

“FORD IS AN ANARCHIST” AND “HISTORY IS BUNK”: WILLIAM ARCHIBALD DUNNING AND JESSE SIDDALL REEVES AS PRECEDENT FOR THE FIRST PROFESSIONAL HISTORIANS TESTIFYING AS EXPERT WITNESSES IN UNITED STATES HISTORY

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INTRODUCTION

Automobile magnate Henry Ford infamously stated “[h]istory is . . . bunk,” evidencing his disdain for academic history or even the need to know something of the past.¹ He also professed he didn’t read books, claiming “[t]hey muss up my mind.”² Yet, from July 29 through July 31, 1919, he required the testimony of Columbia University professor William Archibald Dunning, who was one of the nation’s foremost historians, as well as one of Dunning’s former students, Ohio State University professor Francis W. Coker.³ Ford specifically needed Dunning and Coker to counter University of Michigan professor, Jesse Siddall Reeves, who gave powerful evidence in a Michigan state trial undermining Ford’s claim that the *Chicago Tribune* libeled him.⁴ All three

¹ See JESSIE SWIGGER, “HISTORY IS BUNK:” ASSEMBLING THE PAST AT HENRY FORD’S GREENFIELD VILLAGE 1 (2014); MAX WALLACE, *THE AMERICAN AXIS: HENRY FORD, CHARLES LINDBERGH, AND THE RISE OF THE THIRD REICH* 10-12 (2002).

² WALLACE, *supra* note 1, at 10.

³ *Says Ford Talked Just Like Ancients: Columbia Professor of Political Science Is Called in Libel Suit*, THE SUN, July 30, 1919, at 6; *Dunning Analyzes Goldman Anarchy: Says Ford Writing Did Not Follow Her Fundamental Principles*, THE SUN, August 1, 1919, at 8; “*Wets Are Not Anarchists*,” *Says Prof. Dunning*, EVENING WORLD, July 31, 1919, at 10. It should also be noted that on cross-examination, Ford proved himself ignorant of American history not knowing when the country achieved independence or who Benedict Arnold was. See STANLEY WALKER, *CITY EDITOR* 201-02 (1934). He also believed that the American Revolution and the War of 1812 were the same conflict. See RICHARD SNOW, *I INVENTED THE MODERN AGE: THE RISE OF HENRY FORD* 266-67 (2014).

⁴ See Philip R. Muller, *Look Back Without Anger: A Reappraisal of William A. Dunning*, 61 J. AM. HIST. 325 (1974); *Finds Anarchy in Ford Theories*, N.Y. TIMES, June 21, 1919, at 8; “*Tribune*” *Libel Trial Back to Main Issue: Witness Says Ford Utterances Express Beliefs of Well-Known Anarchists*, L.A. TIMES, June 21, 1919, at 3;

professors taught both history and political science, wrote books and articles in the leading scholarly journals of their time, and were instrumental in shaping research norms.⁵ Dunning was, among the three, a “giant” in American history who influenced the manner in which Reconstruction and the Civil War were taught in the nation’s secondary schools and universities, and he was politically influential.⁶ The *Ford v. Chicago Tribune* trial that lasted over the summer of 1919 is absent from judicial decisions and law review articles alike, but it marked the first time in history that professional historians testified as experts for adverse litigants in a jury trial. In 1910, three historians testified on behalf of the United States in a bench trial in federal court as to the historic navigability of rivers in Illinois.⁷ How Dunning, Coker, and Reeves were judicially approved as experts, as well as the nature of their testimony, left a quiet precedent for the time when historians routinely testified as experts in trials.⁸ Their

Quotes Leading Men in Support of Ford: Libel Suit Attorney Tries to Show They Held the Same Views, N.Y. TIMES, June 25, 1919, at 20.

⁵ PETER NOVICK, *THAT NOBLE DREAM: THE “OBJECTIVITY QUESTION” AND THE AMERICAN HISTORICAL PROFESSION* 69-70 (1988). Reeves, for instance, presented papers at the American Historical Association’s conference. *See Preliminary Announcement of Program*, HIST. TCHR.’S MAG., at 352, 352 (1916) (noting that Reeves presented a paper on the historic conceptions of freedom of the seas); *History Teachers’ Associations*, HIST. TCHR.’S MAG., at 250, 250 (1916); *Historical News*, 22 AM. HIST. REV. 920 (1917) (noting that Coker was taking leave from Ohio State University to teach at Yale’s history and political science departments). For more on the early blend of political science and history, see David D. Van Tassel, *From Learned Society to Professional Organization: The American Historical Association, 1884-1900*, 89 AM. HIST. REV. 929, 943 (1984). *See also Alumni Meetings*, OHIO ST. U. MONTHLY, June 1922, at 18, 18.

⁶ JOHN DAVID SMITH, *AN OLD CREED FOR THE NEW SOUTH: PROSLAVERY IDEOLOGY AND HISTORIOGRAPHY, 1865-1918*, at 163 (1985). For a specific instance of Dunning’s influence, he was quoted in the 1901-1902 Virginia Constitutional Convention. *See Proceedings of the Constitutional Convention*, RICHMOND DISPATCH, Apr. 3, 1902, at 10 (statement of Delegate McIlwaine).

⁷ *See generally* *United States v. Econ. Light & Power Co.*, No. 29776 (N.D. Ill. 1910). The three professors were Clarence W. Alvord from the University of Illinois, Andrew McLaughlin from the University of Michigan, and Reuben Gold Thwaites from the Wisconsin Historical Society. *See generally* *Record of Trial, United States v. Econ. Light & Power Co.*, No. 29776 (N.D. Ill. 1910). The Court, in 1921, issued *Economy Light and Power Co. v. United States*, 256 U.S. 113, in which the justices upheld the authority of the federal government to regulate the usage of commercial waterways.

⁸ *See, e.g.*, *Miller v. Bonta*, 699 F. Supp. 3d 956, 998-1003 (S.D. Cal. 2023) (criticizing the state’s expert historians); *Roake v. Brumley*, 756 F. Supp. 3d 219, 235 (M.D. La. 2024) (accepting a historian as an expert in the history of religion in public

actions also left important considerations as to the line between objective historical analysis and outcome-based support to litigants.⁹

Ford's libel case against the *Chicago Tribune* and its owner-editor Robert McCormick originated on June 23, 1916, when the newspaper printed an editorial titled "Ford is an Anarchist."¹⁰ The *Tribune* did so in the midst of a world war raging across the globe that affected historians and the public alike.¹¹ It is true that Congress's declaration of war against the Imperial German Government would not occur until April 4, 1917, but there were already "preparedness" campaigns across the country, and Ford was a pacifist who openly opposed anything that would appear militaristic or a step toward belligerency.¹² This was not, however, the only reason the *Tribune* commented on Ford, even though McCormick believed Ford was naïve and wrong on the issue of national defense.¹³ Rather, Ford offended McCormick when he called the nation's soldiers "murderers," and McCormick, as well as dozens of his fellow Illinoisans, had been called up into their National Guard units to serve on the Mexican border.¹⁴ Ordered by President Woodrow Wilson, the call-up of state military forces

schools); *Vt. Fed'n of Sportsmen's Clubs v. Birmingham*, 741 F. Supp. 3d 172, 191 (D. Vt. 2024) (historian specializing in crime and firearms as an expert); *Fair Fight Inc. v. True the Vote*, 710 F. Supp. 3d 1237, 1273 (N.D. Ga. 2024) (historian testifying as to voter intimidation by efforts at voter purges and other measures); *United States v. Washington*, No. C70-9213, 2022 WL782612, at *3-4 (W.D. Wash. Mar. 15, 2022) (historian testifying to Native American usage of rivers for fishing); *Carter v. Helmsley-Spear, Inc.*, 861 F. Supp. 303, 314 (S.D.N.Y. 1994) (art historian testifying that removal or alteration of artwork will damage artist's reputation).

⁹ See, e.g., *Saginaw Chippewa Indian Tribe of Mich. v. Granholm*, 690 F. Supp. 2d 622, 637 (E.D. Mich. 2010) (discussing how a court should consider a historian who departs from objectivity principles).

¹⁰ *Ford Is an Anarchist*, CHI. TRIB., June 23, 1916, at 6.

¹¹ See, e.g., WARREN I. COHEN, *THE AMERICAN REVISIONISTS: THE LESSONS OF INTERVENTION IN WORLD WAR I*, at 1-11 (1967).

¹² THOMAS J. KNOCK, *TO END ALL WARS: WOODROW WILSON AND THE QUEST FOR A NEW WORLD ORDER* 59-61 (1992); Roger Butterfield, *Henry Ford, the Wayside Inn, and the Problem of "History is Bunk"* 77 PROC. MASS. HIST. SOC. 53 (1965).

¹³ See, e.g., VINCENT CURCIO, *HENRY FORD* 107 (2013).

¹⁴ Edward Marshall, "Commercialism Made This War": *Henry Ford Argues for Peace Abroad, and Says That Business Men and Not Soldiers, Should Be Sent to Mexico*, N.Y. TIMES, Apr. 11, 1915, at 14; CHARLES H. HARRIS III & LOUIS R. SADLER, *THE GREAT CALL-UP: THE GUARD, THE BORDER, AND THE MEXICAN REVOLUTION* 139-40 (2015).

into federal service occurred in response to Pancho Villa's guerrilla irregulars crossing into the United States, attacking the small town of Columbus, New Mexico, and killing over twenty civilians and United States Army soldiers.¹⁵ The call-up of National Guard forces had little directly to do with the war in Europe, but it occurred at the same time as the global war and Wilson, in the estimation of one historian, "accepted the political realities of the situation" by arguing for "reasonable preparedness" in case of a major war.¹⁶

In addition to calling Ford an anarchist, the *Tribune* alleged that the Ford Motor Company failed to protect the jobs of its employees who were called into the National Guard for service on the border, and claimed that when one of its reporters asked how many of Ford's employees were members of the Michigan National Guard, the corporation refused to answer.¹⁷ After interviewing an army recruiting center officer, the *Tribune* insisted "about seventy-five [Ford] men will pay this price for their services to their country."¹⁸ If those statements were untrue, then Ford could have sued for libel on this basis alone.¹⁹ After all, an Illinois appellate court held a year earlier that information which came from identifiable sources, but turned out to be untrue, could still form the basis for libel against a newspaper.²⁰ Ford, however, was primarily angered that the newspaper called him an "ignorant idealist" and "an anarchistic enemy of the nation."²¹ As a contextual matter, the *Tribune's* use of the word "anarchist" occurred at a time when anarchists assassinated political leaders,

¹⁵ FRIEDRICH KATZ, *THE LIFE AND TIMES OF PANCHO VILLA* 546 (2012); JOSEPH A. STOUT, JR., *BORDER CONFLICT: VILLISTAS, CARRANCISTAS AND THE PUNITIVE EXPEDITION 1915-1920*, at 34-40 (1999); GEORGE C. HERRING, *THE AMERICAN CENTURY AND BEYOND: U.S. FOREIGN RELATIONS, 1893-2014*, at 94-99 (2008).

¹⁶ JOHN WHITECLAY CHAMBERS II, *TO RAISE AN ARMY: THE DRAFT COMES TO MODERN AMERICA* 114-16 (1987).

¹⁷ STEVEN WATTS, *THE PEOPLE'S TYCOON: HENRY FORD AND THE AMERICAN CENTURY* 266 (2005).

¹⁸ *Ford Is an Anarchist*, CHI. TRIB., June 23, 1916, at 6.

¹⁹ See, e.g., *Long v. Trib. Printing Co.*, 107 Mich. 207 (1895). In *Long*, the Michigan Supreme Court upheld the doctrine of injury to feelings as a basis for libel. *Id.*

²⁰ *O'Malley v. Ill. Publ'g & Printing Co.*, 194 Ill. App. 544, 555 (1915).

²¹ WATTS, *supra* note 17, at 266. See also generally BARBARA W. TUCHMAN, *THE PROUD TOWER: A PORTRAIT OF THE WORLD BEFORE THE WAR, 1890-1914*, at 79 (2011).

wealthy industrialists and bankers, as well as committed violent acts against targets they deemed as autocratic or capitalist.²²

In concentrating on how the three historians became expert witnesses, their testimony, and the legacy they created, this article is divided into four sections. Section I briefly provides a contextual background for the trial, including public understandings of who Ford and McCormick were and a brief note on their attorneys. Section II analyzes Reeves's and Dunning's qualifications and backgrounds as well as the political environment for historians, with the caveat that the article concentrates on Dunning and Reeves because Coker was only called to buttress Dunning's gravitas as an expert.²³ Section III provides a brief synopsis of the meaning of anarchism as it was presented to the public at the time through the popular press, as well as in the law and by scholars. One historian has observed that ever since anarchism as an ideology was born in the nineteenth century, "it has meant many different things, both to its supporters and to its opponents."²⁴ In contrast to socialism and Marxism, there was little academic study or agreement on the definition of anarchism, which likely benefitted McCormick but also made the use of experts such as Dunning and Reeves important to the trial. Section IV analyzes the testimonies of Dunning and Reeves against the scholarly norms of their times. It includes press reporting as one measure as well as the available, albeit sparse, observations of Reeves and Dunning. Their testimony is preserved both in newspaper reporting and in a trial transcript, which is located at Northwestern University's Charles Deering McCormick Library, and there is no appellate decision in the case.²⁵ The conclusion provides a brief statement on how this

²² See, e.g., DEAN A. STRANG, *WORSE THAN THE DEVIL: ANARCHISTS, CLARENCE DARROW, AND JUSTICE IN A TIME OF TERROR* 24-30 (2013).

²³ See, e.g., *Flag Mystery Is Explained*, DAILY TIMES (N.C.), Aug. 11, 1919, at 4.

²⁴ RICHARD BACH JENSEN, *THE BATTLE AGAINST ANARCHIST TERRORISM: AN INTERNATIONAL HISTORY, 1878-1934*, at 8 (2013).

²⁵ See Record XI-335, Special Collections, Northwestern University. There are judicial orders for the trial in the Michigan State Archives. See Record Group 79-80, Macomb Cnty., Mich. Cir. Ct., Boxes 13-14, File No. 8070. Additionally, there is a section of a transcript in ASHER L CORNELIUS, *THE CROSS-EXAMINATION OF WITNESSES: RULES, PRINCIPLES AND ILLUSTRATIONS* 444-58 (1929). Cornelius, however, only provides the cross examination of Henry Ford by one of McCormick's attorneys. *Id.*

trial shaped the practice of historians testifying in courts to our current times and how *Ford v. Chicago Tribune* may serve as a standard for the courts in assessing the admissibility of historians as experts under the more relaxed current Federal Rules of Evidence as shaped by *Daubert v. Merrell Dow Pharms., Inc.* and its progeny.²⁶

Before proceeding to the first section, there is an important observation on what it meant to be a historian in 1919. History became “professionalized” with the advent of the Ph.D. in the late nineteenth century, and many of the early doctorate degree awardees studied in Germany, where they followed and built on a model of “scientific history.”²⁷ The so-called “amateur historians” of the generation prior to Dunning, Reeves, and Coker wrote in literary prose, adopted stories from prior writers, and focused on the “great man” theory of history, and these historians were largely independently wealthy men.²⁸ Throughout the nineteenth century, amateur historians produced sweeping works that read like novels and provided their readers with self-assurance that the United States was a patriotic land, with men who achieved wealth and power through merit.²⁹ University of Pennsylvania historian, Edward Potts Cheyney, a “scientific history” contemporary of Dunning, criticized the amateurs’ version of history as selling “its birthright of truth for a mess of the pottage of partisanship.”³⁰ A German historian studying United States historians observed that prior to “scientific history,” historians had judged the past to instruct present students “for the benefit of future ages.”³¹

²⁶ *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 588-89 (1993). On the relaxing of the expert standard, see *Johnson v. Mead Johnson & Co.*, 754 F.3d 557, 562 (8th Cir. 2014).

²⁷ ERNST BREISACH, *HISTORIOGRAPHY: ANCIENT, MEDIEVAL, & MODERN* 286-90 (3d ed. 2007).

²⁸ NOVICK, *supra* note 5, at 44.

²⁹ *Id.*; see also JAMES V. WERTSCH, *VOICES OF COLLECTIVE REMEMBERING* 71 (2002); W. FITZHUGH BRUNDAGE, *THE SOUTHERN PAST: A CLASH OF RACE AND MEMORY* 128-29 (2005); PETER CHARLES HOFFER, *PAST IMPERFECT: FACTS, FICTIONS, FRAUD—AMERICAN HISTORY FROM BANCROFT AND PARKMAN TO AMBROSE, BELLESILES, ELLIS, AND GOODWIN* 16-21 (2007).

³⁰ EDWARD POTTS CHEYNEY, *WHAT IS HISTORY?: ADDRESS OF PROFESSOR E. P. CHEYNEY, '83 C., BEFORE THE GRADUATE SCHOOL, OCTOBER 3, 1907*, at 5 (2019).

³¹ GERTRUDE HIMMELFARB, *THE NEW HISTORY AND THE OLD: CRITICAL ESSAYS AND REAPPRAISALS* 17 (rev. ed. 2004).

Historians in the generation after Dunning, Reeves, and Coker became adherents to the “New History” which sought to meld “scientific history” to a goal of making history useful to society as a progressive undertaking.³² There is an important demarcation between the study of history before the scientific history of Dunning’s time and the scientific history into which history was evolving into, that is, the new history in the immediate years preceding World War I. This demarcation gives a hint that Dunning’s generation produced dry and systematic works that they believed were objective and often devoid of emotion.³³

Distinguishing the newer generation of professional historians, such as Dunning, from the earlier amateurs or their new history successors does not fully answer what scientific history was. Scientific historians claimed they pursued historical truths through objective-based research.³⁴ In contrast to their predecessors, they explored archival sources such as the letters and diaries of their subjects and then based their scholarship on these original sources, which were, they argued, the basis of truths in their writing.³⁵ Cheyney, for instance, in 1901 claimed “the simple [and] arduous task of the historian was to collect facts, view them objectively, and arrange them as the facts . . . demanded.”³⁶ Unlike scientists, however, scientific historians were not concerned with discovering “laws of history” but rather, they wanted to illustrate—in the words of Leopold Von Ranke, the “father of modern history”—“history as it happened.”³⁷ To Von

³² *Id.* It has been observed that the “New History” scholars were discontented with political history and sought to use history to serve reform objectives. See OSCAR HANDLIN, *TRUTH IN HISTORY* 69 (1979).

³³ JOHN HIGHAM WITH LEONARD KRIEGER & FELIX GILBERT, *HISTORY: THE DEVELOPMENT OF HISTORICAL STUDIES IN THE UNITED STATES* 96-103 (1965).

³⁴ NOVICK, *supra* note 5, at 56. Professors Joyce Appleby, Lynn Hunt, and Margaret Jacob observed “[h]istorians of the end of the nineteenth century conceived scientific history as objective because it was not concerned with philosophy or theory. The facts got priority.” JOYCE APPLEBY, LYNN HUNT & MARGARET JACOB, *TELLING THE TRUTH ABOUT HISTORY* 75 (1994).

³⁵ NOVICK, *supra* note 5, at 32-33.

³⁶ AM. HIST. ASS’N, *ANNUAL REPORT OF THE AMERICAN HISTORICAL ASSOCIATION FOR THE YEAR 1901*, at 29 (1901).

³⁷ NOVICK, *supra* note 5 at 28-29; see also ANDREAS BOLDT, *LEOPOLD VON RANKE: A BIOGRAPHY* 277-89 (2019); NICK WITHAM, *POPULARIZING THE PAST: HISTORIANS, PUBLISHERS, AND READERS IN POSTWAR AMERICA* 6 (2023); GEORGE T. BLAKEY,

Ranke, and his American followers, "[i]t was the research . . . that guaranteed truth[;] [t]he historian . . . was [the] detached observer."³⁸ Professor J. Harvey Robinson, a "new history" proponent and Columbia colleague of Dunning, observed that in comparison with the amateurs, "the scientific historian no longer dwells by preference on the heroic, spectacular, and romantic episodes, but strives to reconstruct past conditions."³⁹ By 1916, there was a consensus of sorts in this historic methodology, which was appealing to the college-educated nation because it was, in the words of Professor Peter Novick, whose 1988 book, *That Noble Dream: The "Objectivity Question" and the American Historical Profession*, presents a detailed history of historians, "incontrovertible and noncontroversial."⁴⁰

The appeal of a consensus of historic methodology should not be understated because, as Novick observed, "there was never another time in American history in which overall, there was so little consensus," including the populist revolt, labor upheavals, immigration of non-western Europeans, violence against persons of color and immigrants from Central and Eastern Europe and Asia, economic depressions, Marxism, socialism, and, of course, anarchism.⁴¹ Yet, there was also a devastating aspect to the "scientific history" methodology in that some of the prominent scientific historians—Dunning included—embedded racism as a truth into the national educational landscape.⁴² David S. Brown, in his biography of the historian Richard Hofstadter, noted that in spite of Von Ranke and the brilliant promise of scientific history, "[i]t adopted conventional prejudices, substituting science for

HISTORIANS ON THE HOMEFRONT: AMERICAN PROPAGANDISTS FOR THE GREAT WAR 7 (1970).

³⁸ KEITH D. DICKSON, *SUSTAINING SOUTHERN IDENTITY: DOUGLAS SOUTHWELL FREEMAN AND MEMORY IN THE MODERN SOUTH* 47 (2011).

³⁹ JAMES HARVEY ROBINSON, *THE NEW HISTORY* 51 (1965). One student of new history noted that "the new historians did not dispute Von Ranke's methods of that historical knowledge achieved in the spirit of Von Ranke was important. They wanted to add another function, to make it useable." See MORTON WHITE, *SOCIAL THOUGHT IN AMERICA: THE REVOLT AGAINST FORMALISM* 220-22 (1966).

⁴⁰ NOVICK, *supra* note 5, at 57-63.

⁴¹ *Id.* at 62-63.

⁴² *Id.* at 74. One scholar has observed, "[a]lthough Dunning was a proponent of the scientific school of history, his work does not reflect that school's dedication to careful collection and assessment of evidence." DICKSON, *supra* note 38, at 49.

providence by couching Anglo-American exceptionalism in the imposing language of evolutionary biology and racial hierarchies.”⁴³

However, it must also be acknowledged that the consensus had limits. A historian who maintained scholarly standards but departed from mainstream political ideologies might face the ire of powerful institutions. For instance, in 1913, Professor Charles Austin Beard, one of Dunning’s colleagues at Columbia, published *An Economic Interpretation of the Constitution*, in which he articulated a new constitutional interpretation focusing on the economic motives of the Framers.⁴⁴ In the words of one observer, Beard “triggered a public firestorm over how American history should be investigated, analyzed, and presented.”⁴⁵ Illustrating this point, former President and future Chief Justice William Howard Taft accused him of undermining the nation.⁴⁶

Five further observations are important to make. First, it is difficult, if not impossible, to know what the jurors—twelve white male farmers—thought about historians or, for that matter, history as a subject, since the trial lasted from May 12 to August 14, 1919, and the historians were on the stand for only five of those days.⁴⁷ The jury heard from a variety of witnesses, including General William Harding Carter and Bishop Charles D. Williams.⁴⁸ The jurors determined that Ford had been libeled but

⁴³ DAVID S. BROWN, RICHARD HOFSTADTER: AN INTELLECTUAL BIOGRAPHY 5 (2006).

⁴⁴ CHARLES A. BEARD, AN ECONOMIC INTERPRETATION OF THE CONSTITUTION OF THE UNITED STATES (1913); For a history of his critics, see, for example, D. W. Brogan, *The Quarrel Over Charles Austin Beard and the American Constitution*, 18 ECON. HIST. REV. 199, 200-03 (1965).

⁴⁵ Gary J. Kornblith & Carol Lasser, *More Than Great White Men: A Century of Scholarship on American Social History*, in A CENTURY OF AMERICAN HISTORIOGRAPHY 11, 12-13 (2010).

⁴⁶ *Taft Grills Moose Policy as Hysteria: Pennsylvania Society Hears Bitter Arraignment of Progressive Platform*, BROOKLYN DAILY EAGLE, Dec. 14, 1913, at 10. Taft was lauded by the Executive Council of the National Civic Federation’s chairman who wrote, “I was glad to see you take a whack at the [s]ocialist professor.” Letter from Ralph Easley to William H. Taft (Dec. 16, 1913) (on file with Library of Congress). So too did the editor-in-chief of the *Wall Street Journal* applaud Taft’s public attack on Beard. See Letter from John Franklin Crowell to William H. Taft (Dec. 16, 1913) (on file with Library of Congress).

⁴⁷ GARY ALAN FINE, DIFFICULT REPUTATIONS: COLLECTIVE MEMORIES OF THE EVIL, INEPT, AND CONTROVERSIAL 181-85 (2001).

⁴⁸ Ford called Bishop Charles D. Williams to inform the jury that his statements “were more akin to Christian teachings than anarchism,” and the *Tribune* produced

awarded him only six cents, which was far less than the one million he sought.⁴⁹ Yet Michigan’s public education may provide some indication of their thoughts. University of Iowa professor of history, Bessie Louise Pierce, one of the few women to earn a Ph.D. in the pre-war era and a contemporary of Dunning’s, noted that in 1911, Michigan’s legislature prescribed a “patriotic” history curriculum.⁵⁰ She also pointed out that during World War I and in its immediate aftermath, “the fear of radicalism and disloyalty to the established institutions of the country continued to express itself in drastic legislation.”⁵¹ In short, Michigan’s population that had attended public schools was taught that foreign ideologies, such as anarchism, were evil.

Second, although *Ford v. Chicago Tribune* was the first reported time that historians testified as experts in the United States, French historians testified in the widely reported Alfred Dreyfus and Emile Zola trials.⁵² (Dreyfus, a military officer and a Jew, was accused of treason, and Zola, one of France’s leading novelists, accused Dreyfus’ accusers of the same).⁵³ During Dreyfus’ trials, (then) New York Governor Theodore Roosevelt, in a speech to 10,000 people, highlighted the prosecutions, starting with the acknowledgment that it was rare for people to be concerned with a foreign trial, but that the American public viewed the trial with indignation because it was brought on by France’s antisemitism.⁵⁴ Columbia University professor of history, James T. Shotwell—a contemporary of Dunning’s who observed

retired army major generals Leonard Wood and William Harding Carter to explain to the jury that the internal conditions in Mexico necessitated the use of the Army and National Guard to protect the nation. On Williams’ appearance for Ford, see WATTS, *supra* note 17, at 267. On Carter, see *O’Brien vs. Marquis of Salisbury: This the Case on Trial in the Circuit Court*, MT. CLEMENS MONITOR (Mich.), May 23, 1919, at 6 (explaining Carter’s appearance in town); Philip Kinslby, *Maj. Gen. Carter to Be Witness at Mt. Clemens*, CHI. TRIB., May 19, 1919, at 17.

⁴⁹ H. EUGENE WEISS, CHRYSLER, FORD, DURANT AND SLOAN: FOUNDING GIANTS OF THE AMERICAN AUTOMOTIVE INDUSTRY 42 (2003); WALKER, *supra* note 3, at 202.

⁵⁰ BESSIE LOUISE PIERCE, PUBLIC OPINION AND THE TEACHING OF HISTORY IN THE UNITED STATES 61-62 (1926).

⁵¹ *Id.* at 72.

⁵² PIERS PAUL READ, THE DREYFUS AFFAIR: THE SCANDAL THAT TORE FRANCE IN TWO 238 (2012).

⁵³ *Speech by Governor Roosevelt*, N.Y. TIMES, Sep. 14, 1899, at 3.

⁵⁴ OLIVIER DUMOULIN, LE RÔLE SOCIAL DE L’HISTORIEN: DE LA CHAIRE AU PRÉTOIRE 163-75 (2003).

Dreyfus' retrial—later recalled that “the [history] professors of the University of Paris had taken a courageous and important part” in the trial.⁵⁵ Thus, the public and the history profession's members alike might have viewed Dunning's, Reeves's, and Coker's testimonies as acceptable.

Third, newspapers reported on *Ford v. Chicago Tribune*, and indeed, Ford set up a newspaper bureau that supplied articles to 2,507 weekly newspapers and 260 daily newspapers across the country.⁵⁶ For the first time in the nation's history, the public became aware of American historians testifying as experts, and the names of the three men became known in the midst of front page news about the possible collapse of the German Government, peace negotiations, the spread of communism, and a potential for the war to begin again. Fourth, historians had already been publicly opining on political matters because they did not wish to confine themselves to purely historical studies or, as Woodrow Wilson quipped, when “Cicero cut his eye teeth.”⁵⁷ For instance, shortly after the publication of *An Economic Interpretation of the Constitution*, Beard publicly weighed in on the nation's policy toward China, and his comments were reported in several newspapers.⁵⁸ Because of the increased role of historians publicly commenting on current matters, it may not have come as a complete shock to the public that historians testified in a high-profile trial, since they were already being quoted on matters of current importance, and several were appointed to advise Wilson during the Versailles Treaty negotiations.⁵⁹ Finally, it is interesting that *Ford v. Chicago Tribune* is absent in law review articles on historians testifying in trial courts as it was widely

⁵⁵ JAMES T. SHOTWELL, *THE AUTOBIOGRAPHY OF JAMES T. SHOTWELL* 65 (1961). Shotwell had observed a part of the trial himself. *See id.* at 37.

⁵⁶ REYNOLD M. WIK, *HENRY FORD AND GRASS-ROOTS AMERICA* 52 (1973).

⁵⁷ NOVICK, *supra* note 5, at 69.

⁵⁸ *Asserts Chinese Lobby Is Trying to Hoodwink U.S.*, *THE MILWAUKEE LEADER*, Nov. 12, 1914, at 3; *Is China Moving Forward?*, *BROOKLYN DAILY EAGLE*, Nov. 28, 1914, at 6.

⁵⁹ IAN TYRRELL, *HISTORIANS IN PUBLIC: THE PRACTICE OF AMERICAN HISTORY, 1890-1970*, at 163-66 (2005). Dunning's colleague, Shotwell, was appointed to represent the United States at an international labor conference. *See International Conference for Labor Next October*, *LAB. WORLD* (Minn.), July 26, 1919, at 1.

reported.⁶⁰ Perhaps this absence is emblematic that occasionally history is “lost” in the law, and at times, the law needs professional historians to “rescue it.”

I. THE BACKGROUND DRAMATIS PERSONAE: THE LITIGANTS AND THEIR ATTORNEYS

Henry Ford and Robert McCormick achieved their status through different mediums. Ford was not born into wealth or power, but McCormick, as noted below, was. Years after their legal dispute, the two men politically aligned, and they did so with other influential men such as the famed aviator Charles Lindbergh and controversial historians Charles Beard and Henry Elmer Barnes, who had studied under Dunning at Columbia.⁶¹ In the late 1930s, all five of these men supported, or at least were openly sympathetic to, the America First movement, which tried to convince the nation to remain isolationist in the face of a Nazi German takeover of Europe and Japanese aggression in Asia.⁶² Notably, America First was led by antisemitic people who sought to blame the war raging in Europe since 1939, which was to become World War II (as well as World War I), on the Jews.⁶³

⁶⁰ See, e.g., Daniel A. Farber, *Adjudication of Things Past: Reflections on History as Evidence*, 49 HASTINGS L.J. 1009 (1998); Reuel E. Schiller, *The Strawhorsemen of the Apocalypse: Relativism and the Historian as Expert Witness*, 49 HASTINGS L.J. 1169 (1998); Jonathan D. Martin, *Historians at the Gate: Accommodating Expert Historical Testimony in Federal Courts*, 78 N.Y.U. L. REV. 1518 (2003); Matthew J. Festa, *Applying a Usable Past: The Use of History in Law*, 38 SETON HALL L. REV. 479 (2008).

⁶¹ On Beard, see RICHARD HOFSTADTER, *THE PROGRESSIVE HISTORIANS: TURNER, BEARD, PARRINGTON* 341-44 (1968) (noting that “[t]oday Beard’s reputation stands like an imposing ruin in the landscape of American historiography”). On Barnes, see DEBORAH E. LIPSTADT, *DENYING THE HOLOCAUST: THE GROWING ASSAULT ON TRUTH AND MEMORY* 32-73 (1993) (providing a detailed analysis of Barnes’ becoming the center of the Holocaust denial conspiracy). However, Barnes was not always publicly antisemitic and in 1920 he criticized Ford for promoting a false conspiracy against Jews. See Harry Elmer Barnes, *Zionism and World Politics by Horace M. Kallen*, 12 J. INT’L RELS. 423 (1922).

⁶² KATHRYN S. OLMSTED, *REAL ENEMIES: CONSPIRACY THEORIES AND AMERICAN DEMOCRACY, WORLD WAR I TO 9/11*, at 49-51 (2009); ROBERT J. NORRELL, *HOW HISTORY WAS USED IN THE WARS OF THE TWENTIETH CENTURY* 118 (2023).

⁶³ LEONARD DINNERSTEIN, *ANTISEMITISM IN AMERICA* 129-30 (1995).

Earlier, the five men protested against Franklin Delano Roosevelt and the New Deal as an authoritarian takeover of government.⁶⁴

After World War II, Ford and McCormick supported Beard and Barnes to advance a conspiracy that Roosevelt knew when and where the Japanese attack on Pearl Harbor would occur, and indeed, intentionally baited the Japanese to attack while shielding intelligence from the military command there.⁶⁵ Although this occurred two decades after McCormick's alleged slander against Ford, the interwoven nature of the two litigants evidences that changes in a political landscape can create new friendships between adversaries.⁶⁶ However, their antagonism dates back to 1915 when journalist Edward Marshall interviewed Ford, who blamed the war on commercialism, and several of the nation's major newspapers printed the interview.⁶⁷

A. Henry Ford and his Attorneys:

It is difficult to assess Henry Ford in the year 2025. There are a number of biographies about him, in which he is remembered for being an innovator, industrialist, world peace advocate, isolationist, intellectually ignorant man, politically powerful force, and virulent Anti-Semite who was admired by the

⁶⁴ CHAIM M. ROSENBERG, *THE INTERNATIONAL HARVESTER COMPANY: A HISTORY OF THE FOUNDING FAMILIES AND THEIR MACHINES* 191-200 (2019); DAVID W. NOBLE, *HISTORIANS AGAINST HISTORY: THE FRONTIER THESIS AND THE NATIONAL COVENANT IN AMERICAN HISTORICAL WRITING SINCE 1830*, at 132-33 (1965). Noble wrote that Beard believed Franklin Roosevelt was "destroying the promise of American life," and the historian responded by writing two books "to rally the people against Roosevelt's [foreign] polic[ies]." *Id.*

⁶⁵ See WAYNE S. COLE, *ROOSEVELT & THE ISOLATIONISTS, 1932-1945* (1983); see also GORDON W. PRANGE, *PEARL HARBOR: THE VERDICT OF HISTORY* 34-37 (1986). Prange wrote "possibly the ablest advocate of the revisionist camp was Charles Beard who amassed an awesome reputation as a historian . . . Beard believed Roosevelt maneuvered the United States into the war . . . Barnes advocate a massive coverup." *Id.* at 37.

⁶⁶ ALLAN NEVINS & FRANK ERNEST HILL, *FORD: EXPANSION AND CHALLENGE, 1915-1933*, at 141-42 (1957).

⁶⁷ See Edward Marshall, *'Twas Commercialism That Made This War, Says Henry Ford*, L.A. TIMES, Apr. 11, 1915, at 6, 8; Edward Marshall, *"Commercialism Made this War": Henry Ford Argues for Peace Abroad, and Says That Business Men Not Soldiers, Should Be Sent to Mexico*, N.Y. TIMES, Apr. 11, 1915, at 54.

Nazis.⁶⁸ Prior to Ford’s automobile construction industry, a car manufacturer typically built less than 5,000 cars per year; however, on the eve of World War I, the Ford “Model T,” as a result of his innovation in assembly methods and pricing, sold at a rate of 250,000 per year.⁶⁹ During World War I, Ford ensured that his son Edsel was exempted from conscription, which caused anger in the military and would become an issue at the libel trial.⁷⁰ There were more important aspects of Ford as a plaintiff. He was born in 1863 to a farming family in Dearborn, Michigan; left school at the age of sixteen; and worked as an apprentice with a railway car manufacturer, at the Detroit Dry Dock Engine works, and for Westinghouse as a laborer.⁷¹ Ford was not a college-educated man, nor did he come from wealth, which may have connected him with the jurors. But he was also a litigious person.

In 1918, the Dodge Brothers, who were the founders of the Dodge Motor Company, sued Ford to force the Ford Motor Company to give primacy to its stockholders over the pay and benefits of its employees.⁷² The case had its origins in 1914 when the Industrial Workers of the World (“IWW”), a labor organization formed by Marxists, socialists, and anarchists, had tried to

⁶⁸ See, e.g., DAVID L. LEWIS, *THE PUBLIC IMAGE OF HENRY FORD: AN AMERICAN FOLK HERO AND HIS COMPANY* 11-12 (1976); FORD R. BRYAN, *BEYOND THE MODEL T: THE OTHER VENTURES OF HENRY FORD* 101-05 (rev. ed. 1997); FRANK ERNEST HILL & ALLAN NEVINS, *HENRY FORD’S PEACE SHIP* (2017); LEO P. RIBUFFO, *THE OLD CHRISTIAN RIGHT: THE PROTESTANT FAR RIGHT FROM THE GREAT DEPRESSION TO THE COLD WAR* 10 (1983); GLEN JEANSONNE, *GERALD L. K. SMITH: MINISTER OF HATE* 73 (1988) (detailing Smith’s alignment with Ford).

⁶⁹ LEWIS, *supra* note 68, at 11-12; JOHN TRAYNOR, *MASTERING MODERN UNITED STATES HISTORY* 83-85 (2001).

⁷⁰ See JOSHUA E. KASTENBERG, *TO RAISE AND DISCIPLINE AN ARMY: MAJOR GENERAL ENOCH CROWDER, THE JUDGE ADVOCATE GENERAL’S OFFICE, AND THE REALIGNMENT OF CIVIL AND MILITARY RELATIONS IN WORLD WAR I*, at 106-08 (2017); KEITH SWARD, *THE LEGEND OF HENRY FORD* 94 (1948); *Attack Edsell Ford in Father’s Suit*, N.Y. TIMES, May 17, 1919, at 9.

⁷¹ RICHARD BAK, *HENRY AND EDESEL: THE CREATION OF THE FORD EMPIRE* 3-12 (2003).

⁷² *Dodge v. Ford Motor Co.*, 170 N.W. 668 (Mich. 1919). This decision has proved influential. See, e.g., *Commodity Futures Trading Comm’n v. Weintraub*, 471 U.S. 343, 348-49 (1985) (citing *Dodge* for the proposition that a corporation must exercise the privilege in a manner consistent with their fiduciary duty to act in the best interests of the corporation and not of themselves as individuals).

unionize Ford's workers.⁷³ To blunt them, Ford offered his employees a significant pay raise, making them the highest-paid industrial workers in the country.⁷⁴ The same year the Dodge Brothers filed suit, Ford, with President Wilson's encouragement, ran for the United States Senate against Republican candidate Truman Newberry.⁷⁵ Ford lost in a close race and alleged that Newberry violated the law in spending an unprecedented amount on the election.⁷⁶ His allegations resulted in part in the Court opinion *Newberry v. United States*.⁷⁷ In the 1920s, Ford was sued under the concept of group libel for publishing antisemitic materials that specifically accused Jews of plotting to control the world—and even after he ceased his publications, the Nazi German government had them reprinted and distributed in Germany.⁷⁸ A month before the *Tribune's* alleged libel, the Navy League of the United States (an organization dedicated to a larger navy) sued Ford for libel after he accused them of pushing the nation into war in a nationally distributed pamphlet titled "The Navy League Unmasked" and in newspaper advertisements.⁷⁹

For his libel case against the *Tribune*, Ford assembled a team of sixty-three attorneys who occupied two hotels near the trial location.⁸⁰ The responsibility for questioning witnesses and giving opening statements and closing arguments fell to Alfred J. Murphy, a former judge, and Alfred Lucking, a former member of Congress.⁸¹ Lucking was born in Canada but raised in Michigan, where he earned a law degree from the University of Michigan in

⁷³ SWARD, *supra* note 70, at 50-69.

⁷⁴ *Id.*

⁷⁵ NEVINS & HILL, *supra* note 66, at 116-18.

⁷⁶ See Melvin I. Urofsky, *Campaign Finance Reform Before 1971*, 1 ALB. GOV'T L. REV. 1, 18-20 (2008). In 1911, Congress passed the Publicity Act which required disclosure of election spending and a year later limited senate races to \$10,000. *Id.* at 17-18.

⁷⁷ 256 U.S. 232 (1921).

⁷⁸ See, e.g., VICTORIA SAKER WOESTE, HENRY FORD'S WAR ON JEWS AND THE LEGAL BATTLE AGAINST HATE SPEECH 1-6 (2012).

⁷⁹ WILLIAM CALVIN WELCH, THE NAVY LEAGUE OF THE UNITED STATES, 1902-1950, at 31 (1951). The Navy League filed suit against Ford before Ford alleged libel against the *Tribune*. See ARMIN RAPPAPORT, THE NAVY LEAGUE OF THE UNITED STATES 153-57 (1962).

⁸⁰ WIK, *supra* note 56, at 52.

⁸¹ See, e.g., N.Y. TIMES, *supra* note 70, at 9.

1878.⁸² Professor Paula Baker, in her 2012 book, *Curbing Campaign Cash: Henry Ford, Truman Newberry, and the Politics of Progressive Reform*, characterized Lucking as “[a] longtime [Democrat] party activist” who handled legal matters for Ford, including the contested 1918 senate election against Newberry.⁸³

Murphy had served as a state trial court judge in Detroit from 1906 to 1919 and resigned his position to represent Ford at the trial.⁸⁴ He began his career as a Democrat but after the libel trial, was reelected to the state judgeship as a Republican.⁸⁵ He also committed suicide after being implicated in a corporate scandal in 1931.⁸⁶

B. Robert McCormick and his Attorneys:

Robert McCormick, who was often referred to as “the Colonel,” is, in all likelihood, less known today than Ford, but he too was politically influential. Perhaps the best evidence that McCormick could be an irresponsible editor did not occur for another two decades after the libel case resolved. In 1941, the *Tribune* published military secrets on the eve of the Japanese attack on Pearl Harbor.⁸⁷ Less than a year later, the newspaper printed an article on the United States Navy’s victory over the Japanese Navy at Midway Island that could have informed the Japanese that their secret military codes had been broken by military intelligence.⁸⁸ McCormick, however, once more, got away with this—in part, because senior military leaders worried that public investigations and trials would result in further leaks.⁸⁹ In

⁸² THE MICHIGAN ALUMNUS: VOLUME X 131 (1904).

⁸³ PAULA BAKER, *CURBING CAMPAIGN CASH: HENRY FORD, TRUMAN NEWBERRY, AND THE POLITICS OF PROGRESSIVE REFORM* 28 (2012).

⁸⁴ *Judge Ends His Life in Detroit Scandal*, N.Y. TIMES, Aug. 6, 1931, at 40.

⁸⁵ *Id.*

⁸⁶ *Id.*; see also *Dean of Detroit Judiciary Ends Life in Despair*, CHI. TRIB., Aug. 6, 1931, at 3.

⁸⁷ Richard B. Frank, *Igniting the U.S.-Japan War, 1941*, in JOHN H. MAURER & ERIK GOLDSTEIN, *THE ROAD TO PEARL HARBOR: GREAT POWER WAR IN ASIA AND THE PACIFIC* 142 (2022).

⁸⁸ JOSEPH E. PERSICO, *ROOSEVELT’S SECRET WAR: FDR AND WORLD WAR II ESPIONAGE* 189-91 (2001).

⁸⁹ KATHRYN S. OLMSTED, *THE NEWSPAPER AXIS: SIX PRESS BARONS WHO ENABLED HITLER* 218-22 (2022); JONATHAN W. JORDAN, *AMERICAN WARLORDS: HOW ROOSEVELT’S HIGH COMMAND LED AMERICA TO VICTORY IN WORLD WAR II*, at 168-69 (2016).

Lucking's opening statement against the *Tribune*, he accused McCormick of intentionally pushing the public to support a war against Mexico and, by implication, characterized McCormick as a war-monger.⁹⁰ McCormick was, in the estimation of one historian, a "press lord" who ran a paper that was "pugnacious, bigoted, [and] even rabid."⁹¹ At the time of its editorial, the *Tribune* unabashedly billed itself as the "World's Greatest Newspaper."⁹² This was a fitting title as it had the largest circulation in the country.⁹³

Born in 1880 in Chicago into a family that owned the *Tribune* and the McCormick Reaper Corporation (that later became International Harvester) McCormick's family's connections to Republicans dates back to Abraham Lincoln's presidency.⁹⁴ During the 1930s, he became well-known as a virulent opponent of the New Deal and an isolationist.⁹⁵ Unlike Ford, McCormick had an elite education, both at Yale University and Northwestern Pritzker School of Law.⁹⁶ In 1938, McCormick turned on Yale by having the *Tribune* attack the university's law school as "a nest of Communists."⁹⁷ After graduating, he formed a law firm with his friend, Weymouth Kirkland, that later became Kirkland and Ellis. In 1910, he became the *Tribune's* editor.⁹⁸ McCormick was also a correspondent to Theodore Roosevelt and a supporter of Presidents Warren G. Harding, Calvin Coolidge, and Herbert

⁹⁰ WATTS, *supra* note 17, at 266-67.

⁹¹ GEORGE H. DOUGLAS, *THE GOLDEN AGE OF THE NEWSPAPER* 236 (1999).

⁹² JOSEPH GIES, *THE COLONEL OF CHICAGO* 6 (1979).

⁹³ DOUGLAS, *supra* note 91, at 236.

⁹⁴ GIES, *supra* note 92, at 8-19; FRANK C. WALDROP, *MCCORMICK OF CHICAGO: AN UNCONVENTIONAL PORTRAIT OF A CONTROVERSIAL FIGURE* 21-22 (1966).

⁹⁵ MICHAEL STAMM, *DEAD TREE MEDIA: MANUFACTURING THE NEWSPAPER IN TWENTIETH-CENTURY NORTH AMERICA* 140-44 (2018); GREGORY L. SCHNEIDER, *THE CONSERVATIVE CENTURY: FROM REACTION TO REVOLUTION* 17 (2009); DIANE WINSTON, *RIGHTING THE AMERICAN DREAM: HOW THE MEDIA MAINSTREAMED REAGAN'S EVANGELICAL VISION* 26-27 (2023).

⁹⁶ GIES, *supra* note 92, at 16-20.

⁹⁷ Gaddis Smith, *Politics and the Law School: The View from Woodbridge Hall, 1921-1963*, in *HISTORY OF THE YALE LAW SCHOOL: THE TERCENTENNIAL LECTURES* 138, 144 (Anthony T. Kronman ed., 2004).

⁹⁸ WALDROP, *supra* note 94, at 44-50; *see also* JOSEPH GUSTAITIS, *CHICAGO TRANSFORMED: WORLD WAR I AND THE WINDY CITY* 88 (2016).

Hoover.⁹⁹ McCormick was also elected as one of Chicago's aldermen and commissioned as an officer in the Illinois National Guard. In this capacity, he served on the Mexican Border and in France in World War I.¹⁰⁰

According to Joseph Gies, one of McCormick's biographers, McCormick was angry with Ford as a result of Ford opposing Wilson's calling up of the National Guard and any military action against Mexico as "organized murder."¹⁰¹ This interpretation makes sense because, as newspaper historian Frank Luther Mott observed in his book, *American Journalism*, the *Tribune* bucked the nation's newspapers, favoring Britain over Germany after World War I began in 1914, but pushed instead for a large military to oppose any other country from asserting its power in America.¹⁰² Frank Waldrop, another of McCormick's biographers, claimed that McCormick would have tolerated Ford's opposition to war but not to preparedness.¹⁰³ Waldrop wrote that "thousands of words have been written about *Ford vs. Tribune*" and that McCormick later tried to claim that it was a writer who used the word "anarchist" without his permission.¹⁰⁴ But the word "anarchist," Waldrop explained, "was McCormick's own . . . hate-word," implying he directed it against Ford.¹⁰⁵ It is improbable that McCormick could have convincingly claimed ignorance over the use of the term "anarchist," in part, because between April 6, 1883 and February 29, 1916, the *Tribune* printed over 500 articles referencing anarchism.¹⁰⁶

Like Ford, McCormick dealt with other lawsuits. Chicago's mayor, Bill Thompson, sued McCormick for libel after the *Tribune* alleged that Chicago was riddled with corruption and pinned it on

⁹⁹ See generally *id.* at 242; DAVID AUSTIN WALSH, *TAKING AMERICA BACK: THE CONSERVATIVE MOVEMENT AND THE FAR RIGHT* 26-28 (2024).

¹⁰⁰ RICHARD NORTON SMITH, *THE COLONEL: THE LIFE AND LEGEND OF ROBERT R. MCCORMICK, 1880-1955*, at 187 (2003).

¹⁰¹ See GIES, *supra* note 92, at 80.

¹⁰² FRANK LUTHER MOTT, *AMERICAN JOURNALISM: A HISTORY OF NEWSPAPERS IN THE UNITED STATES THROUGH 250 YEARS, 1690 TO 1940*, at 616-20 (1964).

¹⁰³ WALDROP, *supra* note 94, at 147.

¹⁰⁴ *Id.* at 147-48.

¹⁰⁵ *Id.* at 148.

¹⁰⁶ See, e.g., *Socialism and Anarchism at Geneva*, CHI. TRIB., Apr. 6, 1883, at 12; *The Romance of Violence*, CHI. TRI., Feb. 29, 1916, at 6 (describing Edward Goldbeck's speech).

the mayor.¹⁰⁷ McCormick may have also invited controversy because he used the newspaper to crusade against political opponents, one of the most famous instances being the *Tribune's* attacks on Senator William Lorimer in 1911, which led to Lorimer's removal from the Senate the following year.¹⁰⁸ This episode placed McCormick at odds with Taft, but it also displayed the *Tribune's* political power. In 1912, McCormick endorsed Roosevelt over Taft for the presidency, and in 1919, Roosevelt was poised to testify at the libel trial on behalf of McCormick but died before the trial began.¹⁰⁹

Roosevelt's willingness to testify illustrates McCormick's power. On October 28, 1918, McCormick's lead counsel, Weymouth Kirkland, wrote to Roosevelt that the trial was set for November 18, and the former president would be needed to testify around "the 23rd or 24th of the month."¹¹⁰ The trial was delayed; but on December 7, 1918, Roosevelt expressed to Kirkland his enthusiasm for testifying against Ford, writing, "I need not repeat to you either what I have already told you of my deep appreciation of the great public service the *Tribune* has rendered, and of the danger that Henry Ford is to this nation."¹¹¹ Kirkland had been friends with McCormick, and would be so, for over four decades.¹¹² This included McCormick funding Kirkland to represent Jay Near before the Supreme Court in *Near v. Minnesota*, an important freedom of the press decision.¹¹³ Indeed, *Near* has been described as "a landmark in First Amendment law" that enabled the press to criticize elected officials.¹¹⁴ When Kirkland died in 1965, the

¹⁰⁷ GIES, *supra* note 92, at 82-83; Ian Loveland, *City of Chicago v. Tribune Co.—in Contexts?*, in *IMPORTING THE FIRST AMENDMENT: FREEDOM OF EXPRESSION IN AMERICAN, ENGLISH AND EUROPEAN LAW* 69 (Ian Loveland ed., 1998).

¹⁰⁸ MOTT, *supra* note 102, at 562.

¹⁰⁹ SMITH, *supra* note 100, at 224. It appears that Kirkland and Roosevelt corresponded over the trial and other matters. See Letter from Theodore Roosevelt to William A. Kirkland (Oct. 19, 1918); Letter from William A. Kirkland to Theodore Roosevelt (Oct. 23, 1918).

¹¹⁰ Letter from William A. Kirkland to Theodore Roosevelt (Oct. 28, 1918).

¹¹¹ Letter from Theodore Roosevelt to William A. Kirkland (Dec. 7, 1918).

¹¹² See generally *id.*

¹¹³ ANTHONY LEWIS, *MAKE NO LAW: THE SULLIVAN CASE AND THE FIRST AMENDMENT* 92 (1991). See generally *Near v. Minnesota ex rel. Olson*, 283 U.S. 697 (1931).

¹¹⁴ John S. Gossett & Juliet Dee, *Near v. Minnesota*, in *FREE SPEECH ON TRIAL: COMMUNICATION PERSPECTIVES ON LANDMARK SUPREME COURT DECISIONS* 69 (Richard

Chicago Tribune called him a “Fighter for Freedom of the Press.”¹¹⁵

In addition to Kirkland, Elliott G. Stevenson served as the second of McCormick’s lead counsel.¹¹⁶ Stevenson was born in Canada in 1856 and moved to Michigan twenty years later, after being educated in Ontario.¹¹⁷ In 1877, he was admitted to the Michigan Bar, became the president of a local bank, and was then elected as a district attorney.¹¹⁸ Stevenson was also the chairman of the state Democratic Party convention in 1896.¹¹⁹ McCormick likely engaged Stevenson because he had become a specialist in libel law and represented several newspapers.¹²⁰ Stevenson also represented the Dodge Brothers against Ford.¹²¹ One of Ford’s biographers, Keith Sward, presented a vivid description of Stevenson in a 1948 book, writing, “Stevenson, one of Detroit’s best-liked and most brilliant lawyers. A master of invective, [Stevenson was] renowned for his capacity to worry a witness to death.”¹²²

II. PROFESSIONAL HISTORIANS AT WAR AND IN COURT

In 1915, the American Association of University Professors (“AAUP”), a professional society dedicated to academic freedom and tenure, was formed in response to professors being removed for advancing positions that were at odds with wealthy and politically influential university trustees.¹²³ In 1894, Richard T.

A. Parker ed., 2003) (quoting THOMAS L. TEDFORD, FREEDOM OF SPEECH IN THE UNITED STATES 213 (1997)).

¹¹⁵ *Weymouth Kirkland Dies; Fighter for Freedom of the Press*, CHI. TRIB., Feb. 4, 1965, at 4.

¹¹⁶ Maude Martin Evers, *Ford- ‘Tribune’ High Lights as Girl Sees Them: Not a Dull Moment as the Lawyers Warm Up in Libel Trial*, CHI. TRI., May 14, 1919, at 7.

¹¹⁷ BENCH & BAR OF MICHIGAN: NINETEEN HUNDRED EIGHTEEN 145 (1918).

¹¹⁸ See generally *Elliott G. Stevenson Dies: Prominent Lawyer Was President of Detroit United Railways*, N.Y. TIMES, Mar. 9, 1925, at 17.

¹¹⁹ *Silver Men in Control: Reorganization of Michigan Democrat Committee*, N.Y. TIMES, Aug. 5, 1896, at 2.

¹²⁰ See Vera Djordjevich, VAULT GUIDE TO THE TOP CHICAGO & MIDWEST LAW FIRMS 74 (2007).

¹²¹ SMITH, *supra* note 100, at 224.

¹²² SWARD, *supra* note 70, at 102.

¹²³ FREDERICK RUDOLPH, THE AMERICAN COLLEGE AND UNIVERSITY: A HISTORY 415 (1962); HANS-JOERG TIEDE, UNIVERSITY REFORM: THE FOUNDING OF THE AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS 2-3 (2015). Peter Novick writes, “wealthy

Ely, a University of Wisconsin economics professor, spoke in favor of boycotts and strikes against the power of railroad corporations, only to have the university's regents fire him.¹²⁴ The University of Chicago dismissed Professor Edward W. Bemis for criticizing railroad owners during the 1894 Pullman Strike.¹²⁵ The strike became so pronounced that President Grover Cleveland ordered the Army, in contravention of the 1877 Posse Comitatus Act and the Constitution's framers' standing army fears, to suppress the strikers.¹²⁶ In 1900, Stanford University professor Edward Ross spoke out against the use of low-wage Chinese labor, only to have the university, which was founded by a railroad magnate, dismiss him.¹²⁷ In theory, if the AAUP protected academic freedom, then historians would be able to write on controversial topics and advocate for public understanding on important questions confronting society.¹²⁸ Whether academic freedom as a principle would protect a professor testifying as an expert was an open question that would not be judicially decided until 1998, when the United States Court of Appeals for the Fifth Circuit, in *Hoover v. Morales*, struck down Texas's prohibition against professors in state employment testifying as experts against the state.¹²⁹

In one sense, Dunning, Reeves, and Coker operated in uncharted territory because, although there were recently articulated principles of academic freedom, the unique environment of World War I and the First Cold War rendered

donors exerted not just generalized influence in defining the permissible limits of academic discourse through their membership on boards of trustees and via compliant administrators, but frequently sweetened the salary of a favored professor." NOVICK, *supra* note 5, at 65.

¹²⁴ LAURENCE R. VEYSEY, *THE EMERGENCE OF THE AMERICAN UNIVERSITY* 385 (1965); RUDOLPH, *supra* note 123, at 414-15.

¹²⁵ RUDOLPH, *supra* note 123, at 414.

¹²⁶ See Joshua Kastenberg, *Neither Constitutionally Demanded Nor Accurately Interpreted History: The Judicial Conservatives' Pockmarked Pathway of Military Law to the Unitary Executive*, 54 TEX. TECH L. REV. 451, 452-53 (2022). For information on the Pullman Strike and President Cleveland, see generally *id.*

¹²⁷ RUDOLPH, *supra* note 123, at 415. Rudolph also pointed out that in 1903, when John Spencer Bassett spoke in favor of racial equality at Trinity College—the predecessor of Duke University—he was dismissed. *Id.*

¹²⁸ MATTHEW W. FINKIN & ROBERT C. POST, *FOR THE COMMON GOOD: PRINCIPLES OF AMERICAN ACADEMIC FREEDOM* 29-35 (2009).

¹²⁹ 164 F.3d 221, 227 (5th Cir. 1998); see also STEVEN G. POSKANZER, *HIGHER EDUCATION LAW: THE FACULTY* 133 (2002).

those principles almost useless.¹³⁰ Professor Novick pointed out that professional historians “could scarcely have failed to be aware of the perils of dissent . . . [to] their careers.”¹³¹ Dunning and Coker testified on behalf of a controversial, but powerful litigant, at a time when war fervor and fears of Bolshevism and anarchism remained a part of society.¹³² Ford’s pacifism and antiwar rhetoric, moreover, did not match his corporation’s immense profits from the war, making him and his supporters open to allegations of hypocrisy.¹³³ On the other hand, Reeves took part in the suppression of academic freedom during the war and departed from the basic constitutional ideology of freedom of speech. In short, Dunning, Coker, and Reeves were not immune to the shift away from newly gained notions of academic freedom and tolerance in academia, as well as a departure from scholarly norms.

A. *The Historian’s Environment: 1916-1919*

On April 2, 1917, Wilson asked Congress for a declaration of war against the German Empire, and four days later, Congress responded by voting to declare war.¹³⁴ In between those four days, the Bureau of Education, a federal agency located within the Department of the Interior, published a list of twenty-three history books for the American public to read.¹³⁵ Several newspapers, including the *New York Times*, headlined the Bureau’s reading list, which included works by Wilson, John Fiske, Francis Parkman, Frederick Jackson Turner, Carl Schurz, Theodore Roosevelt, Henry Cabot Lodge, and Dunning.¹³⁶ This list

¹³⁰ See Hugh Gusterson, *The Weakest Link?: Academic Dissent in the “War on Terrorism,”* in *DISSENT IN DANGEROUS TIMES* 81, 91 (Austin Sarat ed., 2005).

¹³¹ NOVICK, *supra* note 5, at 68.

¹³² See ALEX GOODALL, *LOYALTY AND LIBERTY: AMERICAN COUNTERSUBVERSION FROM WORLD WAR I TO THE MCCARTHY ERA* 28-38 (2013).

¹³³ See, e.g., MICHAEL KAZIN, *WAR AGAINST WAR: THE AMERICAN FIGHT FOR PEACE, 1914-1918*, at 128 (2017).

¹³⁴ Associated Press, *President Issues Statement Explaining Acceptance of Germany’s Challenge in Strife for Humanity and Civilization*, *RICHMOND PALLADIUM* (Ind.), Apr. 6, 1917, at 4.

¹³⁵ *Monthly Bulletin of the Public Library of the District of Columbia*, 6 D.C. PUB. LIB. MO. BULL. 1 (1917).

¹³⁶ *This Is Uncle Sam’s Own Official Course in the History of America*, *SEATTLE STAR*, May 8, 1917, at 10; *Nation’s Story in 23 Books: Bureau of Education*

represented a collection of national political leaders and a select group of historians, as well as highlighted Dunning's 1907 book, *Reconstruction: Political and Economic, 1865-1877*.¹³⁷

As a juxtaposition to the government's endorsement of historians, on April 1, 1917, five days before the declaration of war, the *Lincoln Star* published a University of Nebraska faculty resolution expressing support for Wilson's foreign policy regarding Germany; it noted that a small number of faculty objected to the resolution and the university's regents targeted faculty who were allegedly pro-German.¹³⁸ Two professors were dismissed, and several others were accused of disloyalty.¹³⁹ In contrast, during the Spanish-American War fifteen years earlier, Harvard did not dismiss pacifist professors, and prior to April 1917, the university permitted a robust chapter of the Anti-Militarism League to exist on the campus.¹⁴⁰

In regard to university life, the experience of World War I was different than the Spanish-American War. Dozens of prominent professors of history and political science took part in promoting the war, particularly in three organizations. The Wilson Administration created the Committee for Public Information ("CPI"), initially to provide news of the war to the press, but it also had a group within it titled the Division of Civic and Educational Cooperation, which was headed by University of

Recommends List for Popular Reading, N.Y. TIMES, Apr. 14, 1917, at 11 [hereinafter *Nation's Story in 23 Books*]; *American History Course: United States Bureau of Education*, RICHMOND VA., Apr. 1, 1917, at 7.

¹³⁷ In addition to those noted above, the list included Reuben Gold Thwaites who wrote popular histories of the nation's early explorers. *Nation's Story in 23 Books*, *supra* note 136; see also Clifford L. Lord, *Reuben Gold Thwaites and the Progressive Historical Society*, 47 WIS. MAG. HIST. 1, 3-11 (1963). The list also had Ernest L. Bogart, a University of Illinois professor of economics, who wrote *An Economic History of the United States* in 1907 that proved popular. *Nation's Story in 23 Books*, *supra* note 136; see also Arthur H. Cole, *Economic History in the United States: Formative Years of a Discipline*, 28 J. ECON. HIST. 556, 564-67 (1968).

¹³⁸ ROBERT N. MANLEY, CENTENNIAL HISTORY OF THE UNIVERSITY OF NEBRASKA: FRONTIER UNIVERSITY (1869-1919), at 214-18 (1969).

¹³⁹ *Id.*; see also EMILY J. LEVINE, ALLIES AND RIVALS: GERMAN-AMERICAN EXCHANGE AND THE RISE OF THE MODERN RESEARCH UNIVERSITY 164-66 (2023); MICHAEL ROSENTHAL, NICHOLAS MIRACULOUS: THE AMAZING CAREER OF THE REDOUBTABLE DR. NICHOLAS MURRAY BUTLER 225-28 (2006).

¹⁴⁰ SEYMOUR MARTIN LIPSET & DAVID RIESMAN, EDUCATION AND POLITICS AT HARVARD 117-35 (1975).

Minnesota history professor Guy Stanton Ford. Professor Ford's mission was to educate the public on the "history" that led to the war, and this education was decidedly anti-German.¹⁴¹ Contemporaneously, the University of Minnesota's regents, led by future Supreme Court justice, Pierce Butler, dismissed Professor William Schaper for having the temerity to remain true to his pacifist beliefs.¹⁴² Ford did not come to Schaper's defense and waited until the 1930s, when Ford became the university's president, to challenge the dismissal.¹⁴³ In 1957, Ford explained that at the time of Schaper's removal, he did not think he could have helped from the distance of Washington, D.C., and it is telling that Ford, while even having close ties to the Wilson Administration, would not, or could not, protect academic freedom.¹⁴⁴

Another organization, the National Board for Historical Service ("NBHS") formed in April 1917 and worked closely with Professor Ford and the CPI. Two of Dunning's Columbia history department peers, James Shotwell and Charles Hazen, joined fifteen other academics in Washington, D.C. to form the NBHS.¹⁴⁵ In a short time, the NBHS's historians not only provided the public with arguments for the historical basis for the war and the rightness of the United States' entering it, but they also worked with high schools across the nation to teach children about how Germany was at fault for the war and how the German government had repeatedly violated international law.¹⁴⁶ Notably,

¹⁴¹ GEORGE T. BLAKEY, *HISTORIANS ON THE HOMEFRONT: AMERICAN PROPAGANDISTS FOR THE GREAT WAR* 16-26 (1970); DONALD R. KELLEY, *FRONTIERS OF HISTORY: HISTORICAL INQUIRY IN THE TWENTIETH CENTURY* 51 (2006). On Ford's role, see GUY STANTON FORD, *ON AND OFF THE CAMPUS* 21 (1938).

¹⁴² H. C. PETERSON & GILBERT C. FITE, *OPPONENTS OF WAR, 1917-1918*, at 106 (1957).

¹⁴³ CAROL S. GRUBER, *MARS AND MINERVA: WORLD WAR I AND THE USES OF THE HIGHER LEARNING IN AMERICA* 186-87 (1975).

¹⁴⁴ See Letter from Guy Stanton Ford to James L. Lee (Nov. 5, 1957) (on file with the University of Minnesota).

¹⁴⁵ BLAKEY, *supra* note 141, at 16; SHOTWELL, *supra* note 55, at 72-75; Am. Hist. Ass'n, *Historical News*, 22 AM. HIST. REV. 917, 918 (1917).

¹⁴⁶ See, e.g., Am. Hist. Ass'n, *supra* note 145; DAVID M. KENNEDY, *OVER HERE: THE FIRST WORLD WAR AND AMERICAN SOCIETY* 54-57 (2004); see also SHOTWELL, *supra* note 55, at 72-73. Shotwell, a Columbia University history professor, who worked with Dunning and served as the NBHS president wrote:

the NBHS worked to alter the view of Great Britain from having been a century and a half enemy, which was a typical education theme during this period, to a misunderstood ally, worthy of fighting for.¹⁴⁷

A final organization staffed with history professors, the National Security League (“NSL”), predated the nation’s entry into the war, and it was particularly vitriolic against citizens and residents who had any past affinity for Germany.¹⁴⁸ One of its members, Princeton University professor Robert McNutt McElroy, condemned the University of Wisconsin’s entire student body for treason and an affinity for Germany.¹⁴⁹ Although McElroy did not directly call for violence, a professor was “tarred” and “feathered” after he spoke.¹⁵⁰ Participants in all three organizations departed from the standards of objective research and served the government’s stated national interest, or went even further and tried to convince the public that German ideologies were an anathema to Americanism.¹⁵¹ At the University of Michigan,

Almost immediately after the United States declared war in April, 1917, I went to Washington to see what historians could do by way of national service. A group of us from all the larger universities gathered together in the offices of the American Historical Association, with Dr. John F. Jameson . . . and Waldo G. Leland . . . I found myself chairman of [the NBHS]. Although a volunteer body, it was a branch of the wartime [CPI] . . .

Id. Shotwell insisted, however, that the NBHS began its work by informing its members as well as other historians that their work could not reflect wartime emotions. *Id.* This admonition, he recognized was “not easy to carry out in the strain and stress of war.” *Id.* at 73.

¹⁴⁷ ANTHONY BRUNDAGE & RICHARD A. COSGROVE, *THE GREAT TRADITION: CONSTITUTIONAL HISTORY AND NATIONAL IDENTITY IN BRITAIN AND THE UNITED STATES, 1870-1960*, at 158-61 (2007). Professor Gruber wrote that Professor James Westfall Thompson “obliterated centuries of history when he drew a straight line between medieval and modern Germany” by claiming that German militarism and imperialism had existed since its medieval empire. GRUBER, *supra* note 143, at 133-34.

¹⁴⁸ BLAKEY, *supra* note 141, at 26-33; PAUL L. MURPHY, *WORLD WAR I AND THE ORIGIN OF CIVIL LIBERTIES IN THE UNITED STATES* 87-88 (1979).

¹⁴⁹ G. C. SELLERY, *SOME FERMENTS AT WISCONSIN, 1901-1947: MEMORIES AND REFLECTIONS* 7-8 (1960).

¹⁵⁰ PETERSON & FITE, *supra* note 142, at 105.

¹⁵¹ *Id.* at 149-51; *see also* JOSEPH MOREAU, *SCHOOLBOOK NATION: CONFLICTS OVER AMERICAN HISTORY TEXTBOOKS FROM THE CIVIL WAR TO THE PRESENT* 187-191 (2004); BLAKEY, *supra* note 141, at 128-34.

history professor Claude Van Tyne, a colleague of Reeves, ensured there was an active NSL on campus and Reeves, in at least one instance noted below, assisted Van Tyne.¹⁵²

Dunning's history department was not in lockstep with the CPI, NBHS, the NSL, or, for that matter, the AAUP, which argued that university administrators had "no moral right to bind the reason or the conscience of any professor."¹⁵³ Roosevelt and his NSL allies bullied J. Harvey Robinson into changing his medieval history book to adopt anti-German themes.¹⁵⁴ Professors Beard and Ellery C. Stowell resigned from the university in protest of the university firing professors who had spoken against the war.¹⁵⁵ Two prominent professors, James McKeen Cattell, one of the nation's leading psychologists, and English professor Henry Wadsworth Dana, were dismissed for espousing pacificism and their opposition to war.¹⁵⁶ And, the university's president, Nicholas Murray Butler tried to withdraw academic freedom from the school.¹⁵⁷ The historic record is largely silent as to what role Dunning played, if any, in the firing of professors or in propaganda efforts, and this might have appealed to Henry Ford. Dunning's wife died in June 1917, and this may have been the reason why he did not participate.¹⁵⁸ However, Professor Carol Gruber, in her 1975 book, *Mars and Minerva, World War I and the Uses of Higher Learning in America*, studied the treatment of history professors that dissented from the war and discovered that

¹⁵² See, e.g., *National Security League: Hearings Before a Special Comm. of the H. of Representatives on H. Res. 469 and H. Res. 476*, 65th Cong. 20 (1918). The NSL came into existence on the campus in 1915 as a preparedness organization. See 1 *THE UNIVERSITY OF MICHIGAN: AN ENCYCLOPEDIA SURVEY* 197 (Wilfred B. Shaw ed., 1941).

¹⁵³ Edwin R. A. Seligman et al., *General Report of the Committee on Academic Freedom and Academic Tenure: Presented at the Annual Meeting of the Association*, 1 *BULL. AM. ASS'N U. PROFESSORS* 15, 23 (1915).

¹⁵⁴ BLAKEY, *supra* note 141, at 86-88; see also PETERSON & FITE, *supra* note 142, at 105-06.

¹⁵⁵ WARREN I. COHEN, *THE AMERICAN REVISIONISTS: THE LESSONS OF INTERVENTION IN WORLD WAR I*, at 16 (1967); *Prof. Stowell of Columbia Mute After Resignation: Advocate of War and Academic Freedom Refuses to Discuss Why He Quit*, *EVENING WORLD* (N.Y.), Mar. 2, 1918, at 3.

¹⁵⁶ GRUBER, *supra* note 143, at 174-75; ROBERT A. MCCAUGHEY, *STAND, COLUMBIA: A HISTORY OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK, 1754-2004*, at 249-50 (2003).

¹⁵⁷ LIPSET & RIESMAN, *supra* note 140, at 136.

¹⁵⁸ *Obituary Notes*, *N.Y. TIMES*, June 14, 1919, at 11.

Dunning urged Columbia to retire Cattell for “having ignored the most elementary properties of decent society and for having rendered personal relations with most other Professors difficult.”¹⁵⁹

B. William Archibald Dunning

Dunning was born in 1857 in New Jersey and educated at Dartmouth and then Columbia University, where he earned his doctoral degree.¹⁶⁰ He also studied in Berlin for a year under one of their leading historians, Heinrich von Treitschke, before joining the faculty at Columbia, where he was distinguished as the Francis Lieber chair of the history department.¹⁶¹ Professor John Burgess, Dunning’s thesis advisor, advocated a white supremacist history on Reconstruction in writing, “nor is the welfare of the whole land . . . to be promoted, by the subjection of the white race to the black race in politics and government. It was a great wrong to the negroes themselves,” and this permanently influenced Dunning’s scholarship.¹⁶² Dunning, however, had a greater legacy than Burgess, and, in the estimation of one historian, he “inspired a number of scholars to follow up his research in [R]econstruction in the South after the Civil War.”¹⁶³

Although Dunning was not solely concerned with domestic history, and indeed his first historical work in 1892 was titled *Irish Land Legislation Since 1845*, it was United States history, and specifically the Civil War and Reconstruction, that were his

¹⁵⁹ GRUBER, *supra* note 143, at 192. Dunning also disapproved of Cattell’s conduct toward the university’s president Nicholas Murray Butler. See *Columbia Hunting For Any Disloyalty*, THE SUN (N.Y.), Mar. 6, 1917, at 5.

¹⁶⁰ See generally Charles E. Merriam, *Masters of Moral Science: William Archibald Dunning*, 5 SOCIAL FORCES 1-9 (1926); DAVID LEVERING LEWIS, W.E.B. DU BOIS: THE FIGHT FOR EQUALITY AND THE AMERICAN CENTURY, 1919-1963, at 354 (2000); HORACE COON, COLUMBIA: COLOSSUS ON THE HUDSON 162 (1947).

¹⁶¹ LEWIS, *supra* note 160; JOHN G. GUNNELL, THE DESCENT OF POLITICAL THEORY: THE GENEALOGY OF AN AMERICAN VOCATION 60 (1993).

¹⁶² JOHN W. BURGESS, RECONSTRUCTION AND THE CONSTITUTION, 1866-1876, at 134 (1902). Burgess was an outspoken opponent of the war, but he was already retired and in emeritus status, and the university appeared to ignore him.

¹⁶³ COON, *supra* note 160, at 162. Richard Hofstadter wrote, “Dunning, the brilliant son of a prosperous small-town manufacturer, followed Burgess to Columbia, where he founded a seminar influential in propagating Burgess’s anti-Radical views of Reconstruction.” HOFSTADTER, *supra* note 61, at 25.

main focus, and race was central to his work.¹⁶⁴ In 1888, *Science Magazine* reported that Dunning had written "a somewhat rambling article on the 'Inequality of the States' in which he expresses the opinion that owing to certain conditions imposed by Congress at the time of Reconstruction some of the southern states are not on equality of their sisters."¹⁶⁵ In contrast to this review, the *American Historical Review's* ("AHR") directors entrusted Dunning to examine the works of other historians in the journal's first issue.¹⁶⁶ In turn, he wrote a pithy review of Albert Gallatin Riddle's *Recollections of War Times: Reminiscences of Men and Events in Washington, 1860-1865*, saying it was written "from the standpoint of an extreme abolitionist," doubting its accuracy, and then concluding it was "entertaining."¹⁶⁷

In 1895, the London-based MacMillan Company published Dunning's *Essays on the Civil War and Reconstruction and Related Topics*.¹⁶⁸ Scholarly journals generally lauded the book, including the *Journal of Education*, which opined that it would be important to read for "those who wish to further the safety and the progress of our best national civilization."¹⁶⁹ The *Annals in the American Academy of Political and Social Science* lauded Dunning for having "political judgment and [being] of an ability to weigh the merits and defects of political measures which few modern writers have equalled, and none excelled."¹⁷⁰ As far away as the United Kingdom, the *English Historical Review* lauded him for showing "conspicuous self-restraint in the persistency with which he isolates the constitutional question from the moral issues with

¹⁶⁴ See generally Wm. A. Dunning, *Irish Land Legislation Since 1845*, 7 POL. SCI. Q. 57 (1892).

¹⁶⁵ *Notes and News*, 12 SCI. 115, 115-16 (1888).

¹⁶⁶ See Wm. A. Dunning, *Recollections of War Times; Reminiscences of Men and Events in Washington, 1860-1865*, by Albert Gallatin Riddle, 1 AM. HIST. REV. 182, 182-85 (1895).

¹⁶⁷ *Id.* at 183, 185.

¹⁶⁸ See generally WILLIAM ARCHIBALD DUNNING, *ESSAYS ON THE CIVIL WAR AND RECONSTRUCTION AND RELATED TOPICS* (1898).

¹⁶⁹ *Essays on the Civil War and Reconstructive and Related Topics*, by William Archibald Dunning, 47 J. EDUC. 154 (1898); see also Frederick W. Moore, *Essays on the Civil War and Reconstruction and Related Topics* by William Archibald Dunning, 3 AM. HIST. REV. 761 (1898). Professor Moore wrote, "To the teacher and the student his work will afford valuable and timely help in the further study of the period." *Id.* at 762.

¹⁷⁰ L. S. Rowe, *Essays on the Civil War and Reconstruction*, by William Archibald Dunning, 12 ANNALS AM. ACAD. POL. & SOC. SCI. 93, 95 (1898).

which it was bound up.”¹⁷¹ Dunning wrote a similar book for a series on American History edited by Albert Bushnell Hart—another giant titled *Reconstruction, Political and Economic*, which the *AHR*’s reviewer called “of extraordinary excellence.”¹⁷² Although he had given lectures and written articles on the Civil War and Reconstruction before 1895, it was the *Essays on the Civil War and Reconstruction* that cemented his reputation as the leading scholar of this period in history. Dunning’s works appeared in several of the nation’s major newspapers, including the *New York Times*, which reviewed his books.¹⁷³ In 1901, the *Hawaiian Gazette* noted that he read a paper titled “‘The Undoing of the Reconstruction,’ otherwise known as ‘The Negro Question’” in which he attacked Reconstruction’s leaders for being men “of strong emotions and narrow in judgment.”¹⁷⁴

Shortly after the turn of the century, Dunning expanded beyond United States History. In 1902, he published *A History of Political Theories, Ancient and Medieval*, once more with MacMillan.¹⁷⁵ Three years later, MacMillan published his book titled *A History of Political Theories From Luther to Montesquieu*.¹⁷⁶ Almost contemporaneously, he engaged in a public debate that was reported in the nation’s newspapers as to whether the Duke of Wellington would have defeated Napoleon Bonaparte’s army at Waterloo in 1815 without the help of the Prussians after the German emperor, Kaiser Wilhelm II, claimed that Napoleon would have won but for the Prussian forces that came to the British aid at that battle.¹⁷⁷ In 1920, Dunning

¹⁷¹ J. A. Doyle, *Essays on the Civil War, and Reconstruction and Related Topics*, by William Archibald Dunning; *The Liberty and Free Soil Parties in the North-West*, by Theodore Clarke Smith, 14 *ENG. HIST. REV.* 185, 186 (1899).

¹⁷² E. Benjamin Andrews, *The American Nation: A History. Reconstruction, Political and Economic (1865-1877)*, by William Archibald Dunning, 13 *AM. HIST. REV.* 371 (1908).

¹⁷³ See, e.g., William Archibald Dunning, *Political Theories: A History of Political Theories. From Luther to Montesquieu*, *N.Y. TIMES*, Nov. 11, 1905, at 18.

¹⁷⁴ *New Phases of Negro Question*, *HAWAIIAN GAZETTE*, Jan. 11, 1901, at 3.

¹⁷⁵ WILLIAM ARCHIBALD DUNNING, *A HISTORY OF POLITICAL THEORIES: ANCIENT AND MEDIEVAL* (1902).

¹⁷⁶ WILLIAM ARCHIBALD DUNNING, *A HISTORY OF POLITICAL THEORIES: FROM LUTHER TO MONTESQUIEU* (1905).

¹⁷⁷ *Historians Fail to Agree That the Prussians Saved Waterloo*, *DESERET EVENING NEWS* (Utah), Jan. 9, 1904, at 19.

published a third book titled, *A History of Political Theories From Rousseau to Spencer*, once more with MacMillan.¹⁷⁸ It was likely the three volume series on political theories and ideologies that made him a worthy witness for Ford. In between the second and third books, he published his 381 page book, *The British Empire and the United States: A Review of Their Relations During the Century of Peace Following the Treaty of Ghent*, with Charles Scribner's Sons.¹⁷⁹ Both the MacMillan Press and Charles Scribner's Sons were giants in the publishing industry, and Dunning's books were accorded a wide audience.¹⁸⁰ All four of these books garnered positive reviews.¹⁸¹

In addition to being a prolific scholar, Dunning was also instrumental in the professionalization of history, and he, along with a small group of professors, created the *AHR* that became the hallmark of the profession.¹⁸² In criticizing the prior generations of amateur historians in a 1914 essay titled *Truth in History*, Dunning argued "[a] cyclone of criticism has swept through the

¹⁷⁸ See WILLIAM ARCHIBALD DUNNING, *A HISTORY OF POLITICAL THEORIES: FROM ROUSSEAU TO SPENCER* (1920).

¹⁷⁹ See WILLIAM ARCHIBALD DUNNING, *THE BRITISH EMPIRE AND THE UNITED STATES: A REVIEW OF THEIR RELATIONS DURING THE CENTURY OF PEACE FOLLOWING THE TREATY OF GHENT* (1914). The American Journal of International Law, in its review of the book, noted Dunning "shows great research and careful study," but he took an "objectionable . . . liberty . . . with the character and reputation of the statesmen of the two nations." John W. Foster, *The British Empire and the United States: A Review of their Relations During the Century of Peace following the Treaty of Ghent*, by William Archibald Dunning, 9 AM. J. INT'L L. 269, 271 (1915).

¹⁸⁰ See, e.g., *Report of Committee N on the Preparation of a Handbook of American Universities and Colleges*, 2 BULL. AM. ASS'N U. PROFESSORS 53, 54-55 (1916) (listing academic publishers).

¹⁸¹ See, e.g., James Sullivan, *A History of Political Theories, Ancient and Mediaeval*, by William Archibald Dunning, 7 AM. HIST. REV. 747, 749 (1902) (stating Dunning treated further research in the field "so attractively"); Book Note, *A History of Political Theories, Ancient and Medieval*, by William Archibald Dunning, 2 COLUM. L. REV. 426, 432 (1902) ("[The work] is written in the same pleasing style which adds so much to the attractiveness of the author's lectures."); I. A. Loos, *A History of Political Theories: From Luther to Montesquieu*, by William Archibald Dunning, 11 AM. J. SOCIO. 575 (1906) ("[S]o excellent a piece of work in the history of social philosophy . . ."); Ward W. Pierson, *A History of Political Theories from Luther to Montesquieu*, by William A. Dunning, 27 ANNALS AM. ACAD. POL. & SOC. SCI. 170, 172 ("This volume, like the one covering the previous period, is a well-made summary of the ideas of the writers of the sixteenth to the eighteenth century.")

¹⁸² NOVICK, *supra* note 5, at 58; see generally J. Franklin Jameson, *The American Historical Association, 1884-1909*, 15 AM. HIST. REV. 1, 18 (1909).

populous realm of pseudo historical traditions and the region is thickly strewn with the *disjecta membra* of their proud and often most beautiful forms” before reinforcing the concept of archival and other original research.¹⁸³ Yet, he was not doctrinaire in scientific history, to the point that it visibly influenced his assessment of the work of the new historians, and he lauded Beard’s *Economic Interpretation of the Constitution* as “the true milk of the word,” while cautioning Beard that his book would “cause the heathen to rage.”¹⁸⁴ In 1913, he became the American Historical Association’s (“AHA”) president and worked to replace the “wealthy amateurs from the its board.”¹⁸⁵ And, he served on the AHA’s board at the time of the alleged libel.¹⁸⁶ Finally, Dunning was politically connected to powerful men, including Presidents Wilson, Taft, and Roosevelt. In 1912, he introduced Roosevelt to a crowded Columbia student audience before agreeing with the former president that the United States must be prepared for war with a foreign nation and possess a strong army and navy.¹⁸⁷ He was also a member of the New York Century Club with Taft and worked to bring more historians into that elite social group.¹⁸⁸

Only a few historians are accorded full-length biographies by other historians, but Dunning is an exception, and not only because of his influence in education. He was memorialized because he was beloved by his graduate students, who dedicated a festschrift to him in 1914.¹⁸⁹ In 1924, a second festschrift was dedicated to him two years after he died, and this time it was

¹⁸³ William A. Dunning, *Truth in History*, 19 AM. HIST. REV. 217, 219 (1914).

¹⁸⁴ BARRY D. KARL, CHARLES E. MERRIAM AND THE STUDY OF POLITICS 34 (1974).

¹⁸⁵ JOHN HIGHAM WITH LEONARD KRIEGER & FELIX GILBERT, HISTORY: THE DEVELOPMENT OF HISTORICAL STUDIES IN THE UNITED STATES 16 (1965).

¹⁸⁶ “J. F. J.” (J.F. Jameson), *The Meeting of the American Historical Association in Cincinnati*, 22 AM. HIST. REV. 509, 533 (1917); “J. F. J.” (J.F. Jameson), *Meeting of the American Historical Association in Philadelphia*, 23 AM. HIST. REV. 505, 529 (1918).

¹⁸⁷ *Roosevelt Advises Readiness for War*, N.Y. TIMES, Dec. 29, 1912, at 12.

¹⁸⁸ For Dunning trying to open the club to his peers, see Letter from William Archibald Dunning to William Howard Taft (Sep. 20, 1921); Letter from William Howard Taft to William Archibald Dunning (Sep. 24, 1921). On the standing of the club, one should consider that Taft and other politicians formed the basis for the League of Nations at a 1915 conference in the Century Club. See DAVID H. BURTON, TAFT, WILSON, AND WORLD ORDER 67 (2003).

¹⁸⁹ WALTER L. FLEMING ET AL., STUDIES IN SOUTHERN HISTORY AND POLITICS (1914).

edited by Charles Edward Merriam, a prominent political scientist, and Harry Elmer Barnes, who later described Dunning as being one of the most important influences in his early professional life.¹⁹⁰ Barnes became a pioneer in holocaust denial, arguing that Nazi Germany did not seek world domination or the destruction of Judaism.¹⁹¹ Merriam was a longtime University of Chicago professor of political science and history.¹⁹² Like Dunning, he had written on political philosophies and ideas, and he credited Dunning with influencing the national understanding of history and political theory.¹⁹³ There is more to Dunning’s continuance in historic memory than it being kept alive by a crank like Barnes, although it should not be missed that in his 1938 book, *A History of Historical Writing*, Barnes lauded Dunning for leading “a critical and erudite school” that brought the Civil War and Reconstruction into a serious historic analysis with objective scholarship.¹⁹⁴

In the more recent estimation of Professor James S. Humphreys, “[t]he influence of the American Historian William Archibald Dunning hovers over the study of United States history and political science like a ghostly apparition, one that modern

¹⁹⁰ CHARLES E. MERRIAM ET AL., *A HISTORY OF POLITICAL THEORIES: RECENT TIMES* (Charles Edward Merriam & Harry Elmer Barnes eds., 1924); JESSICA BLATT, *RACE AND THE MAKING OF AMERICAN POLITICAL SCIENCE* 108 (2018).

¹⁹¹ LAWRIE REZNEK, *DELUSIONS AND THE MADNESS OF THE MASSES* 57 (2010); DAVID B. MACDONALD, *IDENTITY POLITICS IN THE AGE OF GENOCIDE: THE HOLOCAUST AND HISTORICAL REPRESENTATION* 56 (2008). In 1935, Barnes hinted at his willingness to have a government rid civilization of undesirable people. 2 HARRY ELMER BARNES WITH HENRY DAVID, *THE HISTORY OF WESTERN CIVILIZATION* 963 (1935) (“It is surely true that we would profit by eliminating the physically and mentally unfit and by producing an ever higher type of human being. . . . Therefore it is desirable that we should encourage their program in every conceivable way.”).

¹⁹² Bruce Lannes Smith, *The Mystifying Intellectual History of Harold D. Lasswell*, in *POLITICS, PERSONALITY, AND SOCIAL SCIENCE IN THE TWENTIETH CENTURY* 41, 53 (Arnold A. Rogow ed., 1969); Robert H. Horwitz, *Politics, Personality, and Social Science in the Twentieth Century*, 65 *AM. POL. SCI. REV.* 1169, 1170 (1971).

¹⁹³ KARL, *supra* note 184, at 34 (“Dunning’s wit and warm intelligence attracted students and kept his relationships with them alive. . . . Students stood in awe of his reception of their work long after they left the tutelage of his classroom and long after their own reputations had been established.”).

¹⁹⁴ HARRY ELMER BARNES, *A HISTORY OF HISTORICAL WRITING* 233 (1937). Barnes also credited Dunning with bringing the profession of history in the United States up to the standards of German universities. *See id.* at 260.

scholars have found impossible to avoid.”¹⁹⁵ Humphreys is not alone in his view that Dunning’s racial beliefs cast a solidification of racism in the law and education for more than a generation.¹⁹⁶ In 1974, another historian noted that Dunning played a major intellectual role in the disenfranchisement of African-Americans.¹⁹⁷ A contemporary analysis from Princeton University professor Sean Wilentz concluded that Dunning shifted the study of the Civil War and Reconstruction from the standpoint of an antislavery pro-big business Republican to reinterpreting slavery’s demise in starkly materialistic terms as a Yankee effort to subjugate the South—an effort that ended only with the “redemption” of white supremacy in the 1870s.”¹⁹⁸ Dunning, Wilentz argued, was not only a leading proponent of devaluing racism and slavery as a force in history, but also he influenced a generation of historians to advocate that the Civil War was avoidable, but that “fanatical abolitionists” made it likely.¹⁹⁹

C. Jesse Siddall Reeves

By the time of the libel trial, Reeves had achieved a full professorship as a political scientist and historian at the University of Michigan.²⁰⁰ Although he did not have Dunning’s stature, he advised prominent men such as one-time Secretary of War and Secretary of State Elihu Root and Secretary of State Philander Knox on matters of international affairs and law.²⁰¹ He was also an officer of the American Society of International Law, where he served with John Bassett Moore and James Brown

¹⁹⁵ James S. Humphreys, *William Archibald Dunning: Flawed Colossus of American Letters*, in *THE DUNNING SCHOOL: HISTORIANS, RACE, AND THE MEANING OF RECONSTRUCTION* 77 (John David Smith & J. Vincent Lowery eds., 2013).

¹⁹⁶ See, e.g., Philip R. Muller, *Looking Back Without Anger: A Reappraisal of William A. Dunning*, 61 J. AM. HIST. 325, 325-38 (1974).

¹⁹⁷ *Id.*

¹⁹⁸ Sean Wilentz, *American Political Histories*, in JEAN-CHRISTOPHE AGNEW ET AL., *A CENTURY OF AMERICAN HISTORIOGRAPHY* 1, 4 (James M. Banner, Jr. ed., 2010).

¹⁹⁹ *Id.*

²⁰⁰ HOWARD H. PECKHAM, *THE MAKING OF THE UNIVERSITY OF MICHIGAN: 1817-1992*, at 129 (Margaret L. Steneck & Nicholas H. Steneck eds., 1994); William C. Dennis, *In Memoriam: Jesse Siddall Reeves: 1872-1942*, 37 AM. J. INT’L L. 104 (1943).

²⁰¹ See *Prominent Men Attend*, TIMES DISPATCH, Apr. 26, 1911, at 1. On Root, see EDWARD S. MIHALKANIN, *AMERICAN STATESMEN: SECRETARIES OF STATE FROM JOHN JAY TO COLIN POWELL* 429-40 (2004). On Knox, see *id.* at 307-09.

Scott, who were both giants in that field.²⁰² Reeves earned a bachelor's degree at Amherst College in 1891 and his doctorate at Johns Hopkins in 1894.²⁰³ That year, he published *The International Beginnings of the Congo Free State* with the Johns Hopkins Press.²⁰⁴ For over a decade, Reeves practiced law, but in 1904, he delivered a paper titled *The Napoleonic Confederacy in the United States* at the first annual meeting of the American Political Science Association.²⁰⁵ He also, almost contemporaneously, gave a paper about the Treaty of Guadalupe-Hidalgo at the AHA's annual meeting.²⁰⁶ And, later in the year, he published *The Napoleonic Exiles in America* as a book with the Johns Hopkins Press.²⁰⁷ Shortly after, Johns Hopkins hired him as a lecturer, and in 1907, he began teaching at the University of Michigan, where he remained until his retirement in 1942.²⁰⁸

The year that Reeves began at Michigan, he published *American Diplomacy Under Tyler and Polk*, once more with the Johns Hopkins Press.²⁰⁹ The *American Political Science Review* noted that Reeves argued the war with Mexico and the annexation of Texas were not a part of an overt attempt to expand slavery.²¹⁰ Another review in the *American Journal of International Law* captioned the book as "a preeminently scholarly treatment of a period of our history[,] every detail of which has been tangled and knotted with, or completely obliterated by, the slavery

²⁰² Am. Soc'y Int'l L., *Proceedings of the American Society of International Law at its Tenth Annual Meeting Held at Washington, D.C., April 27-29, 1916*, 10 PROCS. AM. SOC'Y INT'L L. v, vi (1916).

²⁰³ Dennis, *supra* note 200, at 104.

²⁰⁴ See generally JESSE SIDDALL REEVES, *THE INTERNATIONAL BEGINNINGS OF THE CONGO FREE STATE* (Herbert B. Adams ed., 1894).

²⁰⁵ Am. Pol. Sci. Ass'n, *Programme of the First Annual Meeting of American Political Science Association, Held in Chicago, December 28-30, 1904*, 1 PROCS. AM. POL. SCI. ASS'N 5, 25 (1905).

²⁰⁶ Am. Hist. Assoc., *The Meeting of the American Historical Association at New Orleans*, 9 AM. HIST. R. 437, 446-47 (1904).

²⁰⁷ See generally JESSE S. REEVES, *THE NAPOLEONIC EXILES IN AMERICA: A STUDY IN AMERICAN DIPLOMATIC HISTORY, 1815-1819* (J.M. Vincent, J.H. Hollander & W.W. Willoughby eds., 1905). This book received positive reviews. See, e.g., "H.E.B." (Harry Elmer Barnes), *Book Reviews and Notices*, 9 Q. TEX. ST. HIST. ASS'N 142, 143 (1905).

²⁰⁸ Dennis, *supra* note 200, at 104.

²⁰⁹ See generally JESSE S. REEVES, *AMERICAN DIPLOMACY UNDER TYLER AND POLK* (1907).

²¹⁰ St. George L. Sioussat, *American Diplomacy Under Tyler and Polk*, by Jesse S. Reeves, 2 AM. POL. SCI. REV. 655, 656-57 (1908).

controversy.”²¹¹ Thus, Reeves followed Dunning’s lead in devaluing the importance of slavery as a main influence on the structures of American society. Finally, the year before he testified, Reeves published a paper on the treaty of Guadalupe-Hidalgo, which was based on his earlier research for the AHA.²¹²

There were caveats to his full-time teaching career, which, as noted in the introduction, made him a natural opponent of Ford’s. He worked with other Michigan professors, including historian Claude Van Tyne and geologist William Hobbs, to bring the United States into the war and drew the ire of Representative Louis C. Cramton (R-MI).²¹³ In early April 1916, Reeves, along with fourteen other colleagues, signed his name to a petition of support for Great Britain and France against Germany.²¹⁴ Cramton, who served in Congress from 1911 to 1932, was against declaring war on Germany and opposed both the militaristic Navy League and National Security League.²¹⁵

Ironically, perhaps, Reeves was a founding member of the University of Michigan’s chapter of the Association of American University Professors (“AAUP”), which, in theory, might have shown his commitment to academic freedom.²¹⁶ However, this was not the case. Even before the United States entered the war, he was an active member of the National Security League.²¹⁷ Once the war began, he, Van Tyne, and Hobbs condemned their colleague, Professor Carl Eggert, who was an antiwar pacifist.²¹⁸ The university fired Eggert without any recognizable degree of modern due process.²¹⁹ That the AAUP had within its leadership

²¹¹ Howard Lee McBain, *American Diplomacy Under Tyler and Polk*, by Jesse. S. Reeves, 3 AM. J. INT’L L. 257, 260 (1909).

²¹² See generally Jesse S. Reeves, *The Treaty of Guadalupe-Hidalgo*, 10 AM. HIST. REV. 309 (1905).

²¹³ *U. of M. Faculty Facing Row Over Pro-Ally Memo*, DET. TIMES, Apr. 15, 1916, at 7. For Hobbs’ and Van Tyne’s further efforts, see Clifford Wilcox, *World War I and the Attack on Professors of German at the University of Michigan*, 33 HIST. EDUC. Q. 59, 74-76 (1993).

²¹⁴ *U. of M. Faculty Facing Row Over Pro-Ally Memo*, *supra* note 213, at 7.

²¹⁵ See, e.g., *Plea for Allies Brings Protest*, CHI. DAILY TRIB., Apr. 15, 1916, at 4.

²¹⁶ Timothy Reese Cain, *Academic Freedom in an Age of Organization, 1913-1941*, at 388 (2005) (Ph.D. dissertation, University of Michigan) (ProQuest).

²¹⁷ *Id.* at 386-87.

²¹⁸ JOHN CARVER EDWARDS, *PATRIOTS IN PINSTRIPE: MEN OF THE NATIONAL SECURITY LEAGUE* 79 (1982).

²¹⁹ PECKHAM, *supra* note 200, at 145.

professors who were willing to depart from protecting academic freedom was not unusual when one considers that McElroy, the historian who chaired the National Security League’s history efforts and condemned an entire student body, served on the AAUP’s board.²²⁰ Finally, in 1917, after the United States entered into the conflict with Germany, Reeves was commissioned as an army officer and served as a judge advocate until the end of the war in Washington, D.C.²²¹ Like Dunning, Reeves has been cited in legal scholarship, particularly in matters of international law.²²²

III. THE MEANING OF ANARCHISM IN THE LAW

In 1901, Senator Julius C. Burrows, a Michigan Republican, argued in the quarterly *North American Review* (“NAR”) that there was a dire need to outlaw anarchism.²²³ Established in 1815, the *NAR* published articles on a variety of subjects from noted lawyers and jurists such as Justice Joseph Story and Edward Hale.²²⁴ Prior to his article, Burrows was known for his attacks on the Mormon Church, and he seemed to disparage nonconformity, including his opposition to the Senate permitting Reed Smoot—who was Mormon—to take his seat.²²⁵ As for anarchism, he

²²⁰ *Nominations for Membership*, BULL. AM. ASS’N U. PROFESSORS (1915-1955), Jan. 1918, at 49; see also *Committees for 1918*, BULL. AM. ASS’N U. PROFESSORS, Apr. 1918, at 1, 41 (showing R.M. McElroy served on Committee U: Patriotic Service); *Suggestions from the Committee on Patriotic Service*, BULL. AM. ASS’N U. PROFESSORS, Apr. 1918, at 1, 6 (advertising for the National Security League’s summer institute in AAUP’s Committee on Patriotic Service’s suggestions and listing McElroy as the contact person for further information on the summer institute).

²²¹ Dennis, *supra* note 200, at 104; see also *Professor Jesse S. Reeves Dies July 7 After Illness of Two Years*, MICH. ALUMNUS, Aug. 15, 1942, at 473, 479.

²²² See, e.g., James Kraska, *Legal Vortex in the Strait of Hormuz*, 54 VA. J. INT’L L. 323, 340-41 (2014) (noting that Reeves viewed the 1930 Hague Conference as a failure because of the difficulty of the issues involved).

²²³ J. C. Burrows, *The Need of National Legislation Against Anarchism*, 173 N. AM. REV. 727 (1901).

²²⁴ 2 FRANK LUTHER MOTT, A HISTORY OF AMERICAN MAGAZINES, 1741-1850, at 130-55 (1966). The magazine had a conservative bent, hosting Francis Parkman—one of the leading amateur historians—in opposition to women’s voting rights. 3 FRANK LUTHER MOTT, A HISTORY OF AMERICAN MAGAZINES, 1865-1885, at 88-90 (1967).

²²⁵ Jan Shipps, *Beyond the Stereotypes*, in MORMONS AND MORMONISM: AN INTRODUCTION TO AN AMERICAN WORLD RELIGION 147, 156 (Eric A. Eliason ed., 2001); Byron W. Daynes & Kathryn M. Daynes, *Antipolygamy, the Constitution, and the Smoot Hearings*, in THE REED SMOOT HEARINGS: THE INVESTIGATION OF A MORMON

exclaimed that “[they] knew the institution and its followers as singularly hateful and especially abhorrent in a land of equal rights and universal liberty,” and insisted that in the assassination of President William McKinley, in comparison to that of President Abraham Lincoln and James A. Garfield, “[t]here was not even the pretext of a reason.”²²⁶ Before 1900, the *NAR* published more articles on anarchism than the leading scholarly history and political science journals, but the *NAR*’s articles tended to be short political statements that never defined anarchism as an ideology.²²⁷ Burrows lamented that even Congress had yet to define anarchism, though it was soon to do so and then bar anarchists from immigrating.²²⁸

What Ford personally thought of anarchism would have likely been shaped by the events of his time, such as the Haymarket massacre, McKinley’s assassination, Emma Goldman’s speeches and writings, her lover, Alexander Berkman’s attempted assassination of industrialist Henry Frick, the 1910 bombing of the *Los Angeles Times*, and various other assassinations and bombings around the world that had occurred as recently as 1916 in San Francisco—when, during a civic parade to promote military preparedness and national unity, a bomb exploded and killed ten citizens.²²⁹ Although Goldman did not create modern anarchism, she was a leading proponent of it, founded an anarchist journal, promoted birth control, and opposed conscription, which led to her conviction under the 1917 Selective Service Act.²³⁰ In comparison to Karl Marx, little has been written about the French philosopher Pierre-Joseph Proudhon, but he was one of the most, if not the most, influential thinkers on late nineteenth-century American anarchism and was considered a

SENATOR AND THE TRANSFORMATION OF AN AMERICAN RELIGION 105, 113 (Michael Harold Paulos & Konden Smith Hansen eds., 2021).

²²⁶ Burrows, *supra* note 223, at 727.

²²⁷ *Id.*

²²⁸ *Id.* at 742-43.

²²⁹ See BEVERLY GAGE, *THE DAY WALL STREET EXPLODED: A STORY OF AMERICA IN ITS FIRST AGE OF TERROR* 106-09 (2009); PETER SCHRAG, *NOT FIT FOR OUR SOCIETY: NATIVISM AND IMMIGRATION* 51-52 (2010).

²³⁰ KATHLEEN KENNEDY, *DISLOYAL MOTHERS AND SCURRILOUS CITIZENS: WOMEN AND SUBVERSION DURING WORLD WAR I*, at 39-41 (1999).

"father" of the ideology.²³¹ In addition to Goldman and Proudhon, the press considered Benjamin Tucker, Leo Tolstoy, and Michael Bakunin as leading anarchist thinkers.²³²

Ford might have gained some understanding of anarchism through the press or at least considered being called an anarchist a horrific slander because people would have equated him with anarchists' acts. Perhaps, to Ford, the most important of the media sources was the *Chicago Tribune*, and following the 1916 San Francisco bombing, it headlined "Bomb Kills Six Paraders," before insisting that anarchists were responsible.²³³ Thus, in the same month the *Tribune* called him an anarchist, it also, at least by implication, equated him with the terrorists who killed citizens. The *Tribune* was not alone in holding anarchists responsible for the bombing, and many mentioned Goldman in connection with it.²³⁴ The *Los Angeles Times* pointed out that "the perpetrators" responsible for the attack were not "foreign anarchists," but native born domestic men.²³⁵ The *New York Times* reported that Goldman had been lecturing in San Francisco the week before the parade, and, other than denying that anarchists had anything to do with the attack, she refused to speak about it.²³⁶ As far away as Anchorage, Alaska, the press blamed anarchists for the bombing and highlighted Goldman's presence near the parade.²³⁷

²³¹ PAUL AVRICH, ANARCHIST PORTRAITS 137 (1988); Jonathan Beecher, *Early European Socialism*, in THE OXFORD HANDBOOK OF THE HISTORY OF POLITICAL PHILOSOPHY 379-81 (George Klosko ed., 2011).

²³² See, e.g., *Anarchy in America: Some Citizens of Wealth and Culture Espouse its Cause*, WASH. POST, Nov. 13, 1894, at 12; *News, Views, and Gossip Fresh from Big Metropolis*, HATTIESBURG DAILY NEWS (Miss.), Apr. 19, 1908, at 6; Glenn Guernsey, *Anarchists Not All Foreigners as Proven by Benjamin Tucker*, COEUR D'ALENE EVENING PRESS (Idaho), Apr. 18, 1908, at 4.

²³³ *Bomb Kills Six Paraders: San Francisco Blast Is Laid to Anarchists*, CHI. SUNDAY TRIB., July 23, 1916, at 1.

²³⁴ *Six Are Killed, Scores Injured by Bomb Explosion*, L.A. TIMES, July 23, 1916, at 1; *Six Killed by a Bomb*, SUNDAY ST. J. (Wis.), July 23, 1916, at 2; *Emma Goldman Was There*, TOPEKA DAILY ST. J., July 24, 1916, at 10; *San Francisco Haven for Anarchists*, OAKLAND TRIB., July 30, 1916, at 29; *Rewards of \$13,000 Are Offered for Dynamiters*, NEV. ST. J., July 25, 1916, at 1.

²³⁵ *San Francisco's Opportunity*, L.A. SUNDAY TIMES, July 30, 1916, at II14.

²³⁶ *Bomb Kills Six, Injures Scores in Defense Parade*, N.Y. TIMES, July 23, 1916, at 5.

²³⁷ *Anarchists Are Believed Guilty in the Bomb Plot*, ANCHORAGE DAILY TIMES, Aug. 1, 1916, at 7.

A. Anarchism's Absence in the History Journals and Books

Between its founding in 1895 and 1916, the *AHR* published only three articles mentioning anarchism and two of these were book reviews.²³⁸ From 1882, when the *NAR* published its first article referencing anarchism, to 1916, it ran forty-seven articles touching on anarchism. However, some of the articles dealt with foreign issues such as the British maintenance of its “crown colony” India or Sinn Féin’s ideology.²³⁹ Hannis Taylor, an attorney and former minister to Spain in the Cleveland Administration, warned in an *NAR* article that if Congress failed to protect low-income workers, then anarchism would grow, without defining it.²⁴⁰ In 1885, Richard J. Hinton, a former abolitionist, Union Army colonel, and immigration commissioner, called anarchism a “latter phase of horror” in his *NAR* article titled “American Labor Organizations.”²⁴¹ Hinton argued that the government’s recognition of organized labor could help stifle anarchism without ever defining what anarchism was.²⁴² In 1901, the *NAR* published private detective agency scion, Robert A. Pinkerton’s argument that while “[t]he great majority of anarchists in this country and abroad are a sufficiently harmless body of men and women,” they were swayable, and like Czolgosz, could be turned to violence.²⁴³

Taylor, Pinkerton, and Hinton were not professional scholars, and very few scholars actually wrote on anarchism. Moreover, the

²³⁸ See Henry Charles Lea, *Ethical Values in History*, 9 AM. HIST. REV. 233, 241 (1904); James Sullivan, *A History of Medieval Political Thought, by R.W. Carlyle*, 10 AM. HIST. REV. 629-30 (1905); Archibald Cary Coolidge, *Geschichte der Russischen Revolution, by Ludwig Kulczycki and Anna Schapiro-Neurath*, 17 AM. HIST. REV. 378-79 (1912). The last two articles are book reviews.

²³⁹ See, e.g., Sydney Brooks, *India and the War*, 203 N. AM. REV. 527 (1916); T.M. Kettle, *A Note on Sinn Fein in Ireland*, 187 N. AM. REV. 46 (1908).

²⁴⁰ Hannis Taylor, *The Impending Conflict*, 183 N. AM. REV. 24, 33 (1906). Taylor later argued to the Supreme Court that the national conscription program in World War I was unconstitutional. See TENNANT S. MCWILLIAMS, HANNIS TAYLOR: THE NEW SOUTHERNER AS AMERICAN 78-80 (1978).

²⁴¹ Richard J. Hinton, *American Labor Organizations*, 140 N. AM. REV. 48 (1885).

²⁴² *Id.* at 61-62.

²⁴³ Robert A. Pinkerton, *Detective Surveillance of Anarchists*, 173 N. AM. REV. 609, 612 (1901). Pinkerton advocated for establishing a colony in the Philippines to deport anarchists, including United States citizens who believed in anarchism. *Id.* at 614. On the Pinkerton Agency’s role in the Haymarket trial, see S. PAUL O’HARA, INVENTING THE PINKERTONS: OR SPIES, SLEUTHS, MERCENARIES, AND THUGS 1-3 (2016).

few scholars who did appear little better than the amateurs in explaining anarchism. In 1894, John Bates Clark, a Columbia University economics professor, published an article in the *Publications of the American Economic Association*, in which he spent most of it discussing socialism and how that doctrine of governance altered constitutional understandings. Still, he relegated anarchism to the pithy observation that it was based on antipathy for the law.²⁴⁴ That is, he spent twenty-nine pages of the thirty-page article examining socialism and its supposed incompatibility with domestic law, but only one paragraph on anarchism.²⁴⁵ Clark, who died in 1939, became, in the estimation of his biographer, one of the first economists to reach a position of prominence in academia by the time of the libel trial.²⁴⁶

In 1910, University of Cincinnati sociology professor Ernest Talbert published "Two Modern Social Philosophies" in the *International Journal of Ethics*—in which he described anarchism as "born out of small workshop, guild, farm, Russian mir, love of communal custom, diversified, non-centralized industries, and opposition to crystallization."²⁴⁷ However, he cautioned that it was difficult to "draw a composite picture of anarchism," and one would have to consider governmental oppression in France, Germany, and Russia along with the writings of "Proudhon, Godwin, Bakunin, Reclus, Tolstoi, and Ibsen."²⁴⁸ The philosophy of anarchism was weak, Talbert argued, because it was reactionary and "lacking balance and definiteness."²⁴⁹ In 1913, University of Montana economics professor Louis Levine warned in *Political Science Quarterly* ("PSQ") that while anarchists were anti-political, they regarded the IWW as the "most promising agency for revolutionary propaganda" and shaped it into "its present

²⁴⁴ See generally John B. Clark, *The Modern Appeal to Legal Forces in Economic Life*, 9 PUBL'N AM. ECON. ASS'N 9 (1894).

²⁴⁵ See generally *id.*

²⁴⁶ JOHN F. HENRY, JOHN BATES CLARK: THE MAKING OF A NEOCLASSICAL ECONOMIST 1 (John Pheby ed., 1995).

²⁴⁷ See, e.g., Ernest L. Talbert, *Two Modern Social Philosophies*, 21 INT'L J. ETHICS 68, 70 (1910). Talbert was a psychology professor at the University of Cincinnati. See *Recent Deaths*, SCIENCE, Mar. 3, 1972, at 975.

²⁴⁸ Talbert, *supra* note 247, at 74.

²⁴⁹ *Id.* at 80.

character.”²⁵⁰ Levine might have been an ideal expert witness, but shortly before the libel trial, he was dismissed from the university after arguing that the mining corporations in the state were too lightly taxed.²⁵¹

In 1889, *PSQ* published Herbert L. Osgood’s article titled “Scientific Anarchism.”²⁵² Osgood, a faculty colleague of Dunning’s at Columbia, argued that anarchism was “the extreme antithesis of communism and socialism” and its adherents sought to “banish all forms of authority and have only a system of the most perfect liberty.”²⁵³ He analyzed Proudhon as the originator of “scientific anarchism,” who built into anarchism a denial of “the truth of every dogma.”²⁵⁴ Osgood might have also been an ideal expert witness, but he died in 1918.²⁵⁵

The *Annals of the American Academy of Political and Social Science* (“*Annals*”) had over twenty articles referencing anarchism as an ideology, although most of these were book reviews and others seem amateurish. In 1912, Charles Hollingsworth argued that the shared aims of progressivism and anarchism were the complete breakdown of constitutional government, without ever defining anarchism.²⁵⁶ Equating progressivism, a philosophy of increased government oversight, to anarchism should, perhaps, strain credibility, if not render Hollingsworth into the amateur category.²⁵⁷ In 1892, the first year of the *Annals*, E.P. Cheyney’s

²⁵⁰ Louis Levine, *The Development of Syndicalism in America*, 28 POL. SCI. Q. 451, 475 (1913).

²⁵¹ Frederick S. Deibler, *Committee on Academic Freedom: Statement on the Case of Professor Louis Levine of the University of Montana*, BULL. AM. ASS’N U. PROFESSORS, May 1919, at 13.

²⁵² Herbert L. Osgood, *Scientific Anarchism*, 4 POL. SCI. Q. 1 (1889).

²⁵³ *Id.* On Osgood, see generally DIXON RYAN FOX, HERBERT LEVI OSGOOD: AN AMERICAN SCHOLAR (1924).

²⁵⁴ Osgood, *supra* note 252, at 8. Osgood wrote, “About twelve years before Proudhon published his views, Josiah Warren reached similar conclusions in America. But as the Frenchman possessed the originality necessary to the construction of a social philosophy, we must regard him as altogether the chief authority upon scientific anarchism.” *Id.* at 9 (footnotes omitted).

²⁵⁵ E.C.O. Beatty, *Herbert Levi Osgood*, in WILLIAM T. HUTCHINSON, THE MARCUS W. JERNEGAN ESSAYS IN AMERICAN HISTORIOGRAPHY 291 (1937).

²⁵⁶ Charles M. Hollingsworth, *The So-Called Progressive Movement: Its Real Nature, Causes and Significance*, 43 ANNALS AM. ACAD. POL. & SOC. SCI. 32, 47 (1912).

²⁵⁷ For a brief note on Hollingsworth, see Jerome M. Mileur & Lonce H. Bailey, *Laboratories of Reform: Wisconsin and Oregon*, in IN DEFENSE OF THE FOUNDERS

article "A Third Revolution" referenced anarchism but only for the proposition that anarchism presaged revolution.²⁵⁸ In April 1917, the Bureau of Education listed Cheyney alongside Dunning as an important scholar to learn about United States history and noted that he would have been an acceptable expert witness.²⁵⁹ In 1901, Professor Frank Julian Warne, in his *Annals* article, lamented that employers and the public alike did not know the difference between trade unionism, socialism, and anarchism and that the acceptance of trade unionism by corporations and the government would blunt socialism and anarchism.²⁶⁰

One of Dunning's former graduate students, Paul Haworth, could have qualified as an expert since he studied more recent political, economic, and social changes.²⁶¹ In his 1915 book, *America in Ferment*, Haworth observed that "[m]any persons who are well informed on most other matters continue to confuse [socialism] with communism, anarchism, and various other 'isms,'" before describing anarchism's origins and tenets.²⁶² He argued that the rise of anarchism complicated reform as well as socialism because of "its gospel of revolution and ridicule of reform measures" and that "[g]enuine [s]ocialism had nothing in common [with anarchism]."²⁶³ Moreover, he insisted that reform and socialist leaders "vigorously opposed the anarchistic propaganda" and intimated that neither progressive reformers nor socialists would commit terroristic acts.²⁶⁴ Finally, *America in Ferment* was one of the twenty-three books the Bureau of Education listed in

REPUBLIC: CRITICS OF DIRECT DEMOCRACY IN THE PROGRESSIVE ERA 199-203 (Lonce H. Bailey & Jerome M. Mileur eds., 2015).

²⁵⁸ E. P. Cheyney, *A Third Revolution*, 2 ANNALS AM. ACAD. POL. & SOC. SCI. 40, 45 (1892).

²⁵⁹ *American History Course*, LARAMIE REPUBLICAN (Wyo.), Apr. 3, 1917, at 7.

²⁶⁰ See generally Frank Julian Warne, *The Trade Agreement in the Coal Industry*, 36 ANNALS AM. ACAD. POL. & SOC. SCI. 86 (1910).

²⁶¹ J. Vincent Lowery, *Paul Leland Haworth: The "Black Republican" in the Old Chief's Court*, in THE DUNNING SCHOOL, *supra* note 195, at 203. Lowery observed that "Haworth's scholarship became increasingly focused on recent history, and he distinguished himself as a Progressive historian with the publication of *America in Ferment*." *Id.* at 204.

²⁶² PAUL LELAND HAWORTH, *AMERICA IN FERMENT* 413 (1915).

²⁶³ *Id.* at 428-29.

²⁶⁴ *Id.* at 429.

1917, which at least implicitly meant the government recognized him as an expert.²⁶⁵

University of California history professor Jessica Peixotto, one of the few women to earn a Ph.D. at this time, taught a class on anarchism and socialism. She might have been one of the leading expert historians in this field but does not appear to have been considered by either litigant's attorneys.²⁶⁶ Her doctoral thesis was a study of French revolutionary ideologies, and she published on Proudhon's influence.²⁶⁷ Not only had she been promoted to full professor by the time of the trial but also she assisted the nation's war efforts.²⁶⁸ In contrast, Dunning was, of the three historian experts to testify in *Ford v. Chicago Tribune*, the only professor who wrote on anarchism, but he did so in 1894 in *PSQ*, a quarter-century before the trial.²⁶⁹ His article, moreover, was not dedicated solely to anarchism; rather, it covered political matters ranging from foreign relations with China, the status of Samoa, President Grover Cleveland's recognition of the Republic of Hawaii, tariffs, and domestic labor strikes.²⁷⁰ In regard to the last category, Dunning credited Cleveland with using the army to protect the nation's mails, evidencing his support of the use of federal power.²⁷¹ He recognized that the governor of Illinois argued that Cleveland's use of the army was unconstitutional, but he reasoned that because the United States Attorney General examined the use of the army in light of the Civil War legal experience and Congress did not condemn Cleveland, the governor's claims were in error.²⁷² In terms of anarchism, Dunning only examined the political

²⁶⁵ *From the Educational Field: American History Reading Course*, in 10 AMERICAN SCHOOLMASTER 135 (1917).

²⁶⁶ *See Announces Courses for Next Term*, S.F. CALL, July 17, 1906, at 4.

²⁶⁷ *See generally* JESSICA BLANCHE PEIXOTTO, *THE FRENCH REVOLUTION AND MODERN FRENCH SOCIALISM* (1901).

²⁶⁸ Nancy Folbre, *The "Sphere of Women" in Early-Twentieth-Century Economics*, in *GENDER AND AMERICAN SOCIAL SCIENCE: THE FORMATIVE YEARS* 35, 43 (Helene Silverberg ed., 1998); JEANNE E. ABRAMS, *JEWISH WOMEN PIONEERING THE FRONTIER TRAIL: A HISTORY IN THE AMERICAN WEST* 181 (2006).

²⁶⁹ "Wm." (William) A. Dunning, *Record of Political Events*, 9 POL. SCI. Q. 762 (1894).

²⁷⁰ *Id.* at 762-69.

²⁷¹ *Id.*

²⁷² *Id.* at 762-70.

philosophy as it was employed in France when anarchists assassinated France’s president, Sadi Carnot, earlier that year.²⁷³

B. Anarchism by “The Deed” and Popular Press Notions

If history and political science scholars thinly analyzed anarchism, it was likely that the public was educated by the popular press and amateur writers. After McKinley’s assassination, some newspapers, such as the *Rocky Mountain News*—Colorado’s largest newspaper—pinned the rise of anarchism on Prince Kropotkin, a Russian theorist, as well as the American author Henry Thoreau.²⁷⁴ In a refrain still argued today, the newspaper blamed Kropotkin’s and Thoreau’s popularity on New England elites.²⁷⁵ Invariably, some of the public’s “information” on anarchism came out of the earlier Haymarket Massacre.²⁷⁶ On May 4, 1884, the Chicago Police attempted to intervene in an anarchist meeting during a massive labor strike.²⁷⁷ Someone threw a bomb into the ranks of the police, killing five, and in response, the police opened fire into the crowd. Two more policemen and three civilians were killed. Several suspects—including leaders and speakers of the anarchist movement—were arrested, charged, and convicted for murder.²⁷⁸ In 1887, the Court issued *Spies v. Illinois*, in which the justices denied an application for *certiorari* from August Spies and other prisoners who were prosecuted and sentenced to death in an Illinois court for their alleged role in the Haymarket massacre and appealed that they did not receive a fair trial.²⁷⁹

²⁷³ *Id.* at 772-73.

²⁷⁴ *The Anarchist Problem*, ROCKY MOUNTAIN NEWS, Sep. 26, 1901, at 11. On the *Rocky Mountain News*, see KEN J. WARD, LAST PAPER STANDING: A CENTURY OF COMPETITION BETWEEN THE DENVER POST AND THE ROCKY MOUNTAIN NEWS 23-25 (2023).

²⁷⁵ *Id.* As late as 1911, Thoreau was accused of promoting anarchism. See, e.g., “Anarchism and Other Essays,” S.F. CALL, Mar. 26, 1911, at 7.

²⁷⁶ See, e.g., JEFFORY A. CLYMER, AMERICA’S CULTURE OF TERRORISM: VIOLENCE, CAPITALISM, AND THE WRITTEN WORD 44-45 (2003).

²⁷⁷ TIMOTHY MESSER-KRUSE, THE HAYMARKET CONSPIRACY: TRANSATLANTIC ANARCHIST NETWORKS 3-5 (2012).

²⁷⁸ *Id.*; see also Everett Carter, *The Haymarket Affair in Literature*, 2 AM. Q. 270, 271-72 (1950).

²⁷⁹ PAUL AVRICH, THE HAYMARKET TRAGEDY 260-65 (1984).

Shortly after Haymarket, Michael J. Schaak, a Chicago police captain, published a 688-page tome titled *Anarchy and Anarchists: A History of the Red Terror and Social Revolution in America and Europe*.²⁸⁰ Objectively, Schaak is suspect for many reasons including that he dedicated his book to Judge Joseph J. Gary, who presided over Spies' trial, and Judge Julius Grinnell, who was the lead prosecutor earlier in that trial.²⁸¹ Schaak assured his readers that anarchism was a foreign-made political philosophy that owed its beginning to Germany and its expansion across the globe to Britain.²⁸²

England is really responsible for much of the present strength of the conspiracy against all governments, for it was in the secure asylum of London that speculative Anarchy was thought out by German exiles for German use, and from London that the "red Internationale" was and probably is directed. This was the result of political scheming, for the fomenting of discontent on the continent has always been one of the weapons in the British armory.²⁸³

To the extent Schaak credited Proudhon, he merely gave a brief biography of his birth and highlighted that "[h]is great work, 'What is Property?'" was "epoch-making work that the whole school of modern Anarchy, in any of its departments, may be traced."²⁸⁴

In contrast to Schaak's conflation of Marxism and anarchism, Professor Timothy Messer-Kruse, who authored a recent work on the Haymarket massacre, noted that at the time the Haymarket Massacre occurred, *Frank Leslie's Popular Monthly* was one of the more popular magazines, and it explained that there were, in fact, four "Socialistic Movements in England and the United States."²⁸⁵ *Frank Leslie's*, according to another historian, was directed "to the upwardly mobile middle class" which was "growing more and more polarized [on] important issues of the day such as poverty,

²⁸⁰ See generally MICHAEL J. SCHAAK, *ANARCHY AND ANARCHISTS: A HISTORY OF THE RED TERROR AND THE SOCIAL REVOLUTION IN AMERICA AND EUROPE* (1889).

²⁸¹ *Id.* at 3.

²⁸² *Id.* at 8-19.

²⁸³ *Id.*

²⁸⁴ *Id.* at 21-22.

²⁸⁵ MESSER-KRUSE, *supra* note 277, at 2-3.

immigration, race, class, labor, and women’s rights.”²⁸⁶ The anonymous author of the anarchism article explained that four socialist branches were Marxism, Christian Aesthetic, and Anarchic.²⁸⁷ It was the anarchic branch, according to the anonymous author, that rejected peaceful argument and the reform of laws and institutions for incendiary violence.²⁸⁸ Thus, from two popular sources, albeit thirty years predating the *Tribune*’s editorial, the public was informed to view Ford as a danger for expressing Anarchist sentiments.

C. Anarchism by Judicial Definition

In examining anarchism in 1914, the New Jersey Supreme Court, in *State v. Scott*, observed, “[t]he vice of anarchy is not so much in the belief of a state or condition of society where there is no law or supreme power, but rather in the promotion and encouragement of disobedience to and contempt of existing laws.”²⁸⁹ In one sense, Ford’s case was hampered by the judiciary because the legal definition of anarchism had become broadened beyond assassins and bomb-makers to those who espoused the philosophical tenets of anarchism. That is, federal laws were written so that a person who conveyed anarchism as a philosophy was as dangerous as an anarchist who committed violent acts in furtherance of their beliefs. In 1905, the Court’s nine justices unanimously upheld the federal government’s authority to prevent immigrants from entering the United States on the basis of political ideology in *United States ex rel. John Turner v. Williams*.²⁹⁰ The justices agreed that under international law, a government has the authority to exclude foreign persons from its territory under the principle of self-preservation.²⁹¹ The justices then relied on two definitions of anarchism contained in the Century Dictionary, which included the advocacy of the philosophy of an absence or “insufficiency” of government or an

²⁸⁶ JEREMY AGNEW, SENSATIONAL NEWS: THE RISE OF LURID JOURNALISM IN AMERICA, 1830-1930, at 170 (2024).

²⁸⁷ MESSER-KRUSE, *supra* note 277, at 6.

²⁸⁸ *Id.*

²⁸⁹ *State v. Scott*, 86 N.J.L. 133, 139 (N.J. 1914).

²⁹⁰ *United States ex rel. Turner v. Williams*, 194 U.S. 279, 292 (1904).

²⁹¹ *Id.* at 290.

adherent of Proudhon.²⁹² A recent historical analysis of *Williams* noted that the Court upheld the legality of deportation on the basis of ideology alone and “even the formidable trial lawyer Clarence Darrow, who represented Turner, was unable to persuade the Court otherwise.”²⁹³

Other courts had broadly defined anarchism as a matter of law as well. The United States Court of Appeals for the Second Circuit agreed with the government that a philosophical anarchist still remained a danger to the nation because “[h]is theories, if they could be put in practice, would end the government of the United States.”²⁹⁴ In 1919, Judge John Hazel on the United States District Court for the Western District of New York sided with the government in *United States v. Stuppiello* that there was, for the purpose of determining citizenship, no difference between an actual anarchist and a philosophical anarchist.²⁹⁵ As the *Syracuse Daily Herald* reported, Michael Stuppiello immigrated to the United States from Italy in 1900, applied for citizenship in 1909, and was naturalized in 1915.²⁹⁶ In 1909, he disclaimed any affinity for anarchism, but in 1918, after he was arrested, he admitted to being an anarchist but did not believe in the use of violence to overthrow the government.²⁹⁷ His stated philosophical beliefs were enough to uphold the cancellation of his citizenship and his deportation to Italy.²⁹⁸

One year before Judge Hazel determined that a belief in anarchism alone was a basis for losing citizenship, Judge Charles Wolverton on the United States District Court for the District of Oregon issued a similar ruling in *United States v. Swelgin*.²⁹⁹ Carl Swelgin, a German immigrant, applied for citizenship in 1913 and

²⁹² *Id.* at 292-93.

²⁹³ LEN NIEHOFF & E. THOMAS SULLIVAN, FREE SPEECH: FROM CORE VALUES TO CURRENT DEBATES 57 (2002); *see also* David M. Rabban, *The Free Speech League, the ACLU, and Changing Conceptions of Free Speech in American History*, 45 STAN. L. REV. 47, 89-90 (1992).

²⁹⁴ *Lopez v. Howe*, 259 F. 401, 404 (2d Cir. 1919).

²⁹⁵ *United States v. Stuppiello*, 260 F. 483 (W.D.N.Y. 1919).

²⁹⁶ *Id.*; *see also Anarchist Is Deprived of Citizenship*, SYRACUSE HERALD, Sep. 15, 1919, at 4.

²⁹⁷ *See generally Stuppiello*, 260 F. 483.

²⁹⁸ *Id.*

²⁹⁹ *United States v. Swelgin*, 254 F. 884, 889 (D. Or. 1918).

disclaimed any allegiance to anarchism.³⁰⁰ As in Stuppiello’s case, the public was informed of what defined anarchism and its dangers from the court and the press, but this time from the *Portland Oregonian*.³⁰¹ Swelgin was arrested in a police sting, and it was discovered that he was an IWW member, but he insisted he did not subscribe to violent action or take part in any actions to overthrow the government.³⁰² IWW members, Wolverton declared, were anarchistic and disloyal to the United States, concluding “they do not intend to submit themselves to [the] Constitution, laws, rules, and regulations, nor to defend [the nation] in time of insurrection, or against an aggression from abroad, or when it is at war with other nations.”³⁰³

IV. EXPERT TESTIMONY AT TRIAL

Judge James G. Tucker presided over the trial in Mount Clemens, which began on May 12, 1919 and lasted until August 14, 1919.³⁰⁴ Born in 1855 in Mount Clemens, Tucker grew up in a legal family as his mother had served as a justice of the peace.³⁰⁵ He was a primary school teacher and a city clerk before being admitted to the bar in 1880.³⁰⁶ In 1888, Macomb County’s voters elected him as district attorney, and in 1899, he was elected to a judgeship, all without a formal college education.³⁰⁷ In 1912, he briefly gained national attention; he presided over the trial of several Detroit political leaders who were charged with corruption.³⁰⁸ Tucker, like Lucking, Murphy, and Stevenson, was an active Democratic Party member, and he spoke at the Party’s state convention in favor of Woodrow Wilson becoming the

³⁰⁰ *Id.* at 884-85.

³⁰¹ *IWW Organizer Loses Citizenship*, PORTLAND OREGONIAN, May 23, 1918, at 1.

³⁰² *Id.*

³⁰³ *Swelgin*, 254 F. at 889.

³⁰⁴ Philip Kinsley, *Begin Case of Ford Against ‘The Tribune,’* CHI. TRIB., May 13, 1919, at 1; *Counsel Clash in Big Opening of Libel Suit*, ESCANABA DAILY PRESS, May 13, 1919, at 1.

³⁰⁵ ROBERT F. ELDREDGE, PAST AND PRESENT OF MACOMB COUNTY, MICHIGAN 540 (1905).

³⁰⁶ *Id.* at 540-41.

³⁰⁷ *Id.* at 541.

³⁰⁸ *Aldermanic Graft Cases To Be Tried in Mt. Clemens*, DET. EVENING TIMES, Nov. 30, 1912, at 6; *Detroit Graft Scandal Is More Sensational*, MOBILE (AL) ITEM, August 9, 1912, at 40; *Aldermen Attack Him*, BALT. SUN, Aug. 14, 1912, at 2.

nominee.³⁰⁹ “I am supporting Governor Wilson because I believe he is the strongest man the Democrats can get for the office of President,” Tucker argued. “I regard him as a better man for the place than Harmon because I believe he will be better able to control the radical element in the party.”³¹⁰ A year after the libel trial, Tucker was incapacitated as a result of illness and never resumed the bench.³¹¹

Michigan’s libel law was well-settled by 1919. In 1893, the Michigan Supreme Court, in *Long v. Tribune Printing Co.*, held that a newspaper was liable for libel even when the negligence of a newspaper’s employees resulted in an injury to the feelings of the defendant.³¹² That is, even if there were rumors that justified a suspicion of wrongdoing, without the actual proof of wrongdoing, a newspaper could be held liable for its reporting untruths about a person.³¹³ This was true when a story was published in the ordinary course of business, where an editor examined it for accuracy.³¹⁴ In other words, a newspaper could not rely on an ordinary course of business defense when it published a falsehood about a person.³¹⁵ The question of whether the *Tribune* libeled Ford by using the term “anarchist” would hinge on what the term itself meant, and this is why the expert historians were called to testify by both parties. Under direct examination and cross-examination, they were challenged to place Ford’s words into a category of anarchism or other ideologies—including pacifism, Christian tenets, contemporary literature, and even President Wilson’s public statements.

A. Experts by Analogy

Unlike a medical doctor or a handwriting expert, Reeves and Dunning were called to testify about ideas, and, in doing so, they

³⁰⁹ *Judge Tucker Is Out Strong for Wilson*, DET. TIMES, Sep. 26, 1911, at 1.

³¹⁰ HESTER ELOISE HOSFORD, WOODROW WILSON AND NEW JERSEY MADE OVER 145-46 (1912).

³¹¹ *Michigan Happenings*, YALE EXPOSITOR, Dec. 28, 1922, at 2.

³¹² *Long v. Trib. Printing Co.*, 65 N.W. 108, 112 (Mich. 1895).

³¹³ *Id.* at 111-12; *see also* *Bronson v. Bruce*, 26 N.W. 671, 675 (Mich. 1886) (holding that a newspaper, which alleges a candidate for office committed a crime, is not immune from libel).

³¹⁴ *See* *Owen v. Dewey*, 65 N.W. 8, 9 (Mich. 1895).

³¹⁵ *Long*, 65 N.W. at 112.

represented a historic “first.” Tucker would have either had to accept them as experts based on their professional position and reputation, as well as their scholarly work, or prevent their testimony on the basis that the jurors were competent to determine the scope of anarchism. Experts in religious history and church writings had testified in the past as to the origin of a denomination, the duties of church personnel, and the meaning of church documents, but these experts were religious leaders and not historians.³¹⁶ There is a fundamental difference, moreover, between an expert testifying as to a denominational belief which contains mandates for a wholesome or godly life and a political ideology as diffuse as anarchism.³¹⁷ Given the lack of scholarly writing and the broad media definitions of anarchism, the testimony of experts was likely helpful to both parties having their position explained to the jury.³¹⁸

There is an important context as to their expert status. What it meant to be an expert in 1919 and what it means to be an expert in the present time are not perfectly aligned. In 1923, the United States Court of Appeals for the District of Columbia issued *Frye v. United States* and mandated that an expert’s methodology had to be accepted within the relevant scientific community, and this standard was already in use in Michigan.³¹⁹ In contrast, today, most courts operate under the more permissive *Daubert* standard, which the Court stretched to non-scientific and non-technical matters in *Kumho Tire v. Carmichael* in 1999.³²⁰ That is, an expert needs only to employ a sound methodology, and there

³¹⁶ See, e.g., *Gudmundson v. Thingvalla Lutheran Church*, 150 N.W. 750, 756, 761 (N.D. 1914) (a reverend qualified as an expert to testify as to the relationship of the Icelandic Synod to the Church of Iceland); *Mady v. Holy Trinity Roman Cath. Polish Church*, 111 N.E. 413, 415 (Mass. 1916) (the polity of the Catholic Church was not the common knowledge, and therefore, an expert should have been permitted to testify); *Lehnhoff v. Theine*, 83 S.W. 469, 470 (Mo. 1904) (theological experts translating a German language will document into English).

³¹⁷ See, e.g., Manfred B. Steger, *Political Ideologies in the Age of Globalization*, in MICHAEL FREEDEN, *THE OXFORD HANDBOOK OF POLITICAL IDEOLOGIES* 214, 225 (2013).

³¹⁸ *Cyrowski v. Polish-Am. Pub. Co.*, 163 N.W. 58, 61 (Mich. 1917) (expert helpful to testify as to plaintiff’s mental anguish caused by libel as to his standing in the Polish immigrant community).

³¹⁹ *Frye v. United States*, 293 F. 1013, 1014 (D.C. Cir. 1923).

³²⁰ *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 147-49 (1999).

may be multiple competing methodologies.³²¹ Thus, Dunning's and Reeves's admissibility was governed under a stringent standard.

Perhaps, because of the advent of "scientific history," *Frye* could have opened the door to historians as experts. In 1916, the Michigan Supreme Court held, in *People v. Kimbrough*, that trial judges were vested with the discretion to determine qualifications for expert testimony.³²² Almost four decades earlier, the state's highest court held that the trial judge "must decide within the limits of a fair discretion whether the experience of the supposed expert had been such as to make his opinions of any value."³²³ Because the two scholars attained their doctorates in an era where it was rare to achieve this degree, and they researched and published in relevant fields, they were experts under the legal construct at the time.³²⁴ In Dunning's case, it could be argued that the federal government had already accorded him a *de facto* expert status by listing him on the Bureau of Education's 1917 reading list.

B. Professor Reeves in the Tribune's Defense:

On June 20, 1919, Professor Jesse Siddall Reeves began his testimony explaining that he had examined Ford's public comments, as well as his advertisements and pamphlets, against military preparedness.³²⁵ The 1915 Edward Marshall article was central to Reeves' interpretation of Ford's comments; but before he was able to compare Ford's words to anarchist ideology, he had to first be admitted as an expert, and Ford's attorneys contested this.³²⁶ Newspapers covering the trial glossed over their objection, however. For instance, the *Sandusky (Ohio) Star-Journal* reported that Lucking unsuccessfully objected to Reeves testifying as an expert and then stated "Professor Jesse N. Reeves, teacher of political economy at the University of Michigan and reputed as an

³²¹ *Id.* at 149-50.

³²² *People v. Kimbrough*, 159 N.W. 533, 535 (Mich. 1916).

³²³ *McEwen v. Bigelow*, 40 Mich. 215, 217 (1879).

³²⁴ RICHARD J. EVANS, IN DEFENCE OF HISTORY 56 (1997).

³²⁵ Philip Kinsley, *Philosophy of Ford Linked to Anarchist Lore*, CHI. TRIB., June 21, 1919, at 5.

³²⁶ *Henry Ford's Talk Is Just Like Anarchist's*, ATHENS MESSENGER (Ohio), June 21, 1919, at 6.

expert on socialism, anarchism, bolshevism and other radical doctrines, was asked if certain remarks made by Ford did not show the plaintiff had anarchistic beliefs."³²⁷ The *New York Evening World* similarly reported Reeves' testimony and placed the article on the trial next to an article headlined "Many Cities Prepared to Cope with Radicals."³²⁸ The *Oakland Tribune* and the *Dubuque-Times Journal*, on their June 20, 1919 frontpages, respectively headlined "Ford Jury is Given Course in Anarchism" and "Anarchism Topic In Ford-Trib Libel Case."³²⁹

The *Chicago Tribune* pointed out that Ford's attorneys unsuccessfully objected to Reeves testifying and that Reeves then examined Marshall's article, which he noted had appeared in many newspapers.³³⁰ In Marshall's article, Ford blamed the war in Europe as well as the rise of militarism in the United States on "[t]he men in authority [who] wanted more authority."³³¹ Thus, both wars—the world war as well as the looming conflict with Mexico—originated on nothing more than the increase of power to the few men in control of governments, but, Ford argued, it could have been stopped by a change of emphasis on the lives of common people. "To my mind, the trouble with the nations of this earth is that they spend less money in getting ready to help people than they spend in getting ready to kill people," Ford claimed once more before decrying "Wall Street's" power.³³² Marshall also highlighted that Ford opposed military intervention in Mexico.³³³ Ford's other comments that Marshall printed included that war profiteers—"Money lenders"—and militarists benefitted from the war and

³²⁷ *Says Ford Talked Like Anarchists*, SANDUSKY STAR J. (Ohio), June 20, 1919, at 12.

³²⁸ *Professor Calls Ford Quotations Like Anarchists*, EVENING WORLD (N.Y.), June 20, 1919, at 9.

³²⁹ Harry Reutlinger, *Ford Jury Is Given Course in Anarchism*, OAKLAND TRIB., June 20, 1919, at 1; *Anarchism Topic in Ford-Trib Libel Case*, DUBUQUE TIMES J., June 20, 1919, at 1.

³³⁰ Kinsley, *supra* note 325, at 5 (citing Edward Marshall, "Commercialism Made this War": Henry Ford Argues for Peace Abroad, and Says That Business Men Not Soldiers, Should Be Sent to Mexico, N.Y. TIMES, Apr. 11, 1915, at 14).

³³¹ Marshall, *supra* note 330, at 14; see Edward Marshall, "Commercialism Made War"—Henry Ford, BOS. SUNDAY POST, Apr. 11, 1915, at 50.

³³² Marshall, *supra* note 330, at 14; see Edward Marshall, *Commercialism Made War Says Henry Ford*, INDIANAPOLIS STAR, Apr. 11, 1915, at 69.

³³³ Marshall, *supra* note 330, at 14.

that only the Japanese and Russians were without blame.³³⁴ Additionally, Ford spoke in support of men who avoided military service when called to do so.³³⁵

Reeves' testimony on direct was covered across the nation.³³⁶ The *Arizona Republican* wrote that he "testified that many of Mr. Ford's utterances as quoted in a magazine article by Edward Marshall expressed the same beliefs as witnesses had seen in the writing of well-recognized anarchists."³³⁷ The *Republican* claimed Reeves convincingly compared Ford to Bakunin, Proudhon, Tolstoy and Godwin.³³⁸ The *Atlanta Constitution*, on its front page, reported on Reeves's testimony under the headline "That Utterance Charged to Henry Ford—Prof Reeves, of Michigan University, Asserts Ford Expressed Same Beliefs as Leading Anarchists."³³⁹ The *Constitution* reported that Reeves compared Ford's statements to those of Proudhon, Godwin, Tucker, and Tolstoy.³⁴⁰ Reeves, the newspaper explained, highlighted Ford's claim that "the word murderer should be embroidered in red letters across the breast of every soldier" was an anarchist expression.³⁴¹ The *El Paso Morning Times* placed a similar article on its front page.³⁴² Not all of the newspapers printed similar headlines, and on June 21, as an illustration, the Montgomery, Alabama *Advertiser's* headline, read "Ford's Libel Suit Wanders into Many and Devious Lanes," but below the headline, the

³³⁴ *Id.*

³³⁵ *Id.*

³³⁶ See *Witness Quotes Sayings to Show Ford Anarchist*, OMAHA DAILY BEE, June 21, 1919 at 1; *Ford Not Alone in His Theories*, DAILY BANNER, June 30, 1919, at 4; *Witness Says Ford's Views Were Similar to Those of Anarchy: Professor of Political Science at University of Michigan on Stand*, RICHMOND TIMES-DISPATCH, June 21, 1919, at 1; *Professor Tells Ford Jurors What Anarchism Means*, LAKE CNTY. TIMES (Ind.), June 21, 1919, at 8.

³³⁷ *Quotes Ford's Own Sayings to Prove Him an Anarchist*, ARIZ. REPUBLICAN, June 21, 1919, at 1.

³³⁸ *Id.*

³³⁹ *Brand Murderer Across Breast of Every Soldier*, ATLANTA CONST., June 21, 1919, at 1.

³⁴⁰ *Id.*

³⁴¹ *Id.*

³⁴² *Ford Utterances Like Anarchist's Says Professor*, EL PASO MORNING TIMES, June 21, 1919, at 1.

reporting on Reeves’ testimony was similar.³⁴³ According to the *Advertiser*, Reeves read Marshall’s article and then compared it to the doctrines of anarchists.³⁴⁴ Whether the *Advertiser* meant to link Ford with the radicals threatening cities cannot be known, but in several cities, there were uprisings against the government and businesses in 1919.³⁴⁵

Reeves was not cross-examined until June 24, 1919. When it occurred, the *New York Tribune* printed “the entire examination was a verbal duel, the university man telling without a moment’s hesitation the random history of men named at random and sometimes anticipating the expression which the questioner intended to use.”³⁴⁶ Lucking, according to the newspaper, quoted from the Bible, Ralph Waldo Emerson, and President Wilson to try to draw a similarity to Ford’s statements.³⁴⁷ The *Washington Evening Star* reported that Reeves distinguished Ford’s statements from Emerson, who he called “a transcendentalist idealist,” as well as from Lyman Abbott, a Congregational Church theologian—pointing out that while Abbott was a pacifist, he also supported preparedness.³⁴⁸ The *Muskogee (Oklahoma) Times Democrat* and the *La Crosse Tribune and Leader* reported that Reeves agreed on the likeness of Emerson’s statements and biblical passages to Ford’s comments, but he insisted that, when placed in context, Ford’s opposition to the military and government was mirrored in anarchist ideology.³⁴⁹ The *Richmond*

³⁴³ *Ford’s Libel Suit Wanders into Many and Devious Lanes*, MONTGOMERY ADVERTISER (Ala.), June 21, 1919, at 9.

³⁴⁴ *Id.*

³⁴⁵ See, e.g., DAVID F. KRUGLER, 1919, THE YEAR OF RACIAL VIOLENCE: HOW AFRICAN AMERICANS FOUGHT BACK 2-12 (2015) (describing white violence against African Americans); CAL WINSLOW, RADICAL SEATTLE: THE GENERAL STRIKE OF 1919, at 24-26 (2020).

³⁴⁶ *Attorney in Libel Case in Verbal Joust with Pedagogue; Wife of Soldier Recites Rebuff at Plant*, N.Y. TRIB., June 25, 1919, at 13.

³⁴⁷ *Id.*; see also *Anti-Ford Witness Placed Under Fire*, WASH. STAR, June 24, 1919, at 3; *Recall Expert in Ford Trial: Prof J.S. Reeves of University of Michigan on Stand Again at Mt. Clemens*, ELKHART REV. (Ind.), June 24, 1919, at 6.

³⁴⁸ *Anti-Ford Witness Placed Under Fire*, WASH. STAR, June 24, 1919, at 3.

³⁴⁹ *What Is an Anarchist? Is Basis of Testimony in Ford Libel Lawsuit*, MUSKOGEE TIMES DEMOCRAT (Okla.), June 24, 1919, at 8; *Reporters Testify in Ford Suit*, DECATUR REV. (Ill.), June 24, 1919, at 1; *University of Michigan Instructor is Recalled: Reeves Claims for Utterances Similar to Anarchist Sayings*, LA CROSSE TRIB. & LEADER-PRESS (Wis.), June 25, 1919, at 8.

Palladium reported that, “Lucking attempted to show that Mr. Ford on the subject of internationalism had not used any language stronger than President Wilson had in a recent Paris speech,” but Reeves replied that, unlike Ford, the President had not called for “the abolition of nations.”³⁵⁰ The *Palladium* credited Reeves with refuting Lucking’s proposition on Ford and Christianity as well, concluding that he “held tenaciously to his line that, while the general dream of great men and common men that some time at the dawn of universal peace would come was not anarchistic, Ford’s particular attacks upon the flag and the government and preparedness for war in 1916 was an anarchistic act.”³⁵¹ In the end, Reeves was unyielding in his opinion that Ford’s statements mirrored anarchist ideology. But he still never directly called Ford an anarchist, and, as Rice University history professor Thomas Haskell, one of Professor Novick’s critics, once argued, “objectivity is not neutrality”—meaning one can remain objective but take sides.³⁵² Reeves’ opinions on his role in the trial are sparse in his personal papers that are now housed at the University of Michigan’s Bentley Historical Library.

In a singular folder containing several newspaper clippings, there is a letter to his friend R.P. Lane after Lane sent him the clippings.³⁵³ Reeves responded with his thoughts on his role in the trial to Lane: “I had great fun in the cross-examination when Mr. Lucking tried to run all over the range of Christian and other writings of the past twenty-five centuries,” Reeves began. “Unfortunately, Mr. Lucking is neither very well read nor active mentally and certainly he knows as little on the subject of anarchism as a freshman in college.”³⁵⁴ Notably, there is an absence of any comment in the letter as to what Reeves thought of

³⁵⁰ *Reeves Holds Ford Ideas Are Based on Anarchist Teaching*, RICHMOND PALLADIUM & SUN-TELEGRAM (Ind.), June 25, 1919, at 3.

³⁵¹ *Id.*

³⁵² THOMAS L. HASKELL, OBJECTIVITY IS NOT NEUTRALITY: EXPLANATORY SCHEMES IN HISTORY 146-47 (1998).

³⁵³ Letter from R.P. Lane to Jesse Reeves, Letter (June 25, 1919) (on file with the University of Michigan Bentley Historical Library). The letter reads, “Dear Professor Reeves. Here are a few clippings on your cross examination. They are brief and don’t indicate that Lucking et al led you up a tree. I said this, your second legal tilt with the Luckings father and son.” *Id.*

³⁵⁴ *Id.* Reeves added, “furthermore he is too old to learn anything on short notice.”

Dunning or Coker, or for that matter, how he might have maintained objectivity; instead, he concluded “all in all, I had a very pleasant and agreeable time.”³⁵⁵

C. Professor Dunning in Support of Henry Ford

On July 29, 1919, Dunning began his testimony, insisting that Ford’s statements were commonplace and did not exclusively reflect anarchism.³⁵⁶ The next day, the *New York Times*, *Chicago Tribune*, *Atlanta Constitution*, *Philadelphia Inquirer*, and *El Paso Herald* reported on Dunning’s testimony.³⁵⁷ Dunning, the *Constitution* pointed out, did not refute Reeves’ interpretations, but rather, conceded that Ford’s remarks on conscription and peace were also “expressive of sentiments held also by a great variety of non-anarchistic philosophers, including the ancient Greeks.”³⁵⁸ The *Inquirer*, under the headline *Ford Talked Like Plato, Says Expert*, likewise reported that Dunning insisted Ford had not made any statements that were specific to anarchism.³⁵⁹ While Dunning agreed with Reeves that some of Ford’s statements could be found in the sayings of anarchists, these same statements were commonplace and had originated with people such as Samuel Johnson, who Dunning claimed had commented in support of the American Revolution.³⁶⁰ There was, according to the *Lincoln Daily Star*, some excitement to Dunning’s testimony when Stevenson interrupted Lucking’s direct questions insisting that Ford, like many anarchists, was illiterate.³⁶¹ Importantly

³⁵⁵ *Id.*

³⁵⁶ *Ford’s Utterances Analyzed in Court*, N.Y. TIMES, July 30, 1919, at 15.

³⁵⁷ *Id.*; *Ford Jury Given Further Views as to Anarchy: Columbia University Professor on Stand Most of the Day*, CHI. TRIB., July 30, 1919, at 10; *Ford No Anarchist, Says Prof. Dunning*, ATL. CONST., July 30, 1919, at 9; *Attorney Starts Row as He Avers Ford Can’t Read*, EL PASO HERALD, July 30, 1919, at 10.

³⁵⁸ *See Ford No Anarchist, Says Prof. Dunning*, ATL. CONST., July 30, 1919; *see also* D. Novak, *The Place of Anarchism in the History of Political Thought*, 20 REV. POL. 307, 313 (1958) (“Several of the schools of thought in ancient Greece in the sixth, fifth and fourth centuries B.C., in dealing with the problems of man in society, started from premises, or reached conclusions, which show an anarchist tinge.”).

³⁵⁹ *Ford Talked Like Plato, Says Expert*, PHILA. INQUIRER, July 30, 1919, at 2.

³⁶⁰ *Id.*

³⁶¹ *College Teacher Takes Stand at Ford Libel Suit*, LINCOLN STAR, July 30, 1919, at 1. This was a correct reflection of what occurred according to the trial transcript. *See* Trial Tr. at 7361.

though, the *Star* noted that Dunning explained that anarchism did not exist as a single school of thought and it could be divided into an individualist ideology and anarchists who were aligned with communism.³⁶² The individualist sought to benefit mankind through violent acts, Dunning noted, but the sayings attributed to these adherents were also common to Christianity.³⁶³

The *New York Sun* reported that Dunning was adamant at the beginning of his testimony that Ford's statements were more akin to Socrates than to the tenets of anarchism.³⁶⁴ "Anarchism is a theory that society should exist without government and without law; that there should be no control by one human over another human," Dunning informed the jury before adding that an anarchist was a person who sought to bring about this theory "and the abolition of government by violent means."³⁶⁵ In regards to Ford's statement "people should not speak about their city, state, or country being paramount but rather of being a citizen of the world," Dunning interpreted it to be similar to the Greek philosopher Diogenes.³⁶⁶ He conceded that while one or more of the earlier "scientific anarchists" might have referred to world citizenship, the idea was far too "cosmopolitan" to be adopted by anarchists at the time of the *Tribune's* editorial.³⁶⁷

Whether Dunning's testimony blunted the impact of Reeves' claims can only be speculated, but Stevenson's cross-examination of Dunning proved problematic to Ford's case, as newspapers generally reported that Stevenson was effective. The *New York Times* noted that Dunning could not deny that both Ford and Goldman called war "slaughter" and both of them also encouraged men not to comply with draft orders.³⁶⁸ The *New York Tribune* reported, under the headline *Prof. Dunning Says Some Ford Ideas Are Good Anarchy*, that Stevenson quoted Ford's statement, "[i]t seems to me there is not much difference between a republic, a monarchy and an empire; they are all ruled by a little group of

³⁶² *College Teacher Takes Stand at Ford Libel Suit*, *supra* note 361, at 1.

³⁶³ *Id.*

³⁶⁴ *Says Ford Talked Just Like Ancients*, N.Y. SUN, July 31, 1919, at 9, 30.

³⁶⁵ *Id.*

³⁶⁶ *Id.*

³⁶⁷ *Id.*

³⁶⁸ *Quotes Henry Ford and Emma Goldman: Lawyer in Libel Suit Seeks to Show Points of Resemblance in Their Ideas*, N.Y. TIMES, July 31, 1919, at 15.

interests who have special privileges," to Dunning before asking whether the statement amounted to anarchism.³⁶⁹ Dunning admitted that the statement was anarchistic but added that socialists used similar language.³⁷⁰ Dunning conceded to the *New York Evening Post* that some of Ford's statements could have matched the general tenor of Kropotkin's words.³⁷¹ The *Philadelphia Inquirer* also highlighted Ford's inability to distinguish between types of governments and Dunning's concession that such statements could be found in anarchist publications and speeches.³⁷² A number of other newspapers, such as the *Salt Lake Tribune*, the *Mitchell Morning Republican* (SD), the *Joplin Globe* (MO), and the *Great Falls Daily Tribune* (MO) carried similar stories, including that Dunning agreed both Ford and anarchists opposed military conscription.³⁷³

Unlike Reeves, Dunning went through a third day of testifying, which included redirect and recross examination. On August 1, 1919, the *New York Times* ran the headline *Dictionary Battle at Ford Libel Trial: Books Roughly Handled as Opposing Counsel Seek More Definitions of Anarchist* and then reported that Lucking attempted to rehabilitate Dunning.³⁷⁴ In trying to do this, Lucking focused on Goldman, who had opposed prohibition and universal suffrage, as well as wrote literary criticism, and then asked Dunning whether anti-prohibitionists, opponents of women's voting, and literary critics were also all anarchists.³⁷⁵

³⁶⁹ *Prof. Dunning Says Some Ford Ideas Are Good Anarchy*, N.Y. TRIB., July 31, 1919, at 7.

³⁷⁰ *Id.*

³⁷¹ *Lawyers Wrangle as to Whether Ford Is an Anarchist*, N.Y. EVENING POST, July 31, 1919, at 3.

³⁷² *Defining Anarchist Enlivens Ford Suit*, PHILA. INQUIRER, July 31, 1919, at 2.

³⁷³ *Ford is Unable to Read, Charge*, SALT LAKE TRIB., July 31, 1919, at 3; *"Ford Said He Couldn't Read," Court Is Thrown in Uproar*, MITCHELL MORNING REPUBLICAN (S.D.), July 31, 1919, at 3; *Some Anarchists Are Pacifists, He Says*, JOPLIN GLOBE (Mo.), July 31, 1919, at 5; *Fordite Led to Liken Idealist and Anarchist*, GREAT FALLS DAILY TRIB. (Mont.), July 31, 1919, at 1.

³⁷⁴ *Dictionary Battle at Ford Libel Trial: Books Roughly Handled as Opposing Counsel Seek More Definitions of Anarchist*, N.Y. TIMES, Aug. 1, 1919, at 5. The *Times* wrote that Lucking "endeavored . . . to offset the action of Elliot G. Stevenson yesterday in quoting from the writings of Emma Goldman and statements attributed to Mr. Ford with the purpose of establishing an identity of anarchistic views and ideas between them." *Id.*

³⁷⁵ *Id.*

Dunning answered in the negative and then focused on Goldman's opposition to private property and capital, which Ford clearly did not share with her.³⁷⁶ After Murphy finished his redirect of Dunning, the newspaper reported that Stevenson began another round of cross-examination and pointed out that Ford had accused the nation's capitalists of treason and claimed that "[t]he overpowering power of wealth down to this very day has been on the side of slaughter."³⁷⁷

In response to Dunning's equivocation that Ford meant only *some* capitalists, Stevenson quoted to Dunning Lincoln's answer to protests over the treatment of the pro-southern former congressman, Clement Vallandigham, to make the point that a dangerous ideology is a danger regardless of who propagates it.³⁷⁸ During the Civil War, Vallandigham, an Ohio Democrat, opposed conscription, and when, in 1862, he was defeated for reelection, he gave vitriolic speeches claiming that Lincoln was a dictator who would destroy freedom.³⁷⁹ After Vallandigham spoke against conscription in Ohio, General Ambrose Burnside prosecuted him in a military trial, and Lincoln sustained the conviction, though instead of sending the former congressman to prison, he sent him into the Confederate states.³⁸⁰ During the Civil War, there were violent anti-draft riots in northern cities and a correspondingly high desertion rate in the Union Armies.³⁸¹ Lincoln denied to those who protested Vallandigham's treatment that the arrest and trial were for political gain and countered that it occurred because "he was damaging the army, upon the existence, and vigor of which, the life of the nation depends."³⁸² Stevenson, in drawing an

³⁷⁶ *Id.*

³⁷⁷ *Id.*

³⁷⁸ *Id.* During the Civil War, northerners who opposed the end of slavery or supported the right of secession were often referred to as "Copperheads" and Clement Vallandigham was one of the leading Copperheads. See PHILLIP SHAW PALUDAN, A PEOPLE'S CONTEST: THE UNION & CIVIL WAR, 1861-1865, at 240-45 (1996).

³⁷⁹ JENNIFER L. WEBER, COPPERHEADS: THE RISE AND FALL OF LINCOLN'S OPPONENTS IN THE NORTH 95, 115 (2006).

³⁸⁰ JOSHUA E. KASTENBERG, LAW IN WAR, WAR AS LAW: BRIGADIER GENERAL JOSEPH HOLT AND THE JUDGE ADVOCATE GENERAL'S DEPARTMENT IN THE CIVIL WAR AND EARLY RECONSTRUCTION, 1861-1865, at 105-10 (2011).

³⁸¹ See generally *id.*

³⁸² BRIAN MCGINTY, LINCOLN AND THE COURT 191-92 (2008); JAMES M. MCPHERSON, BATTLE CRY OF FREEDOM: THE CIVIL WAR ERA 596-98 (1988).

analogy between Vollandigham and Ford, had a point to make—which became clear when he next got Dunning to concede that Ford’s statements made against the war could create dissension in the military’s ranks.³⁸³ This was not mere hyperbole on Stevenson’s part. During World War I, the French Army mutinied after a disastrous campaign and being inundated by anti-war, communist propaganda.³⁸⁴

Dunning, in his 1914 essay *Truth in History*, observed that it did not matter whether a belief is true or false before quoting Montesquieu for the proposition that “[i]n a free nation it is very often a matter of indifference whether individuals reason right or reason wrong; it is enough that they reason: for from that springs liberty.”³⁸⁵ He equated scholarly history to this quotation to conclude “the beliefs of a people about history, whether of their own past or of the past of others[,] the beliefs are important whether true or false[,] for out of them is formed the subject matter of history.”³⁸⁶ In essence, when Dunning testified, he did not seek to vindicate Ford but, rather, to point out that Ford’s statements against war, capital, and governments could be found in the beliefs and ideologies of humanity far outside of anarchism as much as they could be found in anarchism. This seems, then, to have aligned with the pursuit of objectivity-based history that he earlier championed. On the other hand, there was a question of payment. On August 16, 1919, Lucking wrote to Dunning and thanked him in a letter, as well as issued him a check for \$750—more than the newspapers reported.³⁸⁷ Lucking wrote, “you will no doubt, have noted from the newspapers, the result of the trial, and I beg to assure you that your testimony was very valuable to us and that we appreciated very much indeed your coming out and giving your time to the matter.”³⁸⁸

³⁸³ *Declares Ford’s Words Anarchistic*, BOS. GLOBE, July 31, 1919, at 3.

³⁸⁴ KASTENBERG, *supra* note 70, at 310-22.

³⁸⁵ Dunning, *supra* note 183, at 229.

³⁸⁶ *Id.*

³⁸⁷ Letter from Rep. Alfred Lucking to William Dunning (Aug. 16, 1919) (on file with Columbia University).

³⁸⁸ *Id.*

CONCLUSION

Given the national reporting on Dunning and Reeves testifying, it is clear that they created something of a precedent for historians being qualified as experts. This might not have been readily apparent, however, at the time they testified or, for that matter, in the five decades after. On August 2, 1919, the *New York Sun*, in reporting on Dunning's testimony, asked its readers: "The real question is whether such evidence ought to be received at all."³⁸⁹ The *Sun* did not lampoon Dunning, as it would do to Ford. Indeed, the article began with, "[t]he testimony of the plaintiff—who pronounces all history 'bunk' and does not know the difference between Benedict Arnold and Arnold Bennett—is not the only curious feature of the trial."³⁹⁰ Normally, the *Sun* noted, witnesses were called to testify to facts that were limited to their direct knowledge and observation.³⁹¹

"They tell the Judge . . . about things that they have seen and . . . heard—what they have done and . . . what others have done . . . in their presence," the *Sun* explained before pronouncing its doubt as to whether Tucker had any precedent to rely on in granting Reeves and Dunning their status as experts.³⁹² The newspaper intimated that the only enriching part of Dunning's testimony would be the \$500 Ford paid for his services.³⁹³ In contrast, the *Arizona Republican* criticized Dunning for arguing by false analogy and derided his standing as an expert. "Dunning . . . is one of those 'intellectuals' who may be found in almost any of our higher institutions of learning. [He is] so called not because of the superior development of his intellect, but because of his 'advanced,' abnormal way of thinking, generally loose thinking," the newspaper opined.³⁹⁴

The next time national reporting appears to have occurred about a historian testifying as an expert was in the 1930s, when Professor Arthur Lyon Cross, a University of Michigan historian, testified on behalf of the United States in federal court that Sir

³⁸⁹ *The Professor in the Ford Case*, N.Y. SUN, Aug. 2, 1919, at 8.

³⁹⁰ *Id.*

³⁹¹ *Id.*

³⁹² *Id.*

³⁹³ *Id.*

³⁹⁴ *Professor Dunning the "Expert,"* ARIZ. REPUBLICAN, Aug. 2, 1919, at 4.

Francis Drake did not leave any property in the United States that any American claimants had a right to possess.³⁹⁵ In what the United States Court of Appeals for the Seventh District titled the "Sir Francis Drake swindle," Oliver Hartzell, an Iowa farmer and confidence man, sold an interest in property he claimed to have inherited from the sixteenth-century British mariner explorer to hundreds of unsuspecting Midwest farmers.³⁹⁶ Although Cross did not receive the level of national reporting that accompanied *Ford v. Chicago Tribune*, the *Oakland Tribune* (CA) noted that he was an expert witness specializing in Elizabethan-era England.³⁹⁷ It might also be the case that the United States Attorney for the District of Northern Iowa, who prosecuted Hartzell, selected Cross because he taught alongside Reeves.³⁹⁸ At a minimum, though, Cross' testimony evidenced that the federal courts were open to historians testifying as experts.

In 1957, the United States Court of Appeals for the Seventh Circuit in *Eisenschiml v. Fawcett Publications* noted that two historians testified in a civil trial regarding Otto Eisenschiml's claim that his historical writings had been copyright protected to the degree that a magazine could not print excerpts of his work without attributing the excerpts to him.³⁹⁹ Without questioning the admissibility of either Professor Donald Riddle's, Eisenschiml's expert historian, or Professor Ernest Samuels', who testified on behalf of Fawcett, testimony, the appellate court focused on the intellectual property claim.⁴⁰⁰ It is interesting that, like *Ford v. Chicago Tribune*, neither Cross nor the two historians in *Eisenschiml* have been mentioned in judicial decisions or law review articles. On the other hand, the *Chicago Tribune*, in its

³⁹⁵ Philip Kinsley, *U.S. Hammers at Drake Myth: Rest Case Today*, CHI. TRIB., Jan. 9, 1936, at 3. For a fuller explanation, see Bernard H. Fried, *Life of Sir Francis Drake Is Described by Cross in Lawsuit*, MICH. DAILY, Nov. 7, 1933, at 5.

³⁹⁶ *United States v. Yant*, 88 F.2d 956, 957 (7th Cir. 1937); see also *Ry. Express Agency v. Jones*, 106 F.2d 341, 342-43 (7th Cir. 1939).

³⁹⁷ *Sir Francis Drake Swindle Suspects on Trial at Chicago*, OAKLAND TRIB., Nov. 18, 1935, at 2; *Historical News*, 46 AM. HIST. REV. 240, 256 (1940).

³⁹⁸ See UNIVERSITY OF MICHIGAN OFFICIAL PUBLICATION, GENERAL REGISTER, 1929, 7-13 (1929).

³⁹⁹ *Eisenschiml v. Fawcett Publ'ns*, 246 F.2d 598, 600-01 (7th Cir. 1957).

⁴⁰⁰ *Id.* at 600-01 (noting that "[t]wo expert witnesses testified and, as so often happens, held diametrically opposed views").

reporting on this trial, noted that lawyers from Kirkland & Ellis defended Fawcett.⁴⁰¹

In the 1980s, there was a growth in the number of historians testifying, at first for industries, and indeed, the Tobacco Industry created the semi-secretive “Project Cosmic” to recruit historians to testify on their behalf as to the public’s understanding of the dangers of smoking.⁴⁰² Steven Ambrose, one of the few well-known historians, albeit for his military histories, testified on behalf of tobacco corporations in such an unscholarly manner that the *Gallup Poll*’s directors accused him of being disingenuous after he questionably interpreted their polling data.⁴⁰³ Ambrose was later discovered to have plagiarized his scholarly work. Later, historians who testified for aggrieved plaintiffs against “big tobacco” applied historically sound methods to show that tobacco corporations hid the dangers of smoking from the public.⁴⁰⁴ Other historians have similarly responsibly investigated and then testified against agricultural, chemical, and paint giants with similar allegations of corporate malfeasance.⁴⁰⁵

Since *Ford v. Chicago Tribune*, *Daubert* replaced *Frye* as the admissibility standard for expert witnesses, making it easier for professional historians to testify as experts, provided that, unlike Ambrose and many of the historians employed through Operation Cosmic, they use sound methodologies in their work.⁴⁰⁶ In an era

⁴⁰¹ *Copyright Violation Suit Lost by Dr. Eisenschiml*, CHI. TRIB., Apr. 27, 1956, at 3.

⁴⁰² David Rosner, *Trials and Tribulations: What Happens When Historians Enter the Courtroom*, 72 LAW & CONTEMP. PROBS. 137, 139 (2009); see also Nicolas Rasmussen & Robert N. Proctor, *From Maverick to Mole: John C. Burnham, Tobacco Consultant*, 110 ISIS 779, 779-83 (2019); Stephen T. Casper, *John Burnham (1929-2017)*, 109 ISIS 140, 141 (2018); David Cantor, *Whose History? Ethics, Lawsuits, National Security, and the Writing of Contemporary History*, in THE COMMISSIONED HISTORIES, THE HISTORIOGRAPHY OF CONTEMPORARY SCIENCE, TECHNOLOGY, AND MEDICINE: WRITING RECENT SCIENCE 60-61 (Ronald E. Doel & Thomas Söderqvist eds., 2006).

⁴⁰³ Martin, *supra* note 60, at 1539-41.

⁴⁰⁴ See, e.g., *Dempster v. Lamorak Ins. Co.*, No. 20-95, 2020 U.S. Dist. LEXIS 166476, at *11-13, *16-19 (E.D. La. Sep. 11, 2020).

⁴⁰⁵ GERALD MARKOWITZ & DAVID ROSNER, *DECEIT AND DENIAL: THE DEADLY POLITICS OF INDUSTRIAL POLLUTION* 310-12 (2013).

⁴⁰⁶ See, e.g., Maxine D. Goodman, *Slipping Through the Gate: Trusting Daubert and Trial Procedures to Reveal the ‘Pseudo-Historian’ Expert Witness and to Enable the Reliable Historian Expert Witness—Troubling Lessons from Holocaust-Related Trials*, 60 BAYLOR L. REV. 824, 826 (2008); Holly Morgan, Comment, *Painting the Past and*

where political leaders advance conspiracies, seek to eliminate protections for historically disadvantaged persons in workplaces, limit access to voting, and undermine the safety of communities, responsible historian investigation and testimony may be at its most important in the nation’s history as a guardrail for adjudicating facts.⁴⁰⁷ It is difficult to argue that either Dunning or Reeves departed from the scholarly norms of their time since, as leading scholars, they formulated norms. Even though the comparison of Ford’s statements to ideologies broke new ground, there is no accusation evident in the media reporting that they departed from the goal of objectivity-based research, and what exists in the newspapers indicates that they sought objectivity. This is so, even though they disagreed with each other. After all, as Professor Haskell noted in his counter to Professor Novick, “[t]hat two people sharing the same position should say different things about it.”⁴⁰⁸ Notwithstanding that Dunning’s testimony may have further cemented him as a “giant” who embedded the “lost cause” in history education, their testimony provides an important century-old precedent for the acceptance of the historian as an expert in our era, where it is important to have scholarly guardrails for facts against fabrication.

Paying for It: The Demise of Daubert in the Context of Historian Expert Witnesses, 44 WAKE FOREST L. REV. 101, 111-12 (2009).

⁴⁰⁷ See, e.g., Amanda Becker, *Trump’s Words Changed Springfield, Ohio. Its Haitian Community Is Bracing for What’s Next*, OHIO CAP. J. (Jan. 23, 2025, at 04:30 CT), <https://ohiocapitaljournal.com/2025/01/23/trumps-words-changed-springfield-ohio-its-haitian-community-is-bracing-for-whats-next/> [<https://perma.cc/74PW-ULZV>].

⁴⁰⁸ Haskell, *supra* note 352, at 147.