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REGULATING FILM CONTENT IN THE UNITED STATES AND AUSTRALIA: 1900-1940

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ABSTRACT

Historically, in both Australia and the United States, the issue of film censorship has been a source of conflict between the film industry, community groups and the government. This paper compares the methods used to regulate film content in each jurisdiction between 1900 and 1940. It argues that whilst the legal structure and community pressure groups played an important part in the form of control that was implemented, it was the economic strength and structure of the film industries in each country that played a pivotal role in the method of film censorship that was adopted .

This paper is concerned with the way film censorship systems developed in two countries: The United States of America (U.S.A.) and Australia. The paper compares the ways in which three major structures-legal, social and economic, affected the development of film censorship in Australia and the U.S.A. in the early 1900s. It examines why each country developed quite different methods of regulating film content and argues that the economic strength and structure of the film industry in each jurisdiction played a significant role in the method of film censorship that was ultimately implemented in each country.

Historical studies of film censorship in Australia have tended to focus attention on the legislative framework governing the implementation of censorship laws and the interplay between federal and state censorship laws (Bertrand, 1978). Academic analysis has also been carried out on the demands of various lobby groups for greater regulation of film content (Collins, 1987). Although the role of the film industry in the implementation of film censorship has been considered, there has been virtually no discussion of how the economic structure and strength of the film industry affected the way the industry debated censorship issues, nor how it influenced the form of regulation that was ultimately implemented. Tulloch (1982) provides some discussion but the focus of the work is not film censorship. By contrast, in the U.S.A., the influence of the film industry in the development of film censorship strategies is discussed extensively in academic work (Jowett, 1976; Bernstein, 1999; Wertheimer, 1993; Doherty, 1999). Comparing the legal, community and industrial responses to film censorship in the two jurisdictions highlights the importance of addressing both the economic structure and influence of the film industry in the creation of censorship laws and policies.

When films were first introduced to American and Australian audiences in the late 1800s it was seen as a passing novelty (Bertrand, 1978: 14; Collins, 1987: 5; Balio, 1976: 8). Indeed, during the early 1900s film was considered to be educational and informative. For example, in Western Australia one headmistress wrote to the local newspaper: "I was delighted with the entertainment. If so instructive to us seniors how full of ideas it must be to the young. I think every child should see it" (*West Australian*, 19 November 1900).

In the U.S.A. welfare agencies used film as part of educational and rehabilitation programs for the poor (Balio, 1976: 64). However, it was not long before this attitude changed. As film content changed from predominantly short factual programmes to longer fictional films public pressure for censorship increased (Bertrand, 1978; Collins, 1987). Bertrand (1978) and Collins (1987) also argue that the realisation that film was no longer a passing novelty but a highly popular form of entertainment prompted increased calls for censorship. For example, in Western Australia, advertisements for films in 1909 included titles such as 'Niagara in Winter' and 'Pompeii City of the Dead' (*West Australian*, 13 November 1909). By the 1920s it was fictional films that received the most advertising space and sensational story lines were emphasised. For example, The Palladium Theatre in Perth advertised a new film entitled 'The Vengeance of Durand' which, according to the description, was about a wife killing herself after her husband accused her of an affair (Walker, 2002: para 15). As the public pressure for censorship became stronger, steps were taken by the film industry and government to develop a way of censoring film that would satisfy public demands, the various elements of the film industry and was within the confines of each country's legal system. In both Australia and the U.S.A., legal, economic and community factors influenced the way the issue of film censorship was debated and the form that was ultimately implemented. Each jurisdiction found ways of regulating film content, but the methods varied because in each jurisdiction different institutions had the power to influence the type of regulations that were formed.

Legislative Regulation in Australia and the U.S.A.

In the early 1900s, in the U.S.A. and Australia, individual States reacted to public demands for film censorship by implementing new state censorship laws or by using existing obscenity and criminal Acts. In the U.S.A., local municipalities also implemented their own censorship ordinances (Wertheimer, 1993:166). Local government was also involved in regulating the physical space of cinemas through Health and Safety by laws. The lack of uniformity in these laws created difficulties for the film industry in both countries because it incurred unnecessary expense in cutting and recutting film for different areas. In Australia, the response to community pressure for increased regulation of film content and industry concern about inconsistent State censorship law was the implementation of a centralised government regulated censorship board (Bertrand and Collins, 1981: 49). By contrast, in the U.S.A., industry based self regulation was introduced in 1909 in the form of the National Board of Censorship. This Board was specifically designed to counter calls for more legally enforceable censorship controls. The Board was replaced in the 1920s with the Motion Picture Producers and Distributors of America (MPPDA) another industry controlled body which attempted to protect the industry whilst appeasing community concerns.

It is initially difficult to see why the Australian industry supported centralised Commonwealth control instead of pursuing the model of self regulation established in the U.S.A. Central to understanding the difference in approach is the recognition that censorship of any kind posed considerable, but different, constitutional dilemmas for each jurisdiction.

Both Australia and the U.S.A. are constructed as federations with two principle tiers of government: state and federal. Each has a written constitution which divides power between the tiers of government. In Australia, the Commonwealth Constitution was

written with the intention of leaving the majority of power in the hands of individual States and providing only a limited list of enumerated powers for the Commonwealth government. Censorship fell within the ambit of State power so when calls were made for centralised control of censorship it was necessary for the Commonwealth to find a power under the Commonwealth Constitution that would allow the Commonwealth to legislate for what was essentially a State matter. The Commonwealth decided to use its constitutional power over customs to enact legislation that controlled the content of films imported from overseas. At first glance this might seem inadequate to create a uniform approach to the censoring of films. However, the film industry in Australia was almost entirely comprised of exhibitors with some limited distribution agents and a very small production sector. In the 1920s and 1930s, at least 90% of films screened in Australia were imported and were therefore caught by the Commonwealth regulation. However, in order to ensure complete uniformity across the country, each State also needed to refer their own power over censorship which included censorship of any locally made films. Not all States were prepared to do this and so theoretically films could be passed by the Commonwealth censor only to be rejected by a State. In 1926, when the *Commonwealth Censorship of Films Act* was passed, Victoria enacted state legislation which provided:

The Commonwealth censor shall act, and in the event of the Commonwealth censor not doing his duty to the satisfaction of the State, another censorship shall not be superimposed but substituted for it (Bertrand, 1978: 291).

Western Australia, Queensland and Tasmania did not completely sign over their rights to the Commonwealth until 1947 and New South Wales, Victoria and South Australia waited until 1967 before enacting the necessary legislation (Bertrand, 1978: 212-217).

In the U.S.A.- the situation was very different. The existence of the First Amendment in the U.S.A. constitution meant that the Federal Government was hesitant to enact centralised censorship laws partly because it could contravene State rights to freedom of speech: a freedom which was protected under the First Amendment and which enabled States to enact their own censoring laws (Jowett, 1976: 120). The film industry also used First Amendment arguments to further their claims for industrial self-regulation arguing that they too had rights which should be protected. This view was not shared by the courts which found that the “moving picture industry is a business pure and simple, originated and conducted for profit”.¹ Although legally the industry could not claim rights under the First Amendment it nevertheless used freedom of speech arguments in their discussions with government and the public to bolster their claims for self regulation. In particular, First Amendment arguments were successfully used to counter the Church and women’s organisations which were vocal in calling for stricter censorship. In the U.S.A. there was an equally vocal lobby which argued that censoring was undemocratic and impinged on individual rights. Interestingly, the one referendum that was held on censorship in 1922 in Massachusetts showed an overwhelming rejection of government enforced censorship (Jowett, 1976: 169). The rejection of State imposed censorship in this referendum is a clear example of the strong campaigns run by the Motion Picture Producers and Distributors Association (MPPDA) against government involvement in the censoring of films. The MPPDA ran a \$50,000 advertising campaign against censorship in the

referendum (Jowett, 1976: 169). They made 'free-speech' the main issue and persuaded a large number of women's groups to withdraw their support of State imposed legislation (Balo, 1976: 305).

The U.S.A. method of industrial regulation had one major advantage over the Australian system. Because the U.S.A. system was not governed by legislation it was able to cross state boundaries far more easily than the Australian system which had to rely on individual States to confer power on the Commonwealth; a decision which many States did not embrace wholeheartedly, preferring to give the Commonwealth power whilst still reserving the right to impose State censorship restrictions. The result in Australia was that there was the potential for two tiers of government imposed censorship: federal and state. By contrast, in the U.S.A., the central form of censorship control was the industry based MPPDA which instituted industry-based censorship in "order to stave off the passage of regulatory legislation...and help producers avoid interference by state agencies in the distribution and exhibition of features"(Jacobs in Bernstein, 1999: 88) By establishing an industrial controlled censorship process the U.S.A. was able to avoid some of the complex problems which beset the Australian system.

The differences between the Australian and U.S.A. constitutional provisions had a significant impact on the way the censorship debate was framed in each jurisdiction. In Australia, considerable emphasis was placed on the relationship between Federal and State law and the power that was exercised through the division of laws. There was little discussion of the right to censor or restrict freedom of speech because legally there was no way to protect these rights. In the U.S.A., freedom of speech concerns were integral to the Federal government's hesitancy to implement centralised controls which would impinge upon States' freedoms. First Amendment arguments were also used by the industry and sections of the community to support the idea of industrial self regulation and prevent greater legislative interference. The Australian industry's support for centralised government control is explicable when one considers that the high number of imported films meant that most films could be controlled through the Commonwealth customs power and that the industry would have seen the State referral of powers proposed by the Commonwealth as at least encouraging a more uniform approach throughout the country. Without the availability of freedom of speech arguments so effectively used in the U.S.A., the centralised government option was the best option available to a predominantly exhibition and distribution based Australian film industry.

Economic Strength of the Industry in the U.S.A. and Australia

Another reason, and possibly the most significant reason, for the differences in censorship systems between Australia and the U.S.A. was the economic strength of their respective film industries. In the U.S.A., the film industry had a high degree of vertical integration with a few large companies owning most aspects of the motion picture industry (Jowett, 1976: 54). Initially, each company had concentrated on one aspect of production but gradually this changed and film companies began to produce, distribute and exhibit their own films. By 1930, the five major studios (Paramount, Warners, Fox, RKO and Loews, the parent company of MGM) owned 2600 first-run theatres. This was only 16% of the total number of cinemas in the U.S.A. but they delivered 75% of total revenues (Schindler, 1996: 4). In 1925 the

gross revenue of the United States film industry was \$50 million (US) (Randall, 1968: 13).

The Federal government was not anxious to antagonise an industry which was such a major dollar earner and so requests for self-regulation were regarded favourably. Equally, the film industry was prepared to meet the federal government half way and regulate their own films not only because they feared federal censorship but because there was a fear that such censorship would lead to the regulation of business practices overall.

In Australia the situation was different. The U.S.A. exported vast quantities of film to Australia. During the 1920s Hollywood supplied between 82% and 98% of the films screened in Australia (Jowett, 1976: 34). Australian exhibitors showed these films but the majority of production and distribution work was carried out by the United States. In 1925 there were 9 distribution agents in Sydney. The largest firm was Australasian Films. Others included: Paramount, Fox, First National and Universal (Collins, 1987: 17). Australasian Films was the Australian owned purchasing unit of Union theatres. All distribution agents belonged to the Motion Picture Distributors Association (MPDA). The exhibition sector was predominantly owned by Australians. Initially, cinemas were owned individually but gradually this gave way to chains which were monopolised by Hoyts and Union. In 1928 there were 1250 cinemas in Australia employing 20,000 people with a financial investment of \$25 million (Collins, 1987: 17). Looking at these figures it is apparent that the film industry in Australia was economically powerful however there were significant differences in the structure of the respective industries that affected their ability to effectively lobby for industrial self-regulation.

One of the reasons the Australian industry did not regulate film content itself was because there was a lack of unity between the various areas of the film industry. Producers, exhibitors and distributors never made a concerted attack against government censorship. There were also unity problems within the individual associations. Suburban exhibitors were frequently unable to obtain the box office draw films because the city wouldn't allow their release to other areas (Collins, 1987: 21). This inevitably caused problems and affected the solidarity of the group. For example, The Federated Picture Showmen's Association of New South Wales failed to support suburban exhibitors' requests for an end to a system of film release that favoured city circuits (Tulloch, 1982: 71).

Another reason is that the censorship issue was just not as important to the Australian film industry as some of the other problems which beset the industry. The Report of Royal Commission into the Moving Picture Industry in 1927- 1928 indicates that the United States owned sections of the industry were far more concerned about their ability to realise and repatriate profit to the U.S.A. than they were about the censoring of film.² The American distributors were also concerned about the potential introduction of quota legislation which would have given preference to 'Empire Films', the name applied to films made in the British Commonwealth. The focus of the exhibitors' complaints was that they wanted to have the blind and block booking method of the film industry changed so that they had some choice about the films they screened. The blind and block booking system meant that exhibitors could not choose individual films but had to take a selection of unseen films along with the box office

draw film. The industry did voice concerns about censorship at the Commission hearings but, as it was these other factors which had the greater effect on their profit margins, it was these factors which were raised most frequently at the Royal Commission hearings.

However, the most probable reason that the Australian film industry did not pursue the idea of industrially regulated censorship was that although there was considerable investment in the film industry in Australia, the production side of the industry was economically weak. Few films were made in Australia and so there was little reason to implement a censorship system that was designed to deal with predominantly local films. If Australia had been able to make more films, the number of imported films would have been lower and the Federal Government would not have been able to utilise the Customs Act to exercise control over the censorship process. In the United States imported films were also subject to federal legislation, but as the proportion of imports was lower the legislation did not have the same degree of significance and thus the federal Government had far less power to influence the overall structure of film censorship.

The legal and economic factors which influenced the development of film censorship are closely intertwined: the strength of one considerably affecting the response of the other. In the U.S.A. where there was a strong vertically integrated industry with a low level of imports and a strong export market, it was the film industry which had considerable power to influence the censorship process. However, the nature of the legal system in the USA did much to support the industry's claim for control. By contrast in Australia, where there was a weak production industry and a high level of imports it was the Federal government which had the power to influence the process. The legal system supported these claims because there was no legal provision for any group or organisation to dispute the validity of restricting freedom of speech.

Demands for Film Censorship in Australia and the U.S.A.

The other major feature that affected the censorship process was public response to film. Without public pressure for the control of film content, censorship by government control or by industrial self regulation, would not have developed. The film industries in Australia and the U.S.A. were certainly not interested in implementing film censorship and State and Federal governments only implemented legislation after pressure from organisations such as church groups and women's organisations.

In both countries, the responses of various community groups to the question of film censorship had considerable impact on the way censorship was discussed and subsequently implemented. Initially, the fears that were raised about film were similar for both countries. It was the film as medium rather than the content of individual films which caused concern. The actual process of attending a cinema and viewing a film was seen as the main problem. Numerous complaints were voiced in Australian papers such as *The Sydney Morning Herald* and *The Age* about the problem of eye strain, not using one's imagination and the problems incurred by skipping the reading process (Collins, 1987: iii). In 1921, one newspaper editorial commented that, "The moving picture bridges the gap which is the safeguard of literature" (*The Age*, 25 May 1921). An article in the *Sydney Morning Herald* (6 June 1921) suggested that "The

significance of the words may not be grasped by an auditor whereas the thing seen makes a more direct and probably a deeper impression.’ Other concerns related to the cinema as a venue. One contemporary of the period wrote: “Under cover of dimness, evil communications rapidly pass and bad habits are taught. Moving pictures are favourite places for the teaching of homosexual practices”(Jowett, 1976: 82).

These views were common in both Australia and the U.S.A. Gradually complaints about the film as a medium changed into specific comments about film content. In both countries the major concerns were the effects of film upon children and upon social morals.

It is important to remember that the claims of these groups were not necessarily representative of the views of broad sections of the community nor of the cinema going audience, which as Jowett (1991: 161) has described, ‘is a heterogenous collectivity of individuals, with different social and cultural predispositions’. They were predominantly groups which represented or were the self appointed representatives who claimed the right to speak on behalf of the church and families. In the U.S.A. these organisations included the Catholic League of Decency, the General Federation of Women’s Clubs, the International Federation of Catholic Alumnae and the National Society of Daughters of the American Revolution (Jowett, 1991: 161). In Australia groups included, The Women’s Service Guilds of WA, the Mother’s Union Council, the Young Australia League, the Protestant Council for Civic and Moral Advancement and the Catholic Federation (Bertrand, 1978). These groups were listened to by the Industry and Government because they represented the traditional power bases of the community. However, their attitudes represent a strong desire to impose their own view of morality and sexuality onto others. Implicit within much of their comments about declining moral standards was the fear that film challenged the traditional authorities of society. One account from *The Sydney Morning Herald* demonstrates the concerns of these organisations:

Moving Pictures are first and foremost the entertainment of children and of the grown up children whose minds are no more formed than those of their little ones. Education and that wide culture which comes of many interests and large knowledge of the world are a protection against evils as crude as those associated with the films, but the people who attend the picture theatres in largest numbers have no protection. The business of those who can take a broad and honest survey of the whole question is to protect the masses from the pollution which they themselves are incapable of observing or feeling (Bertrand, 1978).

Beatrice Tildesley, one of Australia’s foremost independent film critics and commentators in the mid 1920s provided evidence to the Royal Commission that supported these views. She stated:

When one takes into account that films are attended by all classes of society but are especially popular among those whose mentality is least vigorous and who look to film for their emotional and intellectual stimuli rather than to any form of literature. When in fact one bears in mind how large a section of film habitués never reads anything but the

sporting and gossip columns of the newspapers, it becomes a matter of grave concern that the mischievous ideas shall not be conveyed to them through the agency of films (Collins, 1987: 37).

In the U.S.A. similar views were expressed about the effects of film on the authority of the church, school and home. Mary Hawkes, from the National Council of Women wrote:

Public consciousness is now aroused to the fact that the movies as they are produced and distributed today, are a menace to the physical, mental and moral welfare of the nation...We must face the unpleasant fact that constant exposure to screen stories of successful gangsters and 'slick' racketeers, of flaming passion and high power emotionalism, may easily nullify every standard of life and conduct set up at home and school and will almost inevitably effect a moral decline at the very outset of life's venture (Collins, 1987: 183).

Despite the similarity between Australian and U.S.A. concerns there was one area that specifically concerned the Australian community: the Americanisation of Australian society through United States' films. These concerns were incorporated into arguments about the effects of films on children and society as a whole. The notion of moral debasement was grafted onto the Americanisation debate and vice versa. The *Sydney Morning Herald* commented that: "A great many American films which Australia sees are tawdry and sordid to a degree : their moral standard is as low as their mechanical standard is high" (Collins, 1987: 35).

The Mothers' Union called for a stop to the 'importation of American slang and American sob stuff'. In W.A., a member for the Women's Justice Association stated at the Royal Commission:

Looking at films from a purely Australian standpoint, we are not satisfied that they are suitable or represent Australian ideals. The most sordid side of American life is shown so frequently, and there are too many scenes depicting acts of burglary and sex problems, including triangular love affairs.³

Despite the large amount of evidence that was given by community groups at the Royal Commission in the Moving Picture Industry it is evident that it was economic determinants that underlay any changes that were made. Public groups were asked to make statements about their views on film and film censorship but few of the suggestions were seriously considered. The one dominant view that emerges from these statements is that pressure groups wanted to maintain State censoring rights or at least an appeal board in each State for Commonwealth censorship procedures. This was not economically viable for the industry and so this suggestion was ignored. The Commission did agree that new classifications of film were necessary but the way in which films should be classified was not discussed with these organisations. Women's organisations and church groups lobbied about the censorship process but there is little evidence to indicate that they had the strength to effect any major changes in the censorship process, after it had been established, without aligning

themselves with a section of the industry or government. However, there is evidence which indicates that their concerns about the Americanising influence of film did help to support the production industry's calls for quota legislation, and their concerns about State control did help support individual State decisions to retain at least some of the State rights governing censorship

Until the 1930s the situation was similar in the U.S.A. Reform groups called for stricter censorship procedures yet they lacked the strength to influence the film industry's censorship policies. Each reform group was so concerned with its own specific attack on the industry that they did not consider other groups, even though they were all voicing the same concerns. Jowett (1976: 200) points out that these groups only met each other during meetings arranged by the industry. As in Australia, these groups were listened to by the film industry and government because they represented areas of traditional power. However, they had little power to influence industrial decisions because they never organised themselves into one major reform group which would have had the numbers to effect some change. There was also the problem that these reform groups represented factional rather than major sections of the community so they could not gain the necessary community support. In Australia, these problems were never resolved but in the USA in the 1930s one reform group was able to overcome these problems and considerably influence the industrial self regulation of films. This group was a Catholic organisation known as The Legion of Decency.

In the 1930s the industry's censoring body, the Hays Office, came under considerable attack from the community because it was felt that the censorship procedures were not harsh enough. There was nothing new in these attacks but this time The Legion of Decency backed up the complaints by asking the Catholic community to stay away from the movies. In Philadelphia in 1934, Catholics boycotted every cinema in the city causing considerable economic hardship for the industry in that area. The manager of the Warner chain in Philadelphia, commented that unless the boycott was discontinued he would be forced to close his theatres (Jowett, 1976 : 253). The result of the boycotts was that in 1934 the industry established the Production Code Administration Office (PCA). This office released certificates of approval for films and ensured that the industry conformed to the Production Code standards of film content. For the first time the industry imposed a \$25,000 penalty on members who did not comply with these standards. The Legion of Decency was successful where other reform groups had failed because it was able to use the established network of the Catholic Church to ensure that it gained mass community support (Jowett in Bernstein, 1999: 37).

Community response to films influenced the censorship process in both Australia and the U.S.A, but it was only in the U.S.A. that a community group had the power to effect change without first aligning itself to a sector of the industry or government. However, it is worth noting though that despite mass support for the Legion's calls for improvements it was not until the film industry was affected economically that any change was made.

In conclusion it can be seen from this study that although Federal and State governments and sections of the community influenced censorship controls it would seem that a central factor in explaining why Australia and the U.S.A. implemented

different methods to control film content was the economic strength and structure of the film industry. In Australia, the limited number of Australian made films meant that the federal legislation governing imports could be used to implement centralised government film censorship. The lack of legal protection for free speech gave the industry little basis to argue against government controls and many pressure groups actively supported central government control. Given the choice between State based censorship laws and one central Commonwealth law it is not surprising that an industry which, lacked the strength, structure and legal justification to call for self-regulation, would support the central Commonwealth method.

By contrast, in the U.S.A, the film industry included a number of large film companies which made films and then controlled the distribution and exhibition of those films. Censoring films in the U.S.A. was primarily about censoring locally made films, films not covered by federal import laws. Although the film industry still had to grapple with various local censorship laws, the strength and structure of their industry allowed them to successfully campaign for industrial self-regulation and to effectively negotiate with community lobby groups and government about film content. Unlike, Australia, centralised control of film content was in the hands of the industry rather than the government and whilst this was the result of social and legal factors, the nature and strength of the film industry was a central factor in this process.

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Notes

¹ For an extensive discussion of the American film industry's early attempts to use First Amendment arguments to support freedom from censorship see Wertheimer, J. 1993, 'Mutual Film Reviewed: The Movies, Censorship and Free Speech in Progressive America', *American Journal of Legal History*, no.37, p.158.

² Report of the Royal Commission into the Moving Picture Industry 1927-8 in *Commonwealth Parliamentary Papers*, Vol 71, 1926-8 Vol iv, pp.1371-1409.

³ Western Australian Minutes of Evidence from the Royal Commission into the Moving Picture Industry, Perth Kalgoorlie, Northam, 518. Held in the Australian National Library, Canberra.

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