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# THE RADIO ACT OF 1927 AS A PRODUCT OF PROGRESSIVISM

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### ABSTRACT

**Congress passed the Radio Act of 1927 to bring order to the chaos of radio broadcasting. In the process, Congressional representatives had to deal with several free speech issues, which were resolved in favor of the Progressive concepts of public interest, thereby limiting free speech. This study examines how Congress intended radio licensees to interpret and practice free speech. In conclusion, it was found Congressmen feared radio's potential power to prompt radical political or social reform, spread indecent language, and to monopolize opinions. Therefore, the FRC was empowered to protect listeners from those who would not operate radio for "public interest, convenience, and necessity."**

### INTRODUCTION

In the Radio Act of 1927 Congress recognized broadcasters' right to "free speech,"<sup>1</sup> meaning those granted licenses to operate AM radio stations could do so free of government censorship or programming. However, a review of the Progressive influences on the Radio Act indicates that Congress never intended for radio licensees to use free speech to create an open, vibrant marketplace of ideas through radio broadcasting. What Congress sought for the new medium was a voice that would articulate middle class ideology.<sup>2</sup>

This research does not refute the existing history written on the text of the Radio Act, which is examined after the major issues have been considered. The search is for the underlying ideology in the Act that may not be found by only reading it and accepting a literal understanding of "free speech." From an ideological approach, the question is how did Congress intend for radio licensees to practice "free speech?" To answer that question, this paper will review the Progressive tenets contained within the Radio Act and the language at its heart, particularly the creation of a commission to regulate radio in the "public interest, convenience, and necessity."

In this examination of the Radio Act, Progressive influence is evident in many places. The Progressive influence can be found in the 1926 Congressional debate that preceded President Calvin Coolidge's signature in 1927. Much of that debate and many provisions of the law focused on free speech issues. The Supreme Court decisions resulting from convictions under the Espionage Act of 1917 suggest that the justices shared a limited, Progressive definition of free speech, indicating both branches of government held similar presumptions on the federal right to regulate the marketplace of ideas.

## **THE PROGRESSIVES**

Progressivism is a controversial term in American history because it describes a wide range of people who frequently disagreed with each other. <sup>3</sup> On one extreme of the movement were Midwestern and Southern farmers (the old Populists). On the other were the immigrants who came to America by the millions after 1880 to work in the factories and live in the urban slums of America. A third social and economic force were the "captains of capitalism" pushing America into the twentieth century through technology and industrialism. Progressivism began as a grass roots reform movement alternatively identified with the aspirations of farmers, immigrants, and industrialists but also members of the middle class threatened by the corruption and immorality of changing social systems.

The Progressive members of the middle class sought to define their place in this new order. Oscar Handlin describes them as holding the traditional Protestant values of the agrarian Populists; yet, they staked their economic future on the business values of the wealthy industrialists by going to work for and investing in their operations. As the middle class joined the factory force and business classes as managers, they were brought into contact with an immigrant labor force frequently composed of Jews and Catholics from eastern Europe. <sup>4</sup> These non-Protestants held onto their ethnic identities, creating inner city neighborhoods where crime, poverty, and sin flourished from the perspective of the middle class.

In the competition for control of this social order, Robert H. Wiebe argues, the middle class led the way in a shift from rural, agricultural, small town thinking to urban, industrial, big government solutions. Middle class Progressives placed power and authority in government bureaucracy, which was to manage the new order by limiting the power of corporations in the business marketplace. Only government could conceivably protect what they perceived to be the public welfare, which was permitting individuals to manage their own affairs by freeing them from the abuses of monopolies. <sup>5</sup> That individualism, to David Danbom, was a product of the Victorian age in which they had grown up and the Victorian faith in individualism. <sup>6</sup> Yet, notes

David N. Rabban, Progressives found that too much individualism and too much freedom threatened social harmony.

More broadly, the shared progressive commitment to social harmony implied limitations on free speech. Many progressives appreciated free speech and even dissent as qualities that contributed to, and should be nurtured by, a progressive democratic society. But they saw no value in, and occasionally expressed hostility toward, dissent that was not directed at positive social reconstruction.<sup>7</sup>

By the 1920s, conflicts between "urban life and rural sentiments" made the creation of a broad-based, progressive coalition impossible.<sup>8</sup> Some senators remained Progressive activists, such as Robert La Follette of Wisconsin, who ran a creditable third-party candidacy in 1924. Nicknamed "Sons of the Wild Jackass,"<sup>9</sup> other senators associated with the Progressives in the 1920s included George Norris, William Borah, Hiram Johnson, Burton Wheeler, and Fiorello La Guardia. These senators, however, did not reflect the totality of Progressivism in the 1920s. The movement had changed after World War I but did not die. John Chamberlain says Progressivism "ceased to be critical; it contented itself with following the drift of events" and then satisfied itself by "calling the drift decision."<sup>10</sup> Richard Hofstadter contends that World War I led to the "liquidation of the progressive spirit," allowing the dark side of the movement to flourish in the 1920s.<sup>11</sup> Progressives were no longer the reformers they had been in the early part of the century; in many aspects they were more powerful. After fifty years of public debate, the Progressive ideal of societal control through federal power was accepted--and still is--as the "common sense" of the era.<sup>12</sup> McCraw calls "the bureaucratization of American life" one of the continuing legacies of the Progressives.<sup>13</sup> In relationship to the Radio Act, what was crucial was that Congressmen, regardless of party, accepted a Progressive way of thinking about the role and mechanisms of government.<sup>14</sup> But, as the Radio Act debate demonstrates, little agreement existed among the divisive elements of the movement, except that the federal government should be in control of radio.

## **THE NEED FOR LEGISLATION**

By 1927, the technology and growth of radio had outpaced existing Congressional regulation, written in 1912 when radio meant ship-to-shore broadcasting. Radio was loosely regulated through its growth years in the 1920s. By mailing a postcard to Secretary of Commerce Herbert Hoover, anyone with a radio transmitter, ranging

from college students experimenting in science classes, to amateur inventors who ordered kits, to newspaper-operated stations, could broadcast on the frequency chosen by Hoover. The airwaves by 1927 were an open forum for anyone with the expertise and equipment <sup>15</sup> to reach a forum with 25 million listeners. <sup>16</sup>

Radio's open forum, however, became unmanageable in 1926 after an Attorney General's decision said the Radio Act of 1912 did not give the Secretary of Commerce authority to assign wave lengths. <sup>17</sup> By 1926, radio in the United States included 15,111 amateur stations, 1,902 ship stations, 553 land stations for maritime use, and 536 broadcasting stations. <sup>18</sup> For those 536 broadcasting stations, the government allocated only eighty-nine wave lengths. Geographical separation and power restrictions would make it possible to place six stations per broadcasting channel for a total of 534 stations. In addition, 425 more licensing applications were under consideration by the Department of Commerce, which had no legal authority to reject any request for a license. Maine Congressman Wallace White warned his colleagues in 1926 that radio stations jammed the airwaves, causing interference between stations in many locations. In the words of the *New York Times*, the radio signal almost anywhere on the dial sounded like "the whistle of the peanut stand." <sup>19</sup> Radio had become what Erik Barnouw calls "A Tower of Babel." <sup>20</sup> The "babel" threatened the emerging economics of radio. The undisciplined and unregulated voice of the public interfered with corporate goals of delivering programming and advertising on a dependable schedule to a mass audience.

Congress faced many difficulties in trying to write legislation. No precedent existed for managing broadcasting except the powerless Radio Act of 1912. No one knew in 1926 where the technology was going nor what radio would be like even the next year, so Congress was trying to write law to cover potentialities. Sen. Key Pittman of Nevada expressed his frustration to the Senate chair: "I do not think, sir, that in the 14 years I have been here there has ever been a question before the Senate that in the very nature of the thing Senators can know so little about as this subject." <sup>21</sup>

Nor was the public much better informed, Pittman noted, even though he received telegrams daily urging passage.

I am receiving many telegrams from my State urging me to vote for this conference report, and informing me that things will go to pieces, that there will be a terrible situation in this country that cannot be coped with unless this report is adopted. Those telegrams come from people, most of whom, I know, know nothing on earth about this bill. <sup>22</sup>

Offering to bring order out of this chaos were Rep. Wallace White and Sen. Clarence Dill of Washington. These two Congressional radio experts led the year-long fight in 1926 to pass legislation to regulate radio, leading to the Radio Act, signed by Calvin Coolidge in February 1927.

## **CONGRESS DEBATES POWER AND CONTROL OF RADIO**

Before radio legislation could be passed, competing Progressive factions debated who would control radio. Sen. Pittman and Rep. E.L. Davis of Tennessee represented the rural American voice of the common people. They believed that the Radio Corporation of America (RCA) conspired to turn radio into a monopoly.<sup>23</sup> The monopoly would not only be worth millions, but to Pittman and Davis, RCA would use the voice of radio to gain great political power and to shape thought in America. Monopolies were frequent targets of rural Progressives and Populists. The Sherman Antitrust Act of 1890 sought to prevent the destruction of "free capitalism and restraint of trade" by regulating monopolies.<sup>24</sup>

The battle for control of radio began when White introduced a bill in the House and Davis introduced a series of amendments to prevent what he perceived as monopoly control of radio. Opponents of the act wanted to insure that everyone received equitable service, rates, and treatment from radio stations. "As it stands now they [the radio monopoly] are absolutely the arbitrators of the air," warned Davis, who held that position throughout the life of the bill.<sup>25</sup> Rep. Luther A. Johnson of Texas opposed the Radio Act because he did not believe the bill gave the federal government the authority to protect the marketplace of ideas. Radio was restructuring America through the formation of opinion, Johnson argued in debate, and American opinion could not be left in the hands of the monopoly. If one group controlled radio, those who opposed them would find it "impossible to criticize," Johnson argued. Networks (called chains in 1927) and high-powered stations controlled by a few would make "freedom of the air" impossible.<sup>26</sup> The<sup>27</sup> monopoly issue became the focus of the Senate debate on the joint bill written by a compromise committee meeting to resolve differences in House and Senate versions. Sen. Pittman believed the conference committee weakened the strong, anti-monopolistic language in the original Senate draft. Radio was bound to be monopolistic, Pittman warned, and consequently, radio needed to be "under the strictest control" or radio would be used as a tool to oppress the American public.<sup>28</sup>

Opposing the Pittman and Davis faction were Dill<sup>29</sup> and White, spokesmen for those who believed in progress and technology, although they shared many of their opponents' apprehensions. Dill and White depended on one man and two key provisions of the legislation to prevent the harm predicted by the anti-monopolists.

The man was Secretary of Commerce Herbert Hoover, a self-described "independent progressive."<sup>30</sup> Hofstadter says Hoover identified with "efficiency, enterprise, opportunity, individualism, substantial laissez-fair, personal success, material welfare."<sup>31</sup> However, Hoover also believed that the only way to control labor unions and corporations was through federal control, even though he feared the power that control gave to the government.<sup>32</sup> Speaking at the third Washington conference on radio legislation, Hoover said broadcasters needed free speech and the right to broadcast, but that broadcasting needed to be free of "malice and unwholesomeness,"<sup>33</sup> which would be accomplished if broadcasters acted in the public interest. If the radio industry could operate in the public interest, he believed that self-regulation would have been adequate.<sup>34</sup> However, Hoover described radio as a "public utility" that needed to be "double-guarded" because of its entry into the home.<sup>35</sup> He agreed that radio needed to be managed in the public interest. In November 1925, Hoover had explained his concept of public interest: "We hear a great deal about the freedom of the air, but there are two parties to freedom of the air, and to freedom of speech for that matter. There is the speechmaker and the listener. Certainly in radio I believe in freedom for the listener."<sup>36</sup>

In the end, not everyone who sought to speak would be allowed to use radio, Hoover continued, which meant that the primary question of regulation would be "who is to do the broadcasting."<sup>37</sup> Knowing Hoover would oversee the transition to the Federal Radio Commission comforted many in Congress.<sup>38</sup>

The two key provisions in the law were the creation of a new government commission and the commission's mandate to regulate radio in the "public interest, convenience, and necessity." Modeled after the Interstate Commerce Commission and the Federal Trade Commission, Congress created the Federal Radio Commission (renamed Federal Communications Commission in 1934). Five disinterested commissioners would head a professional staff that would work with and regulate the radio industry in the "public interest, convenience, and necessity,"<sup>39</sup> a Progressive term borrowed from utility regulation but never defined in the Radio Act.<sup>40</sup> The FRC was free to control radio to serve whatever interests it deemed were within the scope of public interest, convenience and necessity as long as the commission did not deny "free speech" to broadcasters.<sup>41</sup> However, Congress limited free speech in the next sentence: "No person within the jurisdiction of the United States shall utter any obscene, indecent, or profane language by means of radio communication."<sup>42</sup>

The public interest standard went further. Since the Mayflower Compact,<sup>43</sup> the process of a citizen government had been closely identified with free speech and the right of everyone's voice to be heard. Supreme Court Justices Oliver Wendell Holmes and Louis Brandeis used

the phrase "marketplace of ideas" in several court cases written in this era to reflect a similar line of thinking.<sup>44</sup> However, the limited number of radio channels made the old concept of free speech obsolete from the viewpoint of Congress. Noting that free speech needed to be "inviolable," White argued that radio broadcasting required a new concept of free speech.

We [the Radio Conference of 1924] have reached the definite conclusion that the right of all of our people to enjoy this means of communication can be preserved only by the repudiation of the idea underlying the 1912 law that anyone who will may transmit and by the assertion in its stead of the doctrine that the right of the public to service is superior to the right of any individual to use the ether.<sup>45</sup>

In effect, White created a right to listen and equated it with freedom of speech. Such an equation would work, Dill argued,<sup>46</sup> because of the "public interest, convenience, or necessity" standard written into the act.<sup>47</sup> To Pittman such a standard was "absurd" in the face of the power of the monopolies trying to control radio.<sup>48</sup> Most radio listeners writing in support of legislation just wanted a clear channel, argued Sen. Robert B. Howell (Nebraska), but they did not understand the big issue. Howell wanted to know, "Who is to own the right to use the ether--all of the people or just a few of the people who have been fortunate enough to acquire radio transmitting stations?"<sup>49</sup>

The bill that White and Dill presented to their colleagues balanced the competing radio interests. The public received entertainment and the right to listen, but lost the right to speak. RCA profited by meshing advertising and programming, but the FRC regulated broadcasting. The real winners were the Progressives who would be doing the regulation.

Despite the limitations placed on free speech, most of the listening public and those in radio accepted the Progressive concept of free speech. A typical example of Progressive thinking was J. H. Morecraft, who wrote the column, "The March of Radio," in the industry magazine *Radio Broadcast*. "We need to protect freedom of speech," he argued, "but our rights cannot interfere with the rights of others."<sup>50</sup> Congestion on the airwaves was a bigger problem than free speech concerns, Morecraft argued. "At this writing, we fear more no legislation at all, than the harmful effects of any particular bill or method of control."<sup>51</sup> Radio offered an easy solution to any legislative impacts on the speaking public. "If you have something to say," he told his readers, "go to an existing broadcaster and buy time."<sup>52</sup> Later, Morecraft wrote: "Freedom of the air does not require that everyone

who wishes to impress himself on the radio audience need have his private microphone to do so." <sup>53</sup> He reiterated the point in a later column: "Radio waves cannot be freely used by everyone. Unlimited use will lead to its destruction." <sup>54</sup>

Many others concerned with radio also believed that radio could not be an unfettered marketplace of ideas. As *The Literary Digest* stated in 1924, "[T]he power of one man through a broadcasting station must be curbed if that man persists in affronting the sensibilities of a large or a small part of the population." While censorship was not appealing, pointed out *Literary Digest*, radio should not appeal to "vulgarity" or morbid affairs. Therefore, broadcasters should be businessmen of the highest class so that radio would remain "clean and fit for the common consumption." <sup>55</sup> When the wrong people broadcast, then the listening public suffered, *The Literary Digest* noted in another article. "Propagandists, religious zealots, and unprincipled persons" are using radio to "grind their own axes." <sup>56</sup> Once the Radio Act passed, *The Literary Digest* called upon the new radio commission to assign licenses only to the "high type" who would operate the station for public service by providing "well-rounded" programming. <sup>57</sup>

### **PROPER USE OF RADIO: THE AUTHORITY OF THE FRC**

As keepers of the public welfare, the FRC was the instrument ensuring that radio was not used for improper speech. Specifically, the Radio Act banned "obscene, indecent, or profane language," <sup>58</sup> but those who would use radio for radical change also could be silenced by denying them access to the airwaves, White and Dill told their colleagues. Proper use of radio was the second major issue debated by Congress.

In writing the bill, some members of Congress sought to guarantee that audiences heard only the morally "right" kind of material. Sen. Hiram Bingham of Connecticut thought the Commerce Department should handle the technical aspects of radio while the Post Office could handle "improper" communication of thought, since it already had expertise in that area. <sup>59</sup> South Carolina Sen. Coleman L. Blease was willing to create the FRC if he knew what the politics and religion of the commissioners were. He wanted to know if someone could go on the air and say "he came from a monkey." To prevent that from happening, Blease introduced an amendment that would have prohibited all radio discussion of evolution. He justified his position with an appeal to authority: "On this proposition I am on the side of Jesus Christ." <sup>60</sup> Dill and White argued that the intent of the legislation was not to create an open forum for public debate; as written the bill would prevent such misuse of the airwaves, defeating the Blease amendment.

Dill, White, and Hoover made public statements to the *New York Times*, reflecting similar views on what speech would be proper for broadcasters. In explaining the



Radio Act to a reporter, White said, "The bill seeks in other ways to make more certain a proper regard for public as opposed to private right." <sup>61</sup> Dill agreed. Broadcasters needed as much freedom as possible, the senator wrote in the *Times*, "without endangering the interests and the rights of the public." <sup>62</sup> Hoover said the first responsibility of any regulation would be to determine "who may broadcast." <sup>63</sup> Dill noted that the language "public interest" was the result of a conference with White when they were seeking additional language to go with "convenience and necessity," which Hoover had used at the radio conferences, borrowing the term from railroad and utility regulation. Public interest, convenience, and necessity was crucial language, explained Dill, because "their words would empower the Commission to limit the amount of advertising, prohibit programs that it decided were harmful to the public as a whole, and to refuse to renew licenses of those who disregarded its rulings." <sup>64</sup> To Dill, such a concept of public interest did not violate broadcasters' First Amendment rights because "broadcasting was a privilege." <sup>65</sup> Dill did not intend for the FRC to censor broadcasters but to serve as the cop on the beat who would "see to it that no one uses it who does not promise to be good and well-behaved." <sup>66</sup>

Those in the radio industry generally accepted the premise that "free speech" did not mean the right for anyone to say anything on the air to everyone. The National Radio Coordinating Committee, an umbrella group including manufacturers, newspapers, broadcasters, and radio organizations, spoke out in favor of operating radio in the public interest. <sup>67</sup> A report from the American Bar Association mentioned that some people would be taken off the air, accepting that premise without reservation. <sup>68</sup> Two major radio corporations, AT&T and General Electric, as well as the National Association of Broadcasters, publicly endorsed radio legislation, <sup>69</sup> as did the editors of *Radio Retailing* <sup>70</sup> and *Radio Broadcast*. <sup>71</sup> Free speech issues were secondary to the industry, McKerns argues, to ending the chaos on the air, which threatened the economic potential of radio. The radio act became the "least objectionable" option available. <sup>72</sup> The public held similar views in hundreds of letters sent to congressmen, demanding the right to listen without inference with little regard for free speech issues. <sup>73</sup>

About the only negative voices heard were from organizations that feared that their voices would be silenced. The Association of College and University Broadcasting Stations <sup>74</sup> and the American Radio Relay League, <sup>75</sup> an organization of amateur broadcasters, spoke against a "public interest" standard because they predicted--correctly--that people in their organizations would lose their licenses.

Broadcasters were not the only voices silenced by provisions of the Radio Act. Congress wrote the equal opportunity provision of the act (Section 18) to prevent broadcasters from using the radio as a personal political power base. The provision

also marginalized the radical political voice. To White, "equal opportunity" for "legally qualified candidates" encouraged mainstream political debate between Republicans and Democrats through a national medium while the language permitted the exclusion of fringe candidates. At one point Sen. Earle B. Mayfield of Texas wanted to know what was going to keep "bolshevism or communism" off the air. Dill believed that the law would exclude radical politicians from the airwaves since they would not be legally qualified candidates.<sup>76</sup>

The effect of Section 18 was to give voice to the political parties supported by the middle class while the candidates of immigrants who supported unions or radical political change would have limited access to the airwaves.<sup>77</sup> In light of contemporary Supreme Court decisions (discussed later) and the actions of the federal government during the Red Scare of the early 1920s, a discussion of radical political change would not only seem to be against "public interest, convenience, and necessity" but potentially illegal.

Because of the provisions of the bill, the only discussions to be heard over the radio would be those consistent with Progressive ideology. Meanwhile, application of "public interest, convenience, and necessity" could deny the public access to the ideas of their enemies, such as unions, socialists, communists, evolutionists, improper thinkers, non-Christians, and immigrants.<sup>78</sup> Therefore, "free speech" as guaranteed in Section 29 meant to the Progressives that broadcasters could have free speech as long as they served the public interest by denying access to speakers who did not serve the public interest as they defined it.<sup>79</sup> Within this context, the equal time provisions became FRC instruments for governmental, regulatory control of the airwaves.<sup>80</sup>

## **THE SUPREME COURT**

Congress' limited concept of free speech was consistent with a decade of U.S. Supreme Court rulings, including opinions written by Justices Oliver Wendell Holmes and Louis Brandeis, two Progressives on the Court. Beginning with *Schenck v. United States* (39 S.Ct. 247) and *Frohwerk v. United States* (39 S.Ct. 249) and then in *Debs v. United States* (249 Federal 211) and *Abrams v. U.S.* (40 S.Ct. 17), the Supreme Court in 1919 upheld the constitutionality of the Espionage Act as a tool to quiet discontent against the U.S. effort in World War I. Such speech was illegal because its intent was to obstruct the draft and the war effort, Holmes argued in *Schenck*, *Frohwerk*, and *Debs*. The decision in *Frohwerk* shows the limits that the Supreme Court was willing to place on free speech, even if the danger created by free speech was only possibly a threat to the U.S. Holmes agreed the German-language newspaper that Jacob Frohwerk wrote for had made no special effort to reach draftees. He noted its circulation was so small that the paper had no means to obstruct recruiting. Holmes warned, however, that the paper represented a little breath that could "kindle a flame"

in the "tinder box" of the German community, and, therefore, Frohwerk's writings were a threat to national security.

Eventually, the Supreme Court extended limitations on free speech beyond the context of World War I. The court upheld the constitutionality of the conviction of Socialist Benjamin Gitlow (45 S.Ct. 625) under a New York criminal anarchy statute that made it illegal for a person to teach or advocate revolution or assassination. Gitlow had helped distribute 16,000 copies of the paper, "The Revolutionary Age." It called for a communist revolution based on revolutionary socialism, but no evidence was presented indicating distribution resulted in any action. Justice Edward Sanford reasoned that "The Revolutionary Age" created the likelihood of action because an urge to action was implied.<sup>81</sup> In 1927, the Supreme Court (47 S.Ct. 641) used similar reasoning to uphold the conviction of Anita Whitney, a member of the Communist Labor Party of California. The rationale of these Supreme Court decisions and the arguments made during Congressional debate indicate both branches of the federal government shared similar understandings of what was meant in 1927 by free speech.<sup>82</sup>

## **THE HISTORICAL ARGUMENT**

Other historians have considered Congressional intent in the Radio Act and evaluated Progressive influences, most notably Louise Benjamin and Donald Godfrey. Benjamin's dissertation on free speech in the Radio Act considered the issues of censorship, creation of a regulatory agency, monopoly, and the right of broadcasters to use the medium. In trying to resolve who should be allowed to broadcast, Benjamin argues that Congress placed itself into a larger social debate. A free speech debate existed within American society over those who "saw 'abuses' of free speech as intolerable and those who wished to use speech to further social and economic goals."<sup>83</sup> As Benjamin would later argue, these conflicts were resolved by Secretary of Commerce Herbert Hoover and the radio industry during the 1920s radio conferences conducted by him prior to passage of the Radio Act. The end result of these agreements was "to transform the industry from amateur communication to nationwide broadcasting," which met the economic needs of the major radio corporations.<sup>84</sup>

Godfrey looked in his dissertation at Progressive influence on the Radio Act. He makes particular note of the Progressive roots of Sen. Clarence Dill, one of the architects of the Radio Act, and his identification with Progressive senators James Watson, William Borah, Robert La Follette, Hiram Johnson, and Burton Wheeler. According to Godfrey, one of the areas of Progressive influence was in the selection of the language "public interest, convenience, and necessity." These words were a way of balancing industrial control of radio against the potential for government

ensorship. To Godfrey, "The founders of the legislation sought to provide a degree of regulation that would preserve industrial freedom and the public interest."<sup>85</sup> Another way that Progressive senators specifically shaped the Radio Act was in the creation of the Federal Radio Commission, contends Godfrey in a later article.<sup>86</sup> Influenced by Borah and Watson, Dill rewrote his first draft of the 1926 Senate version of the bill to create the FRC. Borah and Watson objected to putting radio control into the hands of the Secretary of Commerce for fear that person would use radio for political purposes. Kerry Irish notes that these Progressive senators were not happy with the final version of the Radio Act. George Norris, for example, wanted governmental control of radio. Despite getting the FRC and the public interest standard, Irish claims Dill, Norris, Borah and others would not have called the Radio Act a Progressive victory because Rep. White and President Coolidge would not have permitted total government ownership.<sup>87</sup> To an extent, Irish is correct. Coolidge told Hoover to turn to the "successful elements of the industry" for advice."<sup>88</sup> White discussed regulation with representatives from the National Association of Broadcasters and RCA as well as even David Sarnoff.<sup>89</sup> In the final analysis, however, whether Borah and other Progressive senators were happy, the fact remains that the Radio Act included many provisions, particularly the creation of an independent commission and the public interest standard, borrowed from the Progressive model of federal regulation.

White and Dill agreed that the public interest standard was the heart of the Radio Act, writes Frederick Ford.<sup>90</sup> Armed with the "hidden teeth" of the public interest standard, the FRC had all of the authority that it needed to create the machinery for censorship.<sup>91</sup> Public interest provided a criteria for the commission to determine who was fit to broadcast but without creating specific guidelines, notes C. B. Rose. Without guidelines to follow, the commission could favor large "capital interests."<sup>92</sup> Ultimately, the public interest standard represented "prior restraint" of broadcasters, argues Fred H. Cate, and, therefore, "The First Amendment is no where to be found" in the Radio Act of 1927.<sup>93</sup>

## **CONCLUSION**

"Free speech" was not an empty term as used by Progressives in the Radio Act of 1927. None of the major participants in the discussion of the law sought to have the federal government run radio stations or provide the material for broadcasters, except in national emergencies. Congress gave them the right to create and broadcast entertainment and news for the listening public. The FRC sought to ensure everyone access to at least one radio station, making listeners active participants in American society and the political process. However, Congress did not want the voices of the Socialist, the Communism, the Bolsheviks, the evolutionists or the obscene heard on the radio. Clearly, some Congressmen feared the power of radio and what they perceived was its potential as a mechanism to call for radical political or social

reform, to speak the indecent, or to monopolize opinions. To prevent that from happening, Congress gave enormous discretion to the FRC to protect listeners from those who would not operate radio for "public interest, convenience, and necessity."

## NOTES

1 *Congressional Record*, 1927, p. 1173.

2 Jane Gaines argues that law is always a performance of ideological assumptions; therefore, the question is not IF the Radio Act was ideological, but what was its ideology. See Jane M. Gaines, *Contested Culture The Image, The Voice, and The Law*(Chapel Hill: University of North Carolina Press, 1991), 15.

3 Many historians make note of the conflicts within Progressivism, including Arthur Link and Richard McCormick, Robert Wiebe, Richard Hofstadter, Robert Murray, Joan Hoff Wilson, LeRoy Ashby, and Kenneth MacKay.

4 Oscar Handlin in the foreword of David P. Thelen, *Robert La Follette and the Insurgent Spirit* (Boston: Little, Brown and Co., 1976), v.

5 Robert H. Wiebe, *The Search for Order, 1877-1920* (New York: Hill and Wang, 1967), 297.

6 David B. Danbom, *"The World of Hope:" Progressives and the Struggle for an Ethical Public Life*, (Philadelphia: Temple University Press, 1987), 5. Explains Danbom on 6, "The individual...was the shaper of his own destiny. His economic success was dependent upon his own efforts, as was his social position."

7 David N. Rabban, "Free Speech in Progressive Social Thought," *Texas Law Review*, 74 (5) (1996): 955.

8 LeRoy Ashby, *The Spearless Leader: Senator Borah and the Progressive Movement in the 1920's* (Chicago: University of Illinois Press, 1972), 8.

9 Ray Tucker and Frederick R. Barkley, *Sons of the Wild Jackass* (Seattle: University of Washington Press, 1932).

10 John Chamberlain, *The Rise, Life and Decay of the Progressive Mind In America*, 2nd ed. (New York: John Day Co., 1933), 305.

11 Richard Hofstadter, *The Age of Reform: From Bryan to F.D.R.* (New York: Knopf, 1955), 273.

12 Stuart Hall explains what a culture deems as "common sense" is in reality an ideological position so accepted by members of the culture that its use is taken for granted. See Stuart Hall "Signification, Representation, Ideology: Althusser and the Post-Structuralist Debates," *Critical Studies in Mass Communication*, 2(2) (1985): 91-114.

13 Thomas K. McCraw, "The Progressive Legacy," in *The Progressive Era*, Lewis L. Gould, ed. (Syracuse, N.Y.: Syracuse University Press, 1974), 182.

14 Key Pittman, for example, was always identified as a party-line Democrat, but in 1925 and 1926 he pushed for passage of a progressive-like piece of governmental regulation, the Long and Short Haul amendment to the Interstate Commerce Act, with the help of Progressive leader William Borah. See Betty Glad, *Key Pittman The Tragedy of a Senate Insider* (New York: Columbia University Press, 1986), 139.

15 An indication of this are the following numbers reported in *New York Times*, 25 February 1927, 2:8. In 1927, there were 733 public entertainment stations and 18,119 amateur radio sending stations.

16 Clarence Dill, "A Traffic Cop For The Air," *The American Review of Reviews*, February 1927, 183.

17 Herbert Hoover, perhaps to force Congress to pass legislation, asked for an opinion ending his authority to regulate radio after the *Zenith* court decision undermined his authority. See C. C. Dill, "Hope to Stretch Ether Channels," *New York Times*, 12 September 1926, sec. R, 2:1.

18 *Congressional Record*, 1927, 5478.

19 *New York Times*, 7 November 1926, sec. xx, 18:1.

20 Erik Barnouw, *A Tower of Babel. A History of Broadcasting in the United States*, Vol. 1 (New York: Oxford University Press, 1966).

21 *Congressional Record*, 1927, 3027. Another indicator of the complexity of the issues is that Clarence Dill and Wallace White were ultimately assigned the task of writing the final version of the Radio Act because no others in Congress understood the

issues. See *New York Times*, 17 December 1926, 44:1. Dill referred to himself as a

"one-eye[d] man among the blind." See Clarence C. Dill, *Where Water Falls* (Spokane,

Wash.: C.W. Hill, 1970), 114.

22 *Congressional Record*, 1927, 3570.

23 French Strother, a writer for *Radio Broadcast*, says that RCA controlled all but two of the essential radio patents, giving RCA a major hold on the industry. "The Radio Patent Structure and What It Means," *Radio Broadcast*, November 1926, 22. The Federal Trade Commission investigated the radio trust of RCA, General Electric, and Westinghouse. The Justice Department broke up the trust in 1932.

24 John Braeman, Robert Bremmer, and David Brody, eds., *Change and Continuity in Twentieth Century America* (Columbus: Ohio State University Press, 1964) as quoted by Louise M. Benjamin, "Radio Regulation in the 1920s: Free Speech Issues in the Development of Radio and the Radio Act of 1927." (Ph.D. Diss., University of Iowa, 1985), 41.

25 *Congressional Record*, 1927, 5483.

26 *Congressional Record*, 1926, 5558.

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28 *Congressional Record*, 1927, 4112.

29 Donald G. Godfrey, "Senator Dill and the 1927 Radio Act," *Journal of Broadcasting*, 23 (4 1979): 478. Godfrey calls Dill a "practical politician and professing progressive." Ray Tucker and Frederick Barkley include Dill in their book on Progressives, 246-267. See C.C. Dill, "Five Ages of a Senator," *Politics and Government: Candidates file*, Allen Library, University of Washington. Dill in one of his 1926 campaign brochures is described as: "Is Young, Able and Progressive."

30 Richard Hofstadter, *The American Political Tradition and the Men Who Made It* (New York: Vintage Books, 1958), 290.

31 *Ibid.*, 286.

32 Joan Hoff Wilson, *Herbert Hoover Forgotten Progressive* (Boston: Little, Brown & Co., 1975), 39.

33 C. M. Jansky, "The Contribution of Herbert Hoover to Broadcasting," *Journal of Broadcasting*, 3 (1957): 247.

34 *Ibid.*, 246.

35 S. E. Frost, Jr., *Is American Radio Democratic? A Study of the American System of Radio Regulation, Control, and Operation as Related to the Democratic Way of Life with Emphasis upon its Educational Aspects*. (Chicago: University of Chicago Press, 1937),16-19.

36 Herbert Hoover, *The Memoirs of Herbert Hoover: The Cabinet and The Presidency, 1920-1933*, Vol. 2 (New York: MacMillian, 1952), 144.

37 *Ibid.*, 140.

38 Several historians have discussed Hoover's viewpoints on radio regulation. Daniel Garvey argues that Hoover was a stronger supporter of radio regulation, but that he favored a single executive to run radio instead of a commission. Edward Sarno says that Hoover favored professional broadcasters over the amateurs. Marvin Bensman notes that Hoover opposed anti-monopolistic language aimed at RCA because of the vital role, that he perceived, it played in international radio services. See Daniel E. Garvey, "Secretary Hoover and the Quest for Broadcast Regulation" *Journalism History* 3(3) (1976): 66-70, 85; Edward F. Sarno, Edward. F, "The National Radio Conference," *Journal of Broadcasting* 13(2) (1969): 189-202; and Marvin R. Bensman, "The Zenith-WJAZ Case and the Chaos of 1926-27," *Journal of Broadcasting*, 14, (Fall 1970): 423-41.

39 *Congressional Record*, 1927, 1163.

40 S. E. Frost calls public interest, convenience, and necessity "the heart of the Act" (27). Values could be protected by placing great power into the hands of the FRC and the courts, but "unwarranted" censorship would be prevented if broadcasters did not cross the limits of free speech. C. B. Rose notes that under the Radio Act the FRC had only the public interest standard as criteria to determine who should receive a license. The application of the standard meant that unpopular ideas, such as economic or social views opposed to the dominant ideology, and minority political candidates would not be heard. Besides being Congressional experts on radio, White specialized in railroad legislation and Dill served on the Interstate Commerce Commission, meaning both were familiar with the concept of public interest before writing the Radio Act. See Frost, *Is American Radio Democratic?*; C. B. Rose, Jr. *National Policy for Radio Broadcasting*, 1940; reprint (New York: Arno Press, 1971).



40 *Congressional Record*, 1927, 1173.

41 Milagros Rivera-Sanchez notes that no one either publicly or during Congressional debate objected to restrictions on indecent or obscene speech, despite the language of the bill prohibiting censorship of the airwaves. See Milagros Rivera-Sanchez, "The Origins of the Ban on 'Obscene, Indecent, or Profane' Language of the Radio Act of 1927," *Journalism Monographs*, 149 (February 1995): 21.

42 The language of the 1620 Mayflower Compact states that all white males will "covenant & combine our selves together into a civill body politick" which will "by vertue hearof, to enacte, constitute, and frame shuch just & equall lawes, ordinances, acts, constitutions, & offices, from time to time, as shall be thought most meete & convenient for ye generall good of ye Colonie."  
([www.night.net/thanksgiving/Mayflower.html](http://www.night.net/thanksgiving/Mayflower.html))

43 *Abrams v. United States*, 63 L.ED. 1173. As Holmes stated in *Abrams* at 1180, "The best test of truth is the power of the thought to get itself accepted in the competition of the market."

45 *Congressional Record*, 1926, 5479.

46 *Congressional Record*, 1927, 4111.

47 Barnouw, 305-306.

48 *Congressional Record*, 1927, 4111.

49 *Congressional Record*, 1927, 4510.

50 J.H. Morecraft, "March of Radio," *Radio Broadcast*, July 1926, 118.

51 J.H. Morecraft, "The March of Radio," *Radio Broadcast*, August 1926, 296.

52 J.H. Morecraft, "The March of Radio," *Radio Broadcast*, May 1926, 24.

53 J.H. Morecraft, "March of Radio," *Radio Broadcast*, April 1926, 555.

54 J.H. Morecraft, "March of Radio," *Radio Broadcast*, October 1926, 475.

55 "Radio Censorship," *The Literary Digest*, 4 October 1924, 28.

56 "The Fight for 'Freedom of the Air,'" *The Literary Digest*, 22 March 1924, 9.

- 57 "To Kill Off Broadcasting 'Pirates,'" 7 May 1927, *The Literary Digest*, 13-14.
- 58 *Congressional Record*, 1927, 1173.
- 59 *Congressional Record*, 1926, 12357.
- 60 *Congressional Record*, 1926, 12615.
- 61 "Reports Bill Taking Radio From Hoover," *New York Times*, 9 May 1926, 14:1.
- 62 C. C. Dill, "Hope to Stretch Ether Channels," *New York Times*, 12 September 1926, sec. R, 2: 1.
- 63 "Hoover Sees Chaos Without Radio Law," *New York Times*, 21 April 1926, 5:1.
- 64 Dill, *Where The Water Falls*, 110.
- 65 *Ibid.*
- 66 Dill, *American Review*, 181.
- 67 "Urges Federal Radio Legislation," *New York Times*, 20 November 1926, 23:2.
- 68 "Interim Report on Radio Legislation by the Air Law Committee of the American Bar Association," Wallace White papers, File 64, Folder Federal Control of Radio, 1919-1925, Library of Congress.
- 69 "Bill Provides For Control of Radio Motion Pictures," *New York Times*, 17 January 1926, sec. XX, 15:1.
- 70 O.H. Caldwell, "Gentlemen of the Radio Industry--Wake Up!!!" Wallace White papers, File 51: Radio Miscellaneous, Library of Congress.
- 71 "To Wallace H. White from Willis Kingsley Wing, editor," *Radio Broadcast*, 28 December 1926 and 1 January 1927, Wallace White Papers, File 50: Radio Miscellaneous, Library of Congress.
- 72 Joseph P. McKerns, "Industry Skeptics and the Radio Act of 1927," *Journalism History*, 3(4) (Winter 1976-77): 130.
- 73 "Petitions Urge Congress To Pass Radio Legislation," *New York Times*, 16 January 1927, sec. VII, 16:1.

74 Wallace H. White to J. C. Jenson, secretary, Association of College and University Broadcasting Stations, 13 December 1926, Wallace H. White papers, File 51 Radio Miscellaneous, Library of Congress.

75 Hearings Before the Committee on The Merchant Marine and Fisheries, House of Representatives, 67th Congress, 4th Session On HR 11964, January 2-3, 1923 9Washington; Printing Office, 1923), Wallace White papers, Folder 64: Federal Control of Radio, 1919-1925, Library of Congress.

76 *Congressional Record*, 1926, 12502.

77 Robert McChesney notes that unions and other organizations had their licenses pulled by the FRC in the 1930s. See Robert W. McChesney, *Telecommunications, Mass Media, & Democracy The Battle for the Control of U.S. Broadcasting, 1928-1935*(New York: Oxford University Press, 1994).

78 Censoring in the public interest dates back to 1922 when WOR bleeped out Olga Petrova when she began a discussion on birth control by reciting the lines from Old Mother Hubbard who "had so many children because she didn't know what to do." See Barnouw, *A Tower of Babel*, 86.

79 Rivera-Sanchez, "The Origins of the Ban of 'Obscene, Indecent or Profane' Language in the Radio Act of 1927," 11. The "morally offensive content of motion pictures and plays" also was being censored in the 1920s.

80 D.H. Ostroff argues that the equal time provision was a product of Democratic fear that Republicans and Progressives would dominate politics through the use of radio. See D.H. Ostroff, "Equal Time: Origins of Section 18 of the Radio Act of 1927," *Journal of Broadcasting* 24(3) (Summer 1980): 368.

81 69 L.Ed. 1144.

82 As Louise Benjamin has pointed out, an Illinois court used a public interest standard in establishing court precedent before passage of the Radio Act. See Louise Benjamin, "The Precedent that Almost Was: A 1926 Court Effort to Regulate Radio," *Journalism Quarterly*, 67(3): 579.

83 Louise Benjamin, "Radio Regulation in the 1920s: Free Speech Issues in the Development of Radio and the Radio Act of 1927" (Ph.D. Diss, University of Iowa, 1985), 116-117.

84 Louise Benjamin, "Working It Out Together: Radio Policy From Hoover to the Radio Act of 1927," *Journal of Broadcasting & Electronic Media*, 42(2), (Spring 1998): 233.

85 Donald G. Godfrey, "A Rhetorical Analysis of the Congressional Debates on Broadcast Regulation in the United States, 1927" (Ph.D. Diss, University of Washington, 1975), 33.

86 Donald G. Godfrey, "Senator Dill and the 1927 Radio Act," *Journal of Broadcasting*, 23(4), (Fall 1979), 477-489.

87 Kerry Irish, "Clarence Dill: The Life of A Western Politician" (Ph.D. Diss., University of Washington, 1994), 168.

88 Barnouw, *Tower of Babel*, 178.

89 See Wallace H. White to L. S. Baker, managing director, National Association of Broadcasters, 2 December 1927, Wallace H. White Collection, File 50: Radio Miscellaneous Folder; Wallace H. White to William Brown, vice president and general attorney, RCA, 24 November 1926, Wallace H. White Collection, File 51: Radio Miscellaneous Folder; Wallace H. White to H. G. Harbord, president, RCA, 22 September 1926, Wallace H. White Collection, File 51: Radio Miscellaneous Folder; Wallace H. White to Paul B. Klugh, ex-chairman, National Association of Broadcasters, 2 September 1926, Wallace H. White Collection, Box 651, Folder Radio-Miscellaneous #2; and telegram from William Brown to Wallace White, arranging meeting with "SARNOFF," 26 October 1926, Folder 651: Folder Radio-Miscellaneous #2. All are at the Library of Congress.

90 Frederick W. Ford, "The Meaning of Public Interest, Convenience, or Necessity," *Journal of Broadcasting*, 5 (Summer 1961): 207.

91 Francis Chase, Jr., *Sound Fury: An Informal History of Broadcasting* (New York: Harper, 1942), 233.

92 Rose, *National Policy*, 6.

93 Fred H. Cate, "A Law Antecedent and Paramount," *Federal Communications Law Journal*, 47(2) (December 1994): 207.