

## BRNO LECTURE 6

Increasingly, the history of the American film industry is being rewritten as a history driven by exhibition rather than production. This change in orientation begins to reveal the industry as a politically much more complex field than one determined solely by the representation of politics in movies.

In February 1936, MGM purchased the screen rights to the Nobel Prize-winning author Sinclair Lewis's novel *It Can't Happen Here*, about a fascist takeover of the United States, and then decided not to produce a film version of it, allegedly as a result of pressure from, variously, the Hays Office, the Republican party, and the German and Italian governments threatening a boycott. MGM insisted that they had made a purely business decision based on the likely expense of the production. Such decisions were not uncommon: the industry purchased more source material than it could use, and to a degree the purchase of material that could not be produced was regarded as an inevitable waste cost in a style industry. Two years earlier, for instance, MGM had more quietly made the same decision - under heavy pressure from the MPPDA - not to produce James M. Cain's *The Postman Always Rings Twice*, which they had purchased prior to publication. In an important sense, MGM's account of their action was exactly correct; the company was weighing the loss of an investment of \$200,000 in script purchase and development against the almost certain exclusion from the German and Italian markets for all the company's products –

and possibly all the industry's products, together with the loss of goodwill the production would engender – for a movie that, on the strength of the box-office performance of other films with a political theme, was unlikely to repay the financial risks involved.

However, the company's decision over *It Can't Happen Here* was categorized as an instance of the industry demonstrating its timidity and bowing to political pressure. The book's author, Sinclair Lewis protested that the MPPDA had decided

that a film cannot be made showing the horrors of fascism and extolling the advantages of Liberal Democracy because Hitler and Mussolini might ban other Hollywood films from their countries if we were so rash. ... Democracy is certainly on the defensive when two European dictators, without opening their mouths or knowing anything about the issue, can shut down a American film.<sup>1</sup>

The industry discussed the matter in different terms. Against Lewis's assertion that "this decision raises an extremely important and critical question concerning free speech and free opinion in the United States,"<sup>2</sup> Terry Ramsaye, editor of *Motion Picture Herald*, suggested that it "has all of the vast significance that would attach to a decision by ... Armour and Company to discontinue a brand of ham." Accurately predicting that because of the fame of the novel and the eminence of its author the story would be inscribed into Hollywood's history, Ramsaye observed,

Mr. Lewis sees Art, Expression, Thought, grabbed by the neck and throttled by a czar ... no less. Human rights are crushed under

heel. A great medium is hamstrung. Democratic America cringes before Herr Hitler and the duce.

... It is probable that Mr. Lewis, and many, many others, do not understand the status of the motion picture, in the eyes, or even minds, of his and our beloved and so infernally democratic public. If a reader of his works, for instance, take violent exception to the content, that reader is merely annoyed with Mr. Lewis. He is not outraged at Doubleday, Doran and Company, and at the whole art of the printed word. But the motion picture spectator, when he is annoyed, is annoyed with "the damned movies" and likely as not the theatre where he saw the annoying picture. ... If his publishers were continuously on a battlefield defending the book business from attempts at punitive taxation, from measures of censorship, from measures addressed at nationalization of their industry, they would perhaps at times weigh the possible effect of product of political implication and influence.<sup>3</sup>

As if to underline Ramsaye's final point, the next issue of the *Herald* contained a report on proposed legislation affecting the industry introduced in the 13 state legislatures then in session. These legislatures had in front of them 48 measures affecting the industry, the great majority of them hostile and many of them taxation measures directed at the exhibition sector. The same article also reported 14 measures before Congress, most of which were concerned with prohibiting the industry's distribution practices of block booking. During March 1936 a subcommittee of the House Committee on Interstate and Foreign

Commerce held hearings on these measures, one of five Congressional hearings on the industry held in the seven years between 1934 and 1941. The situation in the state legislature that I have described also represents a norm of the level of political activity affecting the industry.

The decision not to produce *It Can't Happen Here* certainly was not politically neutral. The Classical Hollywood Cinema was a political institution, with an active engagement in politics at both the federal and state levels, and, indeed, in international affairs, too. But the overwhelming majority of its political activity was immediately defensive in nature, undertaken, as Ramsaye suggested, for the primary purpose of sustaining the profitability of the industry's enterprises. Certainly the MPPDA warned MGM off *It Can't Happen Here* because of the likely effect on the company's access to foreign markets; not simply the German and Italian markets but also the British and French, and to the likelihood that some US censor boards would also reject it as not being "good for the nation at large in these unsettled times." Breen also told L.B Mayer that he considered that there was a "general industry policy matter involved in ... whether or not the industry as an industry is disposed to sponsor a picture of this nature."<sup>4</sup> It was certain, he thought, that a picture based on this material would be subject "to the most minute criticism on all sides." It would "result in enormous difficulty to your studio ... It is almost certain that the picture will be rejected pretty generally throughout the world, and it is more than likely that if it is permitted a permit for exhibition in this country, such permit will be obtained only after considerable negotiations and conference with political censor boards everywhere."<sup>5</sup>

Within the discourse of the industry this was an economic and not an ideological consideration: throughout the 1930s the industry – certainly as represented by the MPPDA – voiced a commitment to what Hays called “‘pure entertainment’ – entertainment unadulterated, unsullied by any infiltration of ‘propaganda.’”<sup>6</sup>

“Propaganda” was only one of the pollutants that might affect the purity of entertainment; it became more prominent in public attention in the second half of the 1930s because of the successful machinations of the MPPDA in containing criticism of the representation of sex and crime in 1934. In 1938, Hays argued that,

In a period in which propaganda has largely reduced the artistic and entertainment validity of the screen in many other countries, it is pleasant to report that American motion pictures continue to be free from any but the highest possible entertainment purpose. ... The distinction between motion pictures with a message and self-serving propaganda is one determinable only through the process of common sense. ... Entertainment is the commodity for which the public pays at the box-office. Propaganda disguised as entertainment would be neither honest salesmanship nor honest showmanship. ... The movie theatre can afford the soft impeachment that most pictures reflect no higher purpose than to entertain, with “escapist” entertainment if you please.<sup>7</sup>

The “common sense” of the industry was embodied in the Production Code Administration: the case of *It Can't Happen Here* was an instance of its

operation in regulating the quality of a consumable commodity. The difficulties the Association faced over film content in the late 1930s were largely the results of its successes in imposing a definition of entertainment as recreation. In the period of Production Code Administration Director Joseph Breen's greatest ascendancy over Hollywood production, between 1934 and 1938, he made little distinction in his correspondence with the studios between a decision under the Code, advice regarding the likely actions of state or foreign censors, and the implementation of "industry policy" in response to pressure groups, foreign governments and corporate interests. Industry policy was, like self-regulation, designed to prevent the movies becoming a subject of controversy or giving offense to powerful interests. Breen defended his practice of linking this strategy with Code enforcement by arguing that the studio executives supported his "vigorous" tone in urging eliminations of any kind on producers.

The studios have come, in recent years, to look to us for sound guidance on matters of political censorship ... members of the Production Code Administration are regarded by producers, directors, and their staffs, as "participants in the processes of production" whose experience is at the disposal of the producing companies from the moment a story idea begins to germinate until the picture finally leave the cutting room.

Since he saw the PCA as representing a national consensus on political issues as well as moral ones, he denied that there was anything "sinister" in his rejecting material that characterized "a member of the United States Senate as a

'heavy'; or ... in which police officials are shown to be dishonest; or ... in which lawyers, or doctors, or bankers, *are indicted as a class.*"<sup>8</sup>

In 1936, as part of the Association's lobbying campaign to defeat federal block-booking proposals, and by way of demonstrating the effectiveness of its self-regulation, the PCA prepared bound volumes of some of its decisions, and circulated them among legislators.<sup>9</sup> Against their celebratory intent, these volumes substantiated the accusations of political liberals that "self-regulation ... has degenerated into political censorship." *It Can't Happen Here* was cited as an example, as were PCA decisions over *They Won't Forget* and two films dealing with the Spanish Civil War, *Last Train to Madrid* and *Blockade*. Breen was unrepentant in defending his rejection of *Clown in Congress* because it "treats national politics in an unfavorable light," or *Stevedore* because

it deals with such an inflammatory subject. Portraying as it does the unfair treatment of the blacks by the whites, and touching upon the subject of an alleged attack by a black man on a white woman, an attempted lynching of a negro. ... Surely the organized motion picture industry is performing a useful public service when spokesmen for the Association insist that screen material involving racial conflicts between whites and blacks be handled in such a way as to avoid fanning the flame of race prejudice. The film *FURY* proves conclusively that there is a way to handle satisfactorily and with tremendous dramatic power the heinous crime of lynching without including the racial angle."

He justified such actions on two grounds. One was pragmatic: he was cautioning producers against a production that might prove financially profitable but also embarrass or endanger the industry as a whole “by affording pressure groups ... a further opportunity to call for governmental interference. There was, he maintained,

nothing “sinister” about this. People engaged in every line of endeavor are constantly forced to choose between immediate advantage and the attainment or maintenance of fundamental objectives. The reconciliation of this inevitable conflict is one of the chief functions of this or any other worthwhile trade association.<sup>10</sup>

The other ground of Breen’s defense was that he saw the PCA as representing a national consensus on political issues as well as on moral ones; indeed, he understood political issues primarily in moral terms. If a specifically Catholic sensibility emerged anywhere in the activity of the PCA, it was in this equation of the moral and the political. It was the overt anti-Communism of official Catholicism, and its attitude toward Spain in particular, that led to the strongest accusations of an excessive Catholic influence in the PCA. *Blockade*, approved while Breen was on vacation in Europe, was attacked by the Knights of Columbus as Communist propaganda in 1938. Although Breen defended the film, he did so with little genuine conviction. In December 1937 he had proposed to contacts in the Vatican a plan to prohibit films involving “divorce and the re-marriage of divorced persons,” and films in which “Communist propaganda” had been “injected.” Breen proposed using the power of the foreign market, via Catholic pressure on government censorship, to prohibit such films in enough



countries as to render them unprofitable to the producers.<sup>11</sup> Breen was not alone in seeing the suppression of Communist propaganda was a moral, not a political issue. In the middle of the *Blockade* controversy, Martin Quigley, Breen's co-conspirator in the invention of the Legion of Decency, proposed an amendment to the Production Code, that

No motion picture shall be produced which shall advocate or create sympathy for political theories alien to, and subversive of, American institutions, nor any picture which perverts or tends to pervert the theatre screen from its avowed purpose of entertainment to the function of political controversy. (Quigley to Hays, July 11, 1938, MPA 1939 Production Code file)

But by mid-1938, the PCA was becoming controversial precisely because of its success in keeping controversy from the screen, and Breen's practice of linking Code, censorship and "industry policy" issues together was itself becoming a threat to the industry. The location of that threat was identified by the MPPDA's chief Washington lobbyist, Ray Norr, who argued that under Breen, the PCA was seeking

to take on a vastly greater field than was ever intended by the industry's purpose - which was to adopt and maintain a *moral* code in the production of motion picture entertainment. ... Self-regulation ... has degenerated into political censorship which has made it difficult for the industry to respond to public demand for more vital entertainment. ... the object now is to *limit* the jurisdiction of the Motion Picture Production Code in various respects.<sup>12</sup>

The immediate cause of this concern was the anti-trust suit filed by the Department of Justice in July 1938, which implicated the PCA in the majors' restrictive practices, and alleged that through the Code the majors exercised a practical censorship over the entire industry, restricting the production of pictures treating controversial subjects and hindering the development of innovative approaches to drama or narrative by companies that might use innovation as a way of challenging the majors' monopoly power.

Hays initiated an internal investigation into the extent of the jurisdiction of the PCA conducted by his Executive Assistant Francis Harmon, which had the effect – perhaps also intended of reining in Breen's more grandiose ambitions.

Harmon suggested that,

Very great care is needed on the part of the PCA to distinguish between its administrative functions under the Code (with its penalty provisions) on the one hand, and its advisory functions (without penalties) on the other. ... A reasonably clear and predictable definition of the extent of the jurisdiction of the Production Code Administration, is urgently needed.

He classified groups of films, including newsreels, advertising, sponsored and government films, as properly falling outside the authority of the PCA, as did questions other than a film's conformity "to standards of decency, morality and fairness embodied in the Production Code."

If the film deals with a controversial subject, but is free from that which offends decency or is listed in the Code as morally objectionable, then the sole remaining question to be decided by

the PCA should not be whether the film is “desirable” but whether the presentation deals fairly and honestly, and without deliberate deception, with the subject matter.<sup>13</sup>

Quigley was horrified. The changes proposed, he suggested, were “an invitation to disaster.” **Breen tried to argue t**hat his critics had misunderstood the Production Code Administration when they compared its operation to that of a court of a state censor board. He described the PCA as having grown “out of the entire legislative history of the Association and the general industry policies,” and its responsibilities as never having been “limited solely to the enforcement of the Code”:

The members of the Production Code Administration recognize every day that they are vested with authority voluntarily delegated by the member companies to the Association and subject to termination any time member companies so decide. *The relationship is actually much nearer to that confidential, sympathetic attitude which exists between a lawyer and his client than that between the judge on the bench and a litigant at the bar. ....* The fact that the suggestions and recommendations of the Production Code Administration are so generally followed indicates that today the members of the Production Code Administration are regarded by producers, directors, and their staffs, as “participants in the processes of production” whose experience is at the disposal of the producing companies from the moment a story idea begins to germinate until the picture finally leave the cutting room.<sup>14</sup>

But the federal government's redefinition of what constituted unreasonable restraint of trade in the Paramount suit required the restriction of the PCA's jurisdiction, in order not to embroil the Association in a violation of the anti-trust laws, and demonstrated the practical political need for the industry to encourage, or at least acquiesce in, the use of politically more controversial content as a way of demonstrating that the "freedom of the screen" was not hampered by the operations of the PCA. This change was not occasioned by any clear public demand, but in order to maintain a political quiescence that would protect its oligopoly structure. **Although PCA officials continued** to voice concern over whether such subjects as *Confessions of a Nazi Spy* constituted appropriate screen entertainment, they were much more circumspect in expressing their opinions.

Where, in 1930-34, the dominant voices to which the Association was attempting to adjust film content came from moral conservatives, most clearly orchestrated by the Catholic Church, by 1938-9 that voice had become much more marginal, and Quigley's notion of an entertainment kept pure from all political utterance was becoming increasingly difficult to sustain – less in practice than as a principle for the MPPDA to adhere to.<sup>15</sup>

**In January 1938 Breen** had rejected a manuscript by Lewis Ransom Foster called "The Gentleman From Montana," on the grounds that it portrayed "the United States Senate as a body of politicians, who, if not deliberately crooked, are completely controlled by lobbyists with special interests." Such a picture might well be considered, he thought, "both here, and more particularly abroad, as a covert attack on the democratic form of government."<sup>16</sup> In January

1939, after the changes of policy during 1938, Frank Capra submitted a screenplay based on the same source material, and received a much more favourable reception:

It is a grand yarn that will do a great deal of good for all those who see it and, in my judgment, it is particularly fortunate that this kind of story is to be made at this time. Out of all Senator Jeff's difficulties there has been evolved the importance of a democracy and there is splendidly emphasized the rich and glorious heritage which is ours and which comes when you have a government "of the people, by the people, and for the people."

Nevertheless, despite a in Washington, with all the Congress invited, the movie was very badly received both by serving Senators, many of whom walked out, denouncing the film as an "outrage" and an "insult," and by the Washington press corps, who resented at being represented, once again, by "an amiable drunk."<sup>17</sup> Press coverage of the reaction widely recorded the rumour that Senators would take their revenge by passing anti-block-booking legislation. In the event, the furore over the film died down after about a month, after New York and Los Angeles critics generally endorsed the picture as "a comic celebration of the spirit, rather than the form, of American government."

The movie that I am discussing, *Black Legion*, was produced at the beginning of the sequence of events that I have described, released at the very end of 1936. I think that it is worth discussing as a first instance of the concern for what *New York Times* reviewer Frank Nugent called "editorial cinema." Nugent, like many other of its reviewers, praised the picture extravagantly: the National Board of Review named it as one of the best pictures of 1937, and Bogart as

Best Actor. Much of the enthusiasm for the picture came from its being based on events that had made newspaper headlines during the summer of 1936, and its willingness to address the frightening consequences of those issues directly.

**Frank Nugent wrote:**

Beneath its fictional veneer, it is the quasi-documentary record of the growth and activities of the hooded organization that terrorized the Midwest in 1935-36 cloaking its cowardice, bigotry, selfishness, stupidity and brutality under the mantle of "100 per cent Americanism." .... For this is the unforgettable, the horrible thing about *Black Legion*—it did happen here! Thousands of our illustrious Midwestern citizens did take an oath "in the name of God and the devil to exterminate the anarchists, Communists, the Roman hierarchy and their abettors." They did don their childish regalia with its skull-and-cross-bones insignia, they did hold their secret conclaves and choose their victims. And homes were burned and shops destroyed and men flogged and lynched as a consequence. ... To see a picture that way is a harrowing experience; but it may be salutary, too. ... The picture merits an attentive audience; I hope its message reaches that type of mind to which the Michigan organization's aims appealed.

**Red Kann's review** in the trade paper *Motion Picture Daily* was equally enthusiastic:

While the foreword makes it very clear that what follows is based on no actual incidents or on fact itself. for that matter, this will deceive no one who looks and, we hope, millions will for the good it has a chance of doing. ... The *Black Legion*" moves motion pictures one notch forward in the recognition.

eventually to come, that, although films may be designed chiefly to entertain, they must also go beyond in the cause of social problems.<sup>18</sup>

**In a second review**, Nugent drew attention to the fact that while *Black Legion*

is one the most courageous, forthright and bitter editorials the screen has written ... we are reminded, Hollywood halted production of 'It Can't Happen Here'. because Italy and Germany would have taken offense at its anti-Fascist message; it destroyed the negative of "The Devil Is a Woman" because of Spanish protest about its disrespectful treatment of Spain's Civil Guard ... it regretfully abandoned plans for a film of "Paths of Glory" upon learning that France we prefer to have that incident of World War forgotten; it shelved "The Forty Days of Musa Dagh' in Turkey's interest; it—but there's no need to cite more cases.<sup>19</sup> ...

**As the reviews indicated**, *Black Legion's* story was closely based on press revelations about a secret organisation called the Black Legion made in a criminal case in Michigan in 1936. The Black Legion was founded in Ohio in the mid-1920s as an offshoot of the Ku Klux Klan. In the revived form in which it existed in the early 1920s, **the Klan was** a large and politically significant organisation across much of the country, particularly the South and Midwest, with at least three million members at its height in 1924 – meaning that one of every three or four white, adult, Protestant American males was a Klansman. In this form, it was a nativist organisation, as firmly anti-Catholic and anti-Semitic as it was anti-Negro. It collapsed rapidly in the later 1920s after its leadership was revealed to be corruptly profiteering from the membership, and after the passage of anti-

immigration legislation. Its collapse led to the establishment of a number of comparable organisations, of which **the Black Legion was the** most prominent. Although its members boasted a membership of one million in Michigan, alone, it probably had about 100,000 members in the four Midwest states of Michigan, Indiana, Ohio and Illinois. Its members were mainly working-class Anglo-Saxon men, most of them migrants from the South working in unskilled jobs in steel or automobile assembly plants, poorly educated, their nativism exaggerated by the economic conditions of the Depression and their fears of losing their jobs to immigrant labour. A June 1936 *New York Times* article described “the typical member of this organization dedicated to a doctrine of hate, to a discipline of terror enforced by sheer brutality them,” as

**a man who would be lost** in any crowd in almost any urban slum in the country. ... He is a man in the middle thirties, lean of figure, bony-faced, with pointed features. Probably he was born on a small farm in one of the Southern States, more often Tennessee, of parents who were descended from American stock of long standing and of Anglo-Saxon antecedents. He went through grammar school, but his education came to an end before he got his diploma. ... With his wife, who has borne him two children, he has been living in one or another of the communities within an industrial city for seven or eight years, but he has never come to reconcile himself to city life or industrial work. ... He is working now, on construction—unskilled labor—at the steel plant or in the assembly chain in the automobile plant ... The monotony of repetitive processes sets something welling up within him; he hates the machine that spares him from spending his strength and produces his pay check. ... He cherishes his family and fears for it. The trouble of getting a job and holding it



for his family's sake during the depression is written indelibly on his mind and it conditions his most trivial opinions.<sup>20</sup>

**The Black Legion was,** like the KKK, a secret organisation, notionally dedicated to upholding "Protestantism, Americanism and Womanhood" and in reality operating as a protective organisation finding and preserving its members' jobs. It declared itself committed to the "extermination" of "political Romanism [the Catholic Church], Judaism, Communism, and all 'isms' which our forefathers came to this country to avoid." **Its rituals and costumes** were even more bizarre than those of the KKK. The movie's portrayal of the recruitment process, the oath, and the complete secrecy of the organisation was essentially accurate:

~~We regard as enemies to ourselves and our country all aliens, Negroes, Jews and cults and creeds believing in racial equality or owing allegiance to any foreign potentate. These we will fight without fear or favor as long as one foe of the American liberty is left alive.~~<sup>21</sup>

No man could apply for membership, but if sponsored by friends, was enticed to a meeting. There, with a revolver at his heart, he was permitted to declare his willingness to "be torn limb from limb and scattered to the carrion" if he betrayed a word of society secrets."<sup>22</sup>

**The New York Times** described "the published ritual of this dread band" as reading "as if it had been composed by Tom Sawyer to impress Huck Finn and Indian Joe."<sup>23</sup> But the Black Legion engaged in a variety of acts of nativist vigilantism and terrorism, including crimes often described as lynchings. Newspaper reports suggested that its members may have been responsible for as many as 57 murders, although members were only tried for five. More than

fifty members of the Michigan Black Legion in were convicted of various crimes, including arson, kidnapping, flogging, plotting to kill different individuals, and plotting an armed uprising to take over the Federal Government. Many acts of arson occurred against the homes of supposed Communists, or places at which Communists met. They were involved, at least to some extent, in the anti-union violence perpetrated, as part of company policy, by the major automobile manufacturers in Detroit, Ford and General Motors, and between 1933 and 1935 the Black Legion bombed or burned a fair number of left-wing retreats, meeting halls, and bookstores and shot two Communist labor organizers, all without police interference.

Some of their more extravagant plans of which its members boasted included a plot to kill one million Jews by planting mustard gas bombs in every American synagogue during Yom Kippur, another plot to kill Jews in Detroit by putting typhoid germs in milk, and very vague plans to storm every Army arsenal in the country on a given signal. There was no real evidence that these were ever anything more than fantasies, by the Black Legion's deluded leadership, but they, and the secret rituals and paraphernalia, gave rise to blood-curdling newspaper headlines for much of the summer of 1936, when one of their real crimes, the murder of Charles Poole, a Catholic organiser for the Works Progress Administration, who was married to a Protestant and falsely accused of beating his wife. Because this crime had no connection to anti-union activities, it was investigated, and the chief suspect, Dayton Dean, on whom the Bogart character is modelled, quickly confessed, naming his fellow participants. Poole's murder took place on 13 May, Dean was arrested on 23 May, and confessed on 26 May.

Twelve men were brought to trial in September, and eleven of them were convicted and sentenced to life imprisonment on 29 September.

On 4 June, Warner Bros. announced that their production plans for the next season included a movie called *Black Legion*. On 18 June, only just over a month after the murder and less than two weeks since the arraignment, they submitted a treatment to **the Production Code Administration**, where Breen advised them:

We regret to inform you that, because of certain elements in the material submitted to us, this story, in its present form, is not acceptable from the point of view of the Production Code.

This decision is based upon the fact that it has been our policy not to approve stories which raise and deal with the provocative and inflammatory subjects of racial and religious prejudice. This present treatment contains elements which are definitely calculated to raise this objection.

We are happy to say, however, that, exclusive of this matter, it is our opinion that this story is basically satisfactory from the point of view of this office, and, with careful treatment, may be made into a picture which will be acceptable from the point of view of the Production Code and open to no reasonable objection.

In any acceptable treatment of this material, care must be taken to avoid showing objectionable brutality or gruesomeness.

Great care must be taken with the handling of all scenes of violence and criminal flaunting of law and order.<sup>24</sup>

A conference with Warners producer Robert Lord the next day “ended with the understanding that a treatment would be made in which Mr. Lord would treat the subject as broadly and strongly as he wished, so that we might test out the limit of the acceptability of the treatment of such subjects as religious and racial prejudices.”<sup>25</sup> The speed at which this progressed was noteworthy. It was perhaps in part driven by the studio’s knowledge that Columbia was also at work on a similar project, based on the same incidents, which became *Legion of Terror*, released at the beginning of November 1936, two months ahead of *Black Legion*. A third movie based on the same events, *Nation Aflame*, written by Thomas Dixon, author of *The Birth of a Nation*, the movie held in part responsible for the revival of the Ku Klux Klan, appeared from the independent production company Treasure Pictures in April 1937.

Initially, studio head Hal Wallis and Lord planned *Black Legion* as a major production, possibly starring Edward G. Robinson, and with an emphasis on the Legion’s anti-Semitism and anti-Catholicism, suggesting strong parallels both to the events of Sinclair Lewis’ *It Can’t Happen Here*, which MGM had decided not to make four months earlier in February 1936, and to the rise of Nazism in Germany, and the possibility of the emergence of a native American fascism. Fears of such a phenomenon were quite explicitly expressed in the late 1930s. There were a variety of proto-fascist organisations and extreme right-wing movements, many of them small but as exotic as the Black Legion, such as the California-based Silver Shirts. Some estimates suggested that there were as many as 800 such organisations, and the House Committee on Un-American Activities, originally established to investigate them referred to “at least 200” of them.

As disturbingly, anti-Semitism was endemic in at least some parts of American society. Surveys conducted in the late 1930's suggested that around 15 percent of Americans openly expressed anti-Semitic views, while almost half of all Americans felt there was good reason for anti-Jewish feeling.<sup>26</sup> These figures provided evidence for the concern frequently expressed among Jewish organizations that it was wiser to avoid overt condemnations of Nazism or overt defences of Jewry on American film screens, in case they provoked a hostile reaction. Several Jewish organisations exerted significant pressure on the motion picture industry to avoid provocative representations, and one Jewish leader, Rabbi William H. Fineshriber, claimed to have persuaded MGM and the PCA not to make *It Can't Happen Here*, "on the ground that the present atmosphere of the country is not conducive to a sympathetic understanding of the Jewish Problem. ... during these highly critical days for the Jewish people, here and elsewhere, we ought not to thrust the Jew and his problems too much into the limelight ... there are times when to say nothing is better than to say something favorable."<sup>27</sup> Whether such attitudes influenced Warners' decision to omit the racial and religious issues at the core of the original treatment, or whether this was a commercial decision, I don't know.

Warners' publicity certainly did emphasise the factual origins of the story, including distributing stories suggesting that the ending was rewritten on the day the verdict was returned in Detroit, directly from newspaper reports. The Press book asserted that "Investigation clearly showed that the Black Legion was founded on the prejudices, race-hatred and bigotry of half-baked mentalities, herded together by glib organizers, who were making fortunes out of the sale of hooded gowns and firearms." It also encouraged exhibitors to connect the movie

to the issues raised by the events by recruiting editorials in the local newspaper and “civic-minded individuals and groups” to give talks. At the same time, however, the movie conventionally declared itself to be fictitious, and a number of changes were made late in the production to comply with the legal department’s concerns to protect the studio from possible libel suits. **Two scenes** were added to the movie – the scene between the defence lawyer and the judge establishing that the lawyer knew nothing of the false testimony, and the scene with the businessmen suggesting that the Black Legion was a racket – a charge that in fact, seems not to have been true. Parts of the trial sequence, in which it was suggested that some of the jury were members of the Black Legion, were also deleted.<sup>28</sup>

*Motion Picture Herald* played with the contradictions of the movie’s claims to be simultaneously based on actual events and fictional:

It is not possible, you see, to say that the film closely parallels the facts because the film pointedly declares that it does not. And it isn’t possible to say that it does not, you see, because it does. ... Probably it is possible, of course, to say to showmen that, if you would like a picture that is what you would expect this picture to be if you weren’t told what it isn’t, then this is the picture you would like. <sup>29</sup>

Most reviews, as I have suggested, were much less equivocal, emphasising what **Nugent called** “editorial cinema at its best—ruthless, direct, uncompromising. ... I hope the Midwest can take it.” In his review, Graham Greene wrote that “the real horror is not in the black robes and skull emblems,

but in the knowledge that these hide the weak and commonplace faces you have met over the counter and minding the next machine.”<sup>30</sup>

It is, I think, worth dwelling on this confrontational aspect of the movie, perhaps most evident in the final sequence, where the shots of the convicted killers and their families emphasises, as Greene and Nugent both suggested, their ordinariness; a feature that this movie shares with another 1936 movie about lynching, *Fury*, directed by Fritz Lang, praised by Joe Breen for discussing lynching without mentioning race – or the fact that, as the Judge in *Black Legion* points out, that some 6,000 lynchings had taken place in the US since 1890 – and, as the judge did not point out, but others did, all but a handful of them crimes of racial hatred, not investigated by legal authorities. In this respect, I think, *Black Legion* can be seen as much more confrontational – certainly to any of its audience who had, for example, made up the quarter of the white Protestant adult male population who had belonged to the Ku Klux Klan – than its avoidance of mentioning the issues of racial or religious prejudice, and the suggestion that some political expression had been censored or compromised, might suggest.

It is, on the other hand, also worth noting that while Warners' Publicity called it a headline picture, “another demonstration that actuality can beat fiction at its own game of providing excitement,” the company's understanding of what a headline picture might be was much broader than most criticism now assumes. When the studio announced on 4 June 1936 that it was making *Black Legion*, it listed it as one title among seven “developed from important news stories of the last several years.” The others included *China Clipper*, about the new flying boats, *Over the Wall*, based on a story by Warden Lewis Lawes story, *Mountain*

*Justice* with Bette Davis – suggested by the Maxwell case, in which a girl has killed her father, *Sergeant Murphy* on horseracing, *Gold is Where you Find It*, and *Draegerman Courage*, based on a Canadian mine rescue.



In 1939, Lang argued that cinema was a 'means of conveying social messages,' depicting 'people of today and the things that interest them or imprison them'. He argued for stories 'concerning the pertinent problems that trouble American people today', something that would require an amelioration of the 'rigorous censorship' movies currently experienced and responding to that he claimed was an audience desire for 'profound and simulating' movies.<sup>31</sup>

In Smedley's analysis, Lang seeks to address the conflict in American society between populist democracy and the rights and responsibilities of the individual for their actions.

'Hollywood rarely bothers with themes bearing any relation to significant aspects of contemporary life. When it does, in most cases, its approach is timid, uncertain, or misdirected. *Fury* is direct, forthright and vehement' (Nugent on *Fury*)

The movies' fairly direct address, implied in the reviews, to a particular segment of the audience.

### **MPH References**

14 August 1937 Klan sued WB over infringement of copyright of its insignia and defamation, asking for \$250 for each showing in 54 key cities and an additional \$100,000 – total \$113,500.

What the Picture did for Me entries varied. Some called it "first-class entertainment," and compared it to *Fugitive* – said it was not as gruesome as the

ads suggested, and some complained about the ads keeping customers away – these in June/July 1937. One from Detroit read: “Could not ask for a better picturization of the Black Legion, but apparently our customers have had enough of the Black Legion from the papers.” [26 June 1937, p. 114] Others suggested it did not draw well, usually because of anticipated violence.

10 April 1937, p. 95 reports on exploitation: newsboys distributing overprints of local paper shouting “The Black legion strikes town tomorrow,” (N. Dak); exhibit of gallows and whipping post [N.Mex]; sponsorship by superintendent of schools in connection with an Americanization class (Lawrence, Mass); endorsement by the Delaware State Federation of Labor in Wilmington, Del.

Press book: “Black Legion” will probably take rank alongside that other Warner “spot news” film of several years ago, “I Am a Fugitive From a Chain Gang,” which was one of the most successful pictures any studio ever turned out ...

Letter, Breen to Hays, 2-27-37:

I find no indication, anywhere, of any plans to produce pictures dealing with outstanding social or sociological questions similar to the story of The Black Legion, Black Fury or the Metro production, Fury. But these, it seems, come along hurriedly. They seem to grow out of the headlines of the newspapers. A sinister force shows its head in Detroit, it appears to be invidious and subtle, it receives great newspaper

publicity - and Warners make a picture called Black Legion. The point here seems to be that there are no such pictures on our schedules for the coming year.

---

<sup>1</sup>. *New York Times*, February 16, 1936. Quoted in Hamilton, 127. *Motion Picture Herald*, February 22, 1936, 16.

<sup>2</sup>. Lewis, press release, quoted in *Motion Picture Herald*, February 22, 1936, 16.

<sup>3</sup>. "Whose Business is the Motion Picture," *Motion Picture Herald*, February 22, 1936, 15-6.

<sup>4</sup> Dec 18 Breen to Mayer, PCA file *It Can't Happen Here*.

<sup>5</sup> Jan 31, 1936 Breen to Mayer, PCA file *It Can't Happen Here*.

<sup>6</sup>. Thorp, 160.

<sup>7</sup>. Thorp, 161.

<sup>8</sup>. Breen, June 22, 1938, MPA 1939 Production Code file.

<sup>9</sup>. These bound volumes were titled the "Opinions of the Production Code Administration," but they were never published. They were prepared by Charles R. Metzger, and are referred to by Moley, p. 97, and by Vizzard, p. 10. To some extent they represented an attempted codification of precedent and case law in the PCA.

<sup>10</sup>. Breen, June 22, 1938.

<sup>11</sup>. Morris L. Ernst, *The First Freedom* (New York: Macmillan, 1946), p. 203; *New York Times*, June 26, 1938; Thorp, p. 127; Memo attached to letter, Breen to Lord, December 5, 1937, folder, Joe Breen, 1933-1942, Lord Papers. For a discussion of the importance of the foreign market in this period, see Vasey.

<sup>12</sup>. Norr to Harmon, January 1, 1939. X39-22.

<sup>13</sup>. "Jurisdiction of Production Code Administration," MPA 1938 Production Code file.

<sup>14</sup>. Harmon, *Memorandum Commenting Upon Document entitled 'CODE, EXTRA-CODE, AND INDUSTRY REGULATION IN MOTION PICTURES': A Study of the Production Code and its Administration upon the Type and Content of American Motion Pictures, and Certain Other Basic Industry Policies and Their Current Application*. June 22, 1938. X38-26

<sup>15</sup>. Quigley, January 10, 1939, quoted in Leff and Simmons, p. 65; Norr to Harmon, January 12, 1939, MPA 1939 Production Code file.

<sup>16</sup>. Breen, Letter to John Hammel at Paramount, and to Louis B. Mayer at MGM, 1-19-38. PCA *Mr. Smith Goes to Washington*.

<sup>17</sup>. Donald J. Stirling to Hays, December 5 1939. PCA *Mr. Smith Goes to Washington*.

- 
- <sup>18</sup> Pressbook
- <sup>19</sup> Nugent reviews
- <sup>20</sup> NYT 14 June “BL Members are Pictured as a Type”
- <sup>21</sup> Amman, [497]
- <sup>22</sup> TIME story 1 June 1936
- <sup>23</sup> NYT Editorial 27 May
- <sup>24</sup> Breen to Warner, 6-18-36, *PCA Black Legion*
- <sup>25</sup> Memo, June 19, 1936, *PCA Black Legion*
- <sup>26</sup> Lipset and Raab, 188-9
- <sup>27</sup> Herman, p. 15
- <sup>28</sup> Colgan.
- <sup>29</sup> Showmen’s Reviews, p.44. January 9, 1937. MPH
- <sup>30</sup> Night and Day (8 July 1937)
- <sup>31</sup> Quoted Smedley, p. 2.