mills murder—the first person to be taken into custody and charged in the case.

Pearl Bahmer and her father would soon join Hayes in jail, Pearl on a charge of incorrigibility and her father on the allegations of abuse and statutory rape. But neither Pearl nor the New Brunswick community at large was convinced of Schneider's claim that Hayes had mistakenly shot Hall and Mills. Most believed that the investigators had acted rashly in an attempt to cover for the seeming directionless nature of the investigation. Even Charlotte Mills, Eleanor's daughter, was not convinced, saying, "You will never make me believe that Clifford Hayes shot my mother and Mr. Hall. I know Ray Schneider and I don't think he has sense enough to do it."²⁹ Protests erupted in New Brunswick, including threats and even attacks on the official who obtained

²⁷ Kunstler, *Hall-Mills Murder Case*, 47.

²⁸ *Ibid.*

²⁹ "Girl, 15, is Held in Rector Case," *Morning Oregonian*, October 1, 1922, 1.

Schneider's statement, claiming that they "considered [Hayes's arrest] a 'frame up' to quiet the indignation of citizens and soothe an aroused governor by making it appear that the mystery had been cleared up."³⁰ Amid rumors that the state may take over the investigation, cracks between the two counties also began to show, as, according to a newspaper wire report, "The Middlesex County authorities, including Prosecutor Stricker, expressed the belief that the murder was as far from solution as ever, while Prosecutor Beekman of Somerset County held stubbornly to the belief that in Hayes and Raymond Schneider...he has the two principals in the crime."³¹ Two days later, Schneider, again under heavy questioning, admitted the accusation was false and the case against Hayes collapsed. Hayes was released from jail and authorities "were admittedly 'up in the air' again."³² Investigators turned back to their original theories, considering the possibilities of robbery, hired assassins, or an act of jealousy, with particular attention turning to love letters found at the scene of the crime, seemingly written by Mills to Hall.

In addition to hurting the investigation's credibility with the case's onlookers, the Hayes mistake laid bare the competing theories and interests of the various parties investigating the crime. Convinced early on that Hayes was innocent, state troopers caused dissension by "split[ting] with the other investigators and...pursuing a separate line of inquiry."³³ More specifically, the state troopers were convinced that "a woman and two men were implicated in the murder."³⁴ It did not take long for the identity of those mystery suspects to emerge. As new evidence of love letters from Mills to Hall materialized, along with evidence that Frances Hall had had a coat dyed not long after the

³⁰ "Irate Citizens Attack Detective in Murder Case," *St. Albans Daily Messenger*, October 11, 1922, 1.

³¹ "Basso in Choir Now Suspected," *Morning Oregonian*, October 12, 1922, 1.

³² "Widow's Coat Examined," *Salt Lake Telegram*, October 13, 1922, 1.

³³ "Probe Turns to Mrs. Hall," *The Kansas City Star*, October 12, 1922, 1.

³⁴ *Ibid.*

murders, the widow herself became a more and more prominent figure in the investigation.³⁵ By mid-October, detectives were reportedly ready to turn “from a search of theoretical by-paths and [make] an attack against the center of the drama—the families of the dead man and woman.”³⁶ Detective Totten made the new direction clear early on. When Frances Hall, out of apparent frustration with the investigation, demanded that the governor appoint a new command, Totten responded directly. “Of course,” he said, “Mrs. Hall is suspected of knowing who committed the murder.” He added, leaving little room for misunderstanding, “The shooting was done by someone who was deeply interested in Dr. Hall and Mrs. Mills.”³⁷ Soon after that, the detectives were ready to release the contents of the love letters found at the scene and bring Frances Hall and her two brothers—Henry and Willie Stevens—in for questioning. Not coincidentally, news also emerged at the same time that the state would be taking over the investigation. It was, to many, including the reporters on the scene, further evidence that the case was finally moving in the proper direction: “Hope was felt today that the Hall-Mills mystery may be solved eventually as Wilbur Mott, Newark lawyer, and former Essex county prosecutor, who has been designated a special deputy attorney general, took over the reins of the inquiry on behalf of the state.”³⁸

The optimism initially seemed warranted. Simultaneous with the announcement of the change in investigators came news that the officers had what they considered a smoking gun: an eyewitness named Jane Gibson who claimed to have happened upon the scene on the night of the murders and witnessed a man and a woman confront the

³⁵ “Widow of Rector had Clothing Dyed,” *New York Times*, October 3, 1922, 1.

³⁶ “Hall Trio is Quizzed Again,” *Grand Forks Herald*, October 18, 1922, 1.

³⁷ “Widow Takes a Bold Stand in Investigation,” *Charlotte Sunday Observer*, October 15, 1922, 1.

³⁸ “New Detectives Put In Charge of Hall-Mills Case,” *Miami District Daily News*, October 24, 1922, 2.

victims, argue with them, and shoot them.³⁹ As one anonymous and perhaps overconfident county official put it, “The Hall-Mills murder mystery is solved. Nothing now remains but action by the grand jury.”⁴⁰ The case would move slowly over the ensuing weeks, as Hall fought back, submitting to newspaper interviews telling her story, challenging the prosecution’s case and specifically denying Gibson’s allegations.⁴¹ By then, however, the end of the story seemed inevitable. After a frustrating delay during which Henry Stevens threatened to leave town in order to force detectives to expedite the investigation, by mid-November the prosecution was finally ready to submit its case to the Grand Jury, requesting indictments for murder against Frances Stevens Hall and her two brothers, Henry and Willie Stevens.⁴² Special Prosecutor Mott would call over 50 witnesses to testify in front of the grand jury, but would not call one key witness: Hall herself. Desperate to tell her side of the story, Hall spent the entirety of the proceedings in the hallway outside the grand jury room, waiting for an opportunity to demand a chance to testify. But it was a demand Mott would ultimately refuse.⁴³ As the Grand Jury concluded its hearing during the last week of November, it appeared that the climax of the case was finally at hand, with a trial to follow shortly after.

And yet, in what was quickly becoming a defining characteristic of the Hall-Mills case, the investigation took another unexpected turn: the Grand Jury failed to return an indictment. Hall and her brothers would not be arrested; there would be no trial in the near future. The investigation, in other words, was effectively back to square one. Or, as

³⁹ “Woman’s Story of Double Killing May Lead to Arrest of Slayers,” *St. Albans Daily Messenger*, October 24, 1922, 1.

⁴⁰ “Indictments in Double Slaying Will Be Asked,” *Salt Lake Telegram*, October 22, 1922, 1.

⁴¹ “Widow of Slain Pastor Hurls Denial at Murder Witness,” *The Times-Picayune*, November 2, 1922, 1.

⁴² “Grand Jury is Sifting Murder of Jersey Pair,” *Albuquerque Morning Journal*, November 22, 1922, 1.

⁴³ “Pastor’s Widow Awaits Chance to Ask Hearing,” *Salt Lake Telegram*, November 28, 1922, 1.

the International News Service put it, “The hunt for the murderers of Rev. Edward W. Hall and his ‘wonder heart’ choir singer, Mrs. Eleanor Mills, which has held the eyes of the Nation since Sept. 14...was abandoned.”⁴⁴ Investigators, of course, were quick to point out that their investigation would continue and that the case could be presented to the Grand Jury again at any time. Meanwhile, Hall’s lawyer indicated that the widow would begin her own investigation “to run down the slayers.”⁴⁵ As late as January 1923, widower James Mills had also not given up hope, indicating an intention to go to the governor “asking him to use all the resources of the State to clear up the case.”⁴⁶ But it all seemed, for the most part, like lip service. Prosecutors would occasionally declare that the investigation remained open, but seemed more concerned with ensuring that the investigation’s bills would be paid.⁴⁷ Hall herself, meanwhile, announced that she would be leaving New Brunswick for Italy for one year to recover from the entire affair, closing her home and advising her servants to seek other employment.⁴⁸ It seemed likely, in other words, that despite any protestations to the contrary, “The Hall-Mills murder case ha[d] gone into the dusty pigeonhole of crime’s unsolved mysteries.”⁴⁹

As the years went by, the Hall-Mills case re-entered the national consciousness relatively frequently. It was still often used as a comparison when cases with similar fact patterns became news or when newspapers catalogued unsolved murders.⁵⁰ Newspapers would also occasionally offer updates on the continuing investigation, though the updates never seemed optimistic. One such report, for example, noted that much of the evidence

⁴⁴ “Probe Ends in Hall-Mills Murder,” *Fort Worth Star-Telegram*, November 29, 1922, 15.

⁴⁵ “Pastor’s Wife to Investigate Murder,” *The Evening News*, November 30, 1922, 1.

⁴⁶ “Mills Retains Hope,” *New York Times*, January 28, 1923, 17.

⁴⁷ “Approve \$8,500 Hall Bills,” *New York Times*, January 4, 1923.

⁴⁸ “Mrs. Hall Sails Feb. 7,” *New York Times*, January 20, 1923, 8.

⁴⁹ “Hall Case,” *Miami District Daily News*, December 4, 1922, 2.

⁵⁰ “Unsolved Murder Mysteries Elude Police Like Spectres,” *New York Times*, April 8, 1923, 3.

discovered “since the commotion created by the case died down has been chiefly of a negative character,” contradicting previous theories, including “the story of Mrs. Jane Gibson.”⁵¹ Occasionally new evidence would arise and old suspects would become new again, including “a man who had been announced as eliminated early in the case.”⁵² These suspicions were normally short-lived, however, leading to the perception that the investigation was flailing rather than truly making progress.

Other groups would also take interest in the case, including, perhaps most notably the Ku Klux Klan. Resurgent across the country in the 1920s, central New Jersey had become a particular battleground for the racist, nativist, anti-Catholic organization in the Hall-Mills time period. And onlookers were well aware of the Klan’s growing local presence. As the historian David Mark Chalmers notes, in late spring 1923, less than a year after the murders, the Klan organized a “well publicized” meeting in nearby Bound Brook, New Jersey, to promote the creation of a Klan chapter. Hearing about the high profile meeting, a group of anti-Klan protesters crashed it, throwing stones and trapping the attendees inside until police could clear an exit the following morning.⁵³ With the Klan therefore active locally—and attempting to expand its membership—it is not a surprise that it would become at least tangentially associated with the Hall-Mills case. Indeed, a number of onlookers had theorized from the beginning that the Klan, in an attempt to make a statement about both the moral failures of the adulterous victims and the Klan’s opposition to the Episcopal Church on the whole, had actually been behind the

⁵¹ “Again Suspected in Hall-Mills Case,” *New York Times*, May 31, 1923, 5.

⁵² *Ibid.*

⁵³ David Mark Chalmers, *Hooded Americanism: The History of the Ku Klux Klan* (Durham: Duke University Press, 2003), 246.

murders (a theory, probably far-fetched, that Kunstler would revive in his account of the murders almost 60 years later).⁵⁴

Regardless, the investigators' response to the Klan's interest, too, would not inspire confidence. "As regards reports that the Ku Klux Klan has taken an active interest in the case," Detective Ferdinand David said, "I can only say that although I have no knowledge of this, I would welcome the assistance of the Klan or any other organization or individual that promised to unearth a tangible clue to this mystery."⁵⁵ As time went on, the description of the case given by a headline in the New York Times on the murder's one-year anniversary seemed most apt: "Hall Case Year Old; A Baffling Mystery."⁵⁶ Calling it a "mystery that commanded international interest," the article lamented that, "No solution has been reached. Nor is there any prospect of a solution, however optimistic detectives on the case occasionally seem to be."⁵⁷ Further, the newspaper noted, despite the efforts of everyone from special prosecutors to private detectives to unsolicited help from clairvoyants, the "case today, one year after, is admittedly as great a mystery as when the bodies were found. Perhaps it may be accounted a more perplexing mystery, for at that time numerous solutions were considered possible. Today none seems in prospect."⁵⁸ The press never forgot about the case—there were frequent articles checking in on the status of the principals and the state of the investigation—but the odds that the mystery would ever be solved seemed increasingly bleak in 1923 and 1924.

⁵⁴ "New Letters Prove Hall-Mills Intrigue, Declares Detective," *New York Times*, October 16, 1922, 1.

⁵⁵ "New Clue in Hall Murder," *New York Times*, September 16, 1924, 10.

⁵⁶ "Hall Case Year Old; A Baffling Mystery," *The New York Times*, September 9, 1923, 2.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

The case remained unpredictable, however, and in the summer of 1926, almost four years after the murders, stories began to emerge that investigators had found new evidence that would break the case open. Louise Geist, Mrs. Hall's maid at the time of the murders, was in the midst of annulment proceedings with her husband, Arthur Riehl. Riehl claimed, as part of the annulment case, that Geist was a "participant in or accessory to" the murders and that she had received a payment in return for not revealing what she knew.⁵⁹ At first, the stories seemed like little more than another false lead, designed to raise excitement and circulation rates, but likely to fade away quickly. Hall's attorney, Timothy Pfeiffer, pointed out that the allegations had "evidently been written by a newspaper man to produce a Summer sensation," and noted that the information had been previously known.⁶⁰ Pfeiffer was, at least in part, correct. This latest twist was indeed spearheaded by a tabloid newspaper. William Randolph Hearst had launched the New York *Daily Mirror* in 1924 as competition for the successful *Daily News*. The venture had not gone well, however, and by 1926 the paper continued to significantly trail its primary competitor.⁶¹ Seeking to gain attention and boost circulation, Hearst turned to a reliable subject: the Hall-Mills murder. The *Mirror* dedicated extensive space to the matter in July 1926 and the idea worked. Seeing its success, other tabloids in the region joined in and soon Hall-Mills was back in the spotlight, at least in the Northeast section of the country. Still, it seemed unlikely to have any material effect on the investigation. While the news was inflammatory, as Pfeiffer pointed out, it did not seem to add much new to the story and was clearly driven by something other than a search for truth. Indeed, by late July, it appeared that this evidence would follow the usual pattern of

⁵⁹ "Hall-Mills Murder Under New Inquiry," *New York Times*, July 17, 1926, 3.

⁶⁰ *Ibid.*

⁶¹ Kunstler, *Hall-Mills Murder Case*, 116.

creating some excitement, before fading away. Middlesex County Prosecutor John Toolan, who called his inquiry into the case “unofficial and personal,” stated that there was no likelihood that the Court would order a new investigation on the basis of the new information.⁶²

But this time, there were a few material differences. First, there was in fact a preexisting link between the tabloids and the official investigation. As Pfeiffer may have known but most onlookers did not, the Hall-Mills investigation and the print media were deeply entwined. Investigators had, in fact, quietly been working with tabloid newspapers for years in an attempt to find a break in the case. According to letters in the Hall-Mills case file, in August 1924 New York attorney Joseph Schultz had contacted Azariah Beekman, the case’s original investigator, about “a matter which I am sure would be of great interest to you that I should like to talk to you about.”⁶³ This set off a series of letters between Schultz, Beekman, New Jersey Attorney General Edward Katzenbach and New York *Evening Graphic* reporter Thomas Meares. The letters are cryptic, intentionally avoiding referring to either the Hall-Mills matter or Schultz’s “clients” by name.⁶⁴ But they do make clear that the investigators were working closely with tabloid-employed private investigators and reporters in an attempt to break the case open. In October 1924, the reporter Meares indicated to Beekman that he was “once more at liberty to go full ahead on our case, after having a most strenuous three weeks” working on a different story. He continued, “I am preparing my notes at the present time

⁶² “Hall Murder Inquiry Reveals Nothing New,” *The New York Times*, July 20, 1926, 4.

⁶³ Letter from Joseph Schultz to Azariah Beekman, Aug. 20, 1924, Hall-Mills Case File, Box 1, Folder 9 (Rutgers Special Collections, New Brunswick, N.J.)

⁶⁴ Though they were filed in the Hall-Mills case files and marked with the appropriate case number, AC.2362.

so that we may be ready to go full ahead next week.”⁶⁵ Over the ensuing few weeks, Meares, Beekman and Katzenbach remained in close contact, arranging meetings and determining whether it would be possible to gain Meares access to the sealed Grand Jury records. The attorney Schultz also remained interested in the progress of the case on behalf of his unnamed clients. By November, it seemed clear that Meares’s investigation was, like the official one, going nowhere, with Attorney General Katzenbach noting to Schultz that “Mr. Meares does not feel possessed of sufficient information to make a complaint, or at present to make any presentation of the case to a grand jury.”⁶⁶ One week later, Meares wrote to Katzenbach to let him know that the *Evening Graphic* had seemingly lost interest. He wrote:

I am writing to let you know that by mutual consent the case which we have been working on for some time past has been withdrawn from this paper’s schedule. From this time onward therefore, the GRAPHIC as a paper is not interested in any way whatsoever. I personally am just as interested as ever and it is my hope and desire to be able to assist you in the future in definitely clearing the matter up.⁶⁷

It is not clear whether the relationship continued for any significant amount of time after this, but it is at the very least evidence that investigators and state officials had been working with tabloid newspapers in concert on the case. Further, there is no specific evidence that the investigators were working with the *Daily Mirror* two years later, but given this prior relationship, it is no surprise that they were willing to take a tabloid newspaper’s “new evidence” seriously. This performance, in other words, was more than just a media sensation; it was, to at least some extent, a media creation.

⁶⁵ Letter from Thomas L.M. Meares to Azariah Beekman, Oct. 1924, Hall-Mills Case File, Box 1, Folder 9 (Rutgers Special Collections, New Brunswick, N.J.)

⁶⁶ Letter from Edward Katzenbach to Joseph Schultz, Nov. 10, 1924, Hall-Mills Case File, Box 1, Folder 9 (Rutgers Special Collections, New Brunswick, N.J.)

⁶⁷ Letter from Thomas Meares to Edward Katzenbach, Nov. 17, 1924, Hall-Mills Case File, Box 1, Folder 9 (Rutgers Special Collections, New Brunswick, N.J.)

Perhaps even more important, by 1926 the cast of characters at the center of the investigation had changed. Most of the original investigators were no longer part of the case. Former Somerset County Detective George Totten, for example, was still interested in the case, but only as a private citizen—he was no longer a county detective. Former Middlesex County Detective Joseph Stricker had also left office and, perhaps most important, Beekman himself had died the previous winter, after having left his office to become a state judge.⁶⁸ Initially, the new officials involved in the case showed little interest in the new evidence. Backing up Middlesex County Prosecutor Toolan's statement that the case would not be re-opened, Somerset County Prosecutor Francis Bergen also initially said that "his office had received no new information on the case and had not started a new investigation."⁶⁹ But there was time for one more twist in the winding case: only eight days later, at midnight, state police entered the house of Frances Stevens Hall, arrested her, and charged her with two counts of murder.⁷⁰

It is not clear precisely what led to the change of heart of the Somerset County Prosecutor. But not long after the arrest, New Jersey Governor A. Harry Moore would make an announcement that would have important implications: State Senator Alexander Simpson would take over the investigation as special prosecutor.⁷¹ While the ramifications of this decision may not have been clear at the time, they would become clear quickly. Simpson was an aggressive prosecutor, convinced of the guilt of Hall and her family, and would push hard to ensure that Hall and her two brothers, Henry and Willie Stevens, would stand trial. Simpson's approach was so aggressive and direct, in

⁶⁸ "Hall-Mills Murder Under New Inquiry," *New York Times*, July 17, 1926, 3.

⁶⁹ "Hall Murder Inquiry Reveals Nothing New," *New York Times*, July 20, 1926, 4.

⁷⁰ "Arrest Made at Midnight," *The New York Times*, July 29, 1926, 1.

⁷¹ "Moore Gives State Special Counsel," *New York Times*, July 31, 1926, 3.

fact, that he was criticized as “sensationalistic.”⁷² But whether they constituted a spectacle or not, the surprising arrests re-ignited the somewhat dormant interest in the case, as reports of the investigation’s progress once again became front-page news. The case continued to take multiple twists and turns: witnesses, including Jane Gibson and Charlotte Mills (victim Eleanor Mills’s daughter)—both, notably, women—re-emerged. New characters also appeared on the scene, from the new investigative team led by Simpson to witnesses who had not been identified four years earlier.⁷³ The bodies were even ordered to be exhumed once again, this time to determine whether the initial examination had been tampered with, though it was unclear precisely what investigators hoped to find given the likely state of the bodies four years after their burial (for the second time).⁷⁴ In many ways the investigation mirrored the prior investigation, down to Jane Gibson’s role as the key witness.⁷⁵ But the result would be different. On September 15, 1926, Simpson, in an apparent attempt to take the defense by surprise, decided not to wait until the following Tuesday when the September term Grand Jury would be empanelled and instead called the April term Grand Jury to hear the state’s evidence against Hall, her brother Willie Stevens, and her cousin Henry Carpender.⁷⁶ The next day, the Grand Jury, after hearing thirty witnesses and deliberating for only ten minutes, did what the 1922 Grand Jury would not: it produced indictments for Hall, Carpender, and Willie Stevens and, in a surprise to almost all onlookers, for Hall’s other brother, Henry Stevens (who most thought had been eliminated as a suspect due to an alibi).⁷⁷

⁷² “Simpson Method Criticized,” *New York Times*, August 6, 1926, 3.

⁷³ New Clues Offered by Three Witnesses in Hall-Mills Case,” *New York Times*, August 2, 1926, 1.

⁷⁴ “State to Exhume Bodies in Hall Case in Drastic Inquiry,” *New York Times*, August 1, 1926, 1.

⁷⁵ “Mrs. Gibson Pivot of Hall-Mills Case,” *New York Times*, August 14, 1926, 3.

⁷⁶ “Grand Jury Called Suddenly to Hear Hall Case Today,” *New York Times*, September 15, 1926, 1.

⁷⁷ “Four Indicted in Hall-Mills Murder; Surprise as Jury Adds Henry Stevens to 3 Already Held in 4-Year-Old Case,” *New York Times*, September 16, 1926, 1.

Finally there would be the climax so many had expected four years earlier: there would be a trial, and it would be a sensation.

Over the ensuing months, the murder trial of Frances Stevens Hall and her three relatives predictably became one of the most spectacular trials of the 1920s. Much as in Dayton, Tennessee one year earlier, newspaper reporters packed into Somerville, New Jersey to cover the trial in extraordinary detail. Radio would not have as strong a presence, though not for lack of effort. While New York radio station WRNY made plans to broadcast from just outside the courtroom, the presiding judge, Justice Parker, made it clear that not only would microphones not be installed within the courtroom itself, but issued the additional warning that “I will not permit the courtroom to be disturbed, and running in and out of a courtroom causes a disturbance.”⁷⁸

Still, the trial would not lack for press coverage. The proceedings were front page news each day the trial was in session, including not just brief recaps of the proceedings, but extensive, word-for-word transcripts of each witness’s testimony. The characters involved were well-known to onlookers by then, with newspapers showing particular interest in the witnesses who had become synonymous with the case itself: the defendants, of course, but also Charlotte Mills and, especially, Jane Gibson. The New York Times noted, “More than 5,000,000 words, the greatest number ever sent out on a murder trial, prize fight or any other news story, were sent from the court house during the first eleven days of the Hall-Mills murder trial.”⁷⁹ And that was before either Gibson or the defendants themselves even took the witness stand. By the time the jury reached its verdict, more than two weeks later, on December 3, 1926, The New York Times alone

⁷⁸ “Find Stained Razor as Hall Case Clue,” *New York Times*, October 30, 1926, 1.

⁷⁹ “5,000,000 Words on Hall Trial Put on Wires in First 11 Days,” *New York Times*, November 15, 1926, 1.

had run over 90 front page stories concerning the affair over the course of just the trial itself.⁸⁰

The trial did not disappoint reporters, editors, or readers. While the crowds in the streets outside the courtroom would ebb and flow over the course of the month-long proceedings, the courtroom itself remained crowded, “the three rows of newspaper men, the three rows of witnesses and the two rows and galleries filled with ‘the public.’”⁸¹ This audience, as well as newspaper readers across the country, followed a trial filled with as many twists and turns as the investigation itself. On the very first day, the prosecution surprised the courtroom by calling two witnesses previously unknown to the public who claimed they had seen Willie Stevens wandering the streets of New Brunswick on the night of the crime.⁸² That was one of a number of surprises the prosecution had for the defense, including the decision to call Charlotte Mills to the stand. The trial continued through the sordid facts, including the presentation of the victims’ love letters and the much-anticipated testimony of witnesses such as church vestryman Ralph Gorsline, who now admitted he had heard the gunshots on the night in question, and Louise (Geist) Riehl, Hall’s maid whose alleged statement had re-opened the case in the first place. Of course, the testimonies of the defendants themselves, particularly Frances Hall and Willie Stevens, gathered special attention, as well as all evidence related to Henry Stevens’s alibi.⁸³ In the end, the prosecution laid out a case that the victims planned to leave New Brunswick and elope. Hall and her two brothers,

⁸⁰ “‘Not Guilty’ Is Verdict In Hall Case; Plan To Release Prisoners On Bail Today And Probably Quash All Other Charges,” *The New York Times*, December 4, 1926, 1.

⁸¹ “Town Takes Trial Calmly,” *New York Times*, November 8, 1926, 2.

⁸² “Surprise Opens Hall Trial; Two Saw Willie Stevens Wandering on Crime Night,” *New York Times*, November 4, 1926, 1.

⁸³ “Hall Mistrial Move Today; Jury ‘Loaded,’ Some Stupid, Simpson Writes to Moore,” *New York Times*, December 1, 1926, 1.

knowing that the victims were involved in an illicit affair and having heard of their plans, followed them to the New Brunswick farm on the evening in question and, out of jealousy and/or rage, shot the victims. While they did not have a murder weapon to present, the prosecution did have some key pieces of evidence; the bulk of its case, however, rested on eyewitness testimony, a string of dozens of eyewitnesses who had seen one or more of the defendants on the night in question, or who had seen the defendants taking suspicious actions after the fact. The defense, meanwhile, maintained that the prosecution's theory was implausible. Henry Stevens, they argued, had an alibi; based on his diary and the testimony of friends, he had been in Lavallette, New Jersey, on the night in question, on a fishing trip. The defense portrayed Hall, meanwhile, as both a grieving widow and a pillar of the community while Willie Stevens, whose mental health and maturity had been questioned throughout the investigation, surprised many by proving to be an engaging and effective witness on his own behalf.

Without question, however, the main event of the Hall-Mills trial was the testimony of Jane Gibson. Even before she took the stand, her impending testimony was a continuous side-story through the first two and a half weeks of the trial. Much of the prosecution's case rested on what Gibson—who would come to be known as the “Pig Lady”—had seen that night, when, she claimed, she happened upon the scene while chasing corn thieves. From the beginning, it was understood that her testimony would hold the key to the case. But the story of her testimony would become even more dramatic when she became seriously ill, eventually ending up in Jersey City Hospital. For weeks, newspapers tracked Gibson's health, updating onlookers on her status and speculating on when and whether she would be able to testify. Eventually, she would be

well enough to testify, though not without a great amount of drama, in what would be, as we will see, the trial's most spectacular day.⁸⁴

By early December, after all of the testimony and informal courtroom drama, the imminent verdict was almost an afterthought. In the end, the jury found Frances Hall, Willie Stevens, and Henry Stevens not guilty and all charges were dropped against the three co-defendants, as well as their cousin and alleged co-conspirator Henry Carpenter.⁸⁵ The case would officially remain unsolved and no other suspects would ever be named. The trial, like the coverage, likely indeed came down largely to the credibility of Jane Gibson. According to two jurors, Gibson's "failure...to convince the jurors that her alleged eye-witness story of the double murder was a true one was one of the main reasons for the verdict of acquittal."⁸⁶

Regardless, while the acquittal meant freedom for the defendants, for many onlookers the verdict was beside the point. By then, the informal aspects of the trial had long overshadowed the legal formalities; the trial was entrenched as a cultural reference point. Spanning from 1922 through the end of 1926, the Hall-Mills murders and trial had become a ubiquitous part of the culture of the first half of the 1920s. In the process, a number of its key characters became household names, each performing dual roles. Formally, they were witnesses, defendants, and victims, but informally they were cultural symbols. Three, in particular would come to dominate the coverage of the trial, one more intensely than the rest. The three were, in many ways, very different—one was much younger than the other two, for example, and they were each from different social

⁸⁴ "Amused Throngs Greet Mrs. Gibson," *New York Times*, November 19, 1926, 15.

⁸⁵ "All Hall Charges Quashed; Defendants Go Home Happy; Simpson Resigns in Anger," *New York Times*, December 5, 1926, 1.

⁸⁶ "Jury Disbelieved Mrs. Gibson's Story," *New York Times*, December 4, 1926, 11.

classes. But they had a few key attributes in common—in particular, they were all women, and each spent the trial performing a different possible representation of what it meant to be a modern woman in the 1920s. They were, in other words, identifiable characters the audience could use to discuss changing cultural attitudes towards what it meant to be a woman, the uncertain future of women’s reform movements, and, for some, concern over how changing social and domestic roles for women could lead to a disastrous decline in moral standards. If Scopes was an entrance into a discussion the role of the Church and religion in the 1920s version of modern culture, Hall-Mills was an opportunity to consider how best to define a “modern woman’s” wants, needs, and responsibilities. By analyzing these specific symbols more deeply, we can better understand the concerns at stake and the range of interests colliding at the Somerville County Courthouse. In the process, we will discover why the Hall-Mills trial became more than a sordid fascination—and how the “Pig Lady” became its star.

CHAPTER FOUR

Hall-Mills: The Widow, The Daughter, and the Pig Woman

The Jersey City Hospital ambulance made its way south towards the town of Somerville, the county seat of Somerset County, at a slow but steady 10 miles per hour. Police officers cleared intersections to allow the ambulance to drive by as shopkeepers left their stores to watch the activity. Taxis went out of their way to drive alongside the procession and six cars carrying reporters and photographers stayed as close as they dared to the action. Onlookers along the 60-mile route knew immediately who was in the ambulance and shouted in amusement, “Hurry, there goes the Pig Woman!” and “Now’s yer chance, Jane. Do yer squealin’!” The scene was no less dramatic when the ambulance reached its destination, the Somerville Courthouse. As the New York Times reported, “Hundreds of persons had crowded the steps, perched on the marble abutments, crowded the corridors and balconies in the court house and gathered on the lawns. There they pressed in spite of a drizzling rain.”¹ The performance they had been anticipating for nearly a month was finally about to take place: it was November 18, 1926, and it was the day the Pig Woman would finally take the stand in the Hall-Mills murder trial.

The Pig Woman, or Jane Gibson as she was, by then, less commonly known (or Jane Easton, her likely legal name, as she was even less commonly known) was ready to perform her starring role as the prosecution’s key witness in its murder case against Frances Stevens Hall and her two brothers, Willie and Henry Stevens, for the murders of Edward Hall and Eleanor Mills. Upon arriving at the courthouse and being sworn in, Gibson, who raised pigs (hence her colorful nickname, which tended to shift back and

¹ “Amused Throngs Greet Mrs. Gibson,” *New York Times*, November 19, 1926, 15.

forth between “Pig Lady” and “Pig Woman”) on a farm near the field where the victims’ bodies were discovered, would finally officially deliver the story the State—and the onlookers—were waiting to hear. She testified that in September 1922, she had suffered a series of thefts from her cornfields and was determined to catch the thieves. On the fateful night of September 14, 1922, having heard a noise outside, she saddled her mule, Jennie, and followed a wagon that she suspected was filled with corn stolen from her fields. The wagon led her to De Russey Lane, known locally as a popular “lovers lane,” where she tied Jennie to a cedar tree and attempted to continue on foot. While she lost track of the wagon, she claimed that in the process she heard voices (unrelated to her missing corn) and then saw a man she identified in court as Henry Stevens arguing with another man. To make a long and often convoluted story short, she claimed that she then heard a woman scream multiple times followed by four gunshots. Most important to the prosecution, she was willing to testify that she specifically recognized not only Henry Stevens, but also Frances Hall at the scene of the crime.² It was the highly anticipated climax of the prosecution’s case—dramatic testimony from an eyewitness who recognized the defendants and placed them at the scene.

The drama surrounding Gibson’s arrival at the courthouse and subsequent testimony added to the spectacle at the trial, but the substance of Gibson’s story could hardly have been more serious. On its surface, Gibson’s testimony was not only damning, it was potentially determinative. And yet, delving deeper revealed numerous holes in Gibson’s story. Her story changed, for example, each time she told it—even the number of people she claimed to have seen in the field that night evolved over time. Her

² “Full Text of Mrs. Gibson’s Story That Identifies Four at the Scene,” *New York Times*, November 19, 1926, 1.

initial story for reporters back in 1922 was also quite different from the one she told investigators. Gibson herself admitted, “I told one story to the newspaper men and another quite different to the prosecutor’s office,” explaining the discrepancy as a desire to appease the reporters so they would stop bothering her.³ Further, and perhaps more important, it was unclear how she could be as certain as she was about her identifications, particularly given that her story was not always consistent with those of other, less celebrated eyewitnesses. As the New York Times put it,

Since the night when, according to her story, she rode into the very heart of the murder mystery astride her mule Jennie, Mrs. Gibson has been the State’s strongest card, and now, four years later, her story of what she saw of the murders—the flash and report of a pistol, a woman’s hysterical ‘Please don’t,’ and the kneeling form of a woman in gray near whom was a bushy-haired man—still lacks corroboration.⁴

Indeed, as the newspaper pointed out, it had been contradicted by various people, including “Mrs. Nellie Russell, a negress and neighbor of the ‘pig woman,’ who said Mrs. Gibson was in her shack at the time of the murders.”⁵ Finally, Gibson’s testimony was not new. She had also been the State’s star witness at the 1922 Grand Jury proceedings, telling a similar story. Her performance at that time was not enough even to secure an indictment of Frances Hall and her brothers, let alone a conviction; it was fair to question what could have changed in the intervening four years to make her story more persuasive. And yet, by 1926, Gibson was not only the prosecution’s “pivot,” she would become, in many ways, the lasting image of the entire trial.

The “Pig Woman” endured for a number of reasons. Certainly, the centrality of Gibson’s testimony to the prosecution’s case was important. If the jury believed her and

³ “Gibson Woman Explains Story,” *Salt Lake Telegram*, November 4, 1922, 3.

⁴ “Mrs. Gibson Pivot of Hall-Mills Case,” *New York Times*, August 14, 1926, 3.

⁵ *Ibid.*

trusted her identifications, the decision to convict would be an easy one. And in the event, the opposite also proved crucially true: the New York Times reported, after the trial, “The failure of Mrs. Jane Gibson, the State’s star witness in the Hall-Mills trial, to convince the jurors that her alleged eye-witness story of the double murder was true was one of the main reasons for the verdict of acquittal.”⁶ But Jane Gibson meant much more to the Hall-Mills murder trial than simply being a key, if ultimately unpersuasive, formal witness. She was the symbol of the trial’s informal “ballyhoo,” the most spectacular of the trial’s many spectacles, and gave one of the trial’s key performances. She was, in other words, one of this performance trial’s key characters. Everything about Gibson’s involvement was marked by drama. Her story about the night of the murder itself, for example, became a lasting part of the unsolved mystery. But it was the circumstances surrounding her testimony that truly ensured her prominent place in the trial narrative. Gibson knew she was the prosecution’s key witness and that her performance and resulting celebrity would resonate nationwide. In fact, she seemed to revel in that fact; as she put it, she expected to be “the Babe Ruth of the trial.”⁷ And while she would ultimately not testify until the third week of the trial, she dominated its coverage from the very beginning. There was initially no announcement from the prosecution as to precisely when Gibson would testify, and newspapers speculated for the first two days of the trial that each could be the day on which she appeared. Then, on the third day of the proceedings, Assistant Attorney General Alexander Simpson shocked the courtroom with an announcement: the “‘hand of death’ was reaching for Mrs. Gibson,” he stated, and made the unconventional request that the Judge, jury, and defendants all move to a

⁶ “Jury Disbelieved Mrs. Gibson’s Story,” *New York Times*, December 4, 1926, 11.

⁷ “Mrs. Gibson Expects to be ‘Babe Ruth of Trial,’ ‘Wait Until I Get Well,’ She Says in Hospital,” *New York Times*, November 9, 1926, 15.

Somerville hospital to take Gibson's testimony direct from her hospital bed.⁸ Her condition was reported to improve later that same day, however, and the Judge, after visiting her in the hospital, determined that her testimony could simply be delayed.

For the next two weeks, newspapers would continue to update Gibson's condition (and speculate about her testimony) on a daily basis. For example, after Simpson had her moved from her original hospital to the Jersey City Hospital (where he could have more control over her care), she "suffered a relapse" and required a blood transfusion, further delaying her court appearance.⁹ When the day finally arrived for her testimony, it was, predictably, anything but ordinary. Following her long, public ambulance ride to the courthouse, Gibson was carried on a stretcher into the building and placed in a bed that had been set up within the courtroom.¹⁰ With nurses standing by and intermittently intervening to apply cold cream to the witness, Gibson spent approximately 20 minutes on the makeshift "witness stand." After she finished, and the jury and judge were filing out of the courtroom, in the words of the New York Times:

Summoning a reserve of vitality, Mrs. Gibson half-raised herself from the canvas carrier. A wasted hand was thrust suddenly at the accused, each absorbed in watching her. Mrs. Gibson's voice rose shrilly, with an eerie break in it. Then it died away in a choking sound.

"I have told them the truth!" she cried. "So help me God! And you know I've told the truth!"

She fell back on the stretcher. Bessie Lockwood, the nurse, quickly drew a sheet over the patient's face.¹¹

Dramatic denouement aside, Gibson did not pass away in the courtroom following her testimony; indeed she did not even pass from her place at the center of the trial's

⁸ "Mrs. Gibson Gravely Ill, Can't Appear," *New York Times*, November 5, 1926, 1.

⁹ "Mrs. Gibson Has Relapse; Blood Transfusion Today for Hall Case Witness," *New York Times*, November 12, 1926, 1.

¹⁰ "Mrs. Gibson, From Bed in Court, Picks Four as at Scene of Hall Murder; Cries, 'I Told the Truth; You Know It,'" *New York Times*, November 19, 1926, 1.

¹¹ *Ibid.*

coverage. In the days following her performance, newspapers continued to monitor her condition and reach out to her for comment; to address both concerns, Gibson said, “I have told the truth and I am ready to die with a good, clear conscience.”¹² Even a month after the trial had ended, the New York Times took time to note that Gibson requested flowers in her hospital room for Christmas—“Roses, I like them best.”¹³ Gibson’s final appearance in the Times, in fact, would not come until three years later when she died due to cancer, almost certainly the same sickness that caused her distress during the Hall-Mills trial.¹⁴

Thus marked the end of the saga of the most enduring character in the Hall-Mills drama. Gibson’s performance was particularly dramatic, but characters develop and play a key role in any trial that attains cultural relevance. A performance without characters is impossible; indeed, the existence of characters is nearly a precondition for a trial to reach the status of a performance trial. These characters are crucial, in particular, because they give the trial’s audience someone with whom to identify. Characters function to make the issues of the trial concrete; they allow the audience to discuss the proceedings in terms of real people rather than complex or ineffable formal law concepts. The performance trial, in other words, becomes not just a narrative, but a narrative about people, the type of performance that can both draw an audience and provide that audience with the language and vocabulary with which to discuss the trial’s issues.

In the process, then, a performance trial’s characters come to symbolize the cultural issues at stake. And it is no coincidence that of all the characters who would pass through the Hall-Mills narrative, the three who would become the primary characters—

¹² “Mrs. Gibson Waits Calmly for Death,” *New York Times*, November 20, 1926, 9.

¹³ “Mrs. Gibson Wants Roses,” *New York Times*, December 24, 1926, 10.

¹⁴ “Mrs. Jane Gibson Dies From Cancer,” *New York Times*, February 8, 1930, 9.

Jane Gibson, Frances Stevens Hall, and Charlotte Mills—were all women. Stretching from the fall of 1922 through the end of 1926, the Hall-Mills saga took place during a time of difficult transition in the history of women’s struggle for equality. For much of the late nineteenth and early twentieth centuries, the suffrage movement dominated the efforts of nearly all women’s movements, bringing women of various social, economic, and racial backgrounds together into a loose coalition with a defined, concrete common goal. While not always working together, the combined power of these groups pushing in the same direction led eventually to success. The U.S. Congress passed the Constitutional amendment guaranteeing suffrage for women in June 1919, and it was officially ratified by the thirty-sixth state, becoming the Nineteenth Amendment, in August 1920.¹⁵ It was an immense and historic victory, but it came with a price. Having lost the common goal at the center of the suffrage movement, cracks in the always-fragile coalition of diverse women’s groups began to show. There were attempts to overcome this challenge and continue to work as a group. The historian Jennifer Scanlon writes, “[B]y the early twentieth century, several groups of feminists spoke of ‘women’s’ [as opposed to woman’s] rights, recognizing not only the diversity of women but also that through their diversity women had some common goals.”¹⁶ But, Scanlon notes, the diversity of interests was a lot to overcome. “Like the Progressive movement they were a part of, however, divisions of race, class, and ethnicity proved powerful, and few diverse organizations survived into the 1920s.”¹⁷ The experience of World War I exacerbated

¹⁵ See Nancy Cott, *The Grounding of Modern Feminism* (New Haven: Yale University Press, 1987) for a discussion of the challenges of the suffrage movement. Also see Lynn Dumenil, *The Modern Temper: American Culture and Society in the 1920s* (New York: Hill and Wang, 1995).

¹⁶ Jennifer Scanlon, *Inarticulate Longings: The Ladies’ Home Journal, Gender, and the Promises of Consumer Culture* (New York: Routledge, 1995), 6.

¹⁷ *Ibid.*

many of these challenges, as women's groups took different stands on the war, the more "patriotic" movements (which tended to be whiter, older, and wealthier) gaining more social power.¹⁸

By the early 1920s, the cracks became even bigger, along a number of demographical lines—certainly race, class, and ethnicity, as Scanlon points out, were key examples. But another fault line also became clear, particularly in discussions of the role of women in the private sphere. An identifiable generation gap began to appear, particularly among white middle-class women, and it centered around one key subject: sex. This was certainly not a new subject of concern. Moralists had been worried for decades that increased rates of sexual activity, particularly among American youth, were a sign of moral decay. As early as 1913, at least one magazine had declared that "sex o'clock had struck" in America.¹⁹ By the early 1920s, in fact, the subject seemed almost settled. Depictions of promiscuous (white) youth were common in all forms of mass culture, particularly in popular movies, novels, and advertising.²⁰ Indeed, such activity had become almost expected and was commonly seen as a direct backlash against older, Victorian notions of sexuality. It seemed, as the historian Nancy Cott wrote, that "accepting female sexuality was for the young in the 1920s almost a matter of conformity. From popular, intellectual, and social scientific writers swelled a tide of

¹⁸ Nancy F. Cott, *The Grounding of Modern Feminism*, 59-61.

¹⁹ "Sex O'Clock in America," *Current Opinion* (August 1913). Also see Gaylyn Studlar, *Precocious Charms: Stars Performing Girlhood in Classical Hollywood Cinema* (Berkeley: University of California Press, 2013).

²⁰ Dumenil, *Modern Temper*, 134. On youth culture and changing attitudes towards sex, also see Paula Fass, *The Damned and the Beautiful* (Oxford: Oxford University Press, 1977). On the use of female sexuality in advertising for beauty products for women, see Kathy Peiss, *Hope in a Jar: The Making of America's Beauty Culture* (New York: Henry Holt and Company, 1998).

scorn for ‘Victorian’ sexual morality, monochromatically conceived as repressive and hypocritical.”²¹

The 1920s New Woman, in other words, was seemingly defined at least in part by her sexuality—indeed, by the fact that she was both sexual and sexually active. There were those, however, who were not willing simply to accept the inevitability of that definition. In particular, the very women scorned for their repressive “Victorian” sexual morality—generally older, wealthier, and whiter—did not see the “freedom of modernity” in these new sexual mores, but rather the beginnings (or perhaps continuation) of social decline, heightened by the disruptive impact World War I had on the domestic family unit.²² These reformers saw danger in these new freedoms, brought to life in the destruction of the traditional family unit.²³ They fought for a different vision of a “New Woman,” one rooted in the Victorian ideals of the late nineteenth century, but with the new political power conferred by the Nineteenth Amendment. Seeing themselves as reformers dedicated to moral uplift, these women faced a popular culture that—as with the fundamentalists in Tennessee—portrayed them as relics of the past, symbols of a repressive culture that was inconsistent with modern mores. They needed a stage on which they could present their concerns and a narrative through which they could make the dangers they feared clear.

This was the cultural context into which the Hall-Mills affair exploded. And these were the issues that swirled around the entire case: sex; adultery; murder; violence; the role and sanctity of marriage; the public and cultural comportment of women. It is

²¹ Cott, *Grounding of Modern Feminism*, 150.

²² On the impact of World War I, see Dumenil, *Modern Temper*, 131.

²³ Elaine Tyler May *Great Expectations: Marriage and Divorce in Post-Victorian America* (Chicago: University of Chicago Press, 1980), 5.

therefore neither a surprise nor a coincidence that three women would become the central characters of the performance, the representations of the “sides” with which the audience could identify. It certainly was not for the lack of male possibilities. The flamboyant prosecutor Alexander Simpson, for example, was reminiscent of the legal stars of the Scopes trial—the attorneys. From calling surprise witnesses to declaring, during one detective’s testimony, that “everybody seems to be swimming in a sea of ignorance,” Simpson frequently put himself at the center of the prosecution’s case.²⁴ But here, aside from a couple of key moments, the attorneys would never become major trial stars. Similarly, Frances Stevens Hall’s brother/co-defendant Willie Stevens was described as “a bit of a character” who “spent much of his time in the Hungarian quarter of New Brunswick, sitting on porches there and, while he sunned himself, chatting on this, that and the other thing.”²⁵ A potentially fascinating character, he, too, would remain largely in the shadows of the trial’s primary narratives. In fact, none of the myriad of other witnesses involved in the case became primary characters. A parade of individuals—from Pearl Bahmer and Raymond Clapper (the teenagers who found the bodies) to Ralph Gorsline and Catharine Rastall (reluctant witnesses who had their own reasons for being on “lovers’ lane” that evening)—became objects of public interest during the trial, their names forever to be linked with the Hall-Mills scandal. But while each of these characters had their moments and provided opportunities to discuss the cultural issues raised by the trial, only two would take center stage in the same way Jane Gibson did: Frances Stevens Hall and Charlotte Mills.

²⁴ *Ibid.*

²⁵ “‘Willie’ Stevens a Town Character,” *New York Times*, August 13, 1926, 2.

In some ways, it stands to reason that these two women would become prominent characters in the trial. Hall was, after all, not only the widow of one of the victims, but a co-defendant, accused of participating in the murders. Further, as a member of one of New Brunswick's most prominent families—of Johnson & Johnson fame—Hall's central presence in a trial as scandalous as this was sure to garner attention. Mills, meanwhile, was the daughter of Eleanor Mills, the female victim, and therefore also inextricably linked to the case. But it was not inevitable that these two women would become such persistently powerful symbols. Hall had two co-defendants, after all, and it was widely assumed that she was not being accused of pulling the trigger. For Mills, even more so, there were others who could logically fill the symbolic role she came to perform. She was not an only child, for example; she had a younger brother who barely factored in the case.²⁶ Her late mother also had two sisters—Elsie Barnhart and Marie Lee—who, with the exception of one newspaper photograph and a confirmed appearance at a preliminary hearing, barely figured in the case.²⁷ Charlotte's father, moreover, would have been a logical person to become a primary character in the trial, but he, too, did not. Questioned at the beginning of the case, the "man scorned" never became a prominent suspect, nor did he become a lasting symbol of any kind. It was Charlotte who came to represent the Mills family, in part because of actions she took to insert herself into the case, but in larger part because she could symbolize an important part of the cultural resonance of the Hall-Mills trial.

Indeed, these three main characters—Frances Hall, Charlotte Mills, and Jane Gibson—became the focus of this performance trial in part because they were women.

²⁶ "Again Suspected in Hall-Mills Case," *New York Times*, May 31, 1923, 5.

²⁷ "Figures in Hall-Mills Murder Mystery," *Twin Falls News*, November 4, 1922, 8. Also "Move to Jail Widow Again," *New York Times*, August 20, 1926, 1.

But it was also crucial that they could conveniently be used as representations of particular “types” of women. At this time of significant cultural change in notions of femininity and womanhood, these three particular women were placed (and placed themselves) on a public stage to perform their genders in front of a national audience. Each provided a distinct representation of womanhood, different possibilities of what a “New Woman” could be in the 1920s. More important, as with Scopes, the trial provided space for women who identified as neither “Victorian” nor “flappers” to move beyond that traditional dichotomy and participate in the conversation, in the process opening the door to a wide variety of potential “New Women.”²⁸ The trial, in other words, provided a malleable frame for a national conversation—particularly among women—about gender, sex, and the future of the woman’s (or women’s) movement(s) in the years following both World War I and the passage of the Nineteenth Amendment. Further, again similar to Scopes, the Hall-Mills trial provided an opportunity for a segment of the population uncomfortable with what it perceived as a rapidly changing culture to take its discomfort public, place it on a wider stage, and provide an alternative cultural vision.

Certainly, in many important ways, the “moral crusaders” in the Hall-Mills audience differed from those of Scopes. The so-called “Fundamentalists of Tennessee” were largely a rural group, fighting for what they considered a traditional, “country” view of the world. In the case of Hall-Mills, while the crime took place on a farm and the trial took place in the small town of Somerville, both New Jersey and the city of New Brunswick, where the principals lived, were much different culturally and socially from Dayton, Tennessee. Perhaps more striking, there were significant class differences in the two trials. The “traditionalists” in Dayton were from largely agricultural backgrounds.

²⁸ Martha Patterson, *American New Woman Revisited*.

They were concerned not just with what they perceived as an attack on their moral upbringing, but with the possible disappearance of their entire way of life. For the traditional “Victorian” women of New Brunswick, meanwhile, their social—or at least economic—status was not in significant imminent danger. Many of these “traditional” women of New Brunswick were older and financially secure and their status as pillars of the community was not in question. Still, their concerns were no less urgent and, like the fundamentalists in Scopes, while they may not have felt that their local power was threatened, they did sense a wider cultural shift that could eventually result in a social context that deemed them obsolete outsiders. Most important, like the residents of Dayton, these women saw the signs of moral decay surrounding them and feared for the future of both women and propriety. The Hall-Mills murder provided a stark example of the potentially violent and devastating results of this cultural decline and became the perfect opportunity to take their concerns public.

The opportunity was perfect in part because of the presence of Frances Stevens Hall. While Hall’s political leanings are not entirely clear, it is certain that, socially, she perceived of herself in a certain way: traditional, proper, and moral. Hall was a well-known member of the community and was wealthy, an heir to the Johnson & Johnson fortune in New Brunswick. She was older than her late husband—48 at the time of the murders and 52 by the time of the trial—and projected a sense of propriety and poise. She remained calm and somewhat aloof throughout the ordeal, posing for pictures at times in her house, but avoiding photographers as much as possible. As she put it, “I am really more or less an ordinary woman, and that is not sufficiently picturesque. However,

I am not going to cry about it; I'll make the best of it I can.”²⁹ In fact, her lack of youthful beauty became a key part of Hall's representation. As she was older than many of the other female participants in the trial, Hall's appearance helped disarm her, making her seem more motherly (or even grandmotherly)—stern, perhaps, and old-fashioned, but wise and harmless. Finally, and most important, her appearance itself became an example of how a woman of her status and position could become a victim of a looser, more violent, more sexually open culture. In the “first exclusively posed picture” of Hall, the caption cautioned that “it will be noted that Mrs. Hall has turned gray and aged considerably in her appearance from the misery and anguish caused by the murder of her husband and the notoriety received through the case. She was quite youthful at the time of the murder, but this close-up reveals her present self.”³⁰ According to this view, the ordeal itself aged Hall, a physical manifestation of the damage that could be caused by an adulterous relationship, moral decay, and sexual freedom. Here, early in the investigation, Hall was herself a victim—a decent woman “turned gray” by sexual infidelity and violence.

Throughout the entirety of the investigation, and particularly through the trial itself, Hall consciously projected this sense of detached elegance, despite the misconceptions such a representation could create. It was her goal not to appear “hysterical,” a goal that in some ways highlighted the cultural gap between Hall and many of the trial's onlookers. Hall's attorney, Timothy Pfeiffer, noted, “[P]art of the public had read into Mrs. Hall's failure to have hysterics an interpretation that she was

²⁹ “Mrs. Hall Breaks Long Silence to Explain Herself,” *New York Times*, September 7, 1926, 1.

³⁰ “First Posed Photograph of Widow of Slain New Jersey Rector,” *Morning Oregonian*, November 6, 1922, 3.

cold.”³¹ But it was important to Hall that she maintain that sense of propriety. As Pfeiffer put it, “Had she been hysterical, it would have meant something else again.”³² Even on the one night she spent in jail before being released on bail, Hall was an “elderly woman in black” who sat quietly with her hands folded and eyes closed, “outwardly calm” and “weathering the ordeal bravely.”³³ Her performance was so convincing that friends worried that her calm demeanor was hiding the “nervous force she was consuming” and that she would suffer a breakdown after the trial.³⁴ But while some members of the public may have questioned how she could remain so stoic, the image of calm, proper femininity that she exhibited served her well in New Brunswick society. Many women, especially those of Hall’s class and age, recognized the model of womanhood she represented, and responded to it from the very beginning. Some did so publicly; a letter signed by 76 mostly prominent townswomen appeared in multiple newspapers during the initial investigation in 1922. It pledged support to Hall, calling her “a woman of the highest type, above suspicion and above reproach, incapable of thinking, much less of doing, evil.”³⁵ To them, a woman such as Hall, even when betrayed by her husband, would not respond in an improper way.

Four years later, during the Hall-Mills trial itself, this support remained. Women figured heavily amongst the trial’s diverse onlookers—itsself evidence of the opportunity the trial presented for women to participate in the cultural conversation. Wire services noted, “High school girls, college students from Rutgers and Princeton, taxicab drivers

³¹ “Mrs. Hall Breaks Her Long Silence to Explain Herself,” *New York Times*, September 7, 1926, 1.

³² *Ibid.*

³³ “Mrs. Hall a Stoic in Her Cell at Jail,” *New York Times*, July 30, 1926, 2.

³⁴ “Seven Persons Due to Aid Stevens Alibi in Hall Trial Today,” *New York Times*, November 22, 1926, 1.

³⁵ “‘Unswerving Faith’ in Mrs. Hall, Pledge of 76 Townswomen,” *New York Times*, November 22, 1922, 1.

and women of wealth and position seem to find in the court drama a common interest.”³⁶

But it was that last category of onlookers—women of wealth and position—who took a particular interest in Mrs. Hall specifically. Mrs. James Biddle Duke, widow of the tobacco magnate famous for endowing Duke University, for example, attended the trial on multiple occasions, arriving in a limousine “with liveried chauffeur,” notably with her daughter, Doris.³⁷ These wealthy women were particularly looking forward to the testimony of Frances Hall. While not characterized by the spectacular theatrics surrounding Jane Gibson’s testimony, the day Hall testified was almost as crucial to the Hall-Mills trial performance. Despite coming late in the proceedings, Hall’s appearance on the witness stand reportedly “drew the largest crowd of women spectators since the opening of the trial,” vastly outnumbering the number of men in the audience by a reported factor of ten to one.³⁸ Perhaps most important, but not surprisingly, according to the New York Times, “Not only schoolgirls and housewives of Somerville and Somerset County were there, but women of prominence,” including another appearance by Duke and her daughter and by Mrs. R. Stuyvesant Pierrepont.³⁹ These women, who had jammed the halls of the courthouse hours before the proceedings were to begin for the day, were eager for the performance of one of the three key women in the trial. They would see exactly the woman they expected. Described as “[a] wispy figure in black, a strand of gray hair straying from beneath her hat,” Hall took the stand “with a smile upon her lips. When she stepped down two hours later, the smile was still there, and in a softly modulated voice, almost a casual tone, it seemed, she had answered ‘no’ to the charge of

³⁶ “Mrs. Duke in Court to Hear Hall Trial,” *New York Times*, November 14, 1926, 23.

³⁷ *Ibid.*

³⁸ “Women Crowd Court Room.” *New York Times*, November 28, 1926, 26.

³⁹ *Ibid.*

murder.”⁴⁰ Hall, in this representation, was not a murderer; she was a victim. More important, she was a symbolic victim of a violent and sexual culture—the very picture of the dangers this culture could pose to a traditional woman of wealth.

For Hall to work as a representation of the 1920s version of a traditional Victorian woman, however, she would need a foil, a symbolic representation of the other “side.” Two women stood out immediately as potential candidates. The first seemed most obvious: Eleanor Mills had been a rival in life and in death. Certainly, the adulterous Eleanor created a convenient contrast to Hall. She was younger than Hall, and of a different class, both financially and morally—the “type” of woman who would cheat on her husband with another woman’s husband. Newspapers, certainly, noticed the contrast from the beginning, focusing coverage largely on the appearance of the victim and her salacious actions. Articles often commented on Mills’s beauty, even when it was irrelevant; the story containing the news that the second autopsy had discovered Mills’s slashed throat, for example, was headlined “Throat of Pretty Choir Singer Cut.”⁴¹ The press also became obsessed with the sordid background details of Mills’s relationship with Edward Hall, particularly her love letters. Newspapers published word-for-word excerpts of the letters from Mills to Edward Hall, focusing on the “terms of endearment” within them. An AP report, introducing the excerpts, wrote, “They speak of a ‘love nest,’ of a woman’s dreams of ‘true love,’ and describe the varied moods of a woman ‘loved and loving without the conventions.’”⁴² Speculation that the two may have been preparing to elope was also driven by letters written by Mills, including one to an East Indian astrologist in Florida seeking advice on her horoscope—a nod towards spirituality

⁴⁰ “Her Ordeal is Not Over Yet,” *New York Times*, November 28, 1926, 1.

⁴¹ “Throat of Pretty Choir Singer Cut,” *Oregonian*, September 30, 1922, 3.

⁴² “Choir Leader’s Love Letters Found,” *The Bellingham Herald*, October 18, 1922, 1.

that would reappear multiple times in the trial narrative.⁴³ Mills, in other words, had very little in common culturally with Frances Hall. They were very different women, of different generations and different worlds. In many ways, Eleanor Mills represented precisely the type of woman Frances Hall and her peers feared. Fourteen years younger, “looser,” and more open to various modes of spirituality, Eleanor seemingly embraced the new, modern culture.

But while Eleanor was a rival, she was also the victim in this case. She was not present to represent herself nor to defend herself; it would not be an appropriate contrast. Very early in the investigation, and carrying through the trial itself, another figure emerged to present a more present and compelling alternative to Hall: Mills’s daughter, Charlotte. Charlotte, only 15 at the time of the murders, was an even younger example of the power of the modern culture and changing roles for women. She was coming of age in the decade of the New Woman, and she represented many of the hallmarks of this change. Charlotte was young, pretty, and occasionally mischievous. The representation of this young woman in the trial coverage invited, indeed almost begged, a direct comparison to the older, staid Frances Hall. The visual representations provide the starkest example. Newspapers frequently published pictures of Charlotte, always in fashionable clothing, complete with a hat, and soulful eyes staring either directly at the camera or just off-center.⁴⁴ Whether appearing in a stage show in New Brunswick, or being told by investigators that there were “certain places for girls of your kind when they don’t know how to behave,” Charlotte Mills was consistently portrayed as a

⁴³ “Plan of Rector and Chorister to Elope is Uncovered in Letters; Seer Gets Missive,” *Fort Worth Star-Telegram*, October 5, 1922, 19.

⁴⁴ One example: “Headliners in Murder Probe,” *Fort Worth Star-Telegram*, October 13, 1922, 27.

“flapper.”⁴⁵ Charlotte, perhaps also in a nod to her generation, largely embraced both the attention and the representation. She frequently posed for pictures and willingly inserted herself into the narrative in whatever way possible. Even a year after the murders, “[s]he recall[ed] with regret that her father forbade her, during the height of the excitement a year ago, to accept the proffer of \$750 a week from a New York vaudeville booking agent ‘just to show yourself on the stage, without singing or saying a word.’”⁴⁶ While it was Hall’s first priority to avoid appearing hysterical, it sometimes seemed that Charlotte’s priority was to be as visible as possible.

Unlike Hall, Charlotte would have the opportunity to appear in court on more than one occasion. The first was in August 1926, when Mills took the stand to testify in a preliminary hearing against Henry Stevens and Henry Carpender. The New York Times wrote:

Her progress from a rear seat in the court room to the stand was the occasion for a great turning and twisting among those in the court room. The girl, still but a school miss in appearance, appeared unconscious of the stir she provoked. She was hatless and her blond bobbed hair was in the first flush of a ‘permanent’ wave.

She wore a simple dress, beige in color. A string of small pearls was about her slender neck. As she took the stand, her rather large dark eyes fastened full on Mr. Carpender. Then they darted to Stevens. She averted her face quickly.⁴⁷

The difference between this representation and that of Hall was clear, but it perhaps came into even sharper view three months later, when Charlotte took the stand in the trial itself. Charlotte, in fact, testified on the very first day of the trial—the prosecution’s opening shot, an appropriate position for one of the drama’s main characters. While her testimony on that day was in some ways anti-climactic—much of what she said had already

⁴⁵ “Two Arrests Today Likely in Hall Case,” *New York Times*, August 11, 1926, 1.

⁴⁶ “Hall-Mills Murder Year-Old Mystery,” *New York Times*, September 14, 1923, 10.

⁴⁷ “Woman’s Story Unshaken,” *New York Times*, August 14, 1926, 1.

appeared in numerous newspaper reports—her appearance was true to form. While the text of the New York Times article covering the day in question largely glosses over Mills's testimony, it includes five pictures of the scene. One is of Charlotte, walking into the courthouse alone, dressed as an almost stereotypical flapper: bobbed hair covered by a fashionable hat, knee-length skirt, and full makeup accentuating her eyes. Directly above that picture is one of Frances Hall, barely visible behind her male escort, in a long trench coat and traditional hat. There it was, in one newspaper photo collage: the “New Woman” facing off against the “Old,” the “modern” woman clashing with the Victorian. The characters they were performing could not be clearer.

To some extent, Hall and Mills themselves perpetuated those roles, even knowing it was in large part a fiction. They consciously chose how they represented themselves through clothing and through the ways they carried themselves during the proceedings. For Mills, it was in part a way to give her late mother a voice in the proceedings by consciously stepping into her mother's symbolic role as Hall's rival. She accentuated her youth, in other words, to provide a direct contrast to Hall, simultaneously positioning Hall as cold and unfeeling and reminding onlookers of the youth and vivacity of the victim Hall allegedly murdered. Mills frequently cast public suspicion on Hall, sometimes indirectly but often clearly and boldly, fighting back against Hall's attempts to position herself as a victim and place Charlotte's mother, by extension, into the role of the tart. Charlotte was there to remind the audience that the crime in question was murder, not adultery, and that the true victims were her mother and her family. This was perhaps never as evident as in an article Charlotte herself wrote for the International News Service describing a visit she took to Hall's house about a month after the murders.

Claiming that she went to the house both expecting sympathy and to “offer my sympathy” and “ask her a few questions that have been troubling my peace,” Charlotte starts the article by writing, “I have been repulsed at the front door of Mrs. Frances Stevens Hall, widow of Rev. Edward Hall, by whose lifeless body my mother, Eleanor Mills, was found brutally slain.”⁴⁸ Charlotte goes on to describe being unable even to talk to Hall, and being turned away instead by Pfeiffer, Hall’s attorney. “Though I sat on the porch half an hour,” she writes, “no word came from the widow.”⁴⁹ Charlotte closes the article by noting, “I have no friends now—my mother was my best friend and pal.”⁵⁰ Charlotte, then, was the carefree young woman who had to bury her mother; Hall was the cold, unfeeling, older woman who could not even bring herself to empathize with the victim’s daughter. By accentuating her youth, Charlotte was able to remind the audience of the victims left behind, presumably by the actions of Hall.

Hall’s representation, too, was in many ways calculated. Cracks in her façade would occasionally show, accentuating the fact that she was to some extent playing a role—most notably when Gibson appeared on the scene to accuse Hall directly.⁵¹ For the most part, however, Hall was content to allow her attorney to fight her public battles, and remain in her house, out of sight, peering through the blinds when reporters came to the door.⁵² When Hall did make an appearance, it was carefully choreographed to maintain her reputation and representation. For her first major interview after her arrest, for example, reporters were invited into her home where Hall and her attorney could remain

⁴⁸ Charlotte Mills, “Rector’s Widow Bars Slain Woman’s Girl,” *Fort Worth Star-Telegram*, October 24, 1922, 7.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ “Mrs. Hall Will Face Mrs. Gibson,” *Columbus Daily Enquirer*, October 31, 1922, 1.

⁵² “Mrs. Hall Breaks Long Silence to Explain Herself,” *New York Times*, September 7, 1926, 1.

in complete control of the surroundings, Hall welcoming the reporters and treating them as if she “might have been entertaining at tea.”⁵³ From Hall’s perspective, of course, this was largely about self-preservation. She was a suspect in a brutal murder case, almost certain, by that point, to stand trial. She did not want to provide any reason for suspicion and from her perspective a calm, civilized demeanor was the proper way to keep herself above reproach. But for Hall’s supporters—the women, both locally and nationally, who signed petitions on her behalf and who would later crowd the courtroom to watch her testify—the concept of self-preservation went deeper. For them, representing Hall in this manner established her respectability. Perhaps more important, by implicitly contrasting that respectability with the representation of Charlotte Mills, they could cast an air of disrepute on both Charlotte and Eleanor Mills and the “types” of New Women they represented. The trial became an opportunity to “stage” these representations as a dichotomy.⁵⁴ With Hall set up as the prosecuted hero, traditional women could present an alternative narrative focused on the danger of the modern culture, particularly modern youth culture, as it related to new sexual freedoms and the breakdown of the home as the moral foundation of society.

Seen this way, it is easy, with the perspective of history, to dismiss both Hall and her supporters as simple opportunists. At its basest personal level, Hall’s tactic could be seen as an attempt by a wealthy woman, with the help of her upper class friends, to either ensure that she would not be wrongly convicted of a serious crime or, for those less charitable, to get away with murder. From this perspective, all that truly mattered was Hall’s wealth and the social power that accompanied it. To be sure, class was never far

⁵³ *Ibid.*

⁵⁴ See Chapter 2 for discussion of the use of “strategic dramaturgy” in such a situation.

from the center of the Hall-Mills case. Many onlookers recognized the significance of Hall's social standing, often writing letters to investigators making explicit reference to the issue. One typical such letter read, "If you are not sure who the confederates of Mrs. Hall is [sic], give her the third degree. She deserves it, the way they mistreated Mrs. Mills before she died. It was worse than savagery and why should she be exempt because she has money...."⁵⁵ Or, as another letter more bluntly put it, "The whole world knows the murderer and Jane Gibson is the only witness that could not be bought."⁵⁶ This opportunity to attack Hall's representation did not escape Charlotte's notice, either. After Hall was found not guilty, Charlotte's response was, "I am not surprised. Money can buy anything."⁵⁷

Even on a broader cultural scale, these traditional women, like Tennessee's fundamentalists, could be dismissed as being interested in a different type of self-preservation: the protection of their own increasingly outdated social status and power. For these moral reformers concerned about the trajectory of youth culture, the Victorian/flapper dichotomy allowed them to make their case concrete, to situate the danger in a real-life example with an identifiable enemy. By positioning Hall as endangered and Charlotte as dangerous, they could paint the picture of a foreboding future, one that could only be reversed by reasserting their own cultural power. This was, of course, an exaggeration. First, the idea that Charlotte Mills represented a generation of freely promiscuous young women with unfettered cultural access is surely overstated. While it is certainly true that more women—primarily young, middle-class, white

⁵⁵ Letter to Somerset County Prosecutor, undated, Hall-Mills Case File, Box 1, Folder 12 (Rutgers Special Collections, New Brunswick, N.J.)

⁵⁶ Letter from "Anonymous" to Somerset County Prosecutor, undated, Hall-Mills Case File, Box 1, Folder 12 (Rutgers Special Collections, New Brunswick, N.J.)

⁵⁷ "Mills in Seclusion, Refuses to Comment," *New York Times*, December 4, 1926, 11.

women—were entering the workforce and thereby gaining some level of social and cultural freedom, the limits and ceilings they faced were still significant. These jobs, largely as office clerks, were mostly entry-level, with little chance for advancement to the highest levels of the company's management.⁵⁸ More important from the perspective of Hall-Mills, it is also easy to overstate the acceptance of youthful promiscuity. While mass culture representations of promiscuous young women were common, as the cultural historian Lynn Dumenil notes "Adultery and promiscuity were rarely condoned in the mass media.... Movie adulteresses invariably paid for their sins, and heroines ultimately resisted temptation and were rescued by marriage or renewal of their marital commitment."⁵⁹

Still, while it is easy from today's perspective to minimize these cultural changes, it is clear that real change was occurring and that it made some parts of the population uncomfortable. As in *Scopes*, it is tempting to dismiss this discomfort and those who personified it as stodgy and anachronistic, anti-feminist in the sense that they were uncomfortable with the new freedoms afforded to young women. Support for Hall could be seen as the last vestiges of an earlier mode of gender representation, or, at best, an attempt by an aging population to cling to obsolete cultural norms. Either way it was futile; modern culture would continue to march forward, leaving women such as Frances Stevens Hall behind.

Once again, however, this is far too simple. Indeed, to ignore the concerns of these moral reformers would be to ignore one of the battlegrounds where the future of feminism would be fought. The women opposed to this particular cultural concept of the

⁵⁸ Dumenil, *Modern Temper*

⁵⁹ *Ibid.*, 134. See also Fass, *Damned and the Beautiful*, 260-90. See also Simone Weil Davis, *Living Up to the Ads: Gender Fictions of the 1920s* (Durham: Duke University Press, 2000).

New Woman were neither uniformly anti-feminist nor uniformly anti-modern. They, like the moral reformers in *Scopes*, were arguing for a different vision of modern culture, here an alternative version of the New Woman. Indeed, Frances Stevens Hall and her supporters almost certainly saw themselves as true feminist reformers, in the tradition of white, upper class reformers for whom moral uplift was a key aim. To these reformers, promiscuity was more than a cultural ill; it was a distraction from more important parts of the movement. They feared that diversions such as sexual activity would distract young women from truly important women's rights issues.⁶⁰

Many of these older women were on the front lines of the fight for different types of new freedoms for women. In fact, Hall herself was the perfect personification of these complications and contradictions. She was clearly not submissive in her marriage, for example. If anything, Hall was the dominant member of her partnership with Rev. Edward Stevens; she was older, wealthier, and more socially visible than her husband. Hall was not uncomfortable with female power, nor was she opposed to new notions of femininity; she simply favored a style of new femininity different from that of Charlotte Mills. She was not a demure older lady, a trait that came through not only based on her marriage but also on how she carried herself during the investigation. While Hall generally was indeed represented as a paragon of Victorian propriety, the complicated nature of that representation was also often on display. Roughly three weeks after the "tea party" interview of Hall, for example, a new discussion with the widow, conducted as she drove her car along the streets of New Brunswick, showed a very different side of her:

⁶⁰ Cott, *Grounding of Modern Feminism*. Also see Dumenil, *Modern Temper*.

Mrs. Frances Stevens Hall peered through the rain-dimmed windshield of her car as she guided it over the Somerville-New Brunswick road yesterday. She had just been asked if she ‘resented’ the reopening of the Hall-Mills case. She paused to give the steering wheel a manlike twist that bounded the sedan back to the middle of the road⁶¹

Hall would go on in that interview to question whether New Jersey was a “fit place for decent people to live in” and strike back at the unpleasant and cold “mythological Mrs. Hall” the newspapers had created.⁶² Perhaps allowing her guard to drop briefly in anger over the reopening of the investigation, the Hall in this interview is neither stoic nor demure. She is combative, assertive, and at times defensive—a complicated individual caught up in a difficult situation.

But perhaps the most striking example of Hall’s embrace of the modern 1920s woman came from the company Hall kept. Hall’s closest friend, confidant, and spokesperson throughout the investigation and trial was Sallie Peters, herself the daughter of a former rector of an Episcopalian Church. In the Fall of 1922, Peters was at Hall’s side, helping her through the most difficult times of that year’s meandering investigation. One year later, in September of 1923, Peters was somewhere quite different: she was the only woman candidate for the State Assembly in the State of New York.⁶³ Stating succinctly the importance of woman candidates, Peters said, “There seems to be an inclination on the part of certain Republican leaders to ignore the demands of the women supporters of the party for recognition as candidates for elective office.”⁶⁴ Peters, in fact, blamed the Republicans’ loss in the district—a formerly solid Republican district—on the abandonment of the female voter. Peters, Hall, and their supporters were not calling for a

⁶¹ “Mrs. Hall Scorns New Jersey Now,” *New York Times*, September 29, 1926, 1.

⁶² *Ibid.*

⁶³ “Sallie Peters Bids for Assembly Seat,” *New York Times*, September 9, 1923, S8.

⁶⁴ *Ibid.*

return to a “simpler” Victorian time nor were they interested in relegating women to the social spheres of the past. They embraced the concept of a New Woman in the 1920s—one politically and socially active, with social, political, and marital power. Representing the deep roots of the suffrage reform movement, they saw the use of the new freedoms to justify sexual promiscuity as frivolous and, even worse, dangerous. As popular culture seemingly embraced this youthful promiscuity and the concept of new sexual freedoms for women, these more traditional—and Progressive—women searched for a way to express their concerns over what was at best a distraction from true reform and at worst a cause for concern over the moral decline the new culture represented.

Further, to at least some extent, there was evidence that these concerns were neither entirely arbitrary nor irrational. For one thing, while marriage rates were rising, divorce rates were as well, signaling a threat to the sanctity of the marriage bond. This was true even in New Jersey, a state with some of the strictest divorce laws in the country.⁶⁵ This was a potentially dramatic social upheaval and a direct threat to the family/home as the basis of morality. In many ways, the Hall-Mills trial was indeed the perfect stage to dramatize these concerns, as it was the epitome of the ills that could seemingly come from this new cultural turn. The victims of the murder, after all, were adulterous lovers, apparently planning to divorce their spouses and elope. Further, the narrative was filled with prurient details and often shrouded in scandal. The bodies were found in an area notorious for late-night rendezvous. Indeed, detectives found it difficult to find witnesses willing to come forward because of the damage it could do to their reputations if it were publicized that they had been in the area. As the case progressed, witnesses such as Ralph Gorsline would seem to appear out of nowhere, admitting that

⁶⁵ May, *Great Expectations*, 5, 76-77.

they had, in fact, been near the site of the murder on the night in question.⁶⁶ There was even concern that the very interest in the case itself was a sign of the type of moral decay that could lead to a darker future. As early as October 1922, a psychologist suggested that vigilante violence, interest in macabre scenes such as the Hall-Mills murders site, and the psychological damage of World War I were all inter-related and, likely, inevitable aspects of the new culture. He wrote that the fascination with the case, including the collecting of artifacts from the scene of the crime by passersby,

pointed to the frequency with which people who have been gossiped about are being beaten—sometimes killed—by masked bands, amateur gangs of ‘moral hoodlums.’ Partly as a result of the emotional crisis of the war, clandestine philandering is likely to increase, moral hoodlumism will increase and with it the frantic rush for souvenirs of horror.⁶⁷

This was the future “Victorian” women reformers such as Hall wanted to avoid. Their interest in this particular trial was, to be sure, partly opportunistic, and many of their concerns were overdramatized. But in the context of the facts of this case, those concerns were also, in many ways, coherent—neither they nor the women who held them should be dismissed as irrational caricatures.

Charlotte Mills, too, was more complicated than her image as a “typical flapper” might initially suggest. Indeed, from a personal standpoint, Charlotte’s goals may not have been so different from those of Hall: like Hall, Charlotte simply wanted to be taken seriously, both as a victim and as a woman. Newspaper reporters showed interest in Charlotte from the very beginning of the case—large pictures of her appeared in print as

⁶⁶ “Gorsline and Girl Now Admit Hearing Hall Shots,” *New York Times*, September 11, 1926, 1.

⁶⁷ “Morbid Souvenir Hunters Strip Scene of Hall-Mills Crime, Including Apple Tree,” *Fort Worth Star-Telegram*, October 30, 1922, 13.

soon as one month after the discovery of the bodies.⁶⁸ Predictably, many of these early reports focused on Charlotte's youth and attractiveness, using her as a stand-in for the "pretty choir singer" whose throat had been cut. Charlotte, indeed, played into this representation, in part to play the role of "young victim." But on closer examination, her motives for accepting this representation—and the ways in which she used it to her advantage—become clearer. Specifically, she saw in this attention an opportunity to play an active role in the investigation that otherwise seemed inaccessible. Charlotte, for example, was one of the first principals in the case to recognize that the initial investigation was a disaster. As early as late September 1922, just weeks after the murders, Charlotte publicly appealed to the governor of New Jersey, requesting his help and "complaining that investigation into the crime was not bringing results and stating that she had 'received letters from strangers saying that a political gang is running things.'"⁶⁹ She needed to protect her status in the narrative, by whatever means, to give her the standing to ensure that the investigation would continue.

It was a difficult role that required a deft hand. Charlotte needed to be in the public eye in order to continue her fight for justice for her mother; at the same time, by embracing her representation as a flapper in order to protect that visibility, she risked not being taken seriously, dismissed as a young, flippant girl with little to add to the male-dominated investigatory team.⁷⁰ Turned away by investigators from the beginning, she knew newspaper publicity was the best way to push her fight forward. She would therefore need to remain accessible to newspapers while also getting her serious message

⁶⁸ "Latest Photograph of Daughter of Woman Slain with New Brunswick, N.J. Rector," *Oregonian*, October 14, 1922, 2.

⁶⁹ "Charlotte Mills Asks Governor's Aid," *New York Times*, September 28, 1922, 1.

⁷⁰ See, for example, "'Woman's Day,' Says Girl Sleuth, Charging Men Bungling the Hall Case," *Miami District Daily News*, October 22, 1922, 3.

across. Charlotte navigated the role expertly, appearing in photographs in fashionable hats and haircuts, but also writing articles pointedly accusing Hall of hiding the truth. At times, she would represent herself as a typical high school student in one article and as a “sixteen-year-old daughter who has taken up the burden of keeping house before and after school hours” in the next.⁷¹ Indeed, below the surface, representations of Charlotte during the Hall-Mills trial were much deeper than the simple images suggest, even after the trial’s uncertain conclusion. Weeks after the trial ended, Charlotte appeared on a literal stage, at the Rialto Theatre in Hoboken, New Jersey, during a performance of “Who is Guilty,” a play based on the Hall-Mills mystery. The appearance epitomized the complications surrounding Charlotte Mills. Appearing at the end of the second act, Charlotte said to the audience, “My mother was a good woman; please try to think kindly of her.”⁷² One last time, Charlotte was putting herself in the public eye, open to scrutiny, in order to represent her mother. But it is the final paragraph of the short, three-paragraph article describing the appearance that makes clear the contradictions surrounding Charlotte, and the tight line she walked between her self-representation, her need to be public, and the Charlotte the public wanted to see:

The girl was simply dressed in a dark gown. She was recalled three times by applause. It had been announced that she would take a minor role in the play, but the curtain speech was substituted because, the management announced, she was on the verge of a breakdown. Her own explanation was that the part open to her was distasteful.⁷³

In two short sentences, both written by a male reporter, she was both a vulnerable girl on the verge of a breakdown and a woman unwilling to acquiesce to playing a distasteful part.

⁷¹ “Again Suspected in Hall-Mills Case,” *New York Times*, May 31, 1923, 5.

⁷² “Charlotte Mills on Stage,” *New York Times*, December 28, 1926, 9.

⁷³ *Ibid.*

Charlotte, then, saw power in the same cultural changes that caused Hall and her supporters so much fear. Where “Victorian” women saw danger and distraction from more important social aims, young women saw an opportunity to use that cultural freedom to push for social goals that were often quite similar. Therein lay one of the fault lines in the post-World War I, post-suffrage women’s movement. It was a fragile time, with various women’s and feminist movements coming to terms with an uncertain political future following their greatest victory, but also, more quietly and complexly, trying to determine their own cultural futures. It was not a choice between two paths, but rather a multifaceted one involving women of different generations, classes, races, and backgrounds, all coming to terms with and attempting to influence their new reality. The phrase “New Woman” was indeed misleading; there were in fact many “New Women,” of various ages, classes, races, and priorities.⁷⁴ How could these diverse women, representing even more diverse cultural movements, not just coexist but work together to achieve their common goals? That was the question that needed to be answered in the 1920s and it required a cultural stage on which to be performed.

The Hall-Mills trial not only offered that stage, but also the opportunity to present the issue’s complexities and break down the dichotomies in spectacular fashion. There was, after all, a third wheel in the Hall-Mills trial; a third “type” of new woman. While Frances Hall and Charlotte Mills were in some ways ideal symbols of the “sides” they represented, neither, again, was ultimately the most enduring image of the trial. Instead, it was another woman—a “pig woman”—who filled that role. And Jane Gibson, more than any other participant, shows how a character can come to represent the complex

⁷⁴ For more on the concept of “New Women” see Martha H. Patterson, *The American New Woman Revisited*. Also see Dumenil, *Modern Temper*, 111.

nature of feminism in the decade. The public's reaction to Gibson, to start, was certainly affected in large part by her gender. One of the most persistent questions about Gibson, for example, was irrelevant to the trial itself but directly involved her gender: whether or not she was married. Despite having told reporters that she was a widow, upon further research newspapers began to report, "It now develops that Mrs. Gibson is known to her friends and neighbors as Mrs. Easton; that her husband is alive and is a toolmaker."⁷⁵ Presented as evidence of her untrustworthiness, these charges provoked Gibson's denial. Her response: "I defy anyone to say that he is my husband."⁷⁶ There was plenty to marvel at in Gibson's persona and her story, but the curiosity about a woman—possibly married, possibly single—living alone on a rural farm, hitching up her mule to follow a wagon she suspected of stealing her corn, was not gender-neutral.

Gibson, in fact, performed a specific and in some ways unique type of womanhood—one in which a woman lived apart from her husband, running a farm, dealing with corn thieves and "rascals" on her own. Her nickname, in and of itself, suggests the importance of her gender to her representation. In the first article in which she is named, Gibson is described as a "widow, who with her son, conducts a sixty-acre farm."⁷⁷ Or, as the Associated Press deemed her, a "plodding, determined woman...who besides raising crops care[s] for five mules, a saddle horse and a barnyard."⁷⁸ One week later, pictures of her began to appear—often alongside her mule—describing her as a "pig raiser" and a "farmer and a circus woman."⁷⁹ As time went by, "pig raiser" transitioned

⁷⁵ "Mrs. Gibson is Doubted," *Oregonian*, October 31, 1922, 4.

⁷⁶ *Ibid.*

⁷⁷ "New Detectives Put in Charge of Hall-Mills Case," *Miami (OK) District Daily News*, October 24, 1922, 2.

⁷⁸ "Woman's Story of Double Killing May Lead to Arrest of Slayers," *St. Albans Daily Messenger*, October 24, 1922, 1.

⁷⁹ "Pig Raiser Claims She Saw Double Killing on Farm," *Times-Picayune*, November 2, 1922, 1.

into the nickname that onlookers would holler at her ambulance as she made her way to the courtroom: she was not just a pig farmer, after all, she was a “Pig Woman” (or, at times, a “Pig Lady”). She was consistently represented in the press as, at the very least, eccentric (which may have in fact been true) and aggressively rural. Gibson, in a way, presented a different type of challenge to traditional femininity, at least in a Victorian sense. She was neither young nor particularly attractive—certainly she was not a symbol of the promiscuity of youth. Just as certainly, she was clearly of a different class than those who generally supported Hall. Gibson herself, perhaps unknowingly, best explained her status in between the representations of the other two female characters. Explaining why she had taken so long to come forward, Gibson said, “Yes I was there. I kept it all to myself for a long time, because I felt the minister and Mrs. Mills got what they deserved for being there on that spot at that hour. That spot is a well known ‘hunting ground.’ Everyone there was ‘moneyed’—everybody in the affair is ‘moneyed’—except the Mills—the Mills are poor just like we are.”⁸⁰

In one statement, Gibson separated herself both from the “immoral” Mills—who got what she deserved—and the “moneyed” Hall. She showed some of the same concerns about moral decline that many of Hall’s supporters had—indeed, in an earlier decade, one could imagine Gibson herself as the target of a social uplift campaign run by a Progressive women’s organization. Yet, she also separated herself from the types of women who were concerned about such morality—first by emphasizing her independence, then by acknowledging somewhat proudly that she was of a different economic class. Gibson also embraced the descriptions of her as rural, or “country.” She would pose for cameras, often with her mule, Jennie, and later made a paid appearance at

⁸⁰ “Man Did Not Kill Pair, Claim,” *Fort Worth Star-Telegram*, October 25, 1922, 2.

a carnival, once again alongside her mule.⁸¹ Hall, too, emphasized those differences. She, of course, had personal reasons to minimize Gibson and question her credibility. Gibson was, after all, a literal threat to Hall's freedom, as the state's primary witness. In a formal, legal sense, the strategy worked; the jury never took Gibson's story seriously and the defendants were acquitted.⁸² There were, indeed, many reasons for the jury to dismiss Gibson's story and they were likely correct, from a formal legal perspective, to do so. In addition to its inconsistencies, Kunstler, for example, later found evidence that had been suppressed by the prosecution that suggests that Gibson's story was not entirely true.⁸³

Still, the story's lack of veracity, while comforting to the defendants, is, from a cultural historian's perspective, irrelevant. Whether she was truly a witness to the murder or not, Gibson's presence in the trial allowed her to perform a particular type of femininity, one entirely separate from those performed by Frances Hall and Charlotte Mills. Presenting Gibson as a rural, eccentric pig farmer may have seemed to safely contain that mode of femininity. And yet, it represents another complex contradiction. Portraying Gibson as an eccentric "Pig Woman" did help formally acquit Frances Stevens Hall. But from a more important informal standpoint, it did not keep Gibson from becoming the informal star of the trial. Indeed, neither Frances Hall nor Charlotte Mills was the most enduring character to emerge from the Hall-Mills trial. Instead, in a clear sign of the dominance of the Hall-Mills trial's informal aspects, it was the eccentric, rural, independent woman Jane Gibson who would remain the trial's most recognizable

⁸¹ "Hall Case Year Old," *New York Times*, September 9, 1923, XX2.

⁸² "Jury Disbelieved Mrs. Gibson's Story," *New York Times*, December 4, 1926, 11.

⁸³ Kunstler, *Hall-Mills Murder Case*, 319. The evidence does not necessarily establish that Gibson was lying; she may have just been mistaken, as eyewitnesses often are.

character. Decades later, when people reminisced about the case, it was the “pig woman”—a witness whose story almost nobody believed—who invariably came up.⁸⁴

Perhaps this is in part because personality endures. But it is also because while Hall and Mills may have represented the “sides” in the debate, Gibson represented the complexity lurking beneath those sides.

The Hall-Mills case always seemed destined to be a story without an ending. On September 25, 1922, less than two weeks after the bodies of Eleanor Mills and Rev. Edward Hall were found, the future of the Hall-Mills case was already in doubt. As one foreboding report put it, “A fear that the drama that preceded the death of the rector and the sexton’s wife would never be recounted seemed evident in the minds of the detectives on the case tonight.”⁸⁵ Four years and three months later, those pessimistic detectives seemed prescient; legally, the world was no closer to knowing who killed the lovers or why. But in the meantime, the case had become a phenomenon and earned its place in American cultural history. Providing a corrective to earlier historiography that situated the 1920s as a period of feminist decline, the historian Nancy Cott wrote, “What historians have seen as the demise of feminism in the 1920s was, more accurately, the end of the suffrage movement and the early struggle of modern feminism.”⁸⁶ It was a struggle that encompassed multiple fronts, diverse women, and complicated cultural negotiations, making it difficult to access and fully comprehend for contemporary citizens and future historians alike. It was not clear as the 1920s began which group of

⁸⁴ In oral histories in which the Hall-Mills case is mentioned, the “pig lady” almost invariably comes up. See, for example, Alice Archibald Jennings interview by Kurt Piehler and Eve Snider, March 14, 1997, transcript <http://oralhistory.rutgers.edu/interviewees/30-interview-html-text/363-archibald-alice-jennings>. See also Raymond P. Taub interview by G. Kurt Piehler on June 29, 1994, transcript, p. 2.

⁸⁵ “All Clues False in Double Shooting,” *Augusta Chronicle*, September 25, 1922, 1.

⁸⁶ Cott, *Grounding of Modern Feminism*, 10.

women would control the movement, or indeed even if a coherent movement would continue to exist. In particular, older, middle and upper class white women, long the leaders of the women's movement, saw their grip on cultural reform slipping away. In many ways closed off from the popular culture of the day, these women were able to use the Hall-Mills trial to share that concern and re-enter the cultural conversation. In the process, they opened up the complex nature of the struggle, one defined not by dichotomies but by intersecting and overlapping concerns and a variety of at times surprising ways to be a "New Woman."

It is impossible to know the extent, if at all, to which Jane Gibson understood her role in the performance of that wider social struggle as her ambulance made its way to the Somerville Courthouse. But for those watching, whether on the street, in the Courthouse, or via newspapers across the country, the sense that this was an important moment was palpable. If the Scopes "Outdoor Day" was a drama on an outdoor stage, the surreal scene starring the Pig Woman was more like something from a Hollywood movie—an industry that itself was more than aware of the power of a performance trial. In fact, driven by a group of moral reformers with similar moral and cultural concerns, Hollywood culture itself had gone on trial five years earlier, in a ritual that was also personified by a larger-than-life star. In that case, however, the star was much more predictable than the Pig Woman had been.

CHAPTER FIVE

Fatty Arbuckle: A Star is Tried

Roscoe “Fatty” Arbuckle walked into the crowded room and took his place at the front, his presence commanding the audience’s full attention. Arbuckle, after all, was a star. A co-worker of Charlie Chaplin and mentor to such future stars as Buster Keaton, Arbuckle was one of the biggest draws in Hollywood. Known for his physical comedy, Arbuckle had made his national mark starring in the popular Keystone Kops series, in the process becoming a household name. Indeed, Arbuckle was well known enough that advertising agencies not only relied on him for celebrity endorsements—a new motion picture projector, for example, was perfect for the “choice productions of such stars of the screen as Norma Talmadge, Wm. S. Hart, Douglas Fairbanks, Charlie Chaplin and Roscoe Arbuckle”¹—but also as a cultural touchstone. In part defined by his physical stature, Arbuckle’s fame provided advertisers with comfort that a passing reference to him would be nearly universally understood. As one advertisement for milk assured, “Milk taken as part of an intelligently selected diet will not make a Fatty Arbuckle out of a man of ordinary build.”²

But Roscoe Arbuckle’s performance on this day, November 14, 1921, was unlike any he had undertaken before. As Arbuckle walked into the room that morning, he was missing one of his defining traits: his trademark smile.³ Unlike Arbuckle’s movies, this was a serious affair. This performance would not involve pratfalls, jokes, or slapstick. It would not take place on a Hollywood soundstage nor even on a stage in a local

¹ *New York Times*, Sept. 4, 1921, 43.

² *New York Times*, Aug. 8, 1921, 3.

³ “Arbuckle, On Trial, No Longer Smiles,” *New York Times*, November 15, 1921, 6.

community theater. It would instead occur in front of an audience that was, by Arbuckle's standards, much smaller than usual.⁴ And yet, according to the New York Times, "no throng ever watched the screen antics of the comedian more closely than today's gathering gave attention to the day's procedure."⁵ It would, in fact, prove to be the most important performance of his life—a role that would, over the course of the next year and a half, essentially end his career. It was the first day of the trial of Roscoe "Fatty" Arbuckle, charged with manslaughter in the death of the film actress Virginia Rappe during a hotel party two months earlier.

The comedian's drama began on September 4, 1921. Taking a break from filming a series of movies for Paramount, Arbuckle traveled to San Francisco and checked into a suite of rooms at the St. Francis Hotel.⁶ The next morning, Monday, September 5, 1921, Arbuckle, according to his own account of the events, invited some acquaintances, including Maude Delmont, Virginia Rappe, and Rappe's manager A. L. Seminacher, to the room "to have a few drinks."⁷ What happened next is, to this day, still not entirely clear. At some point during the party, Rappe became ill. One of the party's other attendees, Alice Blake, claimed in a signed statement that she and Zey Prevost, a fellow actress and model, found Rappe in an adjoining room in "great distress."⁸ Concerned about her physical state, they notified the hotel doctor. Rappe was eventually transferred to a local San Francisco sanitarium, where she died days later.⁹

⁴ *Ibid.*

⁵ *Ibid.*

⁶ David Yallop, *The Day the Laughter Stopped* (New York: St. Martin's Press, 1976).

⁷ "Roscoe Arbuckle Faces an Inquiry on Woman's Death," *New York Times*, September 11, 1921, 1.

⁸ *Ibid.*

⁹ For an excellent history of the Arbuckle case from the perspective of Virginia Rappe, particularly focusing on the context of Hollywood and gender, see: Hilary Hallett, *Go West, Young Women: The Rise of Early Hollywood* (Berkeley: University of California Press, 2013).

That was the extent to which witnesses could agree; on the specifics of what happened, witnesses had varying answers to important questions. When did Rappe begin to feel ill? Who was with her at the time? And perhaps most important, what was Arbuckle's role, if any? As more witness statements became public, the answers only became murkier. Five women who attended the party, including Walker, Prevost, and Maude Delmont, each made sworn statements early in the investigation stating that Arbuckle had been directly involved. These witnesses claimed that at some point during the party Arbuckle and Rappe had disappeared, together, into an adjoining room. Approximately thirty minutes later, the party was brought to a halt by Rappe's screams, coming through the closed door between the two rooms. Delmont claimed that Arbuckle came out of the room and refused to let anyone in; only after Delmont herself "made a commotion" did Arbuckle allow her to enter the room, upon which she found Rappe "on a bed, practically nude, and but partially conscious. Her clothing was badly torn...even to her stockings."¹⁰

For his part, Arbuckle, backed by three other men who attended the party, expressly denied these accusations. He claimed that there were no closed doors at the party and that he had never been alone with Rappe. Instead, the victim simply became "hysterical" after two drinks, leading him, along with other partygoers, immediately to call for medical assistance.¹¹ Unaware, according to his statement, that Rappe's condition was serious and content that she was under the care of the hotel physician, Arbuckle reportedly decided to leave San Francisco and return to his home in Los Angeles. Rappe, at the time, was hospitalized but still alive.

¹⁰ "Fatty Arbuckle Faces Grave Charge," *The Bellingham (WA) Herald*, September 10, 1921, 1.

¹¹ "Roscoe Arbuckle Faces an Inquiry on Woman's Death," *New York Times*, September 11, 1921, 1.

It is unclear whether Arbuckle knew how serious Rappe's condition was at the time he made his way back to Los Angeles. Assuming his statement is truthful, it is possible he was hoping she would recover, that the scandal would quickly blow over, and that this would be the end of the story. It is also possible that a guilty Arbuckle hoped to put distance between himself and the scene of the crime. Regardless, the young actress's condition did not improve and late on the night of September 9, 1921, less than a week after the fateful party, Arbuckle learned that Rappe had died.¹² Upon the request of the San Francisco police, Arbuckle immediately left Los Angeles to return north, as police prepared to take him into custody as soon as he arrived. San Francisco's Acting Captain of Detectives Michael Griffin initially assured Arbuckle that the police did not at that point intend to charge him with any specific crime, pending an inquest. But on the night of September 10, as Arbuckle returned to the city, that decision changed. San Francisco police arrested the famous actor and charged him with first-degree murder. Detective Captain Duncan Matheson laid the case out in stark terms, immediately setting both the tone of the case and effectively summarizing, in an indirect way, the stakes the case would come to represent. "This woman," he said to the press, "without a doubt died as a result of an attack by Arbuckle. That makes it first-degree murder without a doubt. We don't feel that a man like 'Fatty' Arbuckle can pull stuff like this in San Francisco and get away with it."¹³ The final sentence of Matheson's statement, while lacking formal substance, stands out the most. Quickly identifying the role Hollywood culture—and its impact on American moral decline—would come to play in the case, Matheson made it clear that such behavior by a "person like Fatty Arbuckle" (notably using his nickname as

¹² *Ibid.*

¹³ "Arbuckle is Jailed on Murder Charge in Woman's Death," *New York Times*, September 12, 1921, 1.

an epithet rather than a term of endearment) might be acceptable in Los Angeles, but neither it nor the moral decay it represented would be tolerated in San Francisco. Thus, the boundaries of the case were set early and the debate surrounding it could begin.

While Matheson specifically referred to the city of San Francisco, it was clear from the beginning that the debate would not be locally confined. Indeed, with Rappe's tragic death and the arrest of the icon Arbuckle, the scandal was officially an American phenomenon. Any hope Arbuckle may have had that this would be anything other than a major national story was gone. Newspapers across the country—from Miami, Florida to Albuquerque, New Mexico to New York City—put the story on the front page on September 11, 1921, ensuring that readers in all parts of the United States would wake up to the news that Fatty Arbuckle was involved in the death of a Hollywood actress.¹⁴ It was, perhaps, from the beginning inevitable that the story would become a national sensation and that the eventual trial(s) of Arbuckle would become performance trials. Arbuckle himself, after all, unlike most defendants, was a star before the events leading to the trial ever took place. Movies, though still a developing media technology, were a national business by the 1920s.¹⁵ Leaving the days of the nickelodeon behind, national theater chains began to emerge, backed by large corporations in need of a steady supply of movies to exhibit. Led by Marcus Loew, these chain exhibitors began to reach agreements with top producers such as Louis Mayer to guarantee a steady supply of films, with special emphasis on those that featured famous Hollywood stars.¹⁶ As the

¹⁴ “‘Fatty’ Arbuckle to be Held in Death of Movie Actress Virginia Rappe,” *Miami Herald*, September 11, 1921, 1. See also “Fatty Arbuckle to be Detained in Murder Case,” *Albuquerque Journal*, September 11, 1921, 1. See also “Roscoe Arbuckle Faces an Inquiry on Woman’s Death,” *New York Times*, September 11, 1921, 1.

¹⁵ See, for example, Douglas Gomery, *Shared Pleasures: A History of Movie Presentation in the United States* (Madison: University of Wisconsin Press, 1992).

¹⁶ *Ibid.*, 38.

1920s proceeded, the supply chain became even more vertical, with exhibitors buying out production companies in order to control all aspects of movie production, in the process creating such enduring Hollywood partnerships as Metro-Goldwyn-Mayer. But even by 1921, the process had already become centralized enough that movie fans in cities across the country could visit a local branch of a national theater chain—such as Loew’s—and watch the same films popular in New York and Chicago. Movie stars were therefore increasingly national stars, able to build a fan base in every part of the country simultaneously, without having personally to travel to local stages or showcases. And Arbuckle was himself one of these major Hollywood stars, often mentioned alongside Charlie Chaplin as Hollywood’s leading comedians.¹⁷

This gave the Fatty Arbuckle trial a significant head start in becoming a performance trial. As always in these types of trials, character was key; for the trial to capture national attention, it would need characters that connected with its audience, a hero and/or villain with which the audience could identify. But in this trial, unlike in the Hall-Mills trial or, to a lesser extent, Scopes, the main character was both obvious and already built in. While Frances Stevens Hall was, locally at least, a prominent figure, and both Clarence Darrow and William Jennings Bryan were well-known figures in particular social circles, Roscoe “Fatty” Arbuckle was an entirely different type of celebrity.¹⁸ He was not a politician, lawyer, or socialite—he was a movie star. He was known precisely for being a performer. Arbuckle’s audience, in other words, was accustomed to

¹⁷ Gary Alan Fine, “Scandal, Social Conditions, and the Creation of Public Attention: Fatty Arbuckle and the ‘Problem of Hollywood,’” *Social Problems* 44:3 (August 1997). Fine provides a sociological analysis of the Arbuckle trial, using it to illustrate the importance of structural conditions in a social order to social problems theory. On the popularity of Arbuckle, also see Yallop, *The Day the Laughter Stopped*.

¹⁸ On the emergence of celebrity and its relationship to modern culture, see Charles L. Ponce de Leon, *Self-Exposure: Human-Interest Journalism and the Emergence of Celebrity in America, 1890-1940*, Chapel Hill: University of North Carolina Press, 2002.

experiencing him through a lens, as a character, producing a particular performance on a screen. Further, Arbuckle had cultivated a specific type of character; he was primarily a comic, a slapstick actor, a “clown.” Using his unusual weight—he was 5’ 5” tall and 266 pounds, according to his police booking information—to his advantage, Arbuckle starred primarily in broad, physical, crowd-pleasing comedies. He was not an unattainable sex symbol like Rudolph Valentino or Douglas Fairbanks. Representing “low-brow” culture, Arbuckle was an accessible “everyman.” It was a status that made him easy to make fun of and relate to, but also potentially dangerous to anyone concerned with the increasing cultural power of Hollywood and the movie industry.

Regardless, Arbuckle’s cultural status made him anything but a typical defendant. For one thing, the Arbuckle trial’s audience would not need time to “get to know” the defendant, as onlookers often do early in a performance trial.¹⁹ While early newspapers articles covering the Hall-Mills case, for example, were often dedicated to introducing the “cast of characters” or reminding the readers who the key figures were, such introduction was unnecessary here. From the very beginning, articles could simply refer to the accused as “Fatty” Arbuckle, the moving picture star.”²⁰ Readers and other onlookers could fill in any necessary blanks for themselves with whatever impressions they already had of the character at the center of the drama. Further, unlike many performance trials—such as Scopes—the defendant here had little competition for his status as the main character. While various witnesses—particularly Zey Prevost—would become important over the course of the investigation and trial, no presence could overwhelm a

¹⁹ For a consideration of how celebrity can affect formal legal results in trials, see Jared Chamberlain, Monica K. Miller, and Alayna Jehle, “Celebrities in the Courtroom: Legal Responses, Psychological Theory and Empirical Research,” 8 Vand. J. Ent. & Tech. L. 551, 2005-2006.

²⁰ “Film Beauty Dies After Liquor Party,” *The Oregonian*, September 10, 1921, 6.

character as imposing as Arbuckle. All other witnesses, lawyers, investigators, and trial participants were instead viewed in relation to Arbuckle himself—how they affected his reputation and what they could establish about what he may or may not have done.

Arbuckle cast a lasting shadow over the entire proceedings.

The defendant is almost always, of course, the center of attention in a criminal case; in this sense, the Arbuckle case was not unusual. But the difference here was that, while onlookers are often curious about what a defendant did, the interest in Arbuckle extended to who he was. The trial's audience was, of course, interested in his formal guilt or innocence, but it was just as interested in the informal topic of what that guilt or innocence would mean outside the courtroom, how what Arbuckle "did" was related to his cultural status. Roscoe Arbuckle the actor would stand trial, but so would the character, industry, and Hollywood cultural status he represented. At best, Arbuckle threw an alcohol-fueled party, in the early years of Prohibition, at which a young actress died. As a result, for many, Arbuckle was a convenient symbol of Hollywood itself and, more important, the role of the movie industry in what some saw as the country's declining moral foundation. Like Hall-Mills and Scopes, the Fatty Arbuckle trials would provide an opportunity for those concerned about the moral future of the nation to place that concern in front of a national audience. And, again as in Hall-Mills and Scopes, for those at neither extreme of the debate, the trial was an opportunity to participate in the conversation and better understand the stakes. Arbuckle's established cultural status would ensure that, as long as the trial continued, conversations about the role of Hollywood in driving national culture—and the possible dangers inherent therein—would receive front-page status. More specifically, as the nation considered the extent to

which the industry's cultural power should actively be limited—and who should determine those boundaries—the Arbuckle trials gave all onlookers an invaluable symbol of the cultural argument. The power and strength of Arbuckle as an informal cultural character, in other words, above and beyond his role as a formal trial participant, differentiated him from a standard criminal defendant.

There is some indication that the San Francisco police and investigators quickly realized the power of this presence. The investigators experienced public pressure from the very beginning, for example, particularly from Women's Clubs and "moral interest groups," including the Women's Vigilante Committee, an organization made up of women from numerous Women's Clubs from around San Francisco.²¹ In addition, the investigators seemed, at first, unsure of how to handle such a high-profile suspect, with clear disagreement among the investigating parties as to how to proceed with the case. As a result of this uncertainty, multiple proceedings seemed to begin concurrently. The county grand jury was one of the first investigatory bodies to act, with the Secretary of the Grand Jury, Harry Kelly, announcing an intention to start an investigation into the matter even before Arbuckle's arrest. "So many women's clubs and private individuals interested in the moral welfare of the city have demanded an investigation," Kelly said, "that I will present their demands to the jury."²² He went on to indicate that the District Attorney, Matthew Brady, was out of town, but would be informed of the investigation and would handle the matter upon his return. Meanwhile, on the very next day, the San Francisco police, led by Detective Captain Matheson and perhaps spurred on by Kelly's proactive statement, decided to reverse its initial plan to simply detain Arbuckle and

²¹ "Roscoe Arbuckle Faces an Inquiry on Woman's Death," *New York Times*, September 11, 1921, 1.

²² *Ibid.*

instead moved forward with an arrest. Further, rather than waiting for Brady's return and the grand jury's determination of a proper charge, Matheson and Assistant District Attorney Milton U'Ren decided, to Arbuckle's surprise, to separately pursue the highest possible charge: first degree murder. Explaining the decision, U'Ren relied on the "section of the California code providing that taking of life in rape is considered murder," based on the common law concept of felony murder.²³ Explicit in the charge, then, was the idea that Arbuckle had committed an underlying crime; Matheson and U'Ren laid out a theory of the case that indicated Arbuckle had raped Rappe, killing her in the process. When District Attorney Brady returned to the city, his role now would be to present evidence on a charge of murder. Meanwhile, Arbuckle's arraignment was scheduled to take place in the police court the following day, followed immediately by an inquest proceeding, a formal inquiry undertaken by a coroner (sometimes using a jury) into the details surrounding a suspicious death.

At the time, while the charge itself may have surprised Arbuckle, and the statements of the grand jury and the investigators were not entirely in sync, the process did not seem particularly unusual. It was common procedure for the police to arrest a suspect and submit a charge, to be followed by a formal complaint and an arraignment. Indeed, a witness, Maude Delmont, signed a formal complaint the following day and Arbuckle was officially arraigned on a charge of first-degree murder in the Police Court.²⁴ Further, a separate inquest led by the coroner was also common procedure in a case such as this, in which there was a deceased victim. While Arbuckle himself maintained his silence during both the arraignment and the first day of the inquest, a

²³ "Arbuckle Under Murder Charge," *Charlotte Observer*, September 12, 1921, 1.

²⁴ "Arbuckle Dragged Rappe Girl to Room, Woman Testifies," *New York Times*, September 13, 1921, 1.

number of witnesses at the inquest—including Delmont—gave their accounts of the party and its catastrophic denouement.²⁵ Many of those same witnesses would spend the evening providing testimony to the grand jury, again not particularly out of the ordinary. But as both the investigations and the proceedings continued, it became increasingly clear that the initial confusion over how the case would be handled was symptomatic of a deeper disagreement over how it should proceed—a confusion likely driven in large part by the intense attention it was already attracting.

That attention ensured that every step of the investigation would be closely watched and analyzed. Even a proceeding typically as simple and uneventful as an arraignment would this time require special attention. Extra police were brought in to assist the bailiffs, as, according to the New York Times, “vast crowds battled for a chance to be present” at the police court as the arraignment took place.²⁶ Despite the lack of any kind of substantive testimony in that particular proceeding, the Times continued, the crowd “fought for a chance to gain a foothold in the courtroom and witness the appearance of the film star to face the charge of murdering Virginia Rappe.”²⁷ The true action in the case, meanwhile, was taking place behind closed doors, in the secretive environment of the grand jury room. With the coroner’s inquest taking place during the day, the grand jury met deep into the night on September 13, 1921, listening to a number of witnesses. What they heard may have come as surprise, particularly to District Attorney Brady. First, police had difficulty finding witness Alice Blake, eventually locating her in Berkeley, California, and bringing her back to San Francisco under police

²⁵ “Murder Charge Lodged Against Fatty Arbuckle in California,” *Albuquerque Journal*, September 13, 1921, 1.

²⁶ “Arbuckle Dragged Rappe Girl to Room, Woman Testifies,” *New York Times*, September 13, 1921, 1.

²⁷ *Ibid.*

protection. More important, the key witness, Zey Prevost,²⁸ whose original statement had supported the accusations Maude Delmont made against Arbuckle, reportedly “reversed” her account of what happened.²⁹ Prevost first refused to sign her earlier statement, then changed key parts of her testimony, particularly concerning Rappe’s final words in the hotel. Delmont—the original complaining witness—claimed that Rappe, as she suffered, said “I’m dying, I’m dying; he killed me,” before pointing at Arbuckle.³⁰ Prevost had originally agreed, most notably in her own written statement that had been used at Arbuckle’s arraignment. But in front of the grand jury, Prevost denied that Rappe had in fact made such a statement. Brady declared the discrepancy to be perjury and suggested that “powerful interests were at work to influence witnesses.”³¹ In a strong statement, he referred to Arbuckle’s wealth and status and, once again, made clear the stakes of the case as he saw them. “Whenever wealth and influence are brought to the bar of justice,” he said, “every sinister and corrupt practice is used in an effort to free the accused.”³² Whether as a result of undue influence or a witness’s guilty conscience, for the first time some doubt had been raised as to Arbuckle’s guilt. But District Attorney Brady vowed to press on.

Brady did persist and Prevost re-took the stand, clearing up some of the discrepancies—in particular concluding that Rappe had indeed said “I’m dying” and pointed at Arbuckle, but rather than “he killed me” said “he hurt me.”³³ Prevost’s testimony also provided some support to Brady’s tampering concerns as well as

²⁸ This was a stage name; her given name was Sadie Reiss.

²⁹ “Arbuckle Indicted for Killing Girl in Drinking Orgy,” *New Orleans Times-Picayune*, September 14, 1921, 1.

³⁰ “Arbuckle Indicted for Manslaughter in Actress’ Death,” *New York Times*, September 14 1921, 1.

³¹ *Ibid.*

³² *Ibid.*

³³ “Arbuckle Accused of Manslaughter by Coroner’s Jury,” *New York Times*, September 15, 1921, 1.

underscoring the level of public interest in the case. During the testimony, Captain Matheson reportedly said, “There will be people who come to you and tell you to keep your mouth shut.” Prevost replied, “They have already.”³⁴ Brady, content that the discrepancies had been cleared up, completed his presentation and urged the grand jury to indict Arbuckle for murder.³⁵ The grand jury, however, perhaps due to the testimonial inconsistencies, was not entirely convinced. After two hours of deliberation, the panel first voted to “take no action until further evidence was produced.”³⁶ Brady, facing intense public pressure to deliver an indictment, pressed them to deliberate further. Eventually, after a private consultation with the grand jury, Brady agreed to accept the jury’s compromise: they would indict Arbuckle on a lesser charge of manslaughter.³⁷

The coroner’s inquest, meanwhile, continued in a much more public fashion, with newspapers reporting every detail of the open testimony made in the proceedings, particularly that of the prosecution’s chief witness, Maude Delmont. After hearing a parade of witnesses, the coroner’s jury, too, was prepared to deliver a verdict. The verdict first noted that the cause of death was the rupture of an “internal organ, and that a contributing cause was peritonitis.”³⁸ The verdict went on to declare that the rupture was “caused by the application of some force which, from the evidence submitted, we believe was applied by one Roscoe Arbuckle.”³⁹ The coroner’s jury concluded as the grand jury had: it recommended that Arbuckle be charged with manslaughter. But the coroner’s jury had one more declaration to make, and it was an important one, intended to make a

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ “Coroner’s Jury Places Blame on Arbuckle,” *Bellingham Herald*, September 15, 1921, 1.

³⁹ *Ibid.*

strong statement about the crime and what it represented. “We recommend,” the report said:

that the District Attorney of the City and County of San Francisco, in conjunction with the Grand Jury, the Chief of Police and the Federal prohibition officials, take steps to prevent a recurrence of affairs similar to the one in which this young woman lost her life, so that San Francisco shall not be made the rendezvous of the debauchee and the gangster.⁴⁰

It was, then, in some ways a mixed statement. In a formal legal sense, the coroner’s jury, like the grand jury, found that the case did not meet the formal requirements for a murder charge; it was a manslaughter case. Yet, the jury made the informal legal importance of the case just as clear. It condemned Arbuckle as a “debauchee and gangster,” and took a particularly strong stand against the culture it saw Arbuckle as representing.

This left Brady in somewhat of a bind, stuck between the informal public outcry over the nature of Arbuckle’s alleged crime and the constraints of the strict formal legal requirements for a murder charge. More concretely, he was facing a decision between two potential charges. Arbuckle’s trial for manslaughter, required by the grand jury indictment, was scheduled to begin on September 17 in the Superior Court. But first, Brady would have to dispose of the murder charge previously made in the police court on the sworn complaint by Maude Delmont. He had two options: he could appear in the police court and dismiss the murder charge, setting up the quick prosecution of Arbuckle for manslaughter in the Superior Court. Or he could go forward with the murder prosecution in the police court, asking for a continuance in the manslaughter case until the murder charge had been resolved. The formal legal ramifications were stark. Under California law, a suspect charged with murder could not be set free on bail; no such limitation was placed on a manslaughter defendant. The decision, in other words, would

⁴⁰ *Ibid.*

determine Arbuckle's immediate freedom and would, of course, have a tremendous impact on the defendant's potential sentence if he were eventually found guilty.

In a formal sense, the path forward seemed clear. Two separate legal bodies—the grand jury and the coroner's jury—had come to the same formal conclusion: the proper charge was manslaughter. But Brady also faced informal pressure. He knew he had a large audience, much of it demanding that Arbuckle pay a price.⁴¹ Even the coroner's jury had been careful to condemn Arbuckle while recommending the lesser charge. Trying Arbuckle for murder, disregarding the formal legal opinions of both the grand jury and the coroner's jury, would send a strong informal statement to that audience. Indeed, if Brady dropped the charge in the Police Court, he would risk appearing, to some, as offering an informal partial surrender, providing Arbuckle with an early win. But proceeding with the Police Court hearing also carried significant risk. It was increasingly clear that formally convicting Arbuckle of murder would be difficult, if not impossible. And if Brady lost in the Police Court, it would be his third loss on the issue; he risked losing both momentum and interest in the case. A loss, further, could make it more difficult to secure even a manslaughter conviction in the future. As more and more time passed and witnesses were forced to testify on multiple occasions, that testimony risked becoming stale. In addition, as Brady had learned in the grand jury room, each occasion on which witnesses testified created another opportunity for inconsistencies—discrepancies defense attorneys would be certain to seize upon. Pursuing a murder charge to appease the informal legal audience, in other words, could risk the entire formal case.

⁴¹ "Roscoe Arbuckle Faces an Inquiry on Woman's Death," *New York Times*, September 11, 1921, 1.

On September 16, 1921, at a preliminary hearing in the police court, Brady would announce his decision in front of a large crowd. As the New York Times, again in attendance, described it, the crowd spilled into the hall outside; “a few moments before [Arbuckle’s] case was called...the crowd, mostly men, attempted to rush through the doors. They were held back by police.”⁴² Once order had been restored, Brady appeared in front of Police Court Judge Sylvain Lazarus and made the simple statement that “the people are ready to proceed on the murder charges.”⁴³ While the decision was dubious from a formal legal standpoint, the power of the informal pressure placed on the prosecutor by the public was clear. The decision once again caught Arbuckle by surprise—anticipating bail, Arbuckle had reportedly already booked a train ticket home to Los Angeles.⁴⁴ Facing the press afterwards, Brady stated that his office, “from the time that the facts became known, has always been firmly of the opinion that the correct charge involved in this Arbuckle case was murder.”⁴⁵ Later that afternoon, in the Superior Court, the Times again noted that the crowd had moved along with the proceeding: “A crowd of several hundred persons gathered in the hall to see Arbuckle, but most of them were held by the police on the second floor, the floor below the court room.”⁴⁶ They would not miss much. With Brady’s decision to pursue the murder charge made, he simply asked the Superior Court for a continuance in the manslaughter trial until the murder charge had been disposed of. With no objection from the defense, the continuance was granted. All eyes could return to the police court.

⁴² “Arbuckle to Face Trial for Murder,” *New York Times*, September 17, 1921, 4.

⁴³ “Murder Charge Keeps Arbuckle Behind the Bars,” *Miami Herald*, September 17, 1921, 1.

⁴⁴ “Arbuckle’s Hope of Night Liberty Dashed by State,” *New Orleans Times-Picayune*, September 17, 1921, 1.

⁴⁵ “Arbuckle to Face Trial for Murder,” *New York Times*, September 17, 1921, 4.

⁴⁶ “Arbuckle’s Hope for Bail Dashed,” *New York Times*, September 18, 1921, 9.

Brady's decision was a key turning point in the Arbuckle trial for a number of reasons. For the first time, there was a clear legal path forward in the case and, just as important, one central place of focus: the Police Court. The story would finally be told in an open, formal forum rather than in competing narratives in newspapers and behind closed investigatory doors. The particular site was also important. Lazarus's Police Court was a "Woman's Court," set up specifically to deal with "women's cases." As a result, no men (other than court officers and witnesses) would be permitted to attend the hearings. As Judge Lazarus himself put it, "the status of the court as a woman's court is to be strictly maintained...and one of the rules of the court calls for the exclusion of all men not directly interested in the matters called before it."⁴⁷ As a result, Brady's decision, whether intentional or not, ensured that the courtroom's audience would be overwhelmingly female, placing the trial within a feminized frame. It would ensure the continued visible presence of women's groups and clubs, which had shown tremendous interest in the case from the start. In part as a result, the decision would firmly and clearly place morality at the center of discussion of the case—a "feminized" issue being tried in a woman's court.

Indeed, on the day that testimony would begin, newspapers reported that "women jammed the corridors of the Hall of Justice for nearly two hours before the court session began, and a dozen six-foot policemen had their hands full keeping them away from the court room door."⁴⁸ But the Police Court proceeding, perhaps inevitably, was ultimately disappointing. While the formal stakes were high, the formal restrictions were also important: it was essentially a procedural hearing, not a trial. There was no jury and the

⁴⁷ "Brady Sees Plot in Arbuckle Case," *New York Times*, September 21, 1921, 6.

⁴⁸ "Women Jam Courtroom at Arbuckle Hearing," *Colorado Springs Gazette*, September 23, 1921, 3.

ultimate question was not Arbuckle's guilt or innocence, but simply which charge he would face. As a result, neither side was motivated to litigate its full case. On that first day, the courtroom was packed, filled with women from clubs and civic organizations, including the Women's Vigilante Committee—a relatively new group made up of women from 52 local women's organizations dedicated to ensuring that female victims and witnesses would receive fair treatment in court. But the audience would witness only the testimony of the doctor who performed Rappe's autopsy before the case was held over until the next day. And while the proceedings continued over the ensuing days, each time in front of a packed courtroom, the only highlights were the testimony of Al Seminacher, who was present at the party, and witnesses Zey Prevost and Alice Blake, each telling stories the public had heard before. The prosecution, in a surprise, did not call Maude Delmont, the witness who made the complaint that led to the murder charge itself, to the stand.⁴⁹ In fact, Delmont would not testify in any of the proceedings against Arbuckle over the course of the entire affair. The prosecution never directly explained this decision, but it seems likely that Attorney General Brady simply felt she would not be an effective witness. There were rumors that Delmont, for example, had changed her story numerous times and may have been an unpredictable witness. She also had her own legal issues, including a charge of bigamy on which she pled guilty in December 1921, during the Arbuckle scandal.⁵⁰ But perhaps the answer was even simpler; when fellow witness Zey Prevost was asked during the Police Court hearing what Delmont's condition was at the party, she replied, simply, "Drunk."⁵¹

⁴⁹ "Judge's Verdict Set For Today in Arbuckle Case," *Lexington Herald*, September 28, 1921, 1.

⁵⁰ "Mrs. Delmont Goes Free," *New York Times*, December 18, 1921, 10.

⁵¹ "Prosecution Rests in Arbuckle Case," *New York Times*, September 28, 1921, 13.

For his part, Arbuckle's defense attorney's most robust defense was to suggest during Seminacher's cross-examination that Arbuckle was the victim of an extortion plot hatched by Delmont and Seminacher.⁵² But in the end, after strongly objecting to the fact that Delmont had not been testified, the defense chose not to call any of its own witnesses nor produce any evidence—Arbuckle, in particular, remained silent.⁵³ Legal strategy would ensure that the showdown the crowd was anticipating simply did not materialize. The case was in the hands of Judge Lazarus, who would now have to decide whether the murder charge would stand, or whether Arbuckle would be turned over to the Superior Court to stand trial for manslaughter.

Lazarus did not take long to make his decision. On September 28, Lazarus ruled that the evidence “did not warrant holding the defendant on the charge of murder,” going so far as to say, “I feel that no rape, and no attempted rape, was committed by the defendant on Miss Rappe.”⁵⁴ Lazarus instead “bound the comedian for trial in the Superior Court on the charge of manslaughter.”⁵⁵ That, however, was just the beginning of the judge's opinion. Lazarus went on to give a lengthy, fascinating, and almost startling statement, alternately calling some of the witnesses, such as Seminacher, “worthless,” criticizing the prosecution's case, and declaring the grave nature and correspondingly strict formal legal requirements for a murder charge.⁵⁶ But even more fascinating, Lazarus seemed to understand the informal importance of what was unsaid in the proceedings and, further, that the proceedings themselves had been unsatisfying. “We are not trying Roscoe Arbuckle alone,” he said. “We are trying our present day

⁵² “Charges Blackmail at Arbuckle Trial,” *New York Times*, September 27, 1921, 8.

⁵³ “Prosecution Rests in Arbuckle Case,” *New York Times*, September 28, 1921, 13.

⁵⁴ “Arbuckle Not Held [for] Murder,” *Wyoming State Tribune*, September 29, 1921, 1.

⁵⁵ “Arbuckle on Bail for Manslaughter,” *New York Times*, September 29, 1921, 1.

⁵⁶ *Ibid.*

morals, our present day social conditions, our present day looseness of thought and lack of social balance.”⁵⁷ Finally, he stated that the work—both formal and informal—remained incomplete:

I had really hoped and expected that all the evidence possible on both sides would be presented here, so that this humble Police Court would be the avenue through which a full and complete revelation would be made so that it would become a forum in which the public would have the opportunity to determine the guilt or innocence of this man whose celebrity, and I will say justly so, has traveled to the four corners of the globe.⁵⁸

Aware and frustrated that the case had not gotten a full treatment, Lazarus suggested that much remained unresolved and that it would be up to the trial court to complete the story. The police court hearing, in other words, had served to frame the issues in the case and, in Lazarus’s words, allow morality to take its place at the center, but could not—due to both formal restrictions and attorney decisions—fully confront the issues. It was not a substitute for a trial; the main event was still to come.

Now free of the murder charge, and therefore free to post bail, Arbuckle returned to his home in Los Angeles to wait and prepare for his manslaughter trial. To that point, Arbuckle, the main character driving the interest in the case, had been almost entirely silent. He had not yet said a word under oath in a courtroom, and had said little more than that to investigators. Beyond a handful of official statements proclaiming his innocence early in the investigation, Arbuckle had said virtually nothing at all. Now that a full, formal trial—free from the restrictions of a Police Court hearing—was to begin, that would almost certainly change. That, in and of itself, was enough to ensure that the

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

trial would maintain its audience and its status as a performance trial. Indeed, Arbuckle seemed to understand the importance and nature of his role, as well as the national scope of his audience. During the second week of November 1921, with the manslaughter trial finally ready to begin, Arbuckle visited with his attorneys for the final preparations. He had only one statement for the assembled press: “Ready to shoot.”⁵⁹

And thus, after months of investigation, competing statements, grand juries, and legal wrangling, Arbuckle somberly took his place at the front of the courtroom, ready for jury selection to begin. Four days later, the jury—including five women, a relatively new development in California—was set and testimony would begin.⁶⁰ While attendance during the early, procedural parts of the trial lagged, once testimony began the crowds returned; on the first day of medical expert testimony, the New York Times noted, “The courtroom was crowded for the first time in three days.”⁶¹ By November 22, when the prosecution completed the first part of its case, the audience had grown even larger. As the Morning Oregonian reported, “Crowds thronged the courtroom and the adjoining corridors.”⁶² As Arbuckle’s lawyers presented his defense, the crowd grew even larger. By November 25, the crowd—including, for the first time, Maude Delmont—was reportedly so large, Arbuckle and his attorneys struggled to fight through it to get to their seats.⁶³

More important, the conversation about the trial and the cultural issues it raised never waned; rather, it built towards a particular climax, the moment when the trial’s star would take the spotlight on the witness stand. It was, perhaps, the most important

⁵⁹ “Arbuckle’s Trial Will Open Today,” *New York Times*, November 14, 1921, 13.

⁶⁰ “Five Women Picked on Arbuckle Jury,” *Dallas Morning News*, November 19, 1921, 1.

⁶¹ “Five Women Seated on Arbuckle Jury,” *New York Times*, November 19, 1921, 6.

⁶² “State Ends Case in Arbuckle Trial,” *The Morning Oregonian*, November 23, 1921, 2.

⁶³ “Rappe Girl Said She Was Drunk, Doctor States,” *The Lexington Herald*, November 26, 1921, 1.

performance of Arbuckle's life and the audience would not be disappointed. Once again, the New York Times focused on the size of the crowd: "The fact that Arbuckle was to testify brought such tremendous crowds into the corridor leading to the court room that it was almost impossible for the police to force the defendant, the Judge and the attorneys through it."⁶⁴ In the event, there was nothing particularly surprising about Arbuckle's testimony. For the most part, he simply told his side of the story—that he found Rappe lying on the floor in pain and placed her on the bed, then called the other women at the party for assistance. He denied the allegations of the prosecution's witnesses, specifically that Rappe had said he hurt her. But despite its relative predictability, the testimony was powerful for two reasons. First, unlike most of the rest of the trial's testimony, it had not been heard before. Arbuckle, in fact, said he "had told only two persons the story related today," his Police Court attorney Frank Dominguez and his current attorney Gavin McNab.⁶⁵ Further, Arbuckle's performance was, reportedly, flawless, particularly under cross-examination. "Leo Friedman, Deputy District Attorney, went over and over the story with Arbuckle," the New York Times reported, "eliciting a dozen answers to one question before he would leave it. He failed to do aught but bring out Arbuckle's story the more clearly."⁶⁶ The defense then rested and, after a few somewhat anti-climactic rebuttal witnesses from both sides, final arguments were prepared. In front of a courtroom so crowded, according to the Albuquerque Journal, "many a would-be spectator was able to get no nearer the center of activities than the corridor of the [H]all of [J]ustice," both sides delivered passionate closings.⁶⁷ The defense, in particular,

⁶⁴ "Arbuckle Relates His Story to Jury," *New York Times*, November 29, 1921, 5.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ "Closing Pleas Are Started in Arbuckle Trial," *Albuquerque Journal*, December 2, 1921, 1.

focused on the decision of the prosecution, yet again, not to produce Maude Delmont as a witness, while the prosecution, in turn, attacked the defense's witnesses. At 4:15 p.m. on December 2, 1921, after three weeks of trial and nearly three months of conversation, the case was ready to go to the jury.⁶⁸

The jury would not come to a quick decision. After hours of deliberations and arguments, the jury retired at 11:00 p.m. and was sequestered for the night, to continue the next day.⁶⁹ The process did not get any easier that next day. As a large and growing crowd awaited in the courtroom, the jury sent word at 6:00 p.m. that it was deadlocked. The Judge urged them to continue to discuss the case, delaying a decision on whether to discharge the jury until the next morning. Reportedly, seventeen ballots had been taken and each had the same result: eleven to one in favor of acquittal.⁷⁰ But a majority was not enough; the decision had to be unanimous. And by the next morning, there was no change. After nearly two days' worth of purely deliberation time, the twelve members of the jury were discharged after being unable to come to a unanimous verdict.⁷¹

The final vote, according to the foreman, August Fritze, was ten to two in favor of acquittal. Of the two who did not agree, Fritze said in a statement, one "refused to consider the evidence from the beginning and said, at the opening of the proceedings, that she would cast her ballot and would not change it until hell froze over. The other was fluctuating...."⁷² Arbuckle had come tantalizingly close to acquittal, close enough to declare an informal victory. Laying out in relatively stark terms the formal versus

⁶⁸ "Arbuckle Jury Locked Up for Night After Failing to Reach a Verdict in Seven Hours," *New York Times*, December 3, 1921, 1.

⁶⁹ *Ibid.*

⁷⁰ "Arbuckle Jury Still Deadlocked," *New York Times*, December 4, 1921, 1.

⁷¹ "Judge Dismisses Arbuckle Jury," *New York Times*, December 5, 1921, 1.

⁷² *Ibid.*

informal stakes, Arbuckle said, “While this, through the technicalities of the law, is not a legal acquittal, morally it is such.”⁷³ Arbuckle seemed to suggest that, while a hung jury was an unsatisfying formal legal result, he had been informally vindicated. District Attorney Brady, naturally, disagreed. He said, “A vindication could come only after a quick, unanimous verdict.”⁷⁴ In trying to guide discussion of the case, Brady wanted to make clear that, not only was the formal result incomplete, but the court of public opinion should withhold judgment, as well. Brady did not intend to drop the charges. Instead there would be a retrial—and an opportunity for the cultural conversation to continue.

The second Arbuckle trial began on January 11, 1922. Perhaps surprisingly, the public, like Brady, had not lost interest: as a report in the Salt Lake Telegram put it, “The crowded corridors and the packed courtroom was [sic] evidence that the second appearance of Arbuckle in a defendant’s role is going to be a success from a box office point of view.”⁷⁵ Arbuckle himself would not testify this time; the focus instead remained on the two key prosecution witnesses, Alice Blake and Zey Prevost. Each seemed to be a disaster for the prosecution. First, Blake testified that she had, for two and a half months prior to the first trial, been detained along with Prevost “against her will at the home of an attaché of the District Attorney’s office.”⁷⁶ The damage was only beginning. Prevost was next to take the stand and her testimony was potentially devastating to the prosecution. Prevost’s story had been inconsistent from the beginning. In the initial investigation, she claimed, consistent with Delmont’s statement, that she had heard Rappe say, “he killed me,” while pointing at Arbuckle. But in the Police Court, she

⁷³ “Jury Disagrees; Film Comedian to be Retried,” *The Idaho Daily Statesman*, December 5, 1921, 2.

⁷⁴ “Arbuckle Jury Fails to Agree,” *The Baltimore American*, December 5, 1921, 1.

⁷⁵ “Arbuckle Trial Illustration of Caution,” *Salt Lake Telegram*, January 12, 1922, 12.

⁷⁶ “Alice Blake Testifies,” *New York Times*, January 19, 1922, 12.

backed off of that statement, claiming (as she did in front of the Grand Jury) that Rappe had not used the word “killed”; instead, Prevost claimed, Rappe said, “I’m dying. He hurt me.” This time, she would change her story yet again. Stating that the District Attorney’s office had coerced her Grand Jury testimony, she swore in this proceeding that Rappe had never even used the words, ‘He hurt me.’⁷⁷ The State would go on to attempt to impeach Prevost and, more important, submit other eyewitness and physical evidence to establish Arbuckle’s guilt, but the damage seemed to have been done. Arbuckle’s defense team was so confident in the result, in fact, that it shocked the entire courtroom by deciding not to make a closing statement. “We would only weary the jurors,” defense attorney Gavin McNab said, “We therefore submit without argument.”⁷⁸ Brady, too, seemed resigned. “This is the end,” he said. “No matter what this jury does, this is the final. I’m through with the case for good.”⁷⁹

Two days later, it became clear that the defense team had made a grave mistake. After over 30 hours of deliberation, the jury was once again deadlocked, this time leaning the opposite direction.⁸⁰ The final ballot was 10-2 in favor of conviction, but as before, a unanimous decision was needed. Yet again, the jury was hung and yet again the trial would lack a firm conclusion. The defense’s fateful decision seemed to be the key. Juror Nate Friedman said, “We thought that when the defense declined to argue it had thrown up its hands. The first ten ballots stood nine to three for conviction, and thereafter until the fourteenth and final ballot it was ten to two.”⁸¹ But perhaps the biggest surprise was still to come: after the jury was declared deadlocked, both the defense and the

⁷⁷ “Arbuckle Witness Fails Prosecutor,” *New York Times*, January 20, 1922, 8.

⁷⁸ “Arbuckle’s Fate Again in Hands of Jury,” *New York Times*, February 2, 1922, 5.

⁷⁹ *Ibid.*

⁸⁰ “Arbuckle Jury Out, Locked Up for Night,” *New York Times*, February 3, 1922, 9.

⁸¹ “Two Jurors Save Arbuckle,” *Miami Herald*, February 4, 1922, 1.

prosecution indicated that they favored re-trying the case yet again. There would be a third Arbuckle trial.

After a brief hitch during jury selection, the third Arbuckle trial would start in late March 1922. The prosecution lacked its key witness, Prevost, who had left the state and refused to return, though it's unclear whether the State would have wanted her to testify again anyway. The highlight of the third trial came during the defense's case. Arbuckle himself testified again, sitting on the stand for three hours and essentially repeating the story he had given at the first trial. After one month, the case was ready for the jury once again and this time, there would be a result. After being out for six minutes—the deliberation itself lasting one minute—the jury returned to the still-crowded courtroom to deliver its verdict: not guilty. A group of jurors, in fact, issued a statement saying, “Acquittal is not enough for Roscoe Arbuckle” and that “there was not the slightest proof adduced to connect him in any way with the commission of a crime.”⁸²

The Arbuckle scandal, after seven months, three trials, a Police Court hearing, thousands of newspaper articles, and over \$110,000 spent on the defense alone finally had its formal ending. But a number of questions remained. What was this all about? What accounted for the continued fascination with the case and the seemingly desperate need for a conclusion? From Arbuckle's perspective, the answer is likely clear. His career was at stake. He needed a clear conclusion, a full acquittal, to have any hope of resurrecting his career. His hope, certainly, was that a formal legal result clearing him of the charges would clear the path for him to return to his status as a beloved cultural icon. For Brady, the motive is somewhat less clear. Perhaps it was stubbornness, in part, that motivated him, along with a sincere conviction that Arbuckle was guilty. The public

⁸² “Arbuckle Acquitted in One-Minute Verdict,” *New York Times*, April 13, 1922, 1.

outcry, certainly, helped drive him even as prosecution witnesses disappeared and, over time, his case inevitably seemed to lose steam. But what held the public's attention throughout the case? Arbuckle's fame caused the initial interest, but what sustained the phenomenon?

As always in a performance trial, the answer lies in the intensity and importance of the conversation surrounding the trial. The Arbuckle trial(s) hit a cultural nerve. As moral reformers—largely, but not entirely, driven by religious belief—considered how to battle the perceived threat posed by Hollywood movies, and others considered whether there truly was a legitimate threat at all, Arbuckle appeared as a convenient symbol of what some saw as the industry's inherent dangers. By the third trial, as the prosecution's formal legal case became nearly non-existent, the informal conversation continued to grow, as groups disagreed over who (if anyone) should serve as the moral watchdog over this newly centralized and powerful entertainment and media technology. In the end, this became a performance trial almost entirely defined by its status as a cultural touchstone; the symbolic public trial of the Hollywood industry in general was just as important—and even longer lasting—than the formal trial of Roscoe Arbuckle. Indeed, as the debate increasingly stretched outside the courtroom and into newspapers, churches, public squares, and even movie theaters themselves, Arbuckle the man and Arbuckle the symbol would become intertwined, in many ways permanently. As Arbuckle would soon learn, while the third trial's formal result would ensure his freedom, his life would not simply return to normal. The scandal's informal ramifications would have serious consequences for his career.

CHAPTER SIX

Fatty Arbuckle: The Case for Censorship

The debate had officially been canceled, but the crowd still filled New York City's Calvary Baptist Church, eager to hear what the congregation's dynamic pastor, Rev. Dr. John Roach Straton, would say. Originally planned as a debate with theater producer William Brady about morality and the stage, the event would instead go on as a public speech by Straton after Brady balked at limiting his remarks strictly to acting; he wanted to be free to discuss the moral inadequacy of other professions in comparison to that of the theater. Still, according to the New York Times, the "church was jammed, with scores of people standing, nearly half proving themselves later to be actors and actresses, or in some way connected with the stage."¹ William Anderson, a member of the Anti-Saloon League and the chairman of the meeting, was the first to take the stage, asking, reportedly scornfully, whether either Brady or his representative Brandon Tynan was in attendance. When he received no response, a man in the crowd angrily began to ask whether he could take Brady's place. But the onlooker had no sooner asked the question when the crowd began to murmur, growing into a roar, as, reportedly, "Brady rose from the centre of the church, hands on his hips, and head slightly to one side."²

Brady had, in fact, decided to attend the meeting and explain clearly and for himself why he would not speak. "Mr. Brady is here," he said, referring to himself, before going to the platform to explain that while he would welcome the opportunity to

¹ "Straton and Brady Clash in Church Over Stage Morals," *New York Times*, February 13, 1922, 1.

² *Ibid.* Note that *New York Times* provided the most extensive coverage of the debate, but other newspapers reported that Brady did not rise until Straton had already begun his remarks. See, for example, "Brady Answers Straton Charge," *Macon Telegraph*, February 13, 1922, 10.

debate Straton on neutral grounds, he was not comfortable with the limitations at the present meeting. Straton was then free to begin his remarks, a provocative speech that would more than live up to his reputation as a firebrand. He accused the theater of having no moral standards and accused those in the theater's leadership of "tolerat[ing] iniquities without rebuke, and stand[ing] sponsor for teachings and practices that are profoundly injurious to the youth of our republic."³ Straton went on to accuse the industry of contributing to both the nation's increasing divorce rate and the decrease in attendance at Sunday School and church services. He also chastised the theater for portraying "indecencies" involving women on the stage. "It was recently remarked," he said, "by one who knew, that in employing girls it was not a question with the managers of how much money a girl wanted, but of how near naked she was willing to appear on the stage."⁴ After an anti-Semitic interlude bemoaning "that the theatre today has fallen almost entirely into the hands of a small group of Jews," Straton finished his remarks by focusing on a handful of specific performers.⁵ First singling out Charlie Chaplin, Douglas Fairbanks, and Mary Pickford for criticism over their divorce records, Straton saved his strongest example—the name at the front of everyone's minds and the likely reason for the event's grand turnout—for last: "[C]apping the climax, here is another great comedy hero, Fatty Arbuckle, standing before the nation with his idiotic, leering grin on his face, but with the shadow of shame and sin upon him. Think of such men and women as these being the entertainers for American youth!"⁶ It was such a strong,

³ "Straton and Brady Clash in Church Over Stage Morals," *New York Times*, February 13, 1922, 1.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

stirring performance that Brady could not help himself. When Straton had concluded, Brady once again made his way to the stage and asked if he could respond after all.

It was February 13, 1922, just over a week after the second Arbuckle trial had ended and about six weeks before the third would begin. It was no coincidence that Straton ended his argument by invoking Arbuckle. It was Arbuckle's trials, after all, that had provided the context for such a debate and gave Straton not only a standing room local audience, but also national newspaper coverage.⁷ Arbuckle was, by then, the symbol of Hollywood immorality and Straton's argument would have felt incomplete without at least one reference to him. He in fact made two. Earlier in his speech, Straton notably used Arbuckle as a central example of the devastating impact Hollywood could have on women. He noted that the Arbuckle case was one example of "the turning of the light on the unspeakable rottenness at Hollywood and other such centres, the conditions hav[ing] become notorious and smell[ing] to high heaven."⁸ He continued, "Facts now prove that the price of promotion for many girls and women upon the stage today is that they shall surrender their virtue."⁹

The theme of moral decay and, in particular, the dangerous potential effect of Hollywood culture on women had been part of the Arbuckle trial from the very beginning. The initial decision to put the case in front of the grand jury, for example, in September 1921, was based in part on pressure from members of San Francisco women's clubs.¹⁰ As the meandering initial investigation continued, these groups became more

⁷ See for example: "Brady Speaks Out in Church in Defense of Modern Stage," *Colorado Springs Gazette*, February 13, 1922, 2. Also: "Church in Uproar in Theater Debate," *Oregonian*, February 13, 1922, 4.

⁸ "Straton and Brady Clash in Church Over Stage Morals," *New York Times*, February 13, 1922, 1.

⁹ *Ibid.*

¹⁰ "Arbuckle is Jailed on Murder Charge in Woman's Death," *New York Times*, September 12, 1921, 1. See also Chapter 5.

organized. By September 14, 1921, the Vigilant Committee of Club Women had passed a resolution demanding “that Arbuckle be prosecuted on the charge of murdering Virginia Rappe.”¹¹ This Committee, usually referred to as the Women’s Vigilante Committee (or WVC), would become a ubiquitous presence throughout the proceedings.¹² Early in the trial, Mrs. W.B. Hamilton was named chairman of a special committee of the WVC dedicated to cooperating with the District Attorney’s office throughout the prosecution. The WVC, Hamilton announced, “which is made up of a number of San Francisco club women, will have members of the special committee at every public hearing of the Arbuckle case, will provide every possible protection to the women witnesses, and will cooperate otherwise in every way possible.”¹³

It was a promise the WVC would keep. The organization made its presence known, inside and outside the courtroom, taking its opportunity to, according to express its outrage over the affair.¹⁴ Women—many, though not all—affiliated with the WVC, packed the courthouses during the Arbuckle trials and, in some ways, became an even bigger presence after the trials were over. These women—far from a homogenous group—would play many roles as the trial progressed, but it was their presence itself that most effectively reminded onlookers of the trial’s cultural stakes. It was fitting that women would play such a crucial cultural role in a trial in which the formal charges revolved around an alleged crime against a woman. But informally, too, women had a strong historical and cultural interest in the issues at stake; and yet, in the absence of an

¹¹ “Arbuckle Accused of Manslaughter by Coroner’s Jury,” *New York Times*, September 15, 1921, 1.

¹² See Gary Alan Fine, “Scandal, Social Conditions, and the Creation of Public Attention: Fatty Arbuckle and the ‘Problem of Hollywood,’” *Social Problems* 44:3 (August 1997), 297-323.

¹³ “Promises to Press Arbuckle’s Trial,” *New York Times*, September 16, 1921, 3.

¹⁴ Fine, “Scandal,” 311.

event such as these trials, the nature of those issues—sex, sexual violence, alcohol, and promiscuity—made them difficult for women to broach in “polite” society.

The Arbuckle trials gave these women, among other onlookers, their entrance. Like the Scopes and the Hall-Mills trials, the Arbuckle affair became a performance trial because it fit its cultural context and brought an important social conversation to a widely accessible national stage. And, also as in Hall-Mills and Scopes, the central component of that cultural conversation was the moral future of the country. The formal action within the Arbuckle courtrooms created a ubiquitous national story that opened the door for informal conversations about the issues at stake, particularly the impact a new entertainment technology could have on the nation’s moral foundation. Further, as in Hall-Mills, the Arbuckle trial(s) went a step further; their presence legitimized a conversation about generally prurient topics such as sex, alcohol consumption, and the moral failings of Hollywood. For many Americans—particularly those who considered themselves upstanding moral reformers—these topics were typically off-limits, not proper for public conversation. But the Arbuckle trials, simply by their existence, provided legitimizing cover. While sexual violence was too prurient a topic to be brought up in casual conversation, for example, it *was* socially acceptable to discuss Arbuckle, the national story of the moment. In some ways, opening this opportunity for an external conversation was the Arbuckle trial(s)’ greatest cultural contribution. Indeed, much of the most interesting conversation took place outside the courtroom. As the number of mistrials grew and prosecution witnesses began to falter, the formal testimony within the courtroom became repetitive and predictable. Yet interest in the trial did not wane; even more than in Hall-Mills and Scopes, it was the informal public conversation

that the trial allowed (and provided with national exposure) that became the driving force of the Arbuckle trials. The trials' true cultural power came from providing a universal reference point for an important social argument over the proper location of moral power in 1920s modern culture.

It was not a simple question. As always in a performance trial, the "sides" were much more complicated than they at first seem, with many of the trial's onlookers and participants working to formulate their own opinions and find their places within the broader debate. The narrative frame offered by a trial headlined by a nationally known film character allowed these onlookers accessible space in which to both promote and better understand their own concerns. Here, those concerns broke down into two specific cultural questions: the separate but related roles of alcohol and the movie industry in the apparent decline in American morality, and perhaps most important, who should be charged with monitoring and regulating these potential social ills. Was the government, in other words, best suited to monitor the content of movies and the activities of the Hollywood actors, or did private citizens and the industry itself have the right to make such decisions?

Certainly, the Fatty Arbuckle case was, from the very beginning, closely tied to alcohol and Hollywood's relationship with Prohibition. Prohibition officially began in the United States on January 16, 1920, just over a year and a half before Arbuckle's tragic hotel party.¹⁵ The passage of the Eighteenth Amendment, outlawing the sale of alcohol in the U.S., and the Volstead Act, which codified the ban and allowed for its enforcement, was the culmination of decades of effort on the part of prohibition and,

¹⁵ A much longer version of this discussion of Prohibition has been previously published as Kristoffer Shields, "The Opposition: Labor, Liquor, and Democrats," in *A Companion to Warren G. Harding, Calvin Coolidge, and Herbert Hoover*, ed. Kathleen Sibley (Chichester: John Wiley & Sons, Inc., 2014), 132-50.

earlier, temperance advocates. It was also, of course, ultimately a failure. By 1933, the Amendment had been repealed and alcohol was, once again, freely and legally available in the United States. Prohibition's fate often leaves it as an historical afterthought; the movement's ultimate failure can obscure both the power behind the initial movement and the importance of the social and cultural arguments over its eventual repeal. It is easy to dismiss Prohibition, as many early Prohibition historians did, as a "fluke" destined for inevitable failure, segregated from other Progressive reform efforts.¹⁶ But to do so risks underestimating the importance of the movement—and the law—in the cultural context of the 1920s. Prohibition supporters saw themselves as true reformers, connected to both nineteenth century reform movements and the Progressives of the early twentieth century. Prohibition and temperance movements were also linked with women's movements in close, yet complicated, ways. As the temperance movement transitioned into an effort towards legal prohibition in the late nineteenth and early twentieth centuries, drinking and, in particular, the saloon represented threats to the traditional family unit. As early as the mid-1870s, the Woman's Crusade and the Women's Christian Temperance Union became the public faces of this link between temperance and at least some leading women.¹⁷

While the linkage between Prohibition and women's movements was always complex, there were legitimate reasons for traditional "Victorian" women to rally against alcohol. These reasons were often rooted in practical rather than religious or even moral concerns; saloons were expensive, for example, siphoning money these women relied on

¹⁶ See, for example, Richard Hofstadter, *The Age of Reform: From Bryan to F.D.R.* (New York: Vintage Books, 1955).

¹⁷ For more on the complicated relationship between women's movements and Prohibition see Shields, "The Opposition."

to run the household. In addition, women were largely economically dependent on men, who needed to stay sober in order to be consistent providers. More over, the saloons also represented a potential physical threat to women—over-indulgence, they argued, could lead to increased abuse in the home.¹⁸ Prohibition, in other words, was not simply a “pseudo-reform,” as the historian Richard Hofstadter once put it, “a means by which the reforming energies of the country were transformed into mere peevishness.”¹⁹ It was, instead, a legitimate reform movement, based at least in part on the ideas of moral uplift and the protection of the traditional family unit.²⁰ Indeed, it was a particularly successful reform movement, one of the few to culminate in the passage of an Amendment to the U.S. Constitution.

Further, while enforcement was difficult from the beginning, to assume that repeal was inevitable dismisses the importance of the decade-long fight over the future of the law. It was a fight that was, in many ways, synonymous with the fight over the future of modern culture. For moral reformers, Prohibition was a key victory in the defense of Protestant values that needed to be protected at all costs.²¹ For those who opposed such limits on “modern” culture, meanwhile, nothing less than full repeal could symbolize victory.²² At the time, however, eventual repeal was far from inevitable; if anything, the concept was almost unthinkable.²³

¹⁸ See Catherine Gilbert Murdock, *Domesticating Drink: Women, Men, and Alcohol in America, 1870-1940* (Baltimore: Johns Hopkins University Press, 1998).

¹⁹ Hofstadter, *The Age of Reform*, 292.

²⁰ For classic histories of Prohibition see Andrew Sinclair, *Era of Excess: A Social History of the Prohibition Movement* (New York: Harper & Row, 1962). Also see Norman H. Clark, *Deliver Us From Evil: An Interpretation of Prohibition* (New York: W.W. Norton, 1976).

²¹ See David E. Kyvig, “Sober Thoughts: Myths and Realities of National Prohibition after Fifty Years,” in David E. Kyvig, ed., *Law, Alcohol, and Order: Perspectives on National Prohibition* (Westport: Greenwood Press, 1985).

²² David E. Kyvig, *Repealing National Prohibition* (Kent, OH: Kent State University Press, 2000), 2d ed.

²³ *Ibid.*

This Prohibition context is crucial to understanding the Arbuckle trials. It was understood, from the beginning, that alcohol played a vital role in whatever happened in Arbuckle's hotel suite. As Arbuckle took his place as the symbol of Hollywood immorality, his use of alcohol was an often-unspoken but always-understood factor. From a formal standpoint, federal Prohibition agents took immediate interest in the reports of Arbuckle's party. As Special Attorney General Robert McCormack put it, "If Arbuckle is guilty of having transported liquor from Los Angeles to San Francisco, I intend to go after him. And any man or woman who attempts to escape or to misrepresent the details of the Arbuckle party, insofar as the liquor end of it is concerned, will be prosecuted on charges of perjury."²⁴ The Prohibition investigation never became the focus of the Arbuckle story, but it was an important sidelight, as authorities attempted to determine who provided the alcohol for the party.²⁵ This part of the investigation took greater importance in early October 1921, when Arbuckle was officially arrested and charged with violating the Volstead Act.²⁶ In fact, a Prohibition conviction would prove to be the only formal price he would ultimately pay. After being found not guilty in the third manslaughter trial, Arbuckle, eager to have the entire affair behind him, indicated via his attorney to U.S. District Attorney John T. Williams that he "would plead guilty to the Federal charge of unlawful possession of liquor."²⁷

Informally, too, the presence of alcohol at the party became an important part of Arbuckle's symbolic cultural status. The trial provided the perfect opportunity for moral reformers to reinforce the dangerous effects of the use of alcohol and simultaneously

²⁴ "Indictment of Arbuckle is Up Today," *Fort Worth Star-Telegram*, September 15, 1921, 2.

²⁵ "Officers Track Liquor Shipments," *Idaho Statesman*, October 2, 1921, 10.

²⁶ "Arrest Arbuckle for Liquor Law Violation," *Lexington Herald*, October 8, 1921, 1.

²⁷ "Arbuckle to Face Federal Charges," *San Jose Mercury News*, April 14, 1922, 2.

encourage stricter enforcement. Arbuckle was, for them, the perfect example of a person who felt he was above the law; to him (and those he represented), Prohibition was a nuisance that could safely be ignored. For those who opposed the law, the Arbuckle case was an example of the impossibilities of legitimate enforcement: despite his guilty plea, the maximum penalty Arbuckle would face was a \$500 fine.²⁸ Some even went so far as to blame Prohibition for the entire affair. Director Marshal Neilan said, “If Arbuckle committed the crime with which he is charged, it was the fault of bad liquor; and prohibition laws are to blame for bad liquor.”²⁹ And yet, it is just as clear that the Arbuckle trials were not “about” Prohibition. Arbuckle’s Volstead Act violations, arrest, and guilty plea were little more than a persistent undercurrent; they were not front-page news and did not, directly at least, inspire heartfelt speeches about moral decay. Certainly, many of the moral reform impulses behind the Prohibition movement fit well with wider concerns over a perceived general decline in American morality. But Prohibition, by itself, was not an issue that needed a performance trial in order to find a national stage. The cultural argument over Prohibition was well known by 1921; just two years earlier, after all, there had been a state-by-state campaign over the ratification of the Eighteenth Amendment. Further, while debates over enforcement continued, the debate over Prohibition itself seemed moot. It had been decided, constitutionally.

While alcohol, then, was an important social moral challenge, in order for the Arbuckle trial to become a performance trial, there would need to be something more—an issue that truly needed a national stage and that could capture the public’s imagination. And in this case, Arbuckle’s occupation and status became key. His alcohol-fueled party,

²⁸ *Ibid.*

²⁹ “Neilan Defends Arbuckle,” *Baltimore American*, September 14, 1921, 2.

after all, was only one example of a much larger problem: the moral decay both represented and promoted by the Hollywood movie industry. This was certainly not an issue that started with the arrest of Roscoe Arbuckle. For years, reformers concerned about the moral impact of moving pictures had fought for greater regulation of their content. As the film historian Samantha Barbas wrote, “Since the opening of the first nickelodeons, social reformers, often affiliated with religious organizations, had urged film censorship and even the closing of theaters.”³⁰ But even at that early stage, the effort would be more complicated than it seemed—while mostly Protestant, these moral reformers were far from identical. In 1909, for example, the People’s Institute, described by the historian Francis Couvares as a “reform organization composed largely of Protestant, upper-middle-class New Yorkers,” organized the National Board of Censorship, a non-binding, non-governmental board of censors charged with defining “acceptable standards of morality” after complaints had led New York Mayor George B. McClellan, Jr., to close all movie theaters in the city.³¹ The Board quickly discovered that its charge was easier said than done. Disagreements broke out among the Board itself along a number of fault lines—gender, age, and ideology, for example—as well as between the Board and the Protestant Americans that it was designed to represent.³² Even at that early point, censorship was proving not to be a bright line issue. Standards needed to be negotiated and cultural power was key.

Those in favor of censorship, however, also won important victories. Chicago was the first U.S. city to enact a statute creating a commission to control movies, in

³⁰ Samantha Barbas, “The Political Spectator: Censorship, Protest and the Moviegoing Experience, 1912-1922,” *Film History* 11:2 (1999), 217-229.

³¹ Francis G. Couvares, “Hollywood, Main Street, and the Church: Trying to Censor the Movies Before the Production Code,” *American Quarterly* 44:4 (December 1992), 584-616.

³² *Ibid.*, 586.

1907.³³ States soon followed suit, led by Pennsylvania in 1911.³⁴ Three more states passed statutes soon thereafter, but the pace truly exploded in the aftermath of World War I. By 1917, over twenty states were considering official state censorship boards.³⁵ Four years later, in the winter of 1921, the news for the movie industry was even worse: thirty-six states were considering censorship board legislation, while the United States Congress considered its own federal bill.³⁶ Cities across the country, meanwhile, had already committed to monitoring film content, with municipal ordinances regulating movies becoming common. Leaders in the industry fought the movement in a variety of ways. With early attempts to challenge the legality of such ordinances unsuccessful, theater owners and film distributors turned to audiences to make the public argument that censorship was unnecessary, un-American, and inconsistent with the modern values of the 1920s. Using theater slides and in-house petitions, they attempted to mobilize the audience to fight censorship efforts. Above all, they argued that external censorship was unnecessary, as the industry was fully capable of policing itself and, indeed, that the public was the ultimate arbiter. In an appeal to the concept of audience autonomy and individual rights, the film producer Jesse Lasky—who produced most of Arbuckle’s features—said, “The public itself is the only true censor. Public taste is continually being educated to demand higher and better things, and the producers are glad to respond.”³⁷

The reformers’ momentum was strong, however, as evidenced by the experience in New York. In the winter of 1921, the New York State Legislature was considering a

³³ Stephen Vaughn, “Morality and Entertainment: The Origins of the Motion Picture Production Code,” *The Journal of American History* 77:1 (June 1990), 39-65, 42.

³⁴ For a wider discussion of the importance of the Pennsylvania statute as a model for future states, see Robert J. Klein, “Film Censorship: The American and British Experience,” *Villanova Law Review*, 12 Vill. L. Rev. 419, 1966-1967.

³⁵ Barbas, “Political Spectator,” 220.

³⁶ Klein, “Film Censorship,” 420.

³⁷ Barbas, “Political Spectator,” 222.

bill that would create a state censorship commission. Industry leaders worried that if the effort were successful in a state as important as New York, other states would soon follow suit, with the federal government not far behind.³⁸ Drawing a line in the sand, the industry, led by the National Association of the Motion Picture Industry, fought the New York ordinance, largely by going directly to the public. Despite strenuous opposition efforts, however, the bill passed both the State Senate and Assembly, and on May 13, 1921, Governor Nathan Miller signed the law. While Barbas argues that the industry's efforts, at the very least, led to the creation of a new political space within the movie theater itself, the practical effect was the continuation of the seemingly unstoppable momentum toward a future filled with government-run censorship boards.

This was the cultural context in which the Arbuckle trials took place. Certainly, already energized by legislative success, pro-censorship promoters now had a new and powerful symbol for their fight against the film industry. And many, in fact, did use that symbol. It is true, as the social historian Gary Fine writes, that both the trial and Arbuckle himself were “used by those who wished to limit films, create censorship boards, and staunch moral decay.”³⁹ Vehement opponents of the movie industry indeed comprised one group of the trial's onlookers and these reformers saw in Arbuckle the opportunity to build on the momentum acquired via the passage of the New York law. Reformer Canon William Sheafe Chase, a leader and spokesman of the New York censorship movement and the author of a federal censorship bill, for example, used the opportunity to push for a federal investigation of the entire movie industry. Linking the Arbuckle case with another murder—that of film director William Desmond Taylor—

³⁸ *Ibid.*

³⁹ Fine, “Scandal,” 312.

Chase laid out the stakes in the starkest possible terms, writing, “This little group of producers claim they have a personal liberty to exploit the morality of their little group [the theater-going public] and thus undermine the morality of the rest of the country.”⁴⁰

Chase assumed that an investigation would uncover extreme moral abuse on the part of the film industry, chastised film producers for not taking the threat seriously, and left little doubt about what was at stake:

Instead of trying to cut out the core of this infection, they are trying to patch it up, and it is bound to break out in a condition still worse. I believe the time has come when this country will no longer consent to have a small group of men, who control the moving picture industry, threaten the freedoms of American institutions and undermine the morality of our people.⁴¹

Portraying the film industry as a cabal intent on the destruction of traditional American morality, reformers such as Chase suggested that Arbuckle was representative of a much deeper moral morass. Indeed, Chase concluded, “it is a question, in the minds of reformers of the films, whether the disclosures in connection with these scandals have typified the worst.”⁴²

The film industry, of course, did not allow these charges to go unchallenged. If the trial was an opportunity for reformers to continue their pro-censorship momentum, it was also an opportunity for the industry to defend itself. Chase noted, in his anti-industry argument, that “there are two publics—the theatergoing public and the rest of the public as a whole.”⁴³ While the theatergoing public had long been accessible to the industry

⁴⁰ “Movie Morals Under Fire,” *New York Times*, February 12, 1922, 80.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*

through the use of pre-movie slides and petition-producing ushers, the stage provided by the Arbuckle case was an opportunity to reach that “rest of the public as a whole.” It was a difficult proposition. To make its case, the industry would need simultaneously to minimize the importance of the Arbuckle scandal and to distance itself publicly from the affair. As John Emerson, President of the Actors’ Equity Association put it, in response to Chase, “Hollywood is no better and no worse, in proportion to its size, than New York, Boston, Chicago, San Francisco or any other American city that I know anything about.”⁴⁴ The industry, in other words, should not be judged differently than any other industry or place; the failings of one individual, so the argument went, should not be used to generalize about the industry as a whole. And, anyway, Emerson continued, “To be sure, the Arbuckle case was a nasty mess, but even this was not nearly so bad as it was painted. And have there been no nasty messes elsewhere?”⁴⁵ Of course, another option available to industry defenders was to use the stage the trials provided but ignore Arbuckle himself entirely. When William Brady re-took the stage at Calvary Baptist Church to offer his response to Rev. Straton, he challenged Straton’s Anti-Semitism and his generalizations. Taking care to point out that he was “not defending the wrong,” Brady said, “There are ten good plays to one bad play in New York, and those would not prosper if the public didn’t support them.”⁴⁶ But unlike Straton, Brady ignored the symbol of the moment; he did not mention Arbuckle by name. Instead, Brady indirectly

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ “Straton and Brady Clash in Church Over Stage Morals,” *New York Times*, February 13, 1922, 1.

but clearly distanced himself from the actor, saying, “I do not come to this Church of God to defend black sheep. I come to defend decent men and women of the profession.”⁴⁷

This is, in some ways, the common view of what was at stake in the Arbuckle trial—a group of reformers, often dismissed as “traditional” (as well as out of touch) pushing an agenda of censorship, while the industry mounted a robust defense of itself to protect its profits and avoid government control of content. But in fact, in the Arbuckle trial, perhaps even more than in *Scopes* and *Hall-Mills*, it is hard to even establish the “sides,” apart from the extremes. The power of this trial did not simply come from a long-awaited showdown between pro-censorship and anti-censorship forces. Many of those who followed and attended the trial, for example, expressed their dismay at the movie industry and Arbuckle himself, yet cannot be uniformly dismissed as “pro-censorship reformers.” Historians have, generally, been too willing to categorize these moral reformers as ideological, dogged forces of censorship, singularly focused on the destruction of the immoral movie industry. The social historian Fine, in his account of the case, for example, links “moral warriors,” women, and “Puritans” together as forces of mobilization—activists who may have had differing underlying motives for their interest in the case, but who were using the trial to mobilize similar reform movements.⁴⁸ Fine notes in particular that, like the moralists, women “explicitly attempted to mobilize themselves against the affronts they faced,” emphasizing, for example, unconfirmed reports of women spitting on Arbuckle as he entered the courtroom.⁴⁹ The author David Yallop, too, focuses on a seemingly unified opposition to Arbuckle, while other

⁴⁷ “Cheers and Hisses in Church as Brady and Pastor Debate Bitter Attack on Stage Life,” *Ft. Worth Star-Telegram*, February 13, 1922, 2.

⁴⁸ Fine, “Scandal,” 309-11.

⁴⁹ *Ibid.*, 311.

historians take for granted that the sides split between traditional moral reformers and the style of “modernism” represented by Hollywood.⁵⁰

Certainly, there were moral reformers, such as Canon Chase, who fit that description. But many of the trial’s onlookers, including the large numbers of women in attendance, cannot be limited to one such category. Early in the case, when the Police Court held hearings in its Women’s Court to determine which charge Arbuckle would face, the WVC, in addition to urging District Attorney Brady to seek a murder charge, also mobilized to ensure that the court would be crowded with women observers, offering support to witnesses and showing support for the proceedings. To Fine, this is evidence that the “Arbuckle case provided the first major opportunity for the WVC to express moral outrage and mobilize women,” noting further that “[r]eaction to Arbuckle’s arrest was linked to the gender politics of the early 1920s.”⁵¹ This is undoubtedly true to an extent, and yet the assertion is far too broad; the link to gender politics, for example, was far from rote. When the Police Court proceedings concluded, for example, Judge Sylvain Lazarus, in addition to issuing his wide-ranging statement about the case in general, ruled that Arbuckle should face the lesser charge of manslaughter. In essence, then, Arbuckle won the hearing; disappointment from the WVC and the women onlookers would seem inevitable. And yet, according to newspaper reports, “The Judge’s decision was greeted with great applause by hundreds of women. They crowded into the chambers of Judge Lazarus to shake the comedian’s [Arbuckle] hand, congratulate him and tell him how glad they were.”⁵² In a scene similar to one to come in Dayton, Tennessee, four years

⁵⁰ David Yallop, *The Day the Laughter Stopped* (New York: St. Martin’s Press, 1976).

⁵¹ Fine, “Scandal,” 311.

⁵² “Arbuckle on Trial for Manslaughter,” *New York Times*, September 29, 1921, 1. See also “Women Applaud as Court Reduces Arbuckle Charge,” *Times-Picayune*, September 29, 1921, 1.

later, the crowd's reaction exhibited a motivation that went beyond simple anti-Arbuckle moralization. This perhaps should not be a surprise. The WVC's role, for example, was much more nuanced than Fine allows. While many members, indeed, may have been outraged, the organization was primarily concerned, by their own account, with "giv[ing] moral support to women witnesses in the case and look[ing] after their welfare."⁵³ Seen this way, it was perfectly consistent to appear at the trial in support of women witnesses and yet leave room to celebrate the decision to try Arbuckle on a lesser charge.

Further, as the historian Hilary Hallett has pointed out, the focus of the moral outrage of the members of the WVC was not exclusive to Arbuckle. Hallett notes that, while the first public narrative to come out of initial reports of Virginia Rappe's death positioned Arbuckle as an immoral monster who took advantage of an innocent young actress, by the time of the Police Court hearing, that narrative had changed. Rappe was increasingly portrayed less as an innocent victim and more as a "fallen woman"—a victim, still, but one who voluntarily attended what was then being described as an "orgy."⁵⁴ Hallett writes, "This story linked a specific example of single young women attending a hotel party without fearing for their good names, to a general assertion about the degeneration of moral standards in cities everywhere, making society the villain for allowing young women freedoms that threatened the 'civilized' world."⁵⁵ Arbuckle, in this view, was only a symbol of a national culture that "allowed young women" these dangerous freedoms—concerns similar to those expressed by the "Victorian" women of the Hall-Mills case. Indeed, Hollywood itself "represented not a scapegoat for

⁵³ "Indictment of Arbuckle is Up Today," *Fort Worth Star-Telegram*, September 15, 1921, 2.

⁵⁴ Hilary Hallett, *Go West, Young Women: The Rise of Early Hollywood* (Berkeley: University of California Press, 2013).

⁵⁵ *Ibid.*

modernity's failures, but a symbol of the country's guilt and need for reformation"—though, Hallett goes on to note, the narrative would ultimately shift again to "the idea that Hollywood directly bore responsibility for Rappe's death."⁵⁶ These changing narratives were in part, as Hallett suggests, driven by shifting witness testimony and evolving press coverage. But an audience also has the power to affect, accept, and/or reject the dominant narrative. The women of the WVC did not ignore Arbuckle at the end of the Police Court proceeding, as they might if they simply saw him as superfluous to the overall issue—they instead congratulated him and celebrated the verdict. This suggests that at least some of the women in the audience viewed the narrative as something other than an either/or proposition. Indeed, to split the Arbuckle affair into three distinct narrative "periods" is too simple. Onlookers, instead, seemed to be able to use the competing narratives to distinguish between the formal and informal stakes of the trial. Informally, Arbuckle symbolized an unacceptable moral standard, but formally the proper charge was indeed manslaughter—an audience compromise that would become even clearer a year later, as we will see, in the months after Arbuckle was acquitted. And, of course, it is crucial to remember that the WVC, like any organization, was made up of individual women, with different (even if similar) views on modern culture. At the very least, as Hallett suggests, the WVC did not represent all women. Indeed, she notes:

Yet [groups such as the WVC's] behavior also demonstrated how they envisioned using women's new rights to empower the "right sort" of women to protect their weaker sisters. Put differently, the WVC, and many of the other clubwomen who sought control over Hollywood in the postwar era, believed in equalizing gender roles for women like themselves so they could regulate women whose age, class, ethnic identities, or behavior made them unable to take advantage of the new

⁵⁶ *Ibid.*, 195.

rights. Such vulnerable girls needed respectable ladies to perfect a modern type of state chaperonage.⁵⁷

It is not difficult to imagine that such “vulnerable girls” may have disagreed with this take on the most effective use of “women’s new rights.”

Hallett focuses primarily on the Police Court proceeding, but there are indications that these narrative adjustments, compromises, and disagreements continued throughout Arbuckle’s manslaughter trials, as well. Indeed, a courtroom scene similar to the one in the Police Court played out at Arbuckle’s ultimate acquittal. Even on the juries themselves, women played crucial and diverse roles. Fine accurately emphasizes that the lone holdout for conviction on the first Arbuckle jury was a woman, but he does not point out that there were also four women on the jury that ultimately acquitted Arbuckle after a less-than-one-minute deliberation. After that final trial, according to the Charlotte Observer, “Jurors and spectators crowded around Arbuckle and his counsel and finally bore him off to the jury room to congratulate him further.”⁵⁸ Later, wire services reported, “jurors held an informal reception with Arbuckle in the jury room while newspaper photographers, armed with flashlights, took many pictures.”⁵⁹ There is no indication that many, if any, of these women supported Arbuckle in the sense that they approved of his actions, alleged or otherwise, or even that they supported the movie industry on the whole. But it is clear that for many, their interest in the trial was more complicated than a simple desire to see Arbuckle personally punished or to see the movie industry destroyed. From attempting to protect women involved in the industry to understanding their roles as moviegoers to promoting the aspects of a cultural shift that

⁵⁷ *Ibid.*, 207.

⁵⁸ “Arbuckle Free of Charge of Manslaughter,” *Charlotte Observer*, April 13, 1922, 1.

⁵⁹ “Arbuckle is Freed in Manslaughter Trial,” *Macon Telegraph*, April 13, 1922, 1.

had the potential to provide women with more social power, women following the trial had a variety of motivations.

For religious women—and men—interested in promoting moral reform, meanwhile, the Arbuckle affair served another purpose: it opened up discussion of a topic that may have otherwise been taboo, too prurient for legitimate social conversation. In this way, religious reformers, too, had a variety of opinions and strategies concerning the Arbuckle saga. For many, it was indeed an opportunity for publicity, a chance to bring these issues into public light. Reverend Straton, for example, represented a strand of Protestantism that strongly opposed the nation's moral trajectory and used symbols such as Hollywood to critique modern culture. In numerous sermons to his high-profile congregation, Straton railed against such modern creations as prizefights, plays, movies, and, of course, Fatty Arbuckle. The Arbuckle case, in particular, was an entrance into the argument that sex and alcohol were destroying American morality.

But these sermons were not met with universal support. For some religious moral reformers, this case was not an appropriate vehicle for discussion of such a prurient topic. Indeed, in a striking example of the diversity of opinions a seemingly like-minded audience could have, Straton's congregation became a referendum on how most effectively to combat the potential evils represented by modern culture. While Straton openly rebelled against the "rotten" motion picture industry "dragging all the people, including the youth of the nation, through a silly, sordid, sensuous stream of moral infamy," some in his congregation protested his methods.⁶⁰ Straton's predecessor, the former long-time pastor of Calvary Church Rev. Dr. Robert Stuart MacArthur, became his most prominent critic. MacArthur, who was still listed as pastor emeritus of the

⁶⁰ "MacArthur Breaks with Dr. Straton on Pulpit Sensations," *New York Times*, September 19, 1921, 1.

church, asked that his name be removed from all church calendars and bulletins as he “did not wish to appear to sanction all of the acts of Dr. Straton.”⁶¹ The controversy nearly tore the venerated church apart, as more than 200 members quit attending in protest of Straton’s “sensationalistic” sermons.⁶² Those who disagreed with Straton were obviously neither defending nor supporting Arbuckle. It was, instead, an argument over the best way to fight the new culture and how to be a Protestant Christian within it. For those who protested Straton, one of the most common complaints was the “alleged tendency of his sermons to increase interest in the evils under review.”⁶³ By mentioning Arbuckle, in other words, Straton was arguably sparking interest and curiosity in the very subjects he was condemning.⁶⁴ These members of the audience located within Straton’s fiery sermons echoes of the same prurience to which they objected in Hollywood movies. For them, the proper way to fight for moral reform was not by referencing the affair from the pulpit, but rather by rejecting the conversation altogether, focusing instead on the teachings of the Bible and on determining how to maintain their personal piety in the face of the new cultural reality. Straton, of course, rejected those claims, deeming his detractors hypocrites. “They say that their children are too nice to hear my sermons against the ‘movies,’” he said, “yet they let those same children go constantly to the ‘movies’ to see the unspeakable filth that is there presented.”⁶⁵ Thus was the complicated nature of moral reform of 1920s culture. Whether religious reformers concerned about the impact of Hollywood on youth, or women reformers concerned about the impact of

⁶¹ *Ibid.*

⁶² “Straton’s Sermons Split Congregation,” *New York Times*, September 20, 1921, 1.

⁶³ “MacArthur Breaks with Dr. Straton on Pulpit Sensations,” *New York Times*, September 19, 1921, 1.

⁶⁴ For a discussion of the history of erotic publishing and, most relevant, the disguising of pornographic materials as inquiries into the state of American morals, see Donna Dennis, *Licentious Gotham: Erotic Publishing and its Prosecution in Nineteenth-Century New York*, Cambridge: Harvard University Press, 2009.

⁶⁵ “Dr. Straton Calls Critics ‘Salacious,’” *New York Times*, October 3, 1921, 3.

modern culture on women, “moral reformers” who followed and used the Arbuckle trial were diverse and at times unpredictable.

The motives of those who “supported” Arbuckle were similarly multifaceted. In truth, it’s unlikely that many (beyond Arbuckle’s inner circle of friends) had any desire to personally defend him; the allegations against him were far too serious. Most who fell on Arbuckle’s “side” were instead defending the movie industry in general, whether as a financially interested party—a producer, distributor, actor, or exhibitor, for example—or as a viewer. And the form that defense took was also not inevitable. In some ways, from the industry’s perspective, it would have been easiest to attempt to minimize the trial entirely, perhaps by quietly brokering a solution that would make the scandal disappear (a result that would also seem likely to appeal to Arbuckle himself). It is true that the pressure to prosecute asserted by such groups as the WVC would have made this more difficult. But regardless, the industry surprisingly seemed to welcome the publicity from the beginning. The Arbuckle trial would ultimately provide an opportunity for the industry to make its argument. And it was, indeed, an argument against a certain type of censorship, but as with the moral reformers, both the approaches and the goals of various industry groups were far from inevitable.

The movie industry, for example, could have taken a pure, free speech-centered “anti-censorship” approach, fighting for the rights of even someone like Arbuckle to make and distribute movies. The content of Arbuckle’s movies themselves, after all, was never in moral question and delving into the personal lives of entertainers was a precedent the industry might well want to avoid. But theater owners and film exhibitors decided from the very beginning not to take this approach. On September 12, 1921, in

one of the earliest articles about the case to run in the New York Times, two items appeared at the end of the report, almost as an aside. First, the article noted, “All San Francisco theatres exhibiting Arbuckle films announced yesterday that no more would be run for the present.”⁶⁶ Perhaps more surprising, the report went on to note that a much larger theater in Arbuckle’s hometown of Los Angeles was quietly making the same decision. “[T]he latest picture of Arbuckle, ‘Gasoline Gus,’ was withdrawn without comment or announcement by Sid Grauman, the largest exhibitor here, from its showing at Grauman’s Theatre, where it was to have been exhibited for the last time today.”⁶⁷ It was the beginning of a tidal wave. Over the ensuing days, hundreds of theaters nationwide removed Arbuckle movies from their screens. Some of these decisions were mandated; the Memphis Board of Censors, for example, announced that the showing of Arbuckle films would not be permitted unless Arbuckle was cleared.⁶⁸ But in other places, such as New York, the censorship commissions were not given time to rule on the case. Distributors and exhibitors made the decision before the Boards could act. By September 14, over 600 theaters in the New York area alone had banned Arbuckle films, led by a decision by the Theatre Owners’ Chamber of Commerce.⁶⁹

Theater owners, exhibitors, and, later, film distributors were clear: they would not fight for the right to exhibit Arbuckle films. Indeed, most of those supporting the industry were not fighting the concept of censorship itself at all. They simply opposed government-mandated censorship. Once again, the issues were laid clear in Rev. Straton’s debate with William Brady at Calvary Baptist Church in February 1922. When

⁶⁶ “Arbuckle is Jailed on Murder Charge in Woman’s Death,” *New York Times*, September 12, 1921, 1.

⁶⁷ “Arbuckle Film Withdrawn,” *New York Times*, September 12, 1921, 3.

⁶⁸ “Movie Films of Fatty Arbuckle are Cancelled,” *Albuquerque Journal*, September 13, 1921, 2.

⁶⁹ “600 Theatres Here Exclude Arbuckle,” *New York Times*, September 14, 1921, 3.

the producer Brady made his argument, not only did he choose not to defend Arbuckle, but he also pointed out, approvingly, that censorship already existed. “There is a law on the statute books,” he stated, “which gives anyone the power to move against immorality on the stage.”⁷⁰ Theater owners, in fact, went beyond Arbuckle to show their concern with morality, passing resolutions not to show “pictures in which a star performer had been proved to be immoral” and, notably, ensuring that the public realized that it was the theater owners themselves who had banned Arbuckle’s movies.⁷¹ Film producers such as the Universal Film Company, meanwhile, inserted “morality clauses” into performers’ contracts, which stated that the company could “discontinue their salaries if they forfeit the respect of the public.”⁷² Many of these actions, certainly, were attempts to assuage a concerned public and taken in response to public demand—something that theater owners and movie distributors would point out was a working part of the system. But there are also indications that many of the theaters were themselves attempting to find the line between providing popular entertainment and being a wholesome, family-oriented, profitable destination. To paint them as uniformly anti-censorship is an overstatement.

The movie industry’s most coordinated and ultimately most interesting step towards self-censorship, however, took place in January 1922—during the height of the Arbuckle manslaughter trials. Increasingly concerned about the momentum of pro-censorship forces and well aware of the potential symbolic impact the continuing Arbuckle saga threatened, studio owners decided to take a proactive, nationwide step. These owners joined together to create the Motion Picture Producers and Distributors of America (MPPDA), a “public relations arm” that would represent the industry with one

⁷⁰ “Straton and Brady Clash in Church Over Stage Morals,” *New York Times*, February 13, 1922, 1.

⁷¹ “Move Theatre Owners Ban Plays with Immoral Stars,” *New York Times*, February 16, 1922, 1.

⁷² “Actors Henceforth Bound to be Good,” *Oregonian*, September 22, 1921, 1.

voice.⁷³ The first major decision would be choosing the right person to head this new organization, to be that voice of the industry. For this, the studio heads turned to a somewhat surprising source. After weeks of speculation, President Warren Harding made front-page news across the country when he confirmed rampant rumors by announcing that a member of his Cabinet—Postmaster General William Hays—would be stepping down to accept the MPPDA post.⁷⁴ Hays was a partisan Republican who had previously been head of the national Republican party, a role that landed him the position in Harding’s Cabinet. He had very little experience with the movie industry, but did have experience in public relations, both as it related to political campaigns and as a state liaison to the Committee on Public Information.⁷⁵

It was, in some ways, a surprising choice and one that did not escape criticism. Democrats, in particular, questioned why an industry free “from politics up to this time” would target a Presidential Cabinet member, worrying that he might “place a censorship upon some Democratic pictures that should be shown.”⁷⁶ Some were concerned with the reported size of the offer—a salary rumored to be \$100,000, which was more than the President himself received. But once again, the Arbuckle context was key. Given the debate taking place at the time of the appointment, Hays was, in many ways, an ideal candidate. He was the anti-Arbuckle, even in a literal sense; the new “movie head” weighed a slight 110 pounds. More important, Hays was born and raised in small-town Indiana, a pro-business Presbyterian with extensive Republican connections. As the film historian Stephen Vaughn put it, “Hays’s well-cultivated public profile made him a

⁷³ Stephen Vaughn, “The Devil’s Advocate: Will H. Hays and the Campaign to Make Movies Respectable,” *Indiana Magazine of History* 101:2 (2005), 125-152.

⁷⁴ “Hays Will Head Big Picture Concern,” *Salt Lake Telegram*, January 1, 1922, 1.

⁷⁵ Vaughn, “Devil’s Advocate,” 131.

⁷⁶ “Against Hays as ‘Movie Head,’” *Grand Forks Daily Herald*, January 8, 1922, 2.

natural candidate to head the new MPPDA.”⁷⁷ This was particularly true in the context of the Arbuckle scandal. The industry on the whole, of course, was primarily interested in self-preservation. But it is important again to note that the most dynamic step the industry took to defend itself was neither a full-throated defense of free speech nor an appeal to the anti-American nature of censorship. It was instead to hand power over the industry—including the power to censor content—to a small-town, Republican Protestant. Like many individual Americans, including those who vehemently opposed Hollywood itself, the industry was attempting to understand and come to terms with the new cultural boundaries, while reserving the right to push them when it saw fit. The Arbuckle case was a fight for the movie industry, to be sure, but it was also an opportunity, with access to the entire country, to better understand the culture in which it was acting.

Finally, the largest group of people interested in the Arbuckle trial was also the least homogenous: movie viewers. Indeed, the movie-going public likely overlapped all of the groups interested in the trial, from the strongest industry supporters to the most virulent moral reformers and, most important, everyone in between. They could not, at first, vote with their wallets; the widespread withdrawal of Arbuckle films from theaters around the country took the decision of whether or not to attend an Arbuckle movie out of most viewers’ hands. Indeed, in some ways the most significant and symbolic story of the early public response to the Arbuckle affair turned out to be just that: a story. On September 18, 1921, newspapers around the country reported a dramatic tale of a mob of 150 “men and boys, many of them cowboys” who entered a theater in Wyoming that was exhibiting an Arbuckle film, “shot up the screen, seized the film and taking it into the

⁷⁷ Vaughn, “Devil’s Advocate,” 132.

streets burned part of it.”⁷⁸ It was a significant story showing the depth of the distaste of Arbuckle in at least one community. But there was one problem with the story: it was untrue. The entire story was, according to the New York Times, a “myth,” a “publicity stunt,” discovered four days later.⁷⁹ In reality, it would not be so simple for the movie-going public to take a stand in the theaters, in part because of the removal of Arbuckle films, but also because the “movie-going public” almost certainly did not have one universal opinion. But the public was in general agreement on one point: the cultural issues at stake were important enough to sustain an extended conversation. During the trials, the public made its interest in the issues clear by continuing to show strong interest in the trials themselves. While Arbuckle’s celebrity, combined with the scandalous nature of the allegations, could account for the initial interest in the story, public interest in the Arbuckle trials did not end with his arrest or even after the largely disappointing Police Court proceeding. Even as the trials themselves piled up and dragged on and the prosecution’s case seemingly fell apart, the public’s attention did not lag. Clearly, the public saw value in the conversation, at least in part as a forum in which to better understand the complexities of the relationship between Hollywood, movies, and modern culture. But it was after the trials concluded that the intensity of the public’s interest—and a indication as to where it stood on Arbuckle’s informal guilt—came into clearest focus.

The formal conclusion of the third and final trial of Roscoe Arbuckle was, to say the least, anti-climactic. After their deliberation of less than one minute, the jury not only acquitted the comedian but apologized to him, issuing its statement that a “great injustice

⁷⁸ “Cowboys Shoot Up Arbuckle Film,” *Morning Olympian*, September 18, 1921, 1.

⁷⁹ “Arbuckle Film Not Burned: Wyoming Cowboy Story Called ‘Pernicious Publicity’ for Theater,” *New York Times*, September 22, 1921, 8.

has been done to him.”⁸⁰ The affair was over and it was a complete formal victory for Arbuckle. Simultaneously, Jesse Lasky, President of the Famous Players-Lasky Corporation, made an equally significant announcement: a new movie featuring Arbuckle would be released immediately.⁸¹ After seven months of limbo, it seemed Arbuckle’s career would finally resume. But it was not to be. Less than one week later, Will Hays announced that as his first move as MPPDA head, he was banning Fatty Arbuckle films.⁸² Arbuckle was reportedly “shocked,” but perhaps he should not have been.⁸³ Hays seemingly understood the importance of controlling the narrative, noting that “the purpose of our organization is to attain and maintain the highest moral and artistic standards.”⁸⁴ With the performance trial over, Hays had the opportunity to remove the conversation from the public stage. He would simply take Arbuckle—the man and the symbol—out of the public eye entirely. After overcoming his shock, Arbuckle seemed to cooperate with Hays. On August 16, 1922, he took off for a trip around the world; Arbuckle would no longer even be in the nation, let alone on the national stage.⁸⁵

Once again, however, the industry’s stance would prove to be unpredictable. In another surprise, just before Christmas 1922, Hays, without warning, reinstated Arbuckle.⁸⁶ Noting that Arbuckle had “gone straight” since his banishment from films and that he “seems completely changed,” Hays cited the “spirit of Christmas” as a reason

⁸⁰ “Arbuckle Acquitted in One-Minute Verdict,” *New York Times*, April 13, 1922, 1.

⁸¹ *Ibid.*

⁸² “Will H. Hays Bars All Arbuckle Films,” *Oregonian*, April 19, 1922, 1.

⁸³ “‘Fatty’ Shocked by Hays’ Order,” *Tulsa World*, April 20, 1922, 8.

⁸⁴ “Arbuckle Banished from Film by Hays,” *New York Times*, September 19, 1922, 27.

⁸⁵ “Arbuckle Leaves to Circle World,” *Colorado Springs Gazette*, August 17, 1922, 4.

⁸⁶ “Fatty Arbuckle is Coming Back,” *Charlotte Observer*, December 21, 1922, 1.

for the reinstatement.⁸⁷ Hays also noted that the decision of whether to welcome him back was purely up to the viewing public and made the point that, despite the controversy over the actor himself, “it is known that Arbuckle never made a picture to which any exception possibly could be taken, and he never will.”⁸⁸ It is unclear what, beyond the “spirit of Christmas” drove Hays’s change of heart. It seems likeliest, though, that he had always planned to reinstate the actor once he determined that interest in him had died down. A public relations veteran, Hays likely assumed that enough time had passed and that the Christmas season would provide enough of a distraction to make the decision pass largely unnoticed.

It was a dramatic miscalculation and the backlash was immediate. Once again, the power of the audience’s interest in the Arbuckle case proved surprisingly enduring. Grassroots organizations including, according to the New York Times, “Mayors of the leading cities of the country who have voiced their disapproval, of the clergy and church organizations, of women’s clubs and the leaders of women’s organizations, of associations of theatre owners and of such representative bodies as the National Education Association and the Catholic Welfare Council” mobilized to protest the potential return of Arbuckle to movie screens.⁸⁹ Arbuckle was immediately back on the front page and opposition continued to mount, as groups as diverse as the General Federation of Women’s Clubs to the Grange to the Ku Klux Klan voiced their protest.⁹⁰

Finally given the opportunity to be fully heard, the public made the intricate nature of its response to the Arbuckle affair clearer than ever. Showing their

⁸⁷ “Hays Sanctions Arbuckle Return,” *New York Times*, December 21, 1922, 1.

⁸⁸ *Ibid.*

⁸⁹ “Storm of Protest at Hays Restoring Arbuckle to Films,” *New York Times*, December 22, 1922, 1.

⁹⁰ On the complicated relationship between censorship and the Ku Klux Klan, see Tom Rice, “Protecting Protestantism: The Ku Klux Klan vs. The Motion Picture Industry,” *Film History* 20:3 (2008), 367-380.

understanding of the complexity of the case, many of those opposed to Arbuckle's return took care to separate Arbuckle himself from what he had come to represent—and to separate his formal acquittal from the informal impact of his actions. Mrs. J.C. Urquhart, President of the Los Angeles District Federation of Women's Clubs summed this approach up best, saying, "There is no animosity on our part toward Mr. Arbuckle, but, despite the fact that he was acquitted on the charge of causing the death of Miss Rappe, the testimony at his trial was of such a character as to bar him forever from appearing before a decent, self-respecting public."⁹¹ Others—sometimes unpredictably—took a harder line stance. The well-known religious liberal Rev. Dr. Harry Fosdick said, "Something serious has happened to our moral standards in America if we allow it. It would be a malodorous symptom of our growing lawlessness."⁹² Many also continued to make connections between Arbuckle's status and the continuing debate over censorship. Some, for example, saw Hays's decision as a violation of an unspoken agreement with Massachusetts voters who had recently voted against a movie censorship referendum, ostensibly with the understanding that the industry would self-regulate in situations such as Arbuckle's. Others opposed Arbuckle but seemed to come closer to the argument of Hays himself that the decision should ultimately rest with viewers. Charles McMahon, Director of the Motion Picture Bureau of the National Catholic Welfare Council, for example, condemned the decision, but in the process said "Morality cannot be legislated into the stage or the screen or into the people responsible for them; but public opinion is

⁹¹ "Hays Sanctions Arbuckle Return," *New York Times*, December 21, 1922, 1.

⁹² "Dr. Fosdick Against Arbuckle on Film," *New York Times*, January 8, 1923, 22.

certain to reform—to the extent that it needs reform—the motion picture industry and the people against it.”⁹³

Hays would consistently defend his decision, making the argument that he was not endorsing Arbuckle, but rather putting the decision in the hands of the viewing public.⁹⁴ For his part, Arbuckle asked for fairness and understanding.⁹⁵ In fact, a handful of theaters did attempt to show Arbuckle films, with varying results. And while three new Arbuckle films did exist, according to Adolph Zukor, then head of the Famous Players-Lasky Corporation, which held Arbuckle’s contract, “[t]here had been no real attempt to reintroduce [them]...because public sentiment had been so emphatically against such action.”⁹⁶ In the end, it would not matter. On January 30, 1923, in the shadow of the almost universal condemnation of Hays’s decision, Arbuckle announced that “he had signed a contract to direct motion pictures for a comedy film corporation and that he was ‘done with acting.’”⁹⁷ With one exception, Arbuckle would never appear in another film.

In one sense, then, censorship won out. Moral reform forces mobilized, even after the Arbuckle trial was complete, to ensure that Arbuckle himself would never regain his place of cultural power. And yet, keeping Arbuckle off of movie screens ultimately benefited the movie industry more than it did the most extreme pro-censorship forces. In this way, the Arbuckle trial is different from both Scopes and Hall-Mills. In Scopes and Hall-Mills, the moral reformers were largely in the position of attempting to protect a diminishing reserve of cultural power. Facing significant cultural changes, interested

⁹³ “Storm of Protest at Hays Restoring Arbuckle to Films,” *New York Times*, December 22, 1922, 1.

⁹⁴ “Hays Refuses to Reconsider,” *Idaho Statesman*, December 24, 1922, 1.

⁹⁵ “Arbuckle Gives Bible Quotation in Defense,” *Miami Herald*, December 25, 1922, 3.

⁹⁶ “‘Done with Acting,’ Says ‘Fatty’ Arbuckle,” *New York Times*, January 31, 1923, 14.

⁹⁷ *Ibid.*

groups in both Dayton, Tennessee and Somerville, New Jersey saw their cultural power waning and feared disastrous moral consequences. In the Arbuckle trial, however, litigated over three years before the Scopes controversy erupted, it was the moral reformers themselves who came into the trial with cultural momentum. Buoyed by the success of the Prohibition movement, moral reformers had successfully lobbied for censorship boards in states and localities across the country. It seemed only a matter of time before Congress would establish a federal censorship board that would take even greater control. But the Arbuckle trials provided an opportunity for the industry to make the argument to the public that the industry itself—with guidance from the public—could self-monitor its content. By keeping Arbuckle off the screen, first by Hays's decision and later by public outcry, it became clear to many that movie morals could be regulated by the public without government involvement, precisely the argument the industry had been making all along. Indeed, with Hays in the background working on self-regulation procedures, no states or major localities enacted censorship laws after 1922.⁹⁸ Movie censorship would not become a major issue again until the 1930s when Hays, still acting as President of the MPPDA, would, largely in consultation with leading Catholic groups, create the Production Code.⁹⁹ Hays, of course, deserves credit for promoting self-regulation within the industry. But it was the existence of the Arbuckle trials that allowed the issue to gain access to a public stage, and thereby allowed the public to both understand the issue and assert its latent cultural power. It was ultimately the public, after all, not Hays, that denied the symbolic return of Arbuckle to the screen, proving that

⁹⁸ Barbas, "Political Specator," 227.

⁹⁹ Couvares, "Hollywood," 600.

such moral power could be trusted to the viewing public. By becoming moral actors, this public invalidated the arguments of the most strident moral reformers.

The public had also passed its judgment on Arbuckle himself. When making his plea for fairness on Christmas Eve 1922, Arbuckle would rely heavily on the fact that he had been acquitted of all the charges against him. As he put it, “All I ask is the rights of an American citizen—American fair play.”¹⁰⁰ But Arbuckle misunderstood his situation. His appeal to his formal acquittal was irrelevant; even the harshest criticisms of Arbuckle generally started by acknowledging his formal “innocence.” His formal legal victory, in other words, meant little in the informal court of public opinion. Arbuckle would not face prison for whatever happened in that San Francisco hotel room, but the informal ramifications were—perhaps deservedly—dire. As one New York Times editorial put it, “Sometimes it is expedient that one man should be sacrificed for his group. Sometimes Christian charity comes too high. Arbuckle was a scapegoat; and the only thing to do with a scapegoat, if you must have one, is to chase him off into the wilderness and never let him come back.”¹⁰¹

Scapegoat or not, Roscoe Arbuckle is a personification of the magnitude of the informal power of a performance trial. In these trials, even when the formal ramifications are serious, as in both Arbuckle and Hall-Mills, the informal ramifications can overpower them. Or, when the formal ramifications seem trivial, as in Scopes, the informal consequences can yet elevate the trial to one of lasting cultural importance. Indeed, the cultural power of the performance trial lies in these informal moments. Those who opposed Arbuckle—whether Rev. Straton, District Attorney Brady, the moral crusader

¹⁰⁰ “Arbuckle Begs for ‘Fair Play,’” *Times-Picayune*, December 25, 1922, 10.

¹⁰¹ “Hays and Arbuckle,” *New York Times*, December 22, 1922, 13.

Chase, or the members of the Women's Vigilante Committee—represented people with different goals and different reasons for being involved in the trials. For many, such as the women who cheered the Police Court's decision to charge Arbuckle with a lesser crime, the formal adjudication of Arbuckle was largely immaterial. The trial's informal power existed simply by allowing their presence, being noticed, taken seriously, and making a cultural point.

Arbuckle did make one more appearance on the movie screen, in a scene intentionally symbolic in its content, but just as symbolic in its superfluity. In the 1923 satiric comedy "Hollywood," in what is essentially a throwaway scene, a recognizably portly actor silently approaches a casting window. As he reaches the window, it slams down, according to one review, "leaving the obese comedian with naught to do but walk away with others for whom there is no work."¹⁰² That casting window is a fitting reminder that, sometimes, the most important parts of a trial do not lie in the decision of guilt or innocence or in a sincere quest for "objective" truth. The power, sometimes, lies in culture and the role a trial can play in both understanding and shaping that elusive term.

¹⁰² "The Screen," *New York Times*, July 30, 1923, 13.

EPILOGUE

On January 29, 1995, a television audience of just over 83,000,000 watched the San Francisco 49ers defeat the San Diego Chargers in Super Bowl XXIX.¹ That number was not a surprise—the Super Bowl is usually the largest televised event in the United States in a given year. But 1995 was not just any year. Nearly nine months later, on October 3, 1995, over 150,000,000—almost double the size of the Super Bowl audience—tuned in to watch a former football hero in a very different setting: the announcement of the jury’s verdict in the murder trial of former running back O.J. Simpson. The audience not only dwarfed the ratings for that year’s Super Bowl; it was the largest audience in television history.²

The O.J. Simpson case had all the hallmarks of a performance trial. Indeed, the Simpson case had much in common with the Scopes, Hall-Mills, and Arbuckle trials of the 1920s. Like the Arbuckle trial, the O.J. Simpson trial featured a celebrity defendant, famous long before the events that led to his arrest. Simpson had been a Heisman Trophy-winning running back at the University of Southern California before going on to a Hall of Fame N.F.L. career with the Buffalo Bills. Following his retirement from football, Simpson became even more well known, both as a television football analyst and as an actor with modest success in national commercials and the *Naked Gun* movie series. Further, like Hall-Mills, the crime itself was a violent domestic scandal. Simpson

¹ “Super Bowl XLVIII draws 111.5 million viewers,” Nielsen.com, accessed April 19, 2014, <http://www.nielsen.com/us/en/insights/news/2014/super-bowl-xlvi-draws-111-5-million-viewers-25-3-million-tweets.html>.

² Hal Boedeker, “Simpson’s Verdict Drew Best Ratings in TV History,” *Orlando Sentinel*, October 5, 1995, accessed August 23, 2015, http://articles.orlandosentinel.com/1995-10-05/news/9510050286_1_nielsen-live-events-tv-audience.

was accused of brutally stabbing his ex-wife Nicole Brown Simpson and a local waiter rumored to be her (perhaps former) love interest, Ron Goldman. Their bodies were found in the entryway of Brown Simpson's condominium on June 12, 1994, stabbed multiple times.³ In fact, according to Brown Simpson's autopsy, she was reportedly attacked so severely, particularly via a vicious wound on her neck that "exposes the larynx and cervical vertebral column," that her head was nearly severed from her body, eerily reminiscent of Eleanor Mills.⁴ Finally, the Simpson trial would feature an eclectic cast of characters and, as in Scopes, the most colorful would be the attorneys. Simpson's defense was led by Johnnie Cochran, a lawyer known for his courtroom theatrics. The rest of the team was no less interesting. Featuring such nationally renowned lawyers as F. Lee Bailey and Alan Dershowitz, the defense team became known simply as the "Dream Team."

Also like Scopes, the Simpson drama would not be contained to the courtroom. From the time a warrant was issued for Simpson's arrest, spectacle defined the case's coverage. When Simpson did not show up to turn himself in at the agreed upon time, the police declared him a fugitive and set out to find him. When they did find him, a bizarre, enduring image resulted: Simpson, cowering in the backseat of a white Ford Bronco driven by his friend Al Cowlings, led police on a slow speed chase through the streets of Los Angeles.⁵ Adding to the spectacle, television networks broke into scheduled programming to broadcast the entire bizarre event—live—to a fascinated public. From

³ Seth Mydans, "O.J. Simpson's Ex-Wife Slain at Her Condo in Los Angeles," *New York Times*, June 14 1994, B9.

⁴ Autopsy report. Accessed April 19, 2015, <http://www.lectlaw.com/files/cas45.htm>. For wounds, see also Kenneth B. Noble, "Simpson's Wife Faced Killer and Struggled, Coroner Testifies," *New York Times*, June 8, 1995, A24.

⁵ Raymond Hernandez, "A Spectacle Gripping and Bizarre: THE PURSUIT," *New York Times*, June 18, 1994, 11.

that point forward, the Simpson trial would become an enduring part of American culture and television was part of the story the entire way. Trial judge Lance Ito early in the case made the relatively surprising decision, especially in such a high-profile case, to allow television cameras inside the courtroom to broadcast the entire trial live. Like radio in the Scopes trial, television allowed the already large audience to experience the trial as if it were there, but this time on an even grander scale. The television cameras had a truly national scope, with cable channels such as CNN and Court TV carrying live coverage of the trial every afternoon while it was in session. Indeed, just as coverage of the Hall-Mills affair drove tabloid circulation rates in the early to mid 1920s, the Simpson trial was a boon to 24-hour cable news networks, a relatively new phenomenon. Court TV in particular, which had first appeared on the air in 1991, became a major cable news channel during the O.J. Simpson trial, setting it off on a 16-year run before it would de-emphasize trial coverage as a new network named truTV in 2007.⁶ Reporters and trial participants alike would leverage the attention into new career opportunities; almost every attorney in the trial would later appear in some capacity as a television analyst or personality. The line between participant and performer was harder than ever to delineate. It all climaxed on that October afternoon when nearly 75% of all American adults gathered in living rooms, bars, and public spaces to watch the culmination: a not guilty verdict that shocked some and thrilled others.

In terms of national interest, the Simpson trial was in many ways unique. The intensity of the curiosity in the trial allows it to lay true claim to the over-used mythical title “Trial of the Century.” This was at least in part due to the way in which it was

⁶ “Court TV Exits, truTV Appears,” *USA Today*, December 30, 2007, accessed April 18, 2015, http://usatoday30.usatoday.com/life/television/news/2007-12-30-truTV_N.htm

covered, in particular the presence of television. Just as radio had an impact on the way some onlookers experienced the Scopes trial, television changed the way Americans consumed the Simpson trial. There were differences, of course, primarily in the nature of the technology itself and in terms of scale. In Scopes, radio was a relatively new medium, whereas television was nearly ubiquitous by 1995. The size of the Simpson television audience therefore obviously dwarfed the portion of the Scopes audience that experienced that trial via radio. Further, television, unlike radio, is a visual medium. The presence of the television cameras standardized the visual image of the courtroom in a much more complete way than newspaper photographs (or even radio) could. To the extent that people watched the trial coverage live, each onlooker saw the same images at the same time. In addition, then, to adding to the performative aspect of the setting of the trial, the ever-present television coverage shaped the ways the trial became a cultural reference point. Onlookers could experience the trial virtually communally and instantaneously. As a result, references to the trial, whether in casual conversation or in the monologues of late-night comedians, were nearly universally understood. All of this added to the unprecedented size of the trial's audience; the story was nearly inescapable.

For these reasons, it may be tempting to treat the Simpson trial as an outlier, a product more of its media context than its cultural importance. But that would ignore the factor that truly binds these four trials—and others—together: each, in its own cultural and media context, became a platform for an important and otherwise difficult to access cultural conversation. There were, of course, other trials taking place in the same media context as the Simpson trial. Even the presence of television cameras in the courtroom was not unprecedented; the Simpson trial may have helped Court TV succeed, but the

network existed before anyone could have imagined that O.J. Simpson would be its star. It was something else that drove the interest in the Simpson trial: its cultural context. In particular, it opened an opportunity for a discussion of both domestic violence and race relations in American culture, the latter a topic that had become both more important and seemingly more fraught in the wake of the Rodney King riots in Los Angeles three years earlier.

That is what performance trials have in common and that is the service they provide. They are trials in which formal legal outcomes remain important, but take a backseat to informal cultural translations. They are both products of and influences on their cultural contexts. The emergence and centralization of mass media in the 1920s allowed such trials to take on added importance. As culture, too, seemed to be changing—becoming more centralized, standardized, and focused on individual freedoms rather than moral uplift—these trials became occasions and opportunities for cultural struggle. In a rural courthouse in Tennessee, the nation watched and listened as urban scientists and rural Protestant Fundamentalists—and all of those in between—struggled with the conflicting priorities of piety, scientific knowledge, and the dangers of blind allegiance to either. In a county courthouse in central New Jersey, onlookers sifted through different representations of womanhood as they attempted to come to terms with new social and political roles for women and the moral cultural impact of a variety of “new women.” And in a series of courtrooms in San Francisco, moralists, business leaders, and the American public wrestled with the moral and cultural impact of a nationalized entertainment industry, its potential excesses, and questions over who would be its most appropriate cultural overseer.

In each case, at a time of cultural fragmentation and reorganization, the trials provided opportunities for diverse groups of people uncomfortable with aspects of what they saw as a departure from nineteenth century foundational moral institutions such as the Bible and the traditional family unit to make their discomfort public and attempt to influence the development of the new 1920s version of modern culture. But the trials also allowed others to use the resulting debates simply to learn more about the various facets of that developing culture and to carve out their own space within it. Finally, and just as important, by studying these types of trials as cultural documents—de-emphasizing their formal legal importance and focusing instead on their informal cultural ramifications—historians can better investigate what appears on the surface to be a growing moral (or to some, amoral) 1920s modern consensus. These trials help show the many fault lines and cracks below that consensus and the often contested route towards it. They make the conversations, negotiations, and struggles visible—both of those who were resisting the changes and those who were simply trying to understand them. Indeed, these trials even show the struggles within the resistance itself, the many layers of largely invisible complications and inconsistencies that truly drive cultural change.

The internalized and often individualized nature of that struggle makes it difficult for an historian to access, particularly when the discussion contains potential social taboos. At the heart of the struggle in these trials lay the often-thin, convoluted line between prurience and morality. All of these trials are, perhaps inevitably, driven by scandal. This is most obvious in the Hall-Mills and Arbuckle trials, stories dominated by violence, infidelity, and illicit sex. But Scopes, too, contained its taboos; for Protestant fundamentalists, a public discussion of evolution risked giving the theory—and its attack

on the moral underpinnings of the Bible—more legitimacy. These evangelicals were faced with the seeming inconsistency of attempting to shield their children from the morally destructive theory by giving that same theory national publicity in open court. All of these were subjects, to some parts of the population, both too dangerous for discussion and too fascinating to ignore, best broached in venues outside the eye of the public (and thereby the historian). For moral crusaders, in particular, they pose a challenging proposition: How do you deplore the immoral without invoking it? To what extent was the conversation an opportunity to declare offense and to what extent was it an opportunity to titillate with a subject typically off-limits? How many of the most strident moralists were engaging in what Sigmund Freud called reaction formation—a defense mechanism by which the subject resolves a subconscious impulse he considers immoral by over-compensating in his conscious moral objection to it?⁷ It was a question Rev. Dr. John Roach Straton would have to deal with directly when his congregation split over whether situations such as the Arbuckle case were appropriate subjects for a sermon. But the questions also existed, in less obvious ways, in the other trials. The trophy-seekers who ripped bark off of trees at the Hall-Mills murder site wanted a piece of history, perhaps, but a notably sinister piece of history; they were early examples of “dark tourists.” Even in Dayton, there was that certain thrill that accompanied the discussion of the origin of man, cover for some to subtextually question the inerrancy of the Bible by virulently defending it.

⁷ See, for example, Roy F. Baumeister, Karen Dale, and Kristin L. Sommer, “Freudian Defense Mechanisms and Empirical Findings in Modern Social Psychology: Reaction Formation, Projection, Displacement, Undoing, Isolation, Sublimation, and Denial,” *Journal of Personality* 66:6 (Dec. 1998), 1085.

It is, finally, a struggle that historians must overcome in order to understand the complexities that defined cultural changes not only in the 1920s, but throughout the twentieth century (and into the twenty-first). This often ineffable cultural overlap between the prurient and the moral is a struggle that in no way ended in the 1920s. In fact, in many ways, it foreshadowed the crux of at least one consistent line of moralistic debates concerning popular culture that extended throughout the twentieth century. From jeremiads against suggestive dance moves to discussion of inappropriate song lyrics to concerns about sexual and violent images in video games, twentieth century moralists often invoked prurient symbols in order to decry them. And the tradition of the “fallen moralist” succumbing to the dangers he denounced—from Jimmy Swaggart to Ted Haggard—has become a cultural trope. In fact, the connection between morality and prurience has become an indelible part of the “culture wars” of the twentieth and twenty-first centuries, and, not coincidentally, in the performance trials of the century, as well. From the trial of Bruno Hauptmann in 1935, to the trial (and subsequent retrial) of Ohio doctor Sam Sheppard for the murder of his wife in 1954, to the impeachment trial of President Bill Clinton in 1999, controversial and stimulating social and cultural flashpoints dominated the storylines of the most culturally relevant trials of the century. In fact, the cultural ambivalence between prurience and morality is perhaps best symbolized by that most recent example, a trial that would take place not in a courtroom but in the United States Senate. The trial itself would be anti-climactic; most of the most titillating information was already public knowledge by then. But there was one lasting document to come out of the Clinton affair: the Starr Report, written by Special Prosecutor Kenneth Starr in 1998 at the conclusion of a series of investigations of the

president's activities. Intended to be a documentation of the moral failings of a progressive president, the report read like soft-core erotica. Simultaneously published by three separate companies, the three editions held the top three spots in the USA Today best sellers list in the week they were released.⁸

These are the underground—often even subconscious—skirmishes that provide the foundation for what appears, from a distance, to be a cultural consensus. They can be difficult, if not impossible, to access, even for those involved, in part due to their potentially prurient nature. Performance trials allow us, as historians and cultural commentators, to see these often-invisible fault lines. The external battles among these various and overlapping groups of moral reformers, modernists, conservatives, progressives, and even “ordinary Americans” help push and shape cultural limits. But just as important and much more complex are the internal struggles. Some of these are within the broader movements—battles between modernist and fundamentalist Protestants, for example, over the proper place for religion within the changing culture. But many of the battles are within the individuals themselves, as moralists attempt to come to terms with baser, more prurient impulses and, just as important, less ideological—but no less invested—onlookers attempt to understand where they fit between the extremes.

Once again, the O.J. Simpson trial becomes almost archetypal. Like Arbuckle and Hall-Mills, the Simpson story was about sex—notably, interracial sex—possible betrayal and, above all, the pornography of violence, a category of voyeurism becoming more and more culturally relevant at the time. The trial was filled with graphic

⁸ Jamie Allen, “Starr-Clinton matter sparks hot-selling book and video,” *CNN*, September 22, 1998, accessed April 19, 2015, <http://www.cnn.com/books/news/9809/22/starr.report.folo/index.html>

descriptions of the crime and the crime scene, with days spent discussing blood stains and DNA samples. Onlookers decried the violence, while using the most violent of imagery to make their points. But above all, the O.J. Simpson trial was about *racial* violence. It was the story of a privileged black man allegedly violently murdering his white ex-wife and her white male companion. Much of the informal discussion of the trial focused on race and the American racial gap. A CNN-Time Magazine poll taken after the verdict showed that 62% of white Americans thought Simpson was guilty despite the verdict, while 66% of black Americans felt the verdict was correct.⁹ In this way, the Simpson trial may have the most in common with Scopes. The prurience of the Simpson trial was not just in its violence, but in its opportunity to talk about a subject that was often taboo or unspoken: in Scopes, challenges to the inerrancy of the Bible and in Simpson, race. Indeed, one of the most enduring moments of the trial centered on the testimony of police detective Mark Fuhrman and his alleged use of one of the most fraught, salacious words in the English language. Fuhrman spent an entire week on the stand, some of it discussing the formal investigation, but much of it questioning whether he had ever used “the n-word,” a claim that he denied, but that tape-recorded evidence proved to be true. In the process, Fuhrman became a personification of both the importance of the informal over the formal in a trial such as this and the relationship between the prurient and the moral. Like the moral reformers of the 1920s, the racial reformers of the 1990s invoked the taboo term in order to decry it.

Of course, we continue to struggle with many of these same issues today. From racial inequality to civil rights to sexual orientation to police brutality, the culture wars

⁹ “Races Disagree on Impact of Simpson Trial,” *CNN*, October 6, 1995, accessed May 23, 2015, http://www.cnn.com/US/OJ/daily/9510/10-06/poll_race/oj_poll_txt.html.

are alive and well; indeed even arguments over the use of scientific theory to guide public policy remain, in some quarters, controversial. And while no recent trial has come close to eclipsing the O.J. Simpson trial, performance trials continue to drive ratings—and to provide insight into our own culture. The July 2013 trial of George Zimmerman for the murder of Trayvon Martin, for example, led to a 75% increase in ratings on CNN.¹⁰ The case captured the nation's interest, echoing the Simpson trial, as it dealt with complicated issues concerning race, self-defense, and gun ownership, perhaps most notably proving that even in today's more fractured media environment, a performance trial has the power to have a significant cultural—and ratings—impact. Indeed, the success of the 2014 podcast “Serial,” which examined a 1999 murder and trial, raising questions about the trial's verdict, shows that, as with radio and television, our own versions of “new media” can also be driven by trial narratives. As of February 2015, Serial's episodes had reportedly been downloaded 68 million times.

In fact, there are some similarities—though also some key differences—between our own cultural context and that of the 1920s. We, too, are coming to terms with a new cultural reality. In some ways, we are experiencing the reverse of what Americans in the 1920s were coming to terms with—just as their media and cultural realities were centralizing and becoming more uniform, ours are fracturing and becoming more individually focused. While this carries many benefits, it also makes social and cultural commentary—along with social change and personal understanding—much more difficult. Social media platforms such as Twitter and Facebook are not designed for deep cultural discussions and are particularly ill suited for topics that require nuance and

¹⁰ Rick Kissell, “Zimmerman Trial Revs Up Ratings for Cable News Networks,” *Variety*, July 12, 2013, accessed April 25, 2015, <http://variety.com/2013/tv/news/zimmerman-trial-revs-up-ratings-for-cable-news-networks-1200561565/>.

complexity, such as race, sex, and violence. Instead, those conversations devolve into meaningless anger and defensiveness. Meanwhile, other media options such as cable news and internet blogs have simultaneously become so vast and so targeted that the media system has fractured to the point of self-selection; we seek the news source that most closely matches our own view of American culture. Much of our current frustration with our political and social system is rooted in the difficulty of having a significant and legitimate cultural conversation, as well as the instability that comes from unexamined cultural change, due to the lack of an available public space. Now, as it did in the 1920s (and the 1990s), the performance trial could be the institution to provide that space.

The best example may come from a trial that did not happen. On August 9, 2014, Darren Wilson, a white police officer in Ferguson, Missouri, shot and killed an unarmed black man, 18-year-old Michael Brown.¹¹ The case attracted immediate national attention. Press accounts raised discussion of numerous sensitive and important social issues, from racial profiling to proper community policing practices to the militarization of local American police forces. On August 20, less than two weeks after the incident, a grand jury began investigating the matter and as summer turned into fall, it seemed that the next performance trial was on the horizon.¹² The circumstances were perfect: a high-profile incident that raised difficult social and cultural issues and brought a conversation that had been simmering beneath the surface of American discourse to the forefront. And while the issues themselves were different from those in *Scopes*, *Hall-Mills*, and

¹¹ A timeline of the events: "The Timeline of the Events and Scenes in Ferguson, Mo., Since the Shooting of Michael Brown," *Washington Post*, August 16, 2014.

¹² "Protesters Gather Again in Ferguson and Clayton as Grand Jury Begins Work," *St. Louis Post-Dispatch*, August 21, 2014, A1.

Arbuckle, the trial promised to tackle two difficult but crucial social topics: race and violence.

It would not work out that way. In a decision that surprised many, on November 24, 2014, county prosecutor Robert McCulloch announced that the grand jury would not indict Wilson on any charges, ending the formal legal process. There was much to question about the grand jury's decision. Many mistrusted the manner in which county prosecutor McCulloch presented the evidence, arguing that, contrary to his role, he did not truly want an indictment. Others questioned whether the grand jury process could work in cases such as this. Others pointed to corruption, racism, and an out of control police mentality as the culprits. But one refrain stuck out among the others: the loss of a trial would mean that questions would go unanswered, that we would never know what happened, and that the discussion would be stopped in its tracks. As NPR blogger Kat Chow put it, "And at the moment, without a court trial, those striving for more answers or more action might be met with more questions."¹³

Chow is right to be disappointed in the lack of a trial, but her reasoning is not quite complete. Certainly, a trial would have allowed for many of the questions surrounding the case to be aired publicly. But that does not mean they would necessarily have had clear answers. As can be seen in the Hall-Mills and Arbuckle trials, the existence of a trial does not necessarily mean that a clear image of "what happened" will emerge. But the frustration of authors, protesters, onlookers, and even casual observers of the events in Ferguson reveals something deeper. A trial would have undoubtedly dominated media coverage and captured widespread interest. As facts emerged and

¹³ Kat Chow, "Ferguson, A Trove of Evidence—But No Trial," *NPR*, accessed April 26, 2015, <http://www.npr.org/blogs/codeswitch/2014/11/26/366545882/in-ferguson-a-trove-of-evidence-but-no-trial>

witnesses recounted varying narratives, this trial could have provided a frame for complex cultural discussions about topics otherwise too fraught for casual conversation, just as Scopes, Hall-Mills, and Arbuckle did in the early 1920s. By denying the opportunity for a trial in this case, the grand jury dismantled a cultural stage, ending the nuanced conversation before it could truly begin. A window for discussion of these difficult issues was closed.

There was much to mourn in Ferguson in 2014: the victim Michael Brown, first and foremost, as well as the possibility that formal legal justice was not served. But we also mourned an informal opportunity cost—the lost opportunity to get beyond the pornography of violence and the emotions inherent in the topic of race to have a suitably complex national conversation about the increasingly dangerous mix of violence, race, and law enforcement in our culture. Those issues would have to wait for another time, a different tragic event. In the meantime, the discourse atrophies as the “sides” continue to talk past each other on cable news programs and in Internet comment sections, while the true issues wait for a venue in which they can get the complicated and consistent treatment they require and deserve. In the process, the potential cultural power of the performance trial shines through most brightly in the trial we were denied.

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