From 1919 to 1927, the industrial magnate and mass-mediated folk hero, Henry Ford, did more than make cars; he also owned and published the Dearborn Independent. Ford spent millions making the newspaper a nationwide vehicle for his reactionary politics. The paper became the most widely circulated purveyor of anti-Semitic screeds the United States would ever see. In addition to many freestanding pieces about Jewish wrongdoing, the paper engineered the English translation of the notorious Russian forgery, the Protocols of the Elders of Zion, and then set about Americanizing the original, folding into its annals the “conspiracies” of scores of American Jews, who were said to be aiming to dominate and control the nation’s government, business, and popular culture. Under the title “The International Jew,” this Americanized Protocols ran as a weekly series for nearly 2 years, yielding close to ninety articles, which the Independent reprinted in book form.

Victoria Woeste has written a brilliantly detailed account of the responses to Ford’s “War on Jews,” focusing on two leading American Jewish lawyers: Louis Marshall and Aaron Sapiro. Marshall and Sapiro were both featured in the “International Jew” series. The two attorneys took opposing views, however, about the wisdom of bringing libel actions against Ford, and whether “group libel” suits would halt the spread of Ford’s anti-Semitic vision. For his part, Sapiro brought suit against Ford and the Independent and its editors, alleging malicious harm to himself and to American Jews as a “people,” and Sapiro v. Ford became one of the decade’s “many trials of the century.”

Sapiro’s prominence sprang from pioneering various legal innovations in the organization of large-scale farmers’ cooperatives. This work became grist for the Independent’s accounts of Sapiro as a ringleader of Jews seeking to “exploit” the nation’s farmers. The trial along with the pretrial investigation, all of which Woeste reconstructs in great detail, revolved around counsels’ efforts to prove or puncture this conspiracy narrative. At the outset, the court ruled out evidence that addressed group, as opposed to individual, libel. General characterizations of Jews, even in articles about Sapiro, were inadmissible. The concept of group libel with regard to racial, religious, or national groups was unsupported by the state’s common law or statutes, the court held. The court eventually declared a mistrial, because of apparent jury tampering by Ford’s attorneys.

Rather than risk a second trial, Ford reached out to Louis Marshall, Woeste’s third main character. One of the era’s leading constitutional lawyers, and a frequent Supreme Court advocate on behalf of business, as well as racial minorities, Marshall was the tireless president and chief strategist of the
American Jewish Committee (AJC) and other organizations representing American Jewry from the perspective of the well-established German and central European Reform Jewish elite. From the beginning of “Ford’s War,” Marshall and the AJC had urged against libel suits, insisting that they could do more harm than good. Instead, Marshall discreetly encouraged counterpublications debunking the Independent’s screeds, and petitions and statements by prominent Gentiles, assailing the paper as un-American and un-Christian. Therefore, Marshall was elated when Ford’s emissaries approached him to negotiate an end to the controversy. With scant regard for Sapiro and his counsel, Marshall demanded and received an agreement by Ford to halt any publishing or reprinting of the Americanized Protocols and their ilk; and an apology, which Marshall himself drafted.

Historians generally have been kind to Marshall regarding his role in “Ford’s War.” Woeste demurs. She chides him for his tyrannical style and, chiefly, for a more tantalizing, counterfactual reason. Had he chosen to, Woeste claims, Marshall might have used the Ford affair to put American law on a different path. He might have reinvigorated Sapiro’s suit; and he might have “used [the suit and/or Ford’s] apology to instill group libel in American law or to expand protection of Jews from defamation” (331–32).

What prevented Marshall from undertaking this work on behalf of the group libel idea, in Woeste’s account, was his overall outlook about what was good for American Jews. What kinds of group presence in American politics and what kinds of claims on government should Jews embrace; could they remain a “people,” “race,” or “nation” apart, and still enjoy the promise of American citizenship? American Jews were divided about these questions, then as now. Marshall and the AJC, by and large, had an assimilationist outlook. They were anti-Zionist, anti-nationalist and strove to quell any “race” talk on the part of the newer Jewish immigrants from Russia and Eastern Europe, whose outlooks leaned in that direction. As Woeste interprets Marshall and the AJC, even “group libel” smacked too much of a group- or race-based claim, indirectly calling into question Jews’ social status or civic equality.

To this reader, Marshall’s reasons for spurning the idea of group libel were more contextual and pragmatic than the book suggests. It gives short shrift to Marshall’s concern that by putting the burden on anti-Semites of proving truth, group libel trials would provide grand public fora for wide-ranging and headline-grabbing expert testimony on powerful “Jewish conspiracies” and Jews’ “racial traits.” As long as such views were widely held, one could not rely on either juries or the press to treat them with enlightened disdain.

Woeste does, however, thoroughly discuss the legal and constitutional obstacles that stood in the way of promoting group libel or hate speech statutes. The Sapiro court’s finding that there was no legal support for group, as opposed to individual, injuries was a common one. Moreover, several cities such as Cleveland and Chicago had tried to end sales of the Independent, relying on
statutes or ordinances, which, for example, prohibited selling any publication that “exposes the citizens of any race, color, creed, or religion to contempt, derision, or obloquy or which is productive of breach of the peace or riots” (105). However, in every instance, the lower courts rejected the cities’ efforts, holding that the first amendment protected the Independent’s sales, absent a showing of imminent or actual breach of the peace. Not surprisingly, these anti-anti-hate-speech results were hailed by the newly founded American Civil Liberties Union (ACLU) along with many of the nation’s leading papers.

Therefore, had Marshall mounted a campaign in state legislatures to drive hateful speech from the marketplace, he probably would have done so with much of liberal opinion arrayed against him. Yet, it was upon this enlightened liberal opinion that he and the AJC, as well as more radical Jewish organizations, often had to rely in their various campaigns on behalf of Jews and other minorities at home and abroad. With mass opinion across the country perhaps too divided about the Jewish peril, and elite liberal opinion perhaps too united about the freedom of the press, Marshall may not have been wrong to press his case against Ford, without invoking the courts or the state. One of the signal virtues of this fine book, then, is that it provides readers with ample, rich, and fascinating evidence on which to form their own views about its provocative arguments and conclusions.

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Civil liberties in the United States have, until recently, lacked a robust social history. Efforts to trace their lineage have remained largely on doctrinal terrain, divorced from the broader world in which legal and cultural meaning were articulated and negotiated.

Leigh Ann Wheeler’s important new book, How Sex Became a Civil Liberty, is among a crop of recent and forthcoming works that aim to enrich our historical understanding. Its subject is the process by which “sexual expression, practice, and privacy” (4) entered the American civil liberties agenda. Although civil liberties advocates shared an aversion to state suppression of political and economic speech, they split—often along race and gender lines—over state regulation in the realm of sexuality. Spanning the twentieth century, the book brings together such far-ranging issues as birth control, pornography, abortion, rape, gay rights, and sexual harassment. It convincingly