

INTRODUCTION

At the height of the roaring twenties, Aaron Sapiro, a California lawyer leading the burgeoning agricultural cooperation movement, sued Henry Ford and his newspaper, the *Dearborn Independent*, for libel. The *Independent* had published a series of articles accusing Sapiro of leading a Jewish conspiracy to subvert American agriculture. Tried in Detroit, the million-dollar marquee case culminated in a spectacular mistrial after a series of bizarre events derailed the legal process. At Ford's behest, another Jewish lawyer, the renowned civil rights leader Louis Marshall, prevented the case from returning to court by penning Ford's apology to the Jews.

Paradoxically, the apology narrowed the case's legal significance and relegated it to a footnote in Ford's life story. This book argues that what was most important about Ford's apology was not what it said. It is that Ford did not write it. When it was published in July 1927, no one but Ford, his closest advisers, and Marshall knew the truth. Consequently, reactions to Ford's apology focused on its putative author's obscure motives rather than its capacity for ending Ford's career as a purveyor of antisemitic literature or its implications for legal curbs on speech.¹

Lawsuits are the common coin of conflict in U.S. history. Once in a while, an individual trial commands special attention because it raises issues and concerns that resonate over time and go directly to the heart of how Americans perceive and understand themselves.² *Sapiro v. Ford* is one of those cases. The defendant, of course, is an iconic figure in American history. At stake was nothing less than the fundamental equality of an entire group of citizens, certainly, and something else just as important, though more ephemeral: distinct visions of American social and economic development—and, for Marshall and Sapiro, ensuring that Ford's vision did not come to pass. That the two lawyers were at odds in that endeavor is the surprising story behind *Sapiro v. Ford*.

Henry Ford's War on Jews and the Legal Battle Against Hate Speech transforms our understanding of this famous lawsuit and Ford's apology by focusing

on the intricate triangulated relationships that link the three chief characters. This book answers two critical questions: First, what was Henry Ford's vision for remaking American society during the 1920s? Second, how did Aaron Sapiro and Louis Marshall, two men who should have been allies in the fight against antisemitism but were not, almost fail to stop him?

During the late nineteenth and early twentieth centuries, Americans swam in an ocean of polite antisemitism. Whether black or white, Protestant or Catholic, most Americans regarded Jews as different, alien, and inferior. Still, antisemitism in America was muted compared to the more violent expressions of Jew hatred that were the norm in Europe. New World antisemitism was confined mostly to forms of speech and social discrimination: literary stereotypes; pernicious propaganda; explicitly biased advertisements; and beginning around the time of the Civil War, policies discriminating against Jews in hiring and employment. The most notorious example was General Ulysses Grant's General Order No. 11. In 1862, the order declared "Jews as a class" responsible for cotton speculation and smuggling and expelled them from the western war zone. President Lincoln revoked the order after Jews staged an outraged and effective protest, but the precedent stung.³

For the most part, de jure (by law) exclusions and discriminations against Jews were rare occurrences in post-Civil War America. Yet Jews suffered plenty of de facto discrimination, the kind that happens in everyday life by dint of custom or casual practice. Concealed under the right of freedom of association, the habit of turning Jews away from schools, clubs, and organizations became ingrained in American social life after the mid-1870s and grew more malicious after 1900. Ford's newspaper engulfed the nation in the logic of antisemitism, liberated it, pushed it beyond private social exchange into open air, and sought to institutionalize it in how Americans thought about their government and society.⁴

Much like the iconic Model T, the *Dearborn Independent* reflected Ford's personality and his vision for the country. He plucked the newspaper from obscurity and rebuilt it to serve as his direct and unfiltered voice to the people. He increased its readership from barely 1,200 to nearly 700,000 at its peak. The paper was sent unsolicited to schools, libraries, and universities across the country. Ford dealers were even required to fill monthly quotas for newspaper subscriptions along with their car sales.⁵

As the otherwise innocuous content of his newspaper portended, Ford envisioned a nostalgic American future. Although he had done as much to usher in

an age of technology and consumerism as any other single person, he cherished the idea that Americans would be far better off living on small family farms; eschewing alcohol, cigarettes, and theater; and finding spiritual renewal in Protestant churches and the old-fashioned dances he personally enjoyed.⁶ He imagined a nation of mechanization and mobilization, strangely juxtaposed with an idealized, remade rural society. Cars and tractors were supposed to make farming appealing, not induce people to desert their farms for dirty, overcrowded cities and the novel concentration of power they represented. For decades, historians have sought to explain Ford's antisemitic prejudice by rooting it in a narrow-minded populism. But his beliefs were subtler and more complex than that. Ford disliked Jews who he believed exercised disproportionate control over the institutions that were vital to the rural-mercantile economy he wanted to build.⁷

The three men at the center of this legal drama were not so different from one another. Each is an enduring American character. Each reflected important aspects of Progressive Era America; each fought to shape the country according to his vision of what he believed it should represent. Ford personified the rags-to-riches rise of entrepreneurial ingenuity, the triumph of industrial design and marketing, and the transformation of transportation. After him, there would be no going back. Louis Marshall and Aaron Sapiro lived Horatio Alger tales of their own, rising from humble, even destitute beginnings to distinguished careers and national prominence. But what they wanted to accomplish brought them into conflict with Ford—and with each other.

Marshall was the leading constitutional and immigration lawyer of his day and, as president of the American Jewish Committee, the most important secular leader of American Jews of the early twentieth century. Hailing from rural New York, he became a patrician New York City lawyer, the cornerstone of the bar and pillar of Jewish society. He wanted newcomers to become as fully American as he was. In his view, Ford's attacks on Jews endangered what Jews could become, what their future as Americans should be. For Marshall, anti-semitism was more than a racial slur, not just a libel against an entire people. It was un-American, an anachronism that had no place in a nation governed by a constitution based on equality.⁸

After enduring a wretched childhood in a San Francisco orphanage, Aaron Sapiro turned to law as the vehicle for self-realization and for achieving social change. Molding a nascent body of law into a field of legal expertise all his

own, he led a movement to organize farmers into marketing cooperatives that improved their standard of living much as labor unions did for waged workers. Sapiro built on the conservative legal model of the corporation, but the implications of his idea sounded radical: enabling farmers to come together into powerful collectives that could bargain for better prices for their crops. Sapiro preached the gospel of cooperation; for him, it was a secular religion. If farmers could support their families in the modern industrial economy, they could send their children to school and be productive citizens just like urban families. Unlike Ford, who prized rural over urban, Sapiro envisioned rural and urban as equal partners in modern America.

The conflict that brought these three visionaries to their unlikely encounter took place during what historians call the tribal twenties: a decade of racial and ethnic tension and conflict that followed World War I. John Higham coined the term in the 1950s to describe the rising tide of private social discrimination that spilled into the public realm after the Armistice. This pattern of discrimination affected minorities of all kinds, including women, non-Protestants, and ethnic and racial groups. Conflict bubbled up everywhere after the war; racial animus catalyzed the labor unrest and strikes that nearly paralyzed the nation in 1919. Emboldened by the experience and sacrifice of military service, minorities demanded equal treatment and equal access to jobs and homes. This impertinence met a severe backlash as reactionaries swiftly clamped down to restore economic order and reassert traditional social prerogatives.⁹ It is no coincidence that Ford's antisemitic campaign and the rebirth of the Ku Klux Klan occurred within a few years of each other.

To their shock, American Jews were caught up in this swell of racial animosity. They believed that they had embraced American civic ideals, and they considered themselves distinct from nonwhite minorities; still, the dominant culture regarded them as the "white other." Although their color did not mark them as a subordinate class, the tribalism of the postwar era told them they were not full citizens. Pinned by this social construction of racial identity, Jews struggled to mount a public response that would not call into question their social status or civic equality. Elite Jewish American lawyers were, after all, men of their generation, not without prejudices and preconceptions about race. They believed that African Americans needed to have their constitutional rights defined and defended by law. But as white persons, they did not see themselves as similarly situated. Because they did not agree among themselves about the

danger Ford posed to Jews in the 1920s, it is hardly surprising that historians disagree about the extent to which his newspaper threatened Jews' civic status.¹⁰

The controversy over Ford's newspaper can be understood, in part, as a result of the uncertainty surrounding speech rights at the time of the dispute. During the war, a series of federal laws suppressed criticism of the government and interference with the war effort. Thousands of people were indicted and hundreds convicted under these laws, and during the Red Scare of 1919 the government unleashed its repressive powers in frightening ways. When cases challenging these statutes reached the U.S. Supreme Court, the justices interpreted civil liberties and free-speech rights cautiously. In a series of decisions, the court ruled that the government could not restrict speech in advance of publication, but it could penalize people if what they said or published posed harm to the public welfare. Dissents by Justices Holmes and Brandeis in *Abrams v. United States* (1919) defended "free trade in ideas" and marked the start of a new awareness of the value of unregulated speech in an industrial democratic society.¹¹

It was, however, a mere beginning. Civil libertarians remained in the minority on the Court and in legislatures. Censorship of books, movies, and newspapers continued apace during the 1920s. Sedition laws, which criminalized speech or acts that tended to incite insurrection, and criminal libel statutes, which permitted authorities to prosecute purveyors of ideas that had the potential to cause public disturbances or offend public morals, continued to slow traffic in the free flow of ideas. The American Civil Liberties Union, formed in 1917 to fight laws restricting First Amendment rights, was nearly alone in championing freedom for unpopular or offensive ideas. Yet when Ford's rights as a publisher came under attack from city authorities in 1921, other newspapers threw him their support, not because they agreed with what he published, but because they believed in the principle he was defending (see Chapter 3).

In the judicial midwifery that attended the birth of modern free speech, there was hardly any comment on the subject of what we now call hate speech—speech that attacks groups of people on the basis of their race, creed, or religion. The only statutory development of the era emerged, interestingly, from social discrimination against Jews. In 1913, New York enacted a group libel law, drafted by Louis Marshall, which criminalized printed or published attacks on groups identified by race, religion, or national origin. Six other states had adopted versions of the law by the mid-1920s, but the laws went largely untested in the courts for the following thirty years.¹² In the litigation over free-speech

rights that confronted the Supreme Court during the 1920s and 1930s, the justices remained focused on individual, not group, rights. Although it would be decades before the Court arrived at the more absolutist reading of the First Amendment that characterized its postwar speech jurisprudence, the Court was unwilling to carve out an exception before the war that would permit states to regulate speech that stigmatized groups of people on the basis of race or religion.¹³

This book expands the story of the First Amendment's historical development by revealing divisions in the civil liberties community over how to respond to speech that attacked race and religion. Jewish lawyers and activists who were best positioned to react to Ford's newspaper were handicapped not only by the lack of relevant statutes but also by philosophical and political differences among themselves. As a result, when the Ford case finally presented itself, it was staged by a relative outsider—Sapiro—as a conventional individual libel suit rather than a group libel case.¹⁴ The national press, having covered every word Ford uttered on his obsession with Jews since 1915, elided the technical legal distinction between individual and group libel and proclaimed the case a fight between Henry Ford and “the Jews.” That characterization amplified the consequences of Sapiro's lawsuit for Jews generally and made Louis Marshall desperate to contain its effects on Jewish Americans' civic status.

This book is about how law shaped events and choices over the course of the litigation. It is not a story about the development of legal doctrine; nor does it rechronicle the lawsuit from Ford's perspective, as his many biographers have already done. Rather, it relates how law provided a common point of reference for all sides in the dispute, even if they sometimes disregarded it. The *Sapiro v. Ford* case became one of the many trials of the century of the 1920s; the promise that Ford would appear on the witness stand kept the press fixated on each day's developments. After the suit was settled out of court, it dropped off the press's radar, but its resolution imposed a continuing duty on Ford to restrain the republication of his antisemitic pamphlet, *The International Jew*, in the United States and abroad.

The measure of Ford's sincerity in apologizing—the true test of Marshall's strategy in handling the case as he did, taking it out of the realm of law and putting it under the dominion of his personal authority—is whether Ford followed through on that duty. In managing the case as a civil rights activist, Marshall unwittingly ensured that his ultimate goal—withdrawing hateful speech from the marketplace of ideas—would not be attained. The literature

in the field of American Jewish history, perhaps understandably, soft pedals the divisions within Jewish circles throughout the duration of the Ford matter. Scholars defend Ford's apology as a great victory and a historic repudiation of antisemitism. This book questions those interpretations. On the basis of new archival findings, we can ask what Marshall sought to gain by acting as he did and, more critically, whether he got what he wanted. Moreover, a closer look at the contemporary reaction shows that most Jewish newspapers received Ford's statement skeptically, accepting it gracefully at Marshall's behest to end the ugly mess or, more likely, grudgingly despite Marshall's entreaties because they had no alternative. In the meantime, we learn that Ford never lost control over the legal process, that his subordinates undermined Marshall as he attempted to enforce the apology in 1927 and 1928, and that Marshall did not live to ensure that Ford made good on his promises. Without the authority of law to constrain him, Ford was free to disregard his statement and the promises he made once he and Marshall realized that European publishers who wanted to reproduce Ford's book had law on their side.

This book tells the story of Ford's newspaper, Sapiro's lawsuit, and Marshall's diversion of its outcome. In Part 1, five chapters lay out the context in which Ford waged his war on Jews and establish the triangulated dynamic between Ford, Marshall, and Sapiro. Ford and Marshall's tangle over the *Independent* in 1920, Sapiro and Ford's clash over the second antisemitic series in 1924, and the divisions among Jewish leaders before the trial supply the keys to what follows. Part 2 proceeds chronologically. It gives a narrative account of the trial in Detroit, its unexpected outcome, and its consequences for Jewish civil rights activism on the eve of the 1930s.

By publishing and speaking about his beliefs about Jews, Ford tapped into the strong strain of American nativism and xenophobia that, as Louis Marshall knew, was driving national policy on civil rights, citizenship, and immigration. Recent work in the field portrays Ford as an extremist who had many fans but did not change minds. What this literature fails to capture are the ties between Ford and the prominent men who assumed responsibility for the future of American Jews. The fight of Jewish Americans for civil rights in the 1920s was by no means carefully coordinated or united around a univocal strategy. Moreover, their political power was confined mostly to cities, where they could galvanize protest against the *Independent*. It was among rural conservatives where Ford remained iconic, where his newspaper found its widest

readership, and where bigotry against Jews remained robust during the tribal twenties. The fight between Ford and the Jews was many things, but fundamentally it reflected the pervasive split between rural and urban America that has never ceased to characterize the nation's landscape and its enduring social and political divide.