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LAWLESSNESS AND THE NEW DEAL:
CONGRESS AND ANTILYNCHING LEGISLATION, 1934-1938

DISSERTATION

presented in partial fulfillment of the requirements for
the Degree Doctor of Philosophy in the Graduate
School of the Ohio State University

By

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* * * * *

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To My Parents
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CHAPTER I
INTRODUCTION

During 1930, twenty-one men, all but one black, were lynched in the United States. They were accused of various crimes but had not been proven guilty in a court trial. The victims were burned and tortured, which terrified the local black communities. Not only men but women and children were present at these lynchings, indicating that much of the white community approved of these activities.¹

One of those lynchings took place at Sherman, Texas that May. In many respects it was atypical. A black man, George Hughes, went to his employer’s house to collect wages due him; he found the farmer’s wife at home instead. After several unsuccessful attempts to get his wages from her, he assaulted her. A short while later, Hughes was arrested, pled guilty and was jailed away from Sherman for safekeeping before his upcoming trial. Meanwhile, rumors about the crime spread around Sherman, inflaming the townspeople. When Hughes was brought back to the town for trial, the crowd stormed the courthouse and set it afire. The National
Guardsmen, sent to protect the courthouse, soon retreated; the next wave of troops fought the mob but lost.

The mob dynamited its way into Hughes's cell, and took him to the town's black business district. He was castrated in front of a large crowd that included women and children. Then he was set ablaze. Finally, the crowd rampaged through the black community, destroying black-owned property throughout Sherman, whose black citizens took refuge with whites or fled town.

In the aftermath of the violence, twenty nine people were arrested and fourteen indicted for "rioting, engaging in riot to burn courthouse, burglary of courthouse with explosives to commit arson, engaging in riot to commit arson, and engaging in riot to commit murder." Yet no one was indicted for the murder of George Hughes, and they likely would not have been prosecuted if indicted. No one was convicted of any crime and only one person had taxable property which could be taken to pay damages. The state was interested in the amount of property the defendants owned because it sought compensation for damage done to the jailhouse, but they were never subjected to civil lawsuits for the damage committed to black homes and institutions. The black community itself had to bear the financial cost of the mob frenzy.²

This incident was typical, because the victim was black, continuing a pattern that began in the late
nineteenth century. Thirteen of the twenty-one men were taken from jail cells when killed. The other eight had not been charged with a crime and were lynched on non-criminal grounds. The fact that these lynchings generally took place below the Mason-Dixon line was also characteristic. Nineteen lynchings took place in the former Confederacy, the other two in Oklahoma and Indiana. Of the thirteen outrages the following year, seven were perpetrated in the Deep South, although one lynching took place as far north as North Dakota, where a white man accused of murder was taken from jail and hanged.  

The number of lynchings in 1930 increased compared to the previous year, reversing the declining trend of the 1920s. After a high of eighty-three lynchings in 1919, a year when dozens of race riots erupted across the country, lynchings dropped off in the 1920s. But with the onset of the Depression, the number of lynchings rose once again, a reflection of the impact economic dislocation had on ever present racial tensions.

The earliest scholarly work on lynching was James Elbert Cutler's *Lynch-Law*, which examined the history of lynching, present status of lynch mobs, state remedies and proposed federal solution. Walter White, NAACP Executive Secretary, wrote *Rope and Faggot* after an exhaustive personal study of lynchings across the South; he ultimately recommended federal legislation to stop lynchings. A series
of books on lynching were written in the 1930s under the auspices of the Southern Commission on the Study of Lynching, including Arthur Raper's *The Tragedy of Lynching* and James Chadbourne's *Lynching and the Law*. These and Frank Shay's *Judge Lynch* are historically (and legally) oriented, in that they not only detail the various lynchings over time (as well as in the recent past) but specify the laws' preventive and remedial powers.

A number of books discuss individual lynchings and the circumstances that led to and resulted from them. From *Death at Cross Plains*, about a Reconstruction Alabama lynching, to *No Crooked Death*, about the 1911 Zachariah Walker lynching in Coatesville, Pennsylvania, the recent monographs do not address the larger issues of national jurisdiction over lynching or the legal basis for antilynching legislation. Even the recent book on Virginia and Georgia, W. Fitzhugh Brundage's *Lynching in the New South: Georgia and Virginia, 1880-1930*, only researched the lynching phenomenon in the post-bellum South and not the national efforts to curb the problem.

The only book to look at the effort to secure national antilynching legislation at this period of time was *The NAACP Crusade Against Lynching, 1909-1950* by Robert Zangrando. However, his research did not focus on the 1930s, and attended almost exclusively to the organization's antilynching campaign. The dissertations that analyzed
antilynching legislation in the 1930s--Jesse Reeder's "Federal Efforts to Control Lynching," and Robert Zangrando's "The Efforts of the National Association for the Advancement of Colored People to Secure Passage of a Federal Anti-Lynching Law, 1920-1940"--did not concentrate on the New Deal proposals solely. My dissertation concentrates on the paradox that American life and government changed dramatically in the New Deal years but not concerning lynching.  

The other dissertations on lynchings took various approaches to the problem, some historical and some sociological. Claudia Ferrell's "Nightmare and Dream: Antilynching Legislation in Congress, 1918-1922" asks the precise questions for that period of time that must be addressed for the New Deal. Issues of the difficulties in enacting civil rights legislation as well as constitutional questions pro and con predominate in Ferrell's dissertation, questions that are secondary or absent in other dissertations on the subject.  

A few words about the methodology used in the present dissertation are in order, in light of the different means used to research and write the previous histories on lynching and specifically antilynching legislation. Since my emphasis is on the legal and political processes followed in the quest for federal prohibition against lynching, I am more concerned with such sources as the Congressional Record
on antilynching debates, the state laws, state and federal cases that either interpreted the antilynching measures or addressed the federal government's authority to protect individuals from violence, as well as the failed federal antilynching proposals themselves.

In these and other primary sources, along with the secondary literature, it is hoped that the question as to why federal antilynching legislation could not be enacted during the New Deal, while a mountain of other social as well as economic laws poured out of Congress at the same time, will be answered. The sources should provide the kinds of insights into the acts of ninety-six men in the Senate who ignored rising public opinion against mob violence as they killed the Costigan-Wagner bill in 1934-36 and the Wagner-Van Nuys-Gavagan bill in 1937-38. More than the Senate was at fault, however, in the failure to attain the only race specific New Deal reform--President Roosevelt did not publicly endorse federal antilynching legislation, and without that endorsement Congress would not take on this proposal.

Yet there was more going on between Roosevelt and Congress, particular Southern Democrats, because of the power shift within the party. Southerners no longer felt they controlled the party's policies, and antilynching legislation would signify a serious blow to their power at home. Fewer and fewer communities took the law into their
own hands by the 1930s, but of those that did most were rural/small town Southern areas. And those federal legislators defended their states against attack by outsiders for a practice that appeared to be dying on its own.

Lynchings have always been an expression of community will, implementing a form of law at odds with the formal laws against murder, kidnapping and other illegal acts. There was generally a good deal of community support for such extralegal law enforcement practices, which can be traced back to colonial America and the lawlessness British settlers brought from the Old World. Law enforcement officers, prosecutors, judges, and juries did very little if anything to prevent lynchings or punish lynchers. The composition of lynch victims changed--from colonial loyalists to antebellum pariahs to postbellum blacks. Those members of society who posed ideological, moral, social or racial challenges were the most likely targets of mob violence; blacks came to predominate as lynch victims by the 1890s because black life had little value in America and the restraints slavery imposed on slaveholders no longer existed. Because state antilynching laws were insufficient to halt the practice, proponents of national antilynching legislation, who had been active in the early 1920s, renewed their efforts during the 1930s.
"Lynch-law" is an appropriate term for the manifestation of community violence known as lynching and the informal type of law that it sustains. Whether courts were in place or not, local sentiment could become a powerful force that impelled native sympathies against unlucky men and women. Of course, the courts often served to thwart popular wishes when they followed formal legal proceedings against criminals, which angered the local population in its desire to exact revenge on alleged wrongdoers. However, the usual course of events involved the local courts after a lynching, when the grand jury failed to return an indictment against members of the mob, delivering a verdict of "death at the hands of parties unknown."

In early America, the courts and legal system developed initially as an outgrowth of colonial government when English and colonial interests were one and the same; by 1776, however, the colonists looked on the courts as the enemy because the latter represented imperial prerogatives. The men of Massachusetts, Virginia, et al saw themselves as Americans and anything British as 'outside' of their world. The local interests that came to dominate the legal, political, economic and social scene made it easy to fight foreign domination, but the same spirit of provincialism lingered into the nineteenth century and beyond. Despite being citizens of the United States, Americans related
better to their own neighbors than to distant strangers in another state.

Antebellum lynchings served as a safety valve for various communities, which reacted with hostility to people with different beliefs. Local and state governments did not protect Mormons, abolitionists, or gamblers from mobs because the three groups of dissenters brought anarchy and chaos in their wake. Law enforcement officials often sanctioned if not participated in mob violence, setting a precedent for legal approval for lynching that has lasted well into the twentieth century.

Even though lynchings are a violation of the law, entailing murder, along with assault, conspiracy, arson and assorted other crimes, "the law" generally was powerless to control men and women who took the law into their own hands. The mobs belonged to communities which sometimes remained silent in the face of lynchings or more often congratulated the mobs for maintaining racial stability. By 1900, lynching was a form of racial violence that broke out for a number of reasons. The most generally believed cause at the time was the need to protect white women from assault. Whereas horse thieves and foreigners predominated among the West's victims, black men became the special target of hate across the South.

Most Americans, of whatever region, were inclined to believe the worst about black men and women. But most
blacks were law abiding citizens who wanted nothing more than fair and equal treatment from their white neighbors. Those neighbors, on the other hand, tolerated lynch law when it met their needs for control—whether politically, economically or socially. These same neighbors also included governors, sheriffs and other government representatives, which made it especially hard to counteract when these men were so outspoken in their support of lynchings.

Not every governor or state official accepted lynching as a legitimate means of enforcing white supremacy, and some of these men took the unusual step of proposing and/or promoting antilynching laws in their states. The majority of these laws were passed during the 1890s, when Populism created the environment that made black voters important, if only temporarily. Sadly, however, lynchings continued across the United States after these laws were enacted, so antilynching advocates sought a federal remedy to the problem they battled. Once attention was turned to the national government as the forum to finally rid America of lynch law, antilynching advocates both within and without the federal government faced constitutional obstacles which proved formidable.

Unlike foreign subjects, who may rely on the federal government for protection in conformity with various treaty provisions, United States citizens have to trust their own
states to maintain their security. Among the responsibilities a state has are to guard the safety, health, and morals of its citizens. Even with the greater power the national government gained after the Civil War, those state duties did not change. It was this notion of federalism that antilynching opponents used to block a federal law in this area.

Proponents of antilynching legislation, however, based their main constitutional argument on the Equal Protection and Due Process clauses of the Fourteenth Amendment. If whites accused of crime were entitled to a fair and impartial trial, they argued, then blacks accused of crime were entitled to the same proceeding. This argument helped shape the federal proposals that were introduced in Congress since 1900--making sheriffs responsible for prisoners in their jails or in their custody. Of course, this leaves out a significant number of lynch victims not accused of any crimes but only guilty of breaking one of the South's many restrictions for blacks. A sheriff's malfeasance was deemed sufficient state action for a federal law to operate against a lynch mob or the sheriff himself. Some proposals also placed a fine on the offending county, following the lead of several successful state antilynching laws that penalized the entire county for a few persons' actions.

Congressional opponents of antilynching legislation mounted several counterarguments over the years, starting
with the usual cry of states’ rights. They were typically but not always Southern, which meant they brought their own cultural heritage to the debate. These men, mostly Democrats, viewed any intrusion by the federal government into a state’s affairs as a violation of state sovereignty and this argument continued into the 1930s, even though the New Deal appeared to breach their sacred tenet with the plethora of new programs aimed at revitalizing the national economy. With a few major exceptions, however, there would be no breach of this tenet because most New Deal programs were administered on the local level by local administrators, who could discriminate against blacks and others at will without fear of reprisals.

States’ rights was one constitutional argument against federal antilynching proposals. It successfully narrowed the scope of such proposals when sponsors eliminating the mobs from the laws’ provisions, making the sheriffs and other law enforcement officials the main target of legal sanctions when a lynching occurred. Other constitutional arguments centered on the fines and awards to families of the victims, found in many state antilynching laws. People thought the bill inflicted punishment, not as harsh as to violate the Eighth Amendment perhaps, but enough to warrant the non-extension of state practice to the federal sphere.

To the charge the states have been ineffective in solving the lynching dilemma, foes of federal law maintained
that lynching is murder and should be prosecuted by state authorities. They forget that during Reconstruction, the federal government met its obligation under the Civil War Amendments to protect the freedmen and others in their newly created civil rights; it did this under the Enforcement Acts and the Ku Klux Klan Act in the early 1870s. For a time, Ulysses S. Grant, his attorney general and several energetic United States attorneys prosecuted or sought action against Klansmen and mobs. These laws were useful until the courts eviscerated them with narrow rulings that eliminated many forms of violence from coverage.

While many state antilynching laws did not similarly suffer at the hands of state judges, they made only a small dent in the lynching statistics. All during the early twentieth century when proponents of federal action pressed their case before Congress, the lynching numbers gradually decreased. Except for the years surrounding World War I, the rate steadily decreased so that lynching seemed to have disappeared until the strains of the Depression helped revive the lynching spirit.

The number of deaths in 1931 was lower than the year before, and in 1932 the lynching rate dropped even further. Only ten victims died at the hands of lynch mobs, one murder taking place in Ohio and the rest in the South. However, in 1933 the number of lynchings rose again, reaching twenty-eight. With the election of Franklin D. Roosevelt and the
active government of the New Deal, many people believed that the federal government would turn its attention to the issue of lynching.\textsuperscript{9}

Several lynchings in the second half of 1933 underscored the need for federal intervention. Three black prisoners from Tuscaloosa, Alabama were lynched shortly after local officials insisted that they were able to control disorder. Several organizations reacted to the deaths, and one charged county officials with assisting the mob. The Alabama murders were followed by a travesty of the worst kind, when thousands in Maryland participated in what the New York Times called "The wildest lynching orgy the state has ever witnessed..." The Governor acted afterwards to try to ensure that the lynchers would be punished, only to be met by a mob that wanted to save the lynchers and a legal system that set them free. That all this took place at Princess Anne, Maryland, so close to the nation's capital, made it an especially egregious affront to the nation's ideals.\textsuperscript{10}

Two white men were lynched in California a few months later, leading to renewed calls for a federal antilynching bill. Thomas Thurmond and John Holmes were arrested for kidnapping and murdering a young businessman. A mob seized the two men from the county jail and took them to a nearby park. There, the police cooperated as the crowd of six thousand men, women, and children proceeded to hang Thurmond
and Holmes. Local law enforcement officials kept the crowds moving and kept others out of the park. Governor James Rolph condoned the lynchings. "Why should I call out the troops to protect these two fellows?", he asked. Indeed, Rolph opined, "This is the best lesson that California has ever given to the country."¹¹

In response to Rolph's comments, appalled observers including former President Hoover spoke out against lynching. The NAACP, the Socialist party, and Catholic clergy called for a federal antilynching law, and the clergy adopted a resolution deploring mob violence. President Roosevelt, who had not denounced mob violence before, called lynching "a vile form of collective murder." These would be the strongest words Roosevelt would ever utter on the subject.¹²

Lynchings had not run their course with the California murders. A few weeks later, a mob demanded that police turn over a young black man arrested for assaulting a young white girl in St. Joseph, Missouri. The governor called out the National Guard to augment the state highway patrol. But they were unable to prevent the mob from reaching the prison. Although Governor Park remained silent, four men were subsequently arrested and charged with first degree murder and malicious destruction of property. As usual, the jury failed to convict them and they were released.¹³
After this string of mobbings in Roosevelt's first year as President, NAACP Executive Secretary Walter White sought the support of various Congressmen to help promote a law that the NAACP and others believed would finally attack the problem. When Congress did turn its attention to the matter of lynching, the bills' sponsors faced the same uphill battle that stymied Leonidas Dyer and others who proposed antilynching measures since the early 1900s. The 30s and the New Deal presented a climate that was both good and bad for passage of such a law--good because of the increasing emphasis on the positive role of government in everyday life, bad because of the additional strain the poor economic conditions lent to smoldering racial and class tensions. It appeared that Congress under a popular Democratic president would finally pass legislation to ban lynching mobs. Yet it would not happen due to the political realities of the day, particularly with a president who did not want to anger the Southern politicians who controlled the Democratic party.

This dissertation will concentrate on federal antilynching efforts during the New Deal, at a time in American history when the national government grew in personnel and programs. With all the new laws that Congress passed, a federal antilynching bill would seem to fit in with the general theme of helping the common man and strengthening the power of the national government to deal with serious dislocation. The lawmakers responsible for
introducing and shepherding antilynching legislation to an ignoble end were up against not only stubborn Southerners but a political system that makes electability rely on such things as identification with constituents who adhere to lynch law. Local violence is generally predicated on the belief that people can administer their own version of law. Congressmen from states with lynching records in the 1930s routinely argued that they were personally opposed to lynching, but they consistently argued against a federal solution to a local problem in favor of state action. That neither their states nor the officials could prevent lynchings nor punish lynch mobs that sometimes number in the thousands was addressed; these Congressmen upheld the sanctity of local institutions and expressed faith in those institutions to halt lynchings.

Consequently, my emphasis is on the almost compulsive adherence to community law known as lynching, which while not totally susceptible to formal legal reforms eventually subsided due to more enlightened views on race and a more active federal presence. Michal Belknap evaluated the effect of federal law enforcement on Southern mobs in the 1950s and 1960s, showing that both a commitment from above as well as from below must occur together in order to curb lawlessness. There was no firm commitment from either the federal government or Southern authorities to prevent or punish lynchings in the 1930s, making the problem one that
could decrease only due to a change in attitude. Under these circumstances, the Costigan-Wagner, and Gavagan-Wagner-Van Nuys bills were doomed to the status of unpassed laws, and the goal of federal antilynching legislation would remain just that.
Most analysts believe that lynch mobs assembled to punish accused men and women because they believed the courts inadequate to do the job. Many victims were not accused of violating any formal law at all, but rather of breaking social or economic taboos over which courts had no jurisdiction. Blacks were lynched for "being troublesome . . . for gambling, window-peeping, marrying a white woman and eloping."\(^1\)

Until the Civil War, whites were the main victims of lynching. But from Reconstruction through the end of the nineteenth century the proportion of white victims declined, while that of blacks and others increased. In Texas, Mexicans suffered at the hands of mobs, especially in 1916 during the trouble with Pancho Villa. But most of the mobs' anger and frustration was vented on blacks, because as the Southern Commission of the Study of Lynchings said, since 1865 " . . . the public [has held a] low estimate of his [the Negro's] worth and consequent indifference to his fate . . . . "\(^2\)
At bottom, from the late nineteenth century on, lynching was one of several very effective tools by which Southern whites maintained the status quo; which made it hard to stamp out by state or federal efforts alone. This involved the strictest observance of racial etiquette, with untoward familiarity with whites the cardinal sin. While economic competition with whites or even economic betterment could result in a lynching, the surest way to incur whites' wrath was for a black man to be accused of an interracial relationship with a white woman. Whites did not similarly punish those white men who engaged in sexual contact with black woman, whether welcome or not, because Southern whites did not accord black women the same respect as white women.

Mobs could be massed to preserve a community's racial integrity, to revenge some wrong, or to satisfy a collective sense of justice. They have been doing these things and more since the Revolutionary War era, when Colonel Charles Lynch and a few proud patriots took it upon themselves to punish Tory horse thieves and other criminals. Lynch and company conducted trials to assess the guilt or innocence of their neighbors, and Lynch was later exonerated for all his wartime activities. His name, however, became attached to a peculiar form of law, which has deviated a good deal from the kind administered in 1780. As one early historian of lynching wrote:

It is a far cry from Lynch's patriotic activities which gave a new verb to the American language and
another personality to our list of legendary characters, to present day lynch-executions, with their barbarous forms of torture and cruel death and carnivals of sadism. It is still a far cry from the efforts of the original Lynch to maintain order and security in the face of armed invasion to the Judge Lynch of today, who, in a peaceful nation, is a constant menace to the order of our society and the security of more than fifteen millions of our citizens.³

While the author appeared to oppose lynching he spoke with admiration of Lynch’s zealous efforts to maintain law and order. This is a view that would appear time and again throughout American history when people believed the ends justified the extra-legal means. Even before there was an "American history," there was a tradition of riots and mobs in Europe that demonstrated an inchoate sense of popular justice, which scholars have shown to become more frequent and more violent. From its American beginnings, lynchings became an acceptable method of asserting a community’s will over individuals who broke the law or did not conform to prevailing standards of behavior.⁴

During the antebellum period, gamblers, abolitionists, Mormons, and other deviant people were lynched across the North and Western frontiers. These individuals held beliefs or engaged in activities that people decided had to be expelled from their midst at any cost. The Mormons’ belief that their religion was the one true faith, labelling all others ‘apostacy’, their phenomenal increase in number in the areas where they settled, and their belief in polygamy made them the object of mob violence.⁵
In the 1830s abolitionists incurred the anger of their Northern neighbors for their activities to end slavery. They enraged both Northerners and Southerners with their outspoken attacks on slavery and the racial caste system. William Lloyd Garrison faced mobs time and again, as did Frederick Douglass, Arthur Tappan, and others. The mobs that sought out these antislavery men were at times disorganized, but were more often well planned groups by "gentlemen of property and standing" who objected not only to their opponents' activities but also to what these activities represented; historian Leonard Richards suggested that the anti-abolitionists were frankly concerned that the abolitionists were usurping the anti-abolitionists' leadership role by attempting to break down the existing social order through direct appeals to men of different social classes and races on behalf of abolitionism.⁶

Many Northerners faulted the abolitionists' behavior rather than that of the mobs:

When a body of men with such feelings and principles, begin to distract the nation with their mad schemes, it is high time for a community to notice them. I am no advocate of lynch law, but I must say that if Lynch law must be practised [sic], I know of no fitter subjects for its operation than such fanatics.⁷

Those who did not partipate in mob violence against abolitionists and others often kept silent because of pressure from their neighbors and friends. As one historian has explained why so many lynchings went unpunished:
...while it is publicly condemned when employed by unpopular or outcast groups, collective violence is tacitly accepted and even encouraged when those in power use it against those same outcasts.\(^9\)

Other victims of lynching were less sympathetic characters than the abolitionists. Vigilante committees inflicted punishment on horse thieves and other law breakers from the earliest days of Western settlement down to the late nineteenth century. One of the most famous instances of vigilante justice took place in California, where the San Francisco Vigilance Committee went into action against the town’s troublemakers. The elite members of the community took it upon themselves to uphold law and order in this city, pursuing the goals of "... establish[ing] and strengthen[ing] the three-level community structure (in which they would be dominant) and the values of life and property that supported it." The San Francisco Vigilance Committee, along with others across the West, resorted to violence when territorial governments were promptly established or, in California’s case, had state governments in place.\(^9\)

The San Francisco Vigilance Committee was the most highly organized of the many nineteenth century movements across the country. From Montana to Texas, vigilante movements usually killed four or fewer victims but the largest movements killed the most people, e.g. sixteen, at one time. Between 1883 and 1898, the number of deaths from mob activity whether organized or not exceeded that from
lawful executions. Only in a few years toward the end of the period did the number of legal executions exceed the number of mob-related deaths.¹⁰

Lynching could also reinforce the criminal justice system when the courts appeared to move too slowly. Lynching administered popular justice, whether out on the range against cattle rustlers or in small Southern towns against blacks accused of crimes. The mobs believed that the law needed help in punishing people, as in the case of a black man Meridith Lewis, accused of murder but later acquitted by a Louisiana jury in the 1890s; after the verdict, some angry townspeople gathered outside his house, grabbed him and hanged him despite his innocence. Lynchings thus took place after the criminal justice system had processed the accused; in such instances, lynch mobs were dissatisfied with the courts’ verdicts.¹¹

Often, organized community bodies endorsed such extra-legal support of legal institutions. The Georgia Bar Association observed in 1893 that “the reason, or at least one great reason, why lynchings occur is because there is a distrust, and a constantly growing distrust, in the promptness and efficiency of the law.”¹²

One of the most famous examples of a lynch mob executing what it believed was justice was the tragic death in 1915 of Leo Frank, who was convicted of the murder of a young girl who worked in his factory. Governor John Slaton
commuted Frank's death sentence to life in prison because he believed that Frank was innocent. Frank's pardon angered members of the Atlanta community, who seized Frank from a prison farm, took him to a remote spot near Marietta, Georgia, and hanged him. More than carrying out the court's verdict was involved, however. Anti-Semitism played a major role in Frank's murder. Tom Watson, former Populist who at one time risked his life for blacks, was by 1915 a rabid racist who venomously harped on the Frank case in his newspaper. Watson, among a few others, praised the lynching for executing the law's sentence which Slaton had derailed with his commutation. Despite the Frank lynching, most whites accused or convicted of committing serious crimes were punished less severely than similarly situated blacks.¹³

Whether channeled formally through the legal system or informally by way of lynch mob, whites were not generally subjected to the more brutal treatment that greeted blacks. But on occasion, mobs hung white outlaws then turned their bodies into prized mementos; Dr. John Osborne participated in the death of George Parrott, a notorious bandit in Montana in the 1880s, after which he skinned the body, tanned the skin and displayed a pair of shoes made from it. Even barring this barbaric display, whites were unlikely to suffer cruelty while still alive as did blacks accused of rape or other heinous acts.¹⁴
The men who carried out the lynchings were rarely punished themselves, another sign that mob violence was community sanctioned. Between 1900 and 1933, fewer than one percent of the lynchers in this country were convicted, with two men from Salisbury, North Carolina among the first to go to jail, in 1906, for the lynching deaths of several blacks. In the Frank case, for example, a coroner’s jury found that his death came "at the hands of parties unknown," despite the fact that the mob was composed of twenty-five members and full accounts of the lynching had appeared in Georgia newspapers.15

There are many instances of coroners not convening inquests because of inability to identify the killers, while government officials often passed the buck to avoid prosecuting the perpetrators. Should the legal system actually bring a few individuals to trial, they were usually acquitted by a jury of their peers, upholding their own standard of justice. Even when a Governor and whites around the state called for the arrest and conviction of eighteen killers of a black man in a theatre under macabre circumstances, a Livermore, Kentucky jury quickly acquitted the men who ". . . invited [those sitting in the orchestra] to empty their pistols into the victim’s swinging body, while patrons in the balcony were each permitted one shot."16
While the criminal justice system's goal is pursuit and prosecution of lawbreakers, lynching was frequently condoned by local law officials because it achieved essentially the same result as legal proceedings without the added expense. Early in the course of American history, mob law was employed to express dissatisfaction with taxes or some infringement on property rights. Here, as with later mob action, it is the lack of due process of law that characterizes the imposition of the group's will over that of their opponents. By the late nineteenth century, when lynching was synonymous with the South, blacks who received due process of law in criminal matters faced legal lynching and hence were subject to swift execution with almost as much speed as lynch victims.\(^{17}\)

The main reason given for the tremendous numbers of black men lynched after Reconstruction was unquestionably rape of southern white women. The men of the region, along with others around the nation, believed that black men had reverted to their African savagery and had to be lynched for defiling their women. As historian Jacquelyn Dowd Hall had written, "No image so dramatically symbolized the most lurid of Victorian fantasies and fears as that of violent sexual congress between a black man and a white woman."\(^{18}\)

As this was the era which extolled women's virtue as the agent for society's regeneration, expressed by such social feminists as Jane Addams, anyone accused of violating
a white woman's virtue was potentially subject to swift, illegal retribution. The same was not true, however, for those men who assaulted black women, particularly if the man was white; for according to one Southern journal, "It is not the same thing for a white man to assault a colored woman as for a colored man to assault a white woman, because the colored woman had no finer feelings nor virtue to be outraged!" Indeed, white men who committed such attacks were rarely arrested, much less tried or convicted; yet there is at least one reported case of a white youth lynched by a group of blacks in Clarksdale, Tennessee for the rape of a black girl.19

Lynching and the criminal justice system shared a common feature, which is the role of community approval regarding the results. Lynching is perhaps the most direct way that a local community can enforce its own views of right and wrong even if contrary to the law. It is usually when the courts are perceived as moving too slowly or being too lenient that lynchings most often occur, while censured acts that are not illegal have also triggered lynch mobs to act. These mobs rarely faced punishment because juries and friends agreed with the informal verdict: "A clever lawyer for the defendant lyncher is often able to demonstrate that if the crime had been committed against a member of the juror's own immediate family, he naturally and rightfully would have done what the lyncher did, and if in turn he
shares in the large community responsibility, he would have
done the same thing to help protect his distant neighbor.
Under this type of reasoning the lyncher becomes a protector
of society rather than its enemy."\textsuperscript{20}

While the usual justification for lynching blacks was
the need to protect white women from assault, this reason
can only account for about thirty-five percent of the deaths
from lynching. It was a very exaggerated excuse for mob
violence, yet the one that most contemporary commentators
have uncritically accepted. Many lynchings were committed
against blacks for minor offenses and a significant number
of black victims were women. These facts suggest that since
the late nineteenth century mob violence against blacks was
undertaken more for social control than for other reasons.\textsuperscript{21}

The steady increase in the number of black victims and
the simultaneous decline in white victims after 1880 created
a racial dimension to lynching that has distinguished the
problem ever since. While few blacks were charged with
"acting uppity," being lynched for achieving a measure of
relative wealth or possessing cultured ways was a way to
ensure that blacks did not cross the color line which
relegated them to the lowest caste in American society.\textsuperscript{22}

There were few signals from the federal government
condemning lynching. During Reconstruction, the federal
government provided Union troops to keep order in the South
as new state governments were being formed. Even though new
amendments were ratified to grant blacks freedom and civil
and political rights, special legislation was needed to
ensure blacks rights.

In 1871, Congress took testimony into conditions in the
South, listening to black and white testimony about the
beatings and intimidation they suffered from the vigilante
organizations such as the Klan. Congress then passed the Ku
Klux Klan Act to stop the terrorism rampant in the rebel
states. While the law was effective in driving the Klan out
of business, Northerners ultimately tired of the harsh
measures needed to quell racist violence. After the Klan’s
demise, the federal government took few steps to assist
blacks in the South. Southern white racists regained
political power through violence and intimidation and began
to suppress black rights. By 1890, most of the region’s
lynch victims were blacks and the South led the country in
the number of lynchings.²³

Presidents in the late nineteenth century did not
usually address the subject of lynching in their messages to
Congress or in other speeches, although Benjamin Harrison
started the practice in his last message to Congress.
Because of political pressures from a few humanitarian
Republicans and blacks who still supported the Republican
party, the men in the White House did at least feel
obligated to give lip service to black rights; or, as
Rayford Logan as written, " . . . all the Republicans
uttered pious platitudes about the denial to Negroes of rights guaranteed to them by the Constitution and laws of the United States [but] they did virtually nothing to protect those rights." Between 1877 and 1893, the Republican presidents tried to build up the party in the South among whites while stressing common economic interests between North and South. Yet they resorted to sectional calls, waiving the "bloody shirt" when it rallied flagging Northern and black support for the party.24

During the 1880s, Northern Democrats successfully wooed black voters away from the Republicans, establishing something of a trend among a few blacks to choose whichever party best served their interests. Democrats appealed to blacks starting in the 1870s for a variety of reasons, including an interest in saving the party by getting the North out of Southern affairs. Whether out of principle or expediency or both, Northern Democrats passed numerous civil rights laws throughout the region, and in 1884 Grover Cleveland was the beneficiary of these efforts to cultivate black voters. During his first term, Cleveland, whom Lawrence Grossman called "racially progressive," would not intervene into Southern affairs on behalf of blacks even where the Northern partisan press condemned anti-black violence.25

Just as Cleveland would not involve the federal government in a state matter when Mississippi officials did
not pursue the individuals who killed twelve blacks in a local courtroom, citing a jurisdictional conflict, late nineteenth-century presidents would invoke the same reasoning for their inability to direct federal action against lynching. Benjamin Harrison advocated federal action to prevent lynching, but he was motivated by the lynching of several Italians, murdered by a New Orleans mob in 1891. Constrained by court decisions limiting federal power to protect Americans, President Harrison's proposal dealt only with foreign nationals and not with the hundreds of Americans killed by lynch mobs. The State Department's handling of the affair resulted in a payment of a $24,330.90 indemnity to the Italian government as compensation for that nation's loss.26

However, Harrison, in his last address to Congress in 1892, did recommend that Congress pass "repressive legislation" to stop lynchings. Earlier that year, he responded to the Virginia State Baptist Convention denouncing lynching, and assured them that despite the limits the federal constitution placed on him in acting against lynching, the Department of Justice would do what it could where it had jurisdiction. Where Harrison could have effected positive change for blacks, he did the exact opposite in his appointment of a former Confederate to the Supreme Court, according to disheartened Republican James Clarkson: "That a Republican president, when the South
neither in its press, nor by any public utterance of its people condemns such cruelties [as lynching], should in selecting a supreme judge from the South, choose a man who represents such cruelty to the negro, and that he should do it on the very day after a negro has been burned alive and tortured with the passive consent of the state and local authorities in a Southern state, makes it stranger and more unaccountable and more to be condemned ... "27

Cleveland’s appointments to the Supreme Court did not cause the kind of reaction as Harrison’s choice of Jackson, but Cleveland did sign a law in 1894 which repealed some of the Reconstruction laws which had protected blacks and others from violence. This act involved protection of voting rights, and erased twenty years of federal concern for civil rights. Lynchings continued unabated, with foreign nationals from Italy, Mexico and Japan among the victims; it was this group of victims that prompted the federal government’s efforts to compensate their homelands. Cleveland noted in his addresses the Colorado lynching of Italians, ignoring the rising number of Americans killed by lynch mobs. He did not call for special legislation to end mob violence against Americans, but his Republican successors did, via their party platform, in 1896 and beyond.28

The first person to propose an antilynching measure to protect American citizens was the last black Congressman of
the nineteenth century. George White of North Carolina introduced a bill "For the Protection of All Citizens of the United States Against Mob Violence, and the Penalty for Breaking Such Laws," on January 20, 1900, but had to leave office in 1901 while his bill died in the Judiciary Committee. Before White's abortive efforts, another black Congressman was an early critic of lynching in Congress. Thomas Miller of South Carolina considered lynching the most important problem facing blacks, even though he had his seat in Congress held up almost until the end of his term because of election fraud. Congressmen proposed many investigations into Southern lynchings in the 1890s and petitions from across the nation supported these investigations.

Bills, resolutions and other measures to assist blacks or protect their civil rights, like calls for federal antilynching legislation, were generally ignored out of fear that old Reconstruction wounds would reopen. Southern legislators skillfully used that painful period to forestall legislation to aid blacks, arguing in the case of the federal election bill of 1890 that "... the real purpose of the bill was to control federal and state elections, and even the election of the President." The Lodge Election bill put federal supervisors and the courts, and not troops, in charge of congressional elections only. There was no mention of force anywhere in the bill, but an opponent
dubbed it a "Force" bill and the name has remained popular to the present.29

Henry Cabot Lodge, the bill's sponsor, had long championed election reform more for moral than political reasons but the 1889 congressional elections convinced him that something had to be done about Southern fraud. This bill, along with the Blair Education Bill, would be the last Republican bill attempted on behalf of blacks until the Dyer bill after World War I, and the party's last real effort to sustain a viable presence in the South. Most Republicans were more concerned with high tariffs rather than election regulation or blacks, which led to Republican defections during the votes on the bill. Democrats almost to a man voted against the bill, for it was a way to unify the Northern and Southern branches of the party around economic prosperity as well as maintain the "solid South." Blacks in Congress voted in favor of the bill, and most blacks around the country supported it to no avail. Even President Harrison's limited support could not secure its passage.

Turn of the century Republican presidents William McKinley and Theodore Roosevelt spoke out against lynching more than their predecessors, but usually not without qualification. McKinley denounced the practice first as Governor of Ohio, and later in his first inaugural address: "Lynchings must not be tolerated in a great and civilized country like the United States. . . . The preservation of
public order, the right of discussion, the integrity of courts, and the orderly administration of justice must continue forever the rock of safety upon which our Government securely rests." Yet he called Congress's attention only to the lynching of Italian nationals in 1897 and spoke in his December 1900 Annual Message about the lynchings of Italians and other foreign nationals, asking for financial redress in the first instance. McKinley's reputation among blacks was mixed, for while he continued the long standing tradition of appointing blacks to a few federal positions, his inaction following the Wilmington, North Carolina riot in 1898 reflected his overriding concern with national unity at the expense of black lives. Black and white citizens urged him to act, but he did not and the most he did as President was condemn lynchings in his 1897 Inaugural Address.\textsuperscript{30}

Theodore Roosevelt objected to lynching time and again as Governor of New York and as President, but he frequently linked that crime to the horrors of rape and the need to protect white women from Negro brutes. Moreover, he blamed lynch victims for their own predicament, and blacks in general for not turning over black criminals within their midst. He was only one of the great majority of Americans who subscribed to the racist notion that blacks deserved their fate; yet he disdained lynching as a means of social control and preached obedience to the law in lieu of
anarchy. Roosevelt's black supporters were angry because of messages like the one Roosevelt gave to Congress in 1906 citing rape as the cause of lynching. The final insult for many blacks was Roosevelt's management of the Brownsville affair, in which he discharged three Army units without due process for rioting in the small Texas town.\textsuperscript{31}

The inconsistent condemnations of lynch law that emanated from the White House during those years, while not themselves the cause of lynchings, probably contributed to the rise in lynchings after 1890. Hundreds of men and women faced mobs across the South and elsewhere partially because of the lack of leadership on this issue. Indeed some of our best-loved presidents either sought to participate in vigilante activities in their youth or expressly approved of such actions. Andrew Jackson received an application for pardon in 1834 from a group of residents in Dubuque (now Iowa) which informally tried and convicted an Irish immigrant for murder. The men and women believed that a Governor's or a President's pardon could save the immigrant. Jackson acknowledged that he had no jurisdiction over the area in which the residents lived, as it was not yet a territory, but he declared that "... the pardoning power was invested in the power that condemned." Since the residents began the illegal process, they finished it by hanging Patrick O'Connor only days before 'Iowa' was incorporated into Michigan Territory.\textsuperscript{32}
While Jackson may have sanctioned the frontier lynching of a murderer, Theodore Roosevelt was anxious to join one of the many vigilante drives out in Dakota Territory. Roosevelt enjoyed life on the range, and believed that criminals deserved punishment while "[c]ertain crimes of revolting baseness and cruelty were never forgiven." In fact, Roosevelt carried a certain admiration for vigilantism throughout his life, because the men who tried to enforce the law out on the range believed that they had to defend their way of life from human (as well as four-legged) predators. This was in line with Theodore Roosevelt's social Darwinist views.33

About one hundred fifty people a year faced lynching, if one includes vigilante action, at the end of the nineteenth century. Lynching provided a violent sanction for the prevailing order not only in the South, but everywhere. Around 1900, racism had gained intellectual respectability from scientists claiming "Nordic superiority" and warning of race suicide. Not only blacks and other non-whites, but Southern and Eastern Europeans were denigrated as racially inferior to the dominant Anglo-Saxon segment of society. Medical doctors declared blacks inferior because of their small brains, and the fact that they had "never risen to the eminence of a nation."34

Popular magazines and other literature also commonly denigrated Negroes. Harper's Magazine, which during
Reconstruction had championed the freedmen's cause, regularly used offensive terms when referring to blacks, and cultivated derogatory stereotypes. Other minorities, such as Asians and Native Americans, also faced discrimination and mob violence, but they were treated better in print than blacks. Because the whole society viewed blacks as vastly inferior to whites, there was little sympathy for suspected lawbreakers North or South. As Michael Les Benedict stated in an article on Victorian morality in America around 1900, crime was a moral failing of the worst sort while law reflected morality, as in the 1873 Comstock law. For the majority, "Police brutality . . . was a form of 'delegated vigilantism' by which the middle class tolerated and even approved violence against the outcasts of society."\(^{35}\)

While the President and Congress were paralyzed at the turn of the century, the United States Supreme Court demonstrated that it would punish lynchings that flouted its authority. The Court became involved when a prisoner, Ed Johnson, appealed from a lower court decision denying his petition for a writ of habeas corpus. A state court had convicted Johnson of rape and sentenced him to death. He sought a writ of habeas corpus on the ground that he was about to be executed without due process of law, citing several irregularities with his proceedings starting with the exclusion of blacks from his petit and grand juries. His petition was denied, but the Court permitted the
petitioner to appeal his conviction and further stayed Johnson's execution pending appeal. Shortly thereafter a mob hanged Johnson when the sheriff, who had been ordered to retain custody of Johnson until the appeal was decided, left him unguarded in jail.

The Court held Hamilton County, Tennessee sheriff Joseph Shipp and other defendants in contempt of court, finding that Shipp and his deputies did not adequately protect Johnson because they sympathized with the mob. The Court recognized the reason that Shipp identified with the mob, "... for he was a candidate for reelection and had been told that his saving the prisoner from the first attempt would cost him his place, and he had answered that he wished the mob had got him [Johnson] before he did."35

Often, the legal system condoned community lynchings and vigilante action, but in this case the Court took action when its orders were violated. It was rare that the Supreme Court could intervene, because it only obtained jurisdiction over questions that brought up a federal question or there is a conflict between parties residing in different states, two states, a state and a citizen of another state, or a state and the United States. The Court heard cases either on appeal from the lower courts, which was nondiscretionary in application as opposed to writs of certiorari, entirely discretionary with the Court. Few cases dealing with mob violence made their way to the Court at this time, the other
major case coming in 1915 when the Court heard Leo Frank's petition for a writ of habeas corpus.37

Southern communities, as well as other locales that condoned mob violence, set an example for the world in American brutality. From a high of 130 in 1901, lynchings decreased in number to a low of 8 in 1932. There were a number of factors that led to the decline in mob deaths in the early twentieth century, among them several state antilynching laws passed between 1890 and 1920. The states acted at this point because of increasing criticism of lynching. Newspapers such as the New York Times, Washington Evening Sun, Boston Evening Transcript, and Chicago Tribune criticized lynchings when they published stories on the more brutal assaults. One such story from 1903 on the hanging and burning of a black man in Belleville, Illinois censured the mob and laid blame for lynchings on sheriffs.38

The above newspapers supported the Republicans during the post-Reconstruction era, with the Times switching sides between 1884 and 1894 and switching back to the Republicans in 1896. Besides taking an antilynching stand, these and other Republican papers were generally more sympathetic to black rights and treated blacks with a degree of respect. Democratic associated newspapers almost always justified the use of lynching and mob violence as necessary to protect white women. The Cincinnati Enquirer argued that lynching was not
... necessarily a mark of a disorderly or non-law abiding community. On the contrary it might be argued that where the unspeakable crime [rape] had been committed which leads to the greatest number of lynchings, that the work of the mob is the highest testimony to the civilization and enlightenment and moral character of the people.39

Other newspapers were equally effusive in their praise of lynching and its benefits to the country. The Memphis Commercial Appeal and New Orleans Picayune were only two Southern papers which printed lurid headlines of murder and incendiary articles for the reading public. The articles on lynching have even been charged with inciting later mob violence, as when the Atlanta Evening News sympathized with a mob that lynched a black man for rape on July 30, 1906, "congratulat[ing] the killers for having given the community 'general satisfaction,'" thus creating an explosive climate that erupted into the Atlanta race riot that September.40

Southern politicians who gave their approval to lynching also helped create a reaction which eventually would bolster state efforts to enact antilynching laws. Governor Cole Blease of South Carolina applauded mob action in 1912, promising that "... when a negro attacks a white woman all that it needed is that they get the right man and they who get him will neither need nor receive a trial." While Blease only condoned mob violence, other politicians like former U.S. Senator William Van Amberg Sullivan led a lynch mob with no apologies:

I led the mob which lynched Nelse Patton and I am proud of it. I directed every movement of the mob.
and I did everything I could to see that he was lynched. Cut a white woman's throat? . . . Of course I wanted him lynched. . . . I don't care what investigation is made . . . I will lead a mob in such a case any time.42

More thoughtful Americans across the nation became ashamed of the blatant disparity between American ideals and one of our seamier practices; however, few spoke out against it.

The black press spoke out against lynching in the late nineteenth and early twentieth centuries. Along with other grievances, black editors like The Richmond Planet's John Mitchell urged an end to lynch law, while T. Thomas Fortune defined the black press as the people's servant particularly where "... the mark of color remains and makes the possessor a social pariah, to be robbed, beaten and lynched . . ." Northern papers such as the Cleveland Gazette, Boston Guardian and Indianapolis Freeman all championed the antilynching cause, although the Freeman came close to blaming black men for lynching when they assault white women.42

The federal government at least theoretically supported equal rights for blacks, and since Reconstruction the Republican party had occasionally pledged in platforms and planks to "... quick[ly] and faithful[ly] respon[d] to the people for the 'freedom and equality of all men; for a united nation, assuring the rights of all citizens.' " It was the duty of lawyers to put these principles into practice as court officers, and a few individuals went
against the majority of their profession, who either
publicly favored mob violence or remained silent, by working
to uphold existing law or pass new laws to protect potential
lynch victims. Albion Tourgée, writer and Reconstruction
judge in North Carolina, lent his legal talents to H. C.
Smith and Ohio's blacks who then pressured the state
legislature to pass an antilynching law in the 1890s. Their
efforts were successful in 1896, and the Ohio law served as
a model for other states. The many Northern antilynching
laws passed after 1890 followed on the heels of state civil
rights bills which resulted from black pressures on Northern
Democrats. Many of the black editors running the 'Negro
press' were lawyers who put their energies into their
journalistic endeavors, while other attorneys brought
lawsuits to ensure lynch victims' families received the
compensation due them under various state laws.43

Various individuals and groups worked to halt the
scourge of lynching, starting in the late nineteenth
century. Black men and women sought to bring pressure on
the national government and the American public to end
violence increasingly aimed at blacks. T. Thomas Fortune
created the Afro-American League in 1890 as an "orderly
antilynching campaign." The League took the federal
government, particularly the political parties, to task for
failing to protect black people's rights. It pressed
President Harrison to enforce present laws in the South, while also advocating new measures.\textsuperscript{44}

A few years later, in 1893, Henry McNeil Turner, a bishop of the African Methodist Episcopal Church, began the Equal Rights Council. "'Until we are free from menace by lynchers . . . we are destined to be a dwarfed people,'" he warned. Turner's organization did not last very long, and Turner ultimately concluded that the United States was never going to accept blacks.\textsuperscript{45}

Some of the efforts to end lynching were undertaken directly through the political process. The National Federation of Colored Men of America petitioned the Republican party in 1896 to

\begin{quote}
. . . secure sympathy and aid among those of our white fellow citizens, North and South, who are opposed to the lynching of any person or persons accused of crime, which act is in violation of law, and repugnant to good morals, and the welfare of society . . . .\textsuperscript{46}
\end{quote}

While addressing a major reason for lynching, their petition ignored instances where men were lynched for violating taboos or customs rather than laws. The National Federation hoped that its petition would spur President McKinley to seek legislation from Congress to halt the vile practice that "...is a branch of Democratic opposition towards Negro Republicanism in the South." The National Federation specifically sought and got an antilynching plank included in the Republican party's platform in 1896.\textsuperscript{47}
While these organizations worked to protect minority rights, individuals were campaigning around the country to stop lynching. The earliest effort came from Ida B. Wells, who was first moved to write against lynching after blacks in Georgetown, Kentucky took revenge for a recent lynching by setting part of the town on fire. Wells and co-editor J. L. Fleming cheered their action, claiming that

so long as we permit ourselves to be trampled upon, so long will we have to endure it. Not until the Negro rises in his might and takes a hand in resenting such cold-blooded murders, if he has to burn up whole towns, will a halt be called in wholesale lynching.48

A later outrage touched Wells personally in 1892. Three friends of hers were murdered in Memphis, Tennessee for not heeding warnings to abandon their successful business. Wells attacked mob violence with her considerable journalistic skills, eventually travelling overseas to lead a one-woman crusade in Europe.49

As Wells launched her career as an antilynching advocate, she spoke on the topic at the Southern Afro-American Press Association meeting in 1892. Her career put her life in jeopardy, precipitating several death threats and many vituperative articles. She not only worked tirelessly on her own in the United States and around Europe, she also was active in several antilynching organizations both before and after 1900. Wells worked with the Afro-American Council (formerly the Afro-American League), sparking controversy when she spoke against mob
violence in terms that criticized Booker T. Washington, who argued that economic progress would help Afro-Americans create good will within the white community so as to forestall lynchings.⁵⁰

Wells received help in the early 1890s from the Woman's Loyal League, formed in New York in 1892, to carry out her crusade, while Wells formed her own women's club in Chicago to combat lynching. The Ida B. Wells Club wrote to President McKinley and Congress to express its views on lynching, only to be rebuffed by the usual constitutional/federalism argument that federal action was not possible. Wells again urged blacks to defend themselves as a way to stop violence, otherwise " 'The more the Afro-American yields and cringes and begs, the more he has to do so, the more he is insulted, outraged and lynched.' "⁵¹

Editor Harry C. Smith also campaigned on behalf of antilynching legislation in the 1890s. Smith, of the Cleveland Gazette, was a state representative who was able to gather significant support among the state's black population to pressure Governor Asa Bushnell in his advanced program for the state. His efforts proved successful when Ohio passed its influential law in 1896. The most influential black man in America at the turn of the century was Booker T. Washington. He was usually circumspect in denouncing the practice, citing how detrimental it was to whites while telling blacks to act in
ways to reduce crime and hence lynchings. But he nonetheless worked to get the Republican party to draft a stronger plank on lynching in 1904. And he spoke out forcefully against lynchings when they were particularly egregious:

Three members of my race have been burned at the stake; one of them was a woman. No one . . . was charged with any crime even remotely connected with the abuse of a white woman. . . . Two of them occurred on Sunday afternoon in sight of a Christian church. . . . The custom of burning human beings has become so common as scarcely to excite interest. . . . There is no shadow of excuse for departure from legal methods in the cases of individuals accused of murder.52

While Washington worked with more militant blacks like William Monroe Trotter to end lynching, he believed that "mob victims were low-class Blacks who had not needed his advice" about working hard to earn whites' respect. He also regarded lynching as just a lower class white phenomenon, one which vented pent up frustrations, rather than an expression of racial solidarity backed up by upper class whites interested in maintaining the existing social order. Of course, since Washington depended on men like Andrew Carnegie and Julius Rosenwald to help fund Tuskegee Institute, he would not endanger his school's existence by criticizing these men for not attacking lynching.53

Washington's allies both black and white not only espoused his self-help philosophy but also criticized mob violence, such as John W. Wheeler, editor of the St. Louis Paladium, who did not address lynching in his newspaper but
signed a letter attacking the practice in 1894. The Savannah Tribune promoted economic self-help before Booker T. Washington's Atlanta Compromise in 1895, while the Raleigh, North Carolina Gazette stressed his philosophy very early.54

The Constitution League, an interracial organization founded in the early twentieth century, tried to get the Republicans to strengthen their antilynching position. In 1911, along with the National Independent Political League and the NAACP, the Constitution League met with President Taft to urge congressional action to stop lynching. Taft replied as other chief executives had done to similar requests, namely "that he could not 'ask Congress to do what it has no power to do. . . . The remedy must be sought through the State governments.' " Only when he needed blacks' votes the following year did Taft publicly condemn lynching, while the Republican plank urged "the people. . . to condemn and punish lynchings and other forms of lawlessness."55

There were other interracial organizations formed for the purpose of ending mob violence going back to the 1890s, although the best known was the National Association for the Advancement of Colored People, founded in 1909-1910. The NAACP, with its liberal white supporters, began with the kind of legitimacy that other organizations lacked. Furthermore, the NAACP concentrated on lynching as one of
its top goals, launching its antilynching campaign early in its existence. W. E. B. DuBois was the Association official most linked in the public's mind with the antilynching struggle up through World War I. Other NAACP officials then became associated with its antilynching efforts. James Weldon Johnson and Walter White both would devote a great deal of their energies to promote various antilynching bills before Congress after World War I.

The Frank trial in 1913 prompted the B'nai B'rith to found the Anti-Defamation League to combat anti-Semitism in the United States. The League has cooperated with the NAACP to fight lynchings. Jewish leaders were also helpful to the NAACP.56

The Commission of Interracial Cooperation, founded in Atlanta in 1919, was concerned with improving interracial relations and included an attack on lynching among its goals. Will Alexander was a minister and YMCA counsellor who believed that other Southern Progressives like himself had a responsibility to help blacks with their problems. But the CIC acted paternalistically in that it felt that it rather than blacks had the best solutions to their problems. While there were blacks who participated in the CIC, most of them left the organization a short while later.

The CIC began as an educational organization, to promote better race relations in the South through pamphlets, college courses and speakers. It got involved in
the antilynching crusade in 1930 as a lynching took place in Sherman, Texas. This act belied Alexander's prediction that lynching would soon go out of fashion. The CIC then launched investigations into mob violence, and tried to urge sheriffs and law enforcement officials to protect mob victims. More importantly, the Commission sponsored several projects on lynching, resulting in case studies such as The Mob Still Rides and such well respected books as The Tragedy of Lynching and Lynching and the Law. However, it never enthusiastically sponsored congressional bills to end lynching as the NAACP did in the post-war era.

Adverse publicity, along with the looming threat the federal government would intervene by passing its own law, led several Southern states to pass antilynching laws. Politicians like John Northen of Georgia and William O. Bradley of Kentucky responded to black voters' concern over mob violence by pledging to support antilynching laws if elected. Northen was also concerned with the populist insurgency sweeping through Georgia and the South in the 1890s, because some blacks turned to the new party out of frustration with the other parties. Legislators introduced antimob measures throughout the South animated by fear of interracial cooperation through Populism, while interracial cooperation allowed black legislators to work toward antilynching laws in the North. A concern for law and order and humanitarian regard for lynch victims also motivated
Governors and legislators to address the rapid growth of lynch law by 1900.

Another rash of antilynching laws came after 1919, spurred by the postwar militancy among black soldiers and Southern states' efforts to slow the tide of black migration to Northern urban centers. These laws shared with the earlier ones provisions obligating sheriffs to protect prisoners from mobs or face removal from office and county or community liability for lynchings that took place in their vicinity. There were even provisions for court suits by the victims' families, which resulted in a few cases that tested the antilynching laws' constitutionality. Despite the laws, lynchings continued although in smaller numbers.\(^5\)

While states enacted antimob statutes, resolutions and constitutional provisions, Congress debated resolutions and bills to stop mobs from carrying out their murderous ways. Initially anxious to check lynchings against foreign aliens, a few individuals later pressed their colleagues to accord American citizens the same protection they were interested in bestowing on non-citizens. Overall, state laws around the turn of the century were ignored or modified to weaken the laws, so some members of Congress rallied to the antilynching cause. That these men received petitions and resolutions from worried citizens on the lynching menace helped spur them to act.
The first real attempt that showed any chance of success came after World War I, when Leonidas Dyer (R-Mo) pressed such a law in Congress. The House finally passed the Dyer bill in 1922, but the Senate would not give its approval on the ground that Southern authority would be undermined. The battle over the Dyer bill would prove instructive to antilynching sponsors in the 1930s, when the NAACP recruited two new legislators for another antilynching bill that seemed to have a better chance. But antilynching advocates, including Edward Costigan and Robert Wagner, faced stiff opposition from Southerners and others who believed antilynching bills were an unconstitutional intrusion into the States. Antilynching advocates also faced a group of chief executives, including Franklin Roosevelt, who would or could not exert strong leadership over members of their own parties on behalf of antilynching bills. Without that role, antilynching sponsors were working in vain.
CHAPTER III
BLACK AND WHITE LEADERS PROTEST LYNCHING

While lynching, vigilantism, and mob violence in general can be traced back at least to the eighteenth century, significant opposition to lynching did not develop until the late nineteenth century. Even then, however, this only translated into state and not federal solutions to lynchings. Until then, lynching was either tolerated or endorsed. A leading citizen of frontier Montana, Thomas Dimsdale promoted vigilantism under

... the domination of a body which, upon the whole, it must be admitted, has from the first with a wisdom, a justice and a vigor never surpassed on this continent, and rarely, if ever equalled. Merchants, miners mechanics and professional men, alike, joined in the movement, until, ... the Road Agents and their friends were in a state of constant and well grounded fear, ... .

Elites of the community, when not out actively engaged in mob violence, were the "silent majority" that Abraham Lincoln warned might acquiesce to the mob spirit which animated the "... vicious portion of population [,...]... permitted to gather bands of hundreds and thousand[s]..."
Over the course of the nineteenth century, as more and more individuals disdained lynching as a legitimate form of punishment, there was a growing sense that the harm to the legal system from lynching would outweigh any benefit from mob action. Fear that the mobs would harm or kill the wrong person, even innocent persons, also prompted enemies of lynching to come forward. People were never anxious to be on the receiving end of a mob's wrath. It was only when lynchings started to give the United States a bad international reputation that various government leaders addressed mob violence seriously or suggested laws to punish the lynching of aliens.²

Nonetheless, ordinary citizens, black and white, got involved in the antilynching struggle out of a sense of injustice at the lack of due process. For some, sympathy for the victims motivated their actions. The antilynching spokespersons took a variety of approaches to combating the problem. General philosophies on the "Negro Question" informed their ultimate solutions to lynching. Assimilationists among the black leaders, such as Frederick Douglass and John R. Lynch, couched their reproofs of mob violence in terms that still saw incorporation into the American system as the only course for blacks: "the real Question is whether American justice, American liberty," American civilization, American law, and American
Christianity can be made to include . . . all American citizens. ¹

Others who believed that blacks could be accepted into the family of American brotherhood viewed lynching and mobs as blots on civilization. Leaders like John Mercer Langston and Blanche K. Bruce promoted self-reliance and education along with reliance on Republican efforts to ensure equal rights for all.⁴

While assimilationists frequently urged education as one of the weapons to disarm lynch mobs, men and women with more equalitarian views on the place of blacks in American society and the ultimate goals blacks ought to achieve also advocated education as one way to end mob violence. Those considered militant in their outlook regarding black rights were not reluctant to list education among the means appropriate to combat lynching, for as Mary Church Terrell wrote in the North American Review educated black men and women "are continually expressing their horror of this one particular crime, and exhorting all whom they can reach by voice or pen to do everything in their power to wash the ugly stain of rape from the race’s good name." Yet Terrell and other activists did not label all lynch victims as rapists, and all victims were entitled to due process if accused of a crime.⁵

Those with an accommodationist stand, like Booker T. Washington, pressed education for both blacks and whites in
order to stem the rising number of lynchings around 1900. Washington not only wanted blacks to refrain from committing rape but urged African Americans to "teach with unusual emphasis morality and obedience to the law . . . [at] the fireside, in the school room, in the Sunday school, from the pulpit and the Negro press . . . " He too publicly adopted the common perception that black men wanted to rape white women, and were hence acceptable lynch victims. He did not want to alienate his supporters or his neighbors in Alabama. He also pled with whites to uphold the law because by "degrading themselves and disregarding the law, disrespecting the authority of governors, . . . [i]t is impossible for a youth to be so influenced that he can be made to feel that he can break the law in one case and keep it in other cases without being permanently harmed."®

A bit more needs to be said about the men and women whom historians now label assimilationists, accommodationists, and militants, because their respective outlooks influenced their choice of language in addressing the lynching problem, as well as their ultimate goals. Assimilationists like Douglass and Blanche K. Bruce believed that faith in the system and a fair chance to succeed would ultimately result in equity for everyone. These men and women not only worked for slavery's demise, citing it as an affront to constitutional principles, but also for full civil and political rights after emancipation.
At the time lynching began to claim predominantly black victims and became closely linked with the perpetuation of the South's racial caste system, black leaders who preached the virtues of suffrage and of "... carv[ing] out ... character ... which will demand the proper recognition here ... " were still actively involved in politics, business, and education. Norris W. Cuney, a Texan whose political career spanned over thirty years, recognized that so long as communities supported lynch mobs the latter would continue to rule as the law over Governors and state militias. His views parallel those of other more outspoken leaders, who believed that blacks would have to put an end to lynching since neither local, state nor federal governments acted against lynch mobs. Taking their own lives into their hands, men like Rev. E. Malcolm Argyle of Baxter, Arkansas expressed his views publicly:

The colored press in the South are dared to take an aggressive stand against lynch law ... Will not some who are not in danger of their lives, speak out against the tyrannical South ... 

As assimilationist sentiment died with its major adherents, accommodation became the new operating model for blacks in the late nineteenth century. Booker T. Washington was the best known proponent of the view that blacks needed to forego political and civil rights to concentrate on economic prosperity and group solidarity and pride. His Tuskegee Institute, founded in 1881, taught his conservative values to countless black students who in turn
took his message to black communities North and South. Washington's contemporaries did not all share his philosophy of vocational versus higher education, but he had many adherents across the South who founded their own versions of Tuskegee Institute or helped build black schools into models of industrial education.

One of Washington's followers, William Hooper Councill, had been president of State Normal and Industrial School at Huntsville, Alabama since 1876. Like Washington, Councill was a self-made man who valued education and hard work, which he successfully preached to his students, since they caught "... the spirit of the teacher [to] go forth into life filled with the high notions which ought to occupy the attention of the youth of this day." Councill's reputation as an accommodationist reached such a low point that by 1900 even Washington did not want to be seen on the same stage with him because of his "'reputation of simply toadying to the Southern white people.'" Yet he did not take a flattering tone in his 1899 article in the Forum which advocated blacks leave the United States because whites would never accept them on equal terms.9

Other accommodationists, like J. C. Price of Livingston College in North Carolina (who nonetheless advocated pursuit of civil rights while acquiescing in restrictions on voting) and C. H. J. Taylor (a lawyer and newspaper editor in Atlanta and Kansas City), believed that conciliation with
the South was possible. Not all accommodators were as vilified as W. H. Councill, or as censured as Price and Taylor, but they all wanted to see blacks progress over time rather than hurriedly as happened during Reconstruction. When mobs took the law into their own hands, Washington and others made a public stand against lynching, but in a way that did not jeopardize the conservative work he and others were doing for blacks. Washington once acknowledged to Charles W. Chestnutt, the noted black writer, that he recognized that not only education but agitation were needed to produce justice, but he complained that he was doing all he could that was effective against lynching. Others spoke out against lynching as well, often "take[ing] the appearance of a mild appeal for redress." Those men anxious to avoid trouble with influential whites used circumspect language to assuage whites while still promoting their own cause, a very astute and practical tactic since they relied on whites for financial support or even protection from harm.10

But a few accommodators espoused militant views at the same time, like Alexander Walters of the Afro-American Council in 1898, when he agitated on behalf of rights for blacks while simultaneously counselling caution in areas like education. Perhaps recognizing that racial radicalism was on the horizon, and that Washington's philosophy would generate greater criticism, these men foreshadowed Kelly
Miller's 1906 epigram that "Effective horsemanship is accomplished by straddling."¹¹

Militants denounced lynching more loudly, more often, and without straddling. Their solutions ranged from antilynching laws to armed defense, and matched the militants' advanced positions on civil and political rights and education generally. Militants like Ida Wells or W. E. B. DuBois denounced the timidity Washington displayed on the subject of lynching. Many of these radicals were not dependent upon whites and were affiliated with black institutions. They were better able than leaders like Washington to demand action against mob violence without risking support from influential whites. Black radical spokesmen and women became the vanguard of the burgeoning civil rights movement, and became less hesitant to criticize Washington or his philosophy when it became apparent that conditions for blacks were still intolerable. The Niagara Movement and National Association for the Advancement of Colored People were the culmination of blacks' efforts to bring democracy, "a social condition of equality and respect for the individual within the community," to the black masses during the Progressive Era.¹²

Besides teaching, antilynching advocates of all stripes employed various methods to get their message to the public, both black and white. Newspapers were a preferred medium of promoting antilynching sentiments, as early as the 1880s
when Ida Wells congratulated blacks for defending themselves from a mob attack. Few commentators followed her bold stand of recognizing blacks' right to self-defense, since that no doubt would have placed them in grave danger. Blacks used the pages of newspapers to upbraid communities for not prosecuting lynchers. The New York Age ridiculed Tyler, Texas by calling it "Lynchertown" in 1912 because of its horrendous record, while Jesse C. Duke of the Montgomery Herald was so outspoken in the late 1880s he had to flee the state due to his editorials. The Minnesota editor John Quincy Adams was nationally known for his attacks on lynchings and other injustices.13

After Fred Moore, a close associate of Booker T. Washington, took editorial control of the Age in 1907, the paper continued to protest lynchings to such an extent that Washington, who controlled the Age, objected that lynchings were discussed too much. But despite his influence, Washington could not suppress the lynching issue, because it was too important to blacks and was too prominent a national concern.14

The Cleveland Gazette manifested its unstinting radicalism by condemning both mob violence and Washington's social and economic program. Other papers took a more conciliatory stand toward the Tuskegee's agenda. Both the Richmond Planet and Indianapolis Freeman attacked lynching while endorsing Washington's program of self-help and
economic advancement as the most practical way to attain racial progress. P. B. Young of the Norfolk Journal and Guide was a Bookerite with a "felicitous manner at expression [which] masked the protest quality of his thought." John Mitchell was known even in 1887 as an uncompromising crusader for justice, criticizing lynchings in his Richmond newspaper. George Knox's racial philosophy in the Freeman, while accommodationist for several years, nonetheless also sought concrete reforms such as federal antilynching legislation in 1920.¹⁵

White editors did not take as strong antilynching stands as black leaders. They were more concerned with capturing and prosecuting black criminals, since they along with the rest of the country complained about rising crime. The cities were in fact the site of this growing social problem but most lynchings took place in small towns or rural areas; the vast majority of the nation's blacks lived in the South. Foremost among their discourses against lynching was the attitude that blacks brought lynchings on themselves, so they should control their murderous, lecherous tendencies. The pages of the Charleston News and Courier and Ackerman [Miss.] Choctaw Plaindealer reverberated with defenses of lynching.¹⁶

While mainstream newspapers had a wider audience than their black counterparts, black newspapers could reach a fairly wide audience. Readers included several presidents
of the United States and other important Washington, D. C. officials. However, most readers, especially of Southern newspapers, were members of the black community. They often read their newspapers in a group setting or passed them around from person to person, since newspapers were more a luxury than a necessity. Their impact went beyond the immediate locales of their publication and their initial audience. As Henry Suggs said, "The Southern black serves three major purposes, the most important of which are to inform and expose conditions that violate the inherent and constitutional rights of all Americans, to inspire its readers to nobler things and higher attainments by publicizing the achievements of individuals who have risen from their ranks, and to crusade for justice for all people." The press thus melded a crusading spirit with staunchly middle-class values.¹⁷

Opponents of lynching skillfully utilized other print media, especially journals and magazines. Mary Church Terrell's 1904 *North American Review* article debunking the myth that rape was the main reason for lynching did more than dispel the argument that black criminality justified lynching. Her article was intended to force white Americans to face their responsibility for lynching, since race hatred and Southern lawlessness caused lynchings and blacks cannot move whites through their acts or attitudes.¹⁸
Pressing for racial justice in the leading periodicals went back at least to the days of the assimilationists Douglass and Francis Cardozo. The A. M. E. Review, organ of the African Methodist Episcopal church since the 1840s, was a popular late nineteenth century forum for black leaders. The Review, ostensibly a nonpartisan publication because of its church affiliation, often supported the Republican Party, the Afro-American League and its work, and the Lodge Election Bill of 1890. In its pages various writers advocated such militant measures as blacks arming themselves against lynching, echoing Ida Wells' contemporaneous arguments.¹⁹

The Forum, on the other hand, was a white-owned magazine which allowed blacks to air complaints against mobs, as in W. H. Councill's pessimistic piece on "The Future of the Negro." Although Councill was known for his conciliatory attitude toward Southerners, his 1899 article bespoke the black community's frustration at the recent violence in Wilmington, North Carolina, and the federal government's lack of response: "The whites prate about constitutionality and civil rights while they shut out the Negro from the best means of gaining a livelihood, even mob him, and the President himself says that he cannot prevent white men from whipping Negroes from office, destroying their property, and driving them from communities." Councill ultimately counselled blacks to leave, since
struggling for their rights only brings aggravation and death, but at that time, few blacks seriously considered this an option.\footnote{20}

Antilynching advocates used many means to promote their message to Americans of all races and classes, while they also directed their cause to international audiences as a way to bring pressure on the U. S. government. Ida Wells took her message to Great Britain in the 1890s after her life was threatened in the United States. Wells was so successful in drawing international attention to the lynching question, antilynching clubs were established in England and Scotland. Newspaper reports of her activities led Southern defenders of lynching to attack Wells' character in an effort to deflect criticism.\footnote{21}

While Wells was the best known black leader to take the case against lynching abroad, she was not the only one to do so. After World War One, William Monroe Trotter went to the Paris Peace Conference to present American blacks' list of grievances, including lynching, to the victorious leaders including President Wilson.\footnote{22}

Of course, most of the antilynching protests were aimed at American audiences, and whites rather than blacks were the object of the campaign. Black and white activists scolded and preached, hoping to bring white pressure against the lethal practice. The most vocal white critic of lynching by 1900 was undoubtedly Albion Tourgée, the old
Reconstruction era radical, who worked to secure the Ohio Antilynching Law of 1896 at the same time he worked for the black plaintiffs in the disastrous segregation case, *Plessy v. Ferguson*. Tourgée, a journalist and writer, publicized radical opinion on lynching and the "Negro question" in general in the Republican newspaper, the Chicago *Inter-Ocean*. His "A Bystander's Notes" column spotlighted such issues as economic inequality along with mob attacks. His harsh attacks on white racism and defense of equal rights earned him a reputation as a fanatic by 1900, because his views on racial justice were in disrepute. Tourgée's audience dwindled, and a future critic complained, "[h]is splenetic articles read like the vehement and ill-tempered gestures of a bilious man who has lost whatever audience he once had and now appeals only to the most partisan reader." But those who continued to support the Reconstruction era goal of racial equality joined his biracial organization, the National Citizens' Rights Association, started in 1891.23

This group of black and white men and women was a forum for Southern blacks to enlist support for a federal antilynching bill. Tourgée favored the Blair Education and Lodge Election Bills, and the Judge added the NCRA's name to the movement favoring a federal antilynching law in the 1890s; Tourgée urged President William McKinley to formulate a national policy against lynching in 1897, and after the
turn of the century urged the same policy as President Roosevelt.²⁴

While Tourgée was the most outspoken white critic of mob rule, Southern voices from the field of politics, journalism, and religion began speaking out in the late nineteenth century. Most of these early critics hated lynching but almost always associated it with black criminality against white women, thus blunting their criticism. Governor Joseph F. Johnston of Alabama spoke to the General Assembly in 1896 counselling restraint and faith in the law to take care of criminals rather than taking the law into one's own hands. Johnston was more concerned about law and order in general than with protecting black victims when he called attention to mob justice. He was appalled by the lack of law and order in his state. He wanted several special measures, like speedy trials, instituted to deter lynch mobs, but "It is a commentary on the powerlessness of the Negro community, as well as the foreshortened limits of white humanitarian endeavor, that the two Johnston legislatures never discussed the anti-lynching suggestions." Always the politician, Johnston claimed to sympathize with mobs outraged by rape, but he was wise enough to seek to enforce the law against lawbreakers whether he sympathized with them or not.²⁵

Radicals like the Populists in the 1880s and 1890s enlisted blacks to their program of economic and political
reform, although blacks had to form their own organization. The Colored Farmers Alliance spread to several states and had as many as one and a quarter million members, who worked with the Southern Farmers' Alliance on cooperative projects like trading through the Memphis and Nashville Exchange. Populists began electing men to state office in 1890, and across the South in the early 1890s blacks helped vote for Populists like Thomas Watson of Georgia who pledged to fight for blacks' political rights. Yet Populists did not pledge support to end lynching, and the 1892 Texas state platform had nothing regarding blacks. Watson, however, risked his own life to prevent a black man's lynching, making him one of a few exceptional men. Blacks obviously risked their own lives by becoming Populists in this era of disenfranchisement, but they braved racist attacks for a chance for greater economic and political opportunity.²⁶

Another popular Alliance man in the early 1890s was Benjamin "Pitchfork" Tillman of South Carolina. He was elected governor on the Alliance ticket in 1890, and while in office he ordered sheriffs to protect their prisoners from lynch mobs. He thus earned praise from the New York Age. Both Watson and Tillman would repudiate their enlightened Populist stands for vicious anti-Negro stands after Populism's demise. They even endorsed lynching blacks as fit punishment for the rape of white women, marking a tragic descent into hysteria; perhaps their earlier
enlightened views and actions were born more of political needs than actual belief.\textsuperscript{27}

The Southern Democrats were growing anxious about the new surge of black voting strength in the 1890s, something they tried to eliminate at the end of Reconstruction through various means. While many blacks turned to the Populists, others were reluctant to leave the Republican party for an ephemeral program of racial solidarity and economic cooperation but no concrete program to end lynching. The Democrats then had to compete with both Populist gains and Republican tradition to appeal to black voters in the 1890s. John Northen of Georgia was cognizant of blacks' hesitation to break ranks with the Republicans and support Democrats, but his pledge to outlaw lynching earned their support in 1892. Andrew H. Longino of Mississippi pledged as Governor to punish officers who permitted lynchings to take place on their watch, as well as compensate victims' families, but the legislature refused to enact legislation of this kind.\textsuperscript{28}

Southern journalists joined the growing antilynching movement after 1880. Only a few years after he criticized Ida Wells for her antilynching activities, Henry Watterson began to editorialize in favor of bringing mobs to justice. He urged the Louisville \textit{Courier-Journal}'s readers to repudiate lynching. But he shared the view of his subscribers that lynched blacks were merely criminals unfortunate enough to "... have suffered at the hands of
regulators," undercutting the effectiveness of his argument. Other southern editors expressed their growing unalterable disapproval of lynchings, amid conflicting loyalties to race and social groups on the one hand and law and order and decency on the other.  

Lynching was at an all time high in the 1890s, which resulted in part from the upswing in black voter participation during the Populist movement. Without blaming the victim for his (or occasionally her) murder, blacks electing men like Watson and Tillman to office incurred the Democrats' wrath. However, blacks usually remained loyal Republicans, who still felt obligated to promote token civil rights measures like the Lodge Federal Election Bill of 1890.  

The disenfranchisement movement that swept the South from 1890 (Mississippi) to 1910 (Oklahoma) legally eliminated blacks from the polls, ending years of violence directed at blacks for exercising their constitutional right to vote. The Magnolia State's innovative constitutional provision, which effectively negated the 15th Amendment, was soon copied and expanded upon by energetic Southerners eager to ensure white supremacy. Yet violence was employed to bolster the burgeoning Jim Crow system of racial separation to which the U. S. Supreme Court had given its imprimatur in *Plessy v. Ferguson*. While the legal system became the ultimate guarantor of black inferiority, lynching was only
the most violent weapon in the South's arsenal of devices used to assault blacks.\textsuperscript{31}

Other editorials in some of the country's major dailies tried to influence the general reading public to prevent or at least condemn lynchings. Editors believed that without public silence lynchers would not have the basis for their beliefs that lynching law was tolerable.

Noted Progressive journalist Ray Stannard Baker investigated lynchings after the turn of the century as part of his muckraking chores for \textit{McClure's}. While he was more sympathetic to blacks than most of Baker's intended audience of millions of urban readers, he nonetheless held a negative opinion of blacks' capabilities and achievements. Baker was a product of his times when he criticized lynching on the one hand and upheld a popular belief that criminals often escaped punishment through various legal technicalities on the other.\textsuperscript{32}

The other main category of white reformer during the Progressive era--ministers from different Protestant denominations--spoke to their congregations and to the larger community when they began to criticize mob violence from their pulpits. Yet they sent mixed signals to their intended audiences. Methodist Bishop Robert Strange condemned lynching on the one hand and urged speedy trials and executions for rapists in special courts, implicitly linking blacks and crime together in the minds of his
listeners. The Nashville Christian Advocate, edited by Alexander J. McKelway, took a similar view of lynching in 1899, when it published news of lynchings in Georgia with a warning to blacks that this would happen when they raped white women. However, within the next few decades antilynching advocates would support state and federal legislation to halt lynchings because morality alone was insufficient to do the job, with the best chance for the latter type of law coming during the New Deal.\textsuperscript{33}
CHAPTER IV
"FIGHTING A TRADITION OF COMMUNITY ACTION"

The mechanics of local law enforcement in the United States were important in making a national antilynching law necessary. It is on the local level that questions of law and order, protection of life and property, and justice are first raised and resolved. The earliest settlers to the New World brought their legal concepts with them in the seventeenth century, transmitting a centuries old tradition of not only formal legal procedures but informal customs that gained the force of law over time.¹

Yet the settlers brought more than a tradition of law with them. They also brought a tradition of community action, sometimes violent. Early modern English mobs gathered to protest rising food costs, or food shortages, or moves to enclose formerly open fields, expressing their displeasure as a group on the unfortunate officials who carried out the new policies. This "right of resistance," as one historian of colonial America termed the colonists’ custom from England, was evident in the English villagers’ invocation of ‘popular protest’ which was at least a sixteenth century phenomenon. Mobs acted out of tradition,
attempting to prevent change in a rapidly changing society that did not take the mobs' stubborn insistence on the status quo into account.²

English men and women continued their tradition of direct action into the nineteenth century, providing an example for their Anglo-American cousins whose mob activities went from a sense of community protection in colonial New Hampshire, efforts to "... gain control of life as they expected it should be ...," to a body of individuals determined to throw off colonial rule because the rights of Englishmen were being trampled. As early as 1689 when the New England colonists attacked Governor Andros to the Boston Tea Party and the Sons of Liberty, mob activity had achieved the desired results.³

The Old World tradition of taking extra-legal measures to protect community liberties was reflected in Thomas Jefferson's famous comment during Shay's Rebellion that "... a little rebellion, now and then, is a good thing, and as necessary in the political world as storms in the physical." Earlier, English mobs protested Jewish naturalization laws in the 1750s, leading to their repeal the same year they were enacted. A Scottish mob broke into jail to impose their own sentence on the prisoner, prompting Parliament to initiate a motion to revoke Edinburgh's charter. The Scots in Parliament protested, however, that the mob's acts should not hurt the city. The mob would not
have protested had Parliament not taken action the mob considered detrimental to their interests. An Edinburgh mob also murdered a city guard captain, when it tried to rescue a popular smuggler from jail.⁴

When the settlers arrived in New England after 1620, they did not forget their heritage of popular justice and proceeded to implement it whenever they believed their interests were at stake. A Connecticut mob stormed a jail in 1722 to free a neighbor (in order to settle a land dispute), exerting their collective will over those in authority by their successful defiance. John Adams, a man by profession obliged to uphold law and order, nonetheless sanctioned mob violence when it was in reaction to intolerable laws and officials. He referred to a mob that burned Andrew Oliver, colonial agent, in effigy and destroyed several buildings out of anger over the Stamp Act in 1765 when he suggested that colonial officials somehow find a way to soothe the colonists' difficulties. His attitude toward the right of mobs to commit acts considered "... a very atrocious [sic] Violation of the Peace and of dangerous Tendency and Consequence," provided these acts redressed some egregious wrong committed against the mob, would help propel Adams into the ranks of Revolutionary leadership.⁵

The South Carolina "Regulators" energetically enforced their own law on neighbors before the American Revolution.
Their aim, as described in a letter to the Charleston South Carolina and American General Gazette, was "...effectually to deny the jurisdiction of the courts holden in Charleston over those parts of the province that ought to be by rights out of it; to purge, by measures of their own, the country of all idle persons, ..." These men were less concerned about possible crimes and more disturbed by lackadaisical or criminal persons who were either a drain on or a menace to the community. The back country settlers felt free to order their own society because they were far from colonial controls in Charleston. Even as these vigilantes practiced their form of justice, they remained "committed to formalism and legalism," writing out agreements as to their role in the movement in support of each other in the unorthodox nature of their plan.⁶

Among the components of English legal thought that crossed the Atlantic was the time honored principle of trial by a jury of one's peers, and juries were recreated in American criminal and civil law. The colonial legislators replicated the English formal law's prohibitions on undue search and seizure and excessive bail, so that trial by jury was thus only one of the many safeguards that colonists valued. They likewise established many courts to hear their disputes, in order that justice would be safeguarded. Yet men still found it desirable to take matters into their own
hands from time to time despite the availability of lawful means of solving disputes.  

Men (and only men) served not only on juries, but as judges, magistrates, and justices of the peace, dispensing justice among their neighbors. Judges usually came from the elite segment of society, bringing with them a peculiar mindset that sought to impose their conservative beliefs on law and order. Judges were often formally trained in the law whereas justices of the peace were often ordinary lay people, giving some diversity to the bench along with different sensibilities on how the law should be applied and what punishment should follow.

While formal law as practiced by judges and justices of the peace worked to resolve disputes between neighbors and protect the community from criminals, "popular justice" as practiced in the American colonies was not employed just against accused criminals but toward anyone who stood as a threat to the community in some way. Mob rule not only affected those individuals marked for community justice but vigilantism also affected the colonists' right to freedom of speech. Leonard Levy noted that vigilantes often suppressed their neighbors' First Amendment rights when forcing the latter to acquiesce to the mob's desires or face retribution. By not allowing a publisher to protest the Stamp Act in his own way, the mob in one instance invaded a
fellow colonist's prerogative to express his opposition to something to which the mob also objected.®

Colonial law both sprang out of conditions in the New World and also adhered to English laws and customs, blending into a uniquely American amalgam which was devoted to law unless community law more closely expressed the colonists' sentiments. The object of law became to serve the peoples' needs and "Popular will was a genuine source of consensual authority in every colony and its growth during the eighteenth century contributed directly to the eventual acceptance of a popular will theory of law . . . [wherein] legitimate law had to be derived from the people." Several legal historians have discussed the theory of popular sovereignty and its ramifications for local government and collective action, expounding on the new constitutional order established in 1776, which was based on new state governments and consent of the governed. Popular consent to civil and criminal authority did not, however, eliminate the community's prerogative in taking law into its own hands when the situation called for such action. Although Stephen Botein referred here to colonial land riots in the 1740s, his words could easily apply to the late eighteenth century and opposition to the new federal government: "Local consensus was a law unto itself, perhaps superior in legitimacy to injurious, external authority."®
While there were jails in colonial America, the first police forces were not organized until the mid nineteenth century. Threats to order multiplied with the growth of urban centers. By 1850 the local constable became inadequate to handle the many new problems that beset urban centers. Populations grew because of immigration and migration from rural areas, which led to greater conflict among groups of people of different classes, ethnicities, and races.

While the police arrested criminals of all races, blacks and other 'marginal' people faced stiffer penalties once caught up in the criminal justice system. Individuals or groups with political and/or economic influence or ethnic ties to the police force in their cities could evade arrest or prosecution by trading on these advantages, an alternative which racial minorities or "new immigrants" did not have. Yet there is some evidence that ethnic ties were not as helpful in eluding arrest or criminal prosecution as once thought, particularly for the Irish in New York City. It is undeniable that as society clamored for greater police protection, expanding police authority over more areas of life, those on the lowest rung of the ladder were more likely to find themselves filling more jail space than their better educated, well-off counterparts.11

The men who ran the jails, argued before the courts, or manned the bench were usually products of the communities
they served, which meant that they were shaped by the ideals of community justice as well as formal law and order. They sometimes proved sympathetic to extra-legal action. Due to several factors, blacks were overrepresented among criminal defendants, and society concluded that blacks were more criminal than whites. The men who participated in the system were especially susceptible to viewing blacks as chronic lawbreakers. Add to that view their strong ties to their local communities, and the likelihood rose that these men would participate in illegal violence against blacks, laborers, or others who threatened the prevailing order. It was common that local law enforcement officials, especially if Southern, looked the other way when troublemakers met with an unpleasant end.12

By the end of the nineteenth century, more blacks than whites were subjected both to lynching and to legal executions. The mindset of the American public was accustomed to seeing blacks, usually men but occasionally women as well, punished either legally or extra-legally for crimes real or imagined. Despite this, a demand arose around the country for laws to wipe out lynching. The work of people like Ida B. Wells and Albion Tourgée helped publicize the horrors of lynching and push for a model antilynching law respectively, providing encouragement to other antilynching advocates to press for more laws. The laws that were passed starting in the late nineteenth
century were designed to prevent lynchings and punish lynchers. Yet lynchings continued, although in fewer numbers than before. Many of the laws were subsequently repealed or modified to negate their effectiveness. Ultimately, the failure of efforts to stop lynching through state action would culminate in a campaign for a federal antilynching law.¹³

One of the earliest, if not the first, antilynching laws came out of a territorial legislature. Kansas passed a law in 1858, at the behest of Territorial Acting Governor J. W. Denver, to control mob action: "All incorporated cities and towns shall be liable for all damages that occur in consequence of the action of mobs within their corporate limits, whether such damages shall be destruction of property or injury to life or limb." This law resulted in decisions for a widow who lost family members to a mob in Atchison and a father who lost a son in Salinas. While the Kansas law was passed to forestall mob violence, such violence continued into the next century.¹⁴

There was a great deal of racial violence during Reconstruction, when Southern whites fought to reassert legal, political, and social superiority over the freedmen. Estimates of the number of lynchings at this time begin at 400, a number which some consider conservative. The Reconstruction era state governments were experiments in biracial democracy, and some of the southern legislatures
passed laws to protect people, black and white, from mob
rule. Alabama enacted a law in 1867 to punish counties for
lynchings. While the law did not completely squelch mob
violence, it sent a signal to the Ku Klux Klan that the
state would act against terrorism. That signal, however,
was short-lived as the newly elected Redeemer government
repealed the law. By that time, the people in whose behalf
the law was passed were no longer a political threat.15

Pressure grew in Kentucky for a law against mob
violence. The Klan had a good deal of support among
Democrats in the legislature. The Louisville Courier-
Journal urged passage of the Ku Klux Klan bill in 1871.
Even the New York Times condemned Kentucky Democrats for not
stopping the violence that wracked the state since 1868.
Governor Preston Leslie supported the anti-mob statute in
1871 to no avail, as events around the state clearly
demonstrated that the Klan was in control. It took a report
by a United States marshal, who worked undercover for
several years in the Klan, and the death of an innocent girl
in 1874 to finally put down the vast lawlessness that the
Governor could or would not handle. Leslie now condemned
the Klan, while Democratic newspapers finally spoke out
against the violence, and legal action proceeded against it
to a successful conclusion.16

Another state took tentative steps to eliminate the
Klan during Reconstruction, although not the state (North
Carolina) with the most severe problem. Louisiana's 1872 Constitution contained a "Hood and Mask" provision aimed at the secret order. According to Donald Grant, it was reenacted in 1924 but not found to be very effective.\textsuperscript{17}

As Reconstruction ended, leaving blacks to the mercy of Redeemer governments, violence became a more acceptable way to further white supremacy. The number of whites who faced lynch mobs, especially in the South, declined in direct proportion to the rise in black victims starting in the 1880s, just as antilynching criticism grew more vocal about the need for antilynching laws.

The lynching rate of 96 for 1890 had dropped in comparison to the year before, when 170 men and women were lynched, probably in part due to the attention given to the failed Lodge Federal Election Bill. It was the Republicans' last effort to protect blacks, albeit only in terms of their right to vote in federal elections. It was a bill that would have served the party's purposes, because southern Republicans were either intimidated from the polls if black or did not want to be associated with former slaves if white. In any event, the bill did not constitute an antilynching bill because it merely called for federal troops to be stationed at polling stations so voters could freely cast their ballots. While the bill may have prevented violence at the polls if enacted, it probably would have forestalled only a miniscule amount of the
violence blacks now faced as the preferred object of lynching mobs.\textsuperscript{18}

Lynching rose again in 1891, up to 184, and remained high throughout the decade. Many people--antilynching advocates, politicians--thought that state antilynching laws would solve the horrendous problem facing the country. But as a summary of the laws passed after 1890 will show, they did not always produce the results the advocates wanted or were not given a fair chance to make a difference.

Southern states were so worried that the federal government would reinstate 'foreign rule' in passing a federal antilynching law that they enacted their own to combat the problem. Sectionalism, or the partisan nature of any lynching discussions between North and South, along with the fear of reviving old Reconstruction wounds, kept Congressmen from uniting on antilynching legislation. As late as 1928, Virginia Governor Harry Byrd supported that state's 1928 antilynching law after President Coolidge recommended a federal law, because the latter's passage "might have meant intervention into Virginia's affairs."\textsuperscript{19}

As a symbolic gesture of conciliation toward South Carolina's blacks, Benjamin "Pitchfork" Tillman, after winning election as Governor in 1890, sought the authority to remove sheriffs from office for allowing prisoners to be lynched. Tillman was only one of several Southern politicians in the next few years to propose some sort of
antilynching measure; it was expedient to do so since blacks were still influential voters at the beginning of the decade.  

Even though Tillman seemed to begin his career with a progressive attitude toward race, throughout the rest of his terms as Governor he proposed various measures to disenfranchise blacks and segregate them. He worked to gerrymander the state to prevent the election of a black to the legislature. While Tillman was ultimately successful in placing blacks in a legally inferior status, he nonetheless initially also tried to protect them from lynching. To him, there " 'never was any just reason why the white man and the black man of Carolina should not live together in peace. . . .' " His attitude smacked of paternalistic concern for blacks, who were not constitutionally fit to vote but nonetheless should be protected in the most basic of rights; he reasoned that it also would hurt whites to lose their cheap labor to the North and West from lynching, just as whites tried to keep blacks from migrating away from the countryside and the state in the 1910s. But by 1910, Tillman too would call for the lynching of blacks to protect white Southern women; in fact, as early as 1901 he was reported as favoring lynching. Historical Joel Williamson considered Tillman's violent upbringing and respect for white women (including his teenage daughters, who were
coming of age in the early 1890s) as reasons for his reversal on lynching.\textsuperscript{21}

The South Carolina legislature drafted a constitutional provision in 1895 to penalize counties in which mob deaths occurred, subjecting them to at least $2,000 in damages which the county could recover from the guilty members of the lynch mob. Sheriffs and other law officers who failed to protect prisoners in their custody were subject to removal from office and fines unless pardoned by the Governor. The proposal was designed to motivate sheriffs to provide serious protection to inmates as well as recompense lynch victims' families. The law required the prosecuting attorney to institute prosecutions in the county in which the offense occurred, but it gave the Attorney General discretion to change the venue if necessary. One court case based on the law came in 1899. The court approved the constitutional provision and held the county liable to the estate of the lynch victim. James Chadbourn followed the law's enforcement after 1900, and noted a correlation between the constitutional provision on lynching and decrease in lynching.\textsuperscript{22}

The Georgia antilynching law enacted in 1893 was the work of Governor William Northen, a Democrat and former Allianceman who proposed a law penalizing sheriffs who negligently left prisoners vulnerable to mob violence. Northen won election with the support of black voters, who
chose him over the Populist candidate because blacks mistrusted the farmer movement and Northen seemed the least objectionable of the candidates. The Georgia statute's section on "Duty of officer knowing of attempted mob violence upon citizen" imposed an obligation to protect Georgia citizens from lynch mobs. The same section set punishments for causing injury or death to lynch victims, while later sections imposed penalties for failure to stop lynchings and failure to aid the sheriff in controlling mobs. The law also required persons who the sheriff called upon for assistance to furnish arms to help control mobs.23

While helping blacks in his state was one motivation for Governor Northen's policies, he was also concerned about containing black actions in a paternalistic way that was both anachronistic and futile. He told an 1899 audience in Boston that the only way to stop lynchings was for blacks to stop raping white women, and committing other crimes. He not only called the Negro problem one "full of peril and danger to the whole people," he called for sympathy for white victims of black criminals. He began the Christian League, a biracial organization, in 1906 in the aftermath of the Atlanta race riot. He sought to control what he would later term ". . . a generation of young negroes, both boys and girls . . . that will give trouble, great trouble, at no distant day in criminal and vicious living."24
North Carolina also passed antilynching legislation in 1893, which according to James Cutler did not result in any punishment. One North Carolina resident asserted that while no lynchers had been punished by 1904, the real way to end lynching was to reduce negro crime.\textsuperscript{25}

The Ohio antilynching law, enacted in 1896, was emulated across the country. Ohio had seen a rash of lynchings in the early 1890s. Concerned blacks organized to bring pressure on the state legislature for protection from mobs. The people who committed the lynchings that prompted passage of the 1896 law had not been indicted or punished in any way, and the state's prohibitions against murder were not given a chance to operate. Even if murder charges had been brought against the lynchers, very few juries would have convicted whites of killing blacks. Governor McKinley called out the state militia to prevent mob violence in October 1894.\textsuperscript{26}

Black legislators like Harry C. Smith, along with men like Albion Tourgée, worked on the antilynching law, which defined both a "mob" and "lynching" to mean " 'That any collection of individuals, assembled for any unlawful purpose, intending to do damage or injury to any one or pretending to exercise correctional power over other persons by violence, and without authority of law, shall for the purpose of this act be regarded as a mob, and any act of violence exercised by them upon the body of any person,"
shall constitute a lynching. ’ " The law also set out monetary damages against counties for lynchings that originated within their jurisdictions, and it contained the extraordinary provision that prosecution under the act would not exempt individuals from prosecution for assault or homicide. This provision may have conflicted with the constitutional prohibition against double jeopardy, but the Ohio antilynching law actually envisioned subsequent prosecution for homicide or assault. This troubled legislators like Democrat Aquila Wiley of Wayne City who believed rapists were not entitled to constitutional guarantees to fair trial while mob members are unfairly prosecuted for expressing " 'indignation [which] arises in an uncontrollable frenzy.' "27

Following the example of Ohio, Georgia, and other states, Kentucky enacted an antilynching law in May 1897. Governor William Bradley, a Republican elected with the help of black votes, kept a campaign promise to try to end mob violence. He took a very active stand, calling the legislature into a special session in March 1897 to ensure that an antilynching law got passed, telling lawmakers that criminals who are lynchers should be shown no mercy, and in fact should be punished to the law's extreme. With his daring stand on prisoners arming themselves, Bradley said that " 'No mob would be able to stand before a prisoner
fighting for his life and the jailor or Sheriff fighting for his office.' "28

The bill only took two months to go from proposal to law, during which time there was little debate in either chamber. Very few people wanted to publicly comment on what became "An act to prevent lynching and injury to and destruction of real and personal property in this Commonwealth." With eleven sections, the law was sweeping in its scope, allowing sheriffs to arm prisoners and granting the Governor authority to offer a reward for the capture of any violators. Despite its wide ranging purview, or perhaps because of it, the statute was not as effective in combating mob violence as anticipated and would soon be emasculated.29

In the 1890s Texas also passed an antimob statute in response to concern over mob violence. Governor James Hogg spoke to the Texas legislature in 1893 about protection against mob violence that would penalize counties where the violence took place and assess damages on the lynchers among other things. Hogg was most concerned about

[the] extent the mob spirit will go when the laws are inadequate to check it . . . . It is in the power of the legislature to adopt suitable measures to either prevent mob law or to bring to punishment all murderous executioners. No combination of men should ever be so strong in any government as to successfully override the law. They should never be so numerous as to make it impossible to bring them to trial for their crimes. . . .
While Hogg called on the legislature to respond positively after the 1892 Paris, Texas lynching, it waited until after the Tyler, Texas lynching in 1897 to enact an antilynching law. 3°

Governor Andrew H. Longino of Mississippi also promoted a change in the law. In his 1900 Inaugural Address, Longino spoke about mob action throughout the state, and the Governor's responsibility to enforce the law:

_It must be admitted that the work of the mob is not of infrequent occurrence in the state. Though this is a painful fact to admit, and one which for reasons of political policy it might be best unsaid, yet it is a fact about which, for the public good, every law-abiding citizen should be to speak in condemnation. The Constitution of the state says, 'The Governor shall see that the laws are faithfully executed.' . . . I would therefore recommend to the legislature, the wisdom and expediency of passing a law giving to the family of anyone who may hereafter be lynched a right to recover . . ._

He further recommended penalties on sheriffs who do not prevent lynchings of their prisoners. 31

Around the turn of the century, a few states in the South and Midwest passed antilynching measures due to "[t]he open cooperation or collusion of officials with lynchers" and the persistence of black elected representatives. Alabama's constitutional provision of 1901 was specifically designed to combat the rampant abuse of authority when sheriffs conspired with mobs to aid in lynchings. The 1905 Indiana law similarly prohibited local officials from working with mobs to subvert the law. Illinois's
antilynching statute from 1904 was the result of diligent black leaders in the state. Ida Wells-Barnett described the campaign in her autobiography, *Crusade for Justice*. Representative Edward Green was concerned about anti-black violence and pushed for an anti-mob law in the state legislature. After the 1908 race riots, the county where the damages occurred would be responsible, while the Indianapolis Recorder wrote effusively about both Governor Deneen and the sheriffs who only did their duty by calling for action but performed their duties respectively.\(^{32}\)

While the Sunshine State considered passing an antilynching law in the 1890s, it did not do so until 1914. The Florida law itself was not directed toward lynch mobs, but could have been so applied. It was a relatively weak law that outlawed unlawful assemblies, certainly something for which a lynch mob qualifies. It seemed that Florida never passed a bona fide antilynching law, despite its history of anti-black and anti-foreigner sentiment, making it one Southern state that did not even pretend to protect the rights of its citizens.\(^{33}\)

Blacks created pressure on behalf of antilynching laws in several states during the early 1920s from Nebraska to New Jersey. In many of these states, Republicans held power and as an important element of the Republican coalition, blacks had influence. William T. Francis, black attorney and "race leader" of the Twin Cities once observed that "The
solution of the whole problem . . . is simple justice, a recognition of the fact that the right of the humblest citizens are as worthy of protection as the highest." He and his wife were instrumental in getting the Minnesota legislature to draft and pass an antilynching law in 1923 after three blacks were lynched in Duluth that year. A black representative in West Virginia, H. J. Capehart, is credited with sponsoring that state's antilynching law in 1921. The New Jersey antimob statute, passed in 1923, was a product of the NAACP's hard work, as were other antilynching statutes that decade, and a black representative in Nebraska was credited with that state's law enacted in 1924.

The Ohio law, along with the Illinois law, served as examples for Pennsylvania's 1923 antilynching law. It took over ten years and the NAACP before the legislature responded to the tremendous outcry from the 1911 Zachariah Walker lynching. He was a newcomer to Coatesville, one of hundreds of black migrants moving to small Northern communities in search of jobs. An altercation with a policeman led to Walker's arrest, and upon the man's death, a mob stormed the hospital and took Walker away. The mob thereafter treated him to various tortures before killing him. As usual, the community refused to convict the men responsible for the lynching, and the publicity from the trial helped shame state officials into enacting the 1923 antilynching bill.
The last antilynching statute passed in the 1920s was enacted in Virginia, at the behest of the state's black leaders. Governor Harry Byrd opposed mob violence whether inflicted on blacks or whites, and supported an antilynching law in 1928 after a series of Klan attacks aroused resentment among the general population. Byrd faced editorials on lynching from both the black and white press, urging state antilynching legislation because both editors did not want federal legislation.\textsuperscript{36}

Definitions of lynching could be found in several states' statutes, as in the Ohio 1896 law or the Tennessee law, which interpreted lynchings as "... two or more persons to form or remain in any conspiracy ... to take human life, or ... feloniously take the same." Most definitions not only enumerated the size of the mob, but also confined lynching to breaking into jail to injure or kill prisoners as in the North Carolina law. Similarly, if death occurred during the commission of a lynching, the state's murder laws then operate once the mob is successfully prosecuted.\textsuperscript{37}

The State antilynching laws all shared certain provisions, such as a remedy to lynch victims' families for recovery from the county where the lynching(s) took place. Longino recommended such a provision in 1900, in order to deter future lynchings by requiring counties be held liable to pay large enough damages. He reasoned that if residents
had to pay for another's or others' nefarious acts, they would be motivated to forestall any subsequent lynchings in their county.38

The 1896 Ohio antilynching law contained a section on damages from the county responsible for the death or injury of the lynch victim(s), which led to lawsuits to recover their rightful restitution. The counties fought this particular section because they did not believe they should be held responsible for the violent acts of a few individuals; the legislature, however, thought that by penalizing everyone in a community, the neighbors of the mob members could better control them than anyone else, and the courts agreed.39

Another provision common to antilynching laws of this period was a section imposing criminal liability on sheriffs for leaving prisoners susceptible to lynch mobs, a recognition that local considerations often took precedence over the sheriff's commitment to the law. Northen of Georgia proposed a law penalizing sheriffs who exposed men in their jails to violence, and other states punished law officers who either carelessly or intentionally allowed mobs to take prisoners.

Kentucky Governor Bradley was one of at least two governors to contemplate arming prisoners for their own protection, a very radical proposition since most of the prisoners were black and whites had long harbored fears of
armed blacks wreaking vengeance on whites. The Kentucky 1897 law did in fact allow prisoners to be armed according to the sheriffs' discretion, while another more controversial section imposed fines on sheriffs, judges, and other peace officers found guilty of not protecting a person from lynching. Furthermore, sheriffs found guilty of such dereliction forfeited their offices. In a most unusual provision, the statute barred lack of malice as a defense, so someone acting through heat of passion could face liability. The act was amended in 1902, eliminating several sections and effectively weakening the law by deleting the provision on officials' fines and forfeiture of office.40

The North Carolina bill defined lynching as a conspiracy to enter jail for the purpose of killing a prisoner or actually doing so. The legislature defined lynching narrowly, as did other states, displaying the commonly held belief that only or mostly prisoners were subject to lynchings. The provision ignored the many lynchings committed for non-criminal activities that offended Southerners, as did other state provisions. A novel section punished failure by the county supervisors to provide aid to the sheriff, imposing county liability upon the lynching of the vulnerable prisoner.41

The many statutes, constitutional provisions, and other enactments to punish lynching did not significantly alter the operation of murder statutes in those states. In fact,
many antilynching laws incorporated references to the states' murder provisions so that a conviction under the lynching law would impose the death penalty. The antimob statutes sought to punish organized murder by groups which represented their communities' desire to try, convict and execute accused criminals without putting the state to the expense. The states that passed antilynching laws were more concerned, however, with keeping law and order—and regulating lower class white behavior—than protecting accused black criminals or other blacks who transgressed Southern codes of behavior. While elite participation occurred in lynchings, it would prove next to impossible to prosecute them because of their connections in the community and the perception that only poor whites acted out their violent impulses on blacks.42

In the matter of enforcing murder laws as opposed to antilynching laws, most if not all of the men and women who ran afoul of the latter laws would be white while a good proportion of the people prosecuted for murder in the South were black. Lynch mobs more than likely had the support of the community in carrying out their form of justice; they were also unlikely to run into much opposition from reluctant or ethical neighbors. Blacks who committed crimes, however, and occasionally those who were in the wrong place at the wrong time, faced swift retribution particularly if the victim was white. It is significant
that the majority of lynch victims as well as executed criminals were black, evidencing a societal need to maintain control over a subordinate race.⁴³

Very few lynchers were punished. Only eight-tenths of one percent of the lynchings in the United States since 1900 have led to lynching convictions according to James Chadbourn. While the antilynching laws were probably responsible for those few convictions, the fact that there were so few convictions attests not only to the rampant racism of the era but also to the still prevalent belief that community justice was a proper solution to the problem of crime. After the South Carolina 1895 constitutional provision went into effect, for example, an early suit under the law went against a lynching victim's survivor. State laws were on the whole unable to counter community sentiment. Lack of cooperation by local law enforcement officials and juries blocked efforts to enforce antilynching laws, not just in the South but across the country.⁴⁴

Another surge of antilynching laws came after World War I, in the wake of the massive migration which the war spurred. Wishing to maintain their labor force and sensitive to complaints about their anti-democratic practices, Georgia, Kentucky, South Carolina, and Louisiana enacted new laws to protect against mob violence. The previous efforts were either repealed or ineffective, so these new statutes were redesigned to address the wave of
lynchings that were intended to quiet blacks' rising expectations of equality. Some of these laws probably were enacted to rattle the reorganized Ku Klux Klan, which was not only anti-Negro, but anti-Catholic, anti-Jew and anti-foreigner. The Klan fomented violence around the country, since it had chapters in almost every state in the 1920s, while it also took over several state governments particularly in the Midwest. While the second Klan successfully branched into politics for a few years and attacked all "moral degenerates," it shared with its Reconstruction predecessor a basic desire to perpetuate white superiority.

While states were driven to enact antilynching measures out of several considerations, the demand for federal action was carried on late in the period of state action. The individuals and organizations that called for federal law had a model for proceeding against vigilantism from Reconstruction when the federal government enacted several measures that protected freedmen and others from vengeful Southerners or endowed them with rights so they could defend themselves. The Civil War Amendments, particularly the Fourteenth and Fifteenth Amendments, tried to guarantee federal authority over equal protection and the right to vote for the ex-slaves, enabling Congress to ensure these privileges through legislation. Some of the laws enacted then, such as the Ku Klux Klan Act of 1871, pursued violent
organizations by energetic federal prosecutions in the South.\textsuperscript{46}

President Grant, the Attorney General, federal marshals, and troops acted in concert to protect not only blacks but the Republican party in the South, by strenuous application of the law. Successful to a degree, the Klan went underground and the executive branch soon relinquished its role of guardian to the Southern governments. Soon the Supreme Court would follow suit, with the Civil Rights Cases in which Justice Bradley declared that

\[\text{[w]hen a man has emerged from slavery, and by the aid of beneficent legislation has shaken off the inseparable concomitants of that state, there must be some stage in the progress of his elevation when he takes the rank of a mere citizen, and ceases to be the special favorite of the laws, and when his rights as a citizen, or a man, are to be protected in the ordinary modes by which other men's rights are protected.}\]

The problem with this reasoning is that blacks' rights clearly were not protected by the "ordinary modes" of which Justice Bradley spoke.\textsuperscript{47}

Once the country recovered from Reconstruction's simultaneous spasms of unattainable idealism and intractable conservatism, it resumed its antebellum course of westward expansion and economic growth. These concerns did not leave much time for federal oversight of mob violence, except in areas which fell under direct federal control. One of the many instances of anti-Chinese violence throughout the West occurred at Rock Springs, Wyoming in 1885, when Wyoming was
still a United States territory. An eyewitness, Ralph Zwicky, reported to Congress on the events that took place, for the purpose of indemnity to the Chinese government. He told of the fight one afternoon between miners and how the white miners opened fire on the Chinese afterwards. Several buildings were destroyed and a total of twenty-one lives lost.  

The above illustrates the late nineteenth century government’s response to violence against foreigners, which amounted to either apologies or direct monetary relief to the aggrieved country. There were congressmen and lawyers who proposed antilynching laws to protect aliens out of concern for diplomatic relations, with constitutional ramifications uppermost on their minds. One such law drew commentary from one of the country’s leading legal scholars, Simeon E. Baldwin. He recommended enactment of "An Act to Enforce Treaty Provisions for the Protection of Foreigners Against Acts of Violence" as a way to implement President Harrison’s interests in prosecuting mobs who violate foreigners’ treaty rights. Coming after the New Orleans mob attack on eleven Italians in 1891, Harrison’s December 1891 message to Congress called it "a deplorable and discreditable incident," urging Congress to turn its attention to solutions about aliens based on the treaty rights of foreigners in the United States. Baldwin found sufficient constitutional authority for an antilynching law
protecting foreigners in Article 1, Section 8 and the Fourteenth Amendment, although he was concerned that "such action--directed against the enforcement of a State law--would seem to derogate much more from the sovereignty of the State, than action taken against individual wrongdoers, who attack foreigners as such, without law." In other words, Baldwin was more worried about infringing on a state's sovereignty by ensuring they protect aliens from violence than he was about ensuring foreigners receive the protection to which they were entitled by treaty.

While aliens were at least considered worthy subjects of protection in the late nineteenth century, Congress refused to pass laws to protect blacks and other Americans. State citizenship rights predate the Constitution, when state governments jealously guarded their prerogatives over basic rights. When the Constitution was drawn up in 1787, Convention delegates wanted to establish a strong national government with certain enumerated powers between the three branches of authority. When the states clamored for a Bill of Rights a few years later, it too specified restrictions on the federal government, while under the Ninth and Tenth Amendments the people and the states retain their rights not assigned to the new government. Constitutional protections were narrowly construed after 1787, as when the Supreme Court limited the Bill of Rights' protections to the federal government in the 1833 case *Barron v. Baltimore*. Likewise,
during Reconstruction even though the federal government arrogated to itself the authority to guarantee freedom, equal protection and suffrage, the Slaughterhouse Cases determined that the states retained primary jurisdiction over Americans’ fundamental rights through the Privileges and Immunities Clause.  

Many people, dissatisfied with the slow progress of state laws to control lynching or angry that the federal government did not make any efforts to regulate lynching in the late nineteenth century, began to mount campaigns for federal antilynching legislation. However, the movement faced constitutional obstacles. Laissez-faire constitutionalism was in full ascendance, with people advocating as little government regulation of economic growth and social relations as possible. Despite the Civil War, the doctrine of dual federalism remained viable. "States’ rights" became the rallying cry of Southern conservatives to forestall federal action against lynching and any measure to assist blacks (as well as any federal interference in local and state matters). The tenacious hold that states’ rights had over not just Southerners but Americans in general was also strong enough to make it a potent force in late nineteenth century America. In the postbellum era, there was an innate commitment to states’ rights and federalism; because of these opposing theories, congressional Republicans could not overcome the former
despite the spate of new laws and amendments between 1865 and 1877, according to Melvin Urofsky. 51

Laissez-faire constitutionalism also adversely affected various state efforts at social regulation. In the area of labor relations, state courts overturned laws that protected workers from unfair labor practices on the grounds that workers bargained for those conditions with their employers. The usual reasoning, that workers and employers were equal bargainers, ignored the reality of the highly imbalanced playing field that favored management over labor. The same "objective" mentality was applied in the area of race relations, where courts invalidated constitutional protections in favor of promoting state prerogative over issues like jury service and the right to vote. In Virginia v. Rives, the Supreme Court declared that an absence of blacks from a jury did not constitute an automatic denial of rights. In United States v. Reese, the Court held that the Fifteenth Amendment did not deny to states the right to control suffrage. Probably the Court's best known cases on race in the late nineteenth century were the Civil Rights Cases and Plessy v. Ferguson. Both ignored the pervasive nature of racism against blacks and American history to sanction private discrimination and state discrimination that draped itself in "separate but equal" language. The Civil Rights Cases declared the Civil Rights Act of 1875 unconstitutional pursuant to the Fourteenth Amendment
because the Act outlawed not state-sponsored racial
discrimination but individual acts by property owners and
citizens. The 1883 case was followed thirteen years later
by Plessy, an 8-1 decision that marked the high point for
judicial recognition of racial separation under state law.
Once the Louisiana law that segregated railroad cars
according to race met with the Court's acquiescence, other
Southern states made "Jim Crow" policies the law of the
land. Even Northern states that did not follow a pattern of
de jure segregation usually sanctioned de facto
segregation.  

State laws on murder and antilynching statutes did not
dramatically control mob deaths, although there is some
indication that antilynching laws slowed down the rate of
lynching in states like Kentucky. While states were deemed
the natural forum for safeguarding life and limb in 1900,
society did not value black life very highly, given the
American heritage of slavery and second class citizenship
since 1865. Other minorities were similarly situated,
lynched by angry whites who feared economic competition or
the loss of compliant workers, and the states did nothing
about these peoples' rights unless pushed by other
governments.  

Murder statutes were vigorously applied against accused
minority criminals who killed whites but the reverse was
rarely true. Whites could and did lynch blacks and other
minorities with impunity, as their communities did not believe that the lynchers had committed any crime. The views of this lyncher illustrate why the differential treatments existed: "You don't understand how we feel down here," he said, "when there is a row, we feel like killing a nigger whether he has done anything or not." The young man interviewed by A. B. Hart clearly illustrated Hart’s own view, expressed elsewhere in this article, that blacks were beneath the least civilized whites, who would be accorded at least some rights as citizens. Hart did call for more law and order for both black and white criminals, but probably only the advice concerning blacks was heeded.  

Since law enforcement was so discretionary in terms of who was punished for what crimes, blacks and others concerned about mob violence looked to the federal government’s duty, stated in the Fourteenth Amendment, to ensure equal protection and due process under State laws. Although the federal government undertook such an obligation during Reconstruction, by 1900 most Americans believed the actions taken on behalf of blacks to have been a mistake. Late-nineteenth-century presidents were not anxious to get drawn into a dispute with the South over its treatment of blacks, while many of them were swayed by states’ rights arguments which required the federal government to remain oblivious to what occurred in the states. President Harrison’s last annual message to Congress contained words
against lynching, but they did not spur Congress to act. In Cleveland's second term, his messages were deafening in their omission of any reference to lynching or blacks beyond an innocuous statement in 1893 about "equality before the law."55

As governors of Ohio and New York, William McKinley and Theodore Roosevelt both had addressed the problem of lynching before their elections to the White House. Both brought with them records of speaking out against it, although McKinley did not always speak out against lynching. A disgruntled black complained to John P. Green, fellow black and federal employee, on McKinley's silence about a lynching which took place while McKinley was in Georgia. Roosevelt believed that under certain circumstances lynching was an acceptable means of dealing with criminals. William Howard Taft constantly stressed the states' responsibility to root out lynching, because that activity was squarely under state jurisdiction. However, during his last year in office Taft also blamed blacks for the mob mentality in America by not getting involved in national issues like judicial recall (which he claimed would rob courts of their independence and make them vulnerable to lynch mobs).56

While presidents made constitutional arguments against the enactment of a federal antilynching bill, various members of Congress were convinced that they could pass an antilynching law. They would find it nearly impossible,
however, even to bring their laws up for a vote, as most proposed laws died in committee. Representative George H. White (R-N.C.) submitted the first antilynching law which covered citizens in 1900. "A bill for the protection of all citizens of the United States against mob violence, and the penalty for breaking such laws" was a relatively simple measure which proscribed mob violence by equating it with treason against the United States, setting penalties on that basis. Section Three, the briefest of the three, repealed any state laws that conflicted with this federal law, thus supplanting state authority on this issue.57

White’s bill sought to protect Americans from lynching mobs, and White, a lawyer, offered a statute that he believed would prompt further action: "I do not pretend to claim for this bill perfection, but I have prepared and introduced it to moot the question before Congress of the United States with the hope that expediency will be set aside and justice allowed to prevail, and a measure prepared by the Committee on the Judiciary that will come within the jurisdiction of the Constitution of the United States, as above cited." He believed that Congress had the authority to pass such a bill, citing Supreme Court cases that protect constitutional rights and reading Attorney A. E. Pillsbury’s letter in support of antilynching legislation into the record. The bill implicitly compared lynching to sedition, defined as "conduct or language inciting to rebellion,
against the authority of the state; insurrection, rebellion." Section One, however, does not expressly mention a direct act of rebellion against the state, such as mobs carrying off prisoners. White's original premise for protecting American citizens rests on the citizenship clause of the Fourteenth Amendment.  

Opponents of federal antilynching legislation made the usual argument against White's measure, based on the unspeakable crime of rape and its ability to whip public sentiment into a frenzy. Representative James M. Griggs (D-Ga) advocated something be done to curb rapes, and implied lynchings would thus disappear. R. E. Burke (D-Tx) likewise blamed most of the lynchings on rape, but a fellow Republican, Romulus Z. Linney of North Carolina (a white man who was a former Democrat) tied lynchings to the lack of democracy in a locale--the more freely people could vote, lynching would go down.®®

After White's retirement from Congress in March 1901, others advanced proposals to rid the United States of mob law. From 1901 to the start of World War I, several congressmen spoke out against lynching, promoting investigations or legislation. Representative William H. Moody (R-Mass), Senator George Hoar (R-Mass), Senator Jacob H. Gallinger (R-NH), and Representative Edgar D. Crumpacker (R-Ind) lent their names to the cause of eliminating mob justice, although not all of their efforts concerned
American citizens. There was no groundswell of support for this legislation until Leonidas Dyer, Republican Representative from Missouri, introduced his bill after the 1917 East St. Louis riot. Dyer, whose district was in St. Louis, was shocked by the riot's ferocity. It also increased the number of his black constituents, who moved across the river to escape the violence. This was Dyer's first contribution to the antilynching movement. Dyer's 1917 antilynching bill was based on a resolution he drafted the previous year, as well as on an older proposal Senator George F. Hoar of Massachusetts had offered in 1902. Historians have analyzed Dyer's motivation, which really probably did not matter to his constituents who needed relief from angry whites. One historian judged Dyer a humanitarian, while another assessment found him more worried about attracting black voters and keeping possible black competitors from gaining strength.  

Since the NAACP enlisted Dyer's support in Congress, his bill had the group's support as well as that of other organizations. In contrast, Marcus Garvey (among other black leaders) had a different idea on the most efficacious way to end lynching. Garvey was in trouble with the established leaders like W. E. B. DuBois because he agreed with the Klan that blacks could not expect to achieve equality with whites in America. He adamantly believed that blacks would always be lynched in America, because whites
would never respect them. Garvey no more condoned the Klan's activities than other blacks, but he believed that the only real solution was to rely not on the law but on self-defense. Yet he too endorsed federal antilynching legislation, so long as it served the UNIA's purposes of wider appeal to blacks.⁶¹

Most blacks interested in securing basic rights lent their energies after World War I not only to the Dyer Anti-lynching Bill but other proposals. Despite the enthusiasm for these laws from certain quarters, such as the Anti-Lynching Crusaders' campaign to line up millions of women on behalf of antilynching legislation, southern Democrats in Congress had support in opposing these bills from western Republicans like Senator William Borah of Idaho. Southern congressmen used familiar states' rights arguments to help derail the antilynching movement. Borah and other western Republicans made other points as well, since they were less concerned with federal interference than southerners. The South however risked more than an antilynching bill. If the federal government could pass such a law, then it could legislate under the Fourteenth and Fifteenth Amendments to correct such injustices as disenfranchisement and the whole policy of Jim Crow. This fear would show up again during the 1930s. In the 1920s, Borah doubted the bill's constitutionality, while fellow Republican Henry Cabot Lodge of Massachusetts failed to strongly support it. The
Democrats obstructed passage of the Dyer bill, launching a filibuster. Despite strenuous debate in the Senate, the bill failed.  

During the 1920s, the number of lynchings fell to almost zero. Republicans from the President on down paid little attention to blacks' concerns apart from an occasional speech, as the country's attention turned toward dizzying economic growth. But prosperity ended with the Great Depression that started with the Stock Market crash in 1929. As Americans faced economic hardship, racial animosities became more intense. Lynchings began to reappear in 1930, and by 1934 there were more insistent calls for federal legislation.

By 1934 changed attitudes toward the role of government encouraged people to think that antilynching legislation would now be successful. The advent of the New Deal signalled greater concern for ordinary people. When Franklin Roosevelt proposed his program during the 1932 campaign, it was but an inchoate version of the different agencies and laws that soon helped ease the desperate conditions for millions. When he took over the presidency, the idea that the federal government should become more involved in the nation's economic and social life became acceptable.

The new programs that the national government established, along with the many laws that empowered the
agencies to carry out their mandates, convinced black leaders that the federal government would extend protection to men and women menaced by lynching. That, and the men and women now in the White House and the Senate, served as encouragement that a new antilynching law would finally become law.
Events in the early 1930s, even as they exhibited conflicting tendencies regarding lynching and public opinion on lynching, nonetheless encouraged Americans to urge Congress to enact federal antilynching legislation. Contemporary studies by the Southern Commission for the Study of Lynching and others unearthed disturbing community sympathy for lynching. Countless investigations around the South discovered callous people who were anxious for an opportunity to view a lynching, such as the white minister's wife in Texas in 1930, who "... rushed to the home of another minister and called to his wife: 'Come, I never did see a nigger burned. I mustn't miss this chance!'" Among the "better classes" there were those individuals who still believed in using or supporting violent means to keep the racial status quo.¹

Members of groups like the Association of Southern Women for the Prevention of Lynching, although an almost all-white organization, encountered hostility during their statewide crusades against lynching. Newspapers sneered at founder Jessie Daniel Ames and other women, who challenged
the myth that lynching was committed to protect southern women. Women outraged by the ASWPL's message founded the National Women's Association for the Preservation of White People in 1930. Ames personally received letters critical of the ASWPL's work from individuals and other women's organizations.  

Newspapers reported Southern communities' refusal to respect decisions of local criminal justice systems when they freed blacks accused of crimes against whites. A young black man was lynched in Columbia, Tennessee in 1933 after a grand jury refused to indict him for molesting an eleven year old girl. Some of the year's lynchings came up the following year during the hearings on S.1978, and several Southern newspapers in late 1933 and early 1934 spoke out in favor of federal action. Mobs were intent on wresting the jailed men from their custodians even before accused men were processed on criminal charges, hanging, shooting, and mutilating them.  

By the mid 1930s, however, more and more law enforcement officials at least tried to protect prisoners from lynch mobs. The Galveston Tribune quoted a deputy sheriff who failed to move a prisoner to a safer location. When a mob pointed shotguns and other weapons at he and his partner: "I tried to plead with the men not to take the negro," Smith said, "but they jerked me from the car and took my gun. Davidson got the same treatment." Lawmen
across the South, where state laws punished inaction in the face of mob violence, endangered themselves to help men whether innocent or guilty when their neighbors and friends brandished arms to wrest an accused felon away from them.

Such efforts were extraordinary, however, since the overwhelming sentiment among sheriffs well into the 1930s was one of willingly surrendering prisoners to lynch mobs. Many sheriffs simply regarded a black man's life not worth putting their own lives in jeopardy. "Do you think I am going to risk my life protecting a nigger?", one sheriff asked incredulously.

Public opinion around the United States began to favor a national solution to this intractable problem. In December 1933, the city council of Cleveland, Ohio passed a resolution advocating enactment of federal antilynching legislation, and Gallup polls in 1933 indicated rising sentiment in favor of Congressional action. Indeed, the many memorials and letters read into the Congressional Record once the Costigan-Wagner bill was introduced in January 1934 assured the sponsors that many if not most Americans were anxious to solve this thorny racial problem.

Pressure to pass federal antilynching legislation increased because 1933 was such a violent year, with 28 lynchings. The George Armwood lynching, closest to the nation's capital in Princess Anne, Maryland, outraged many Americans, but it did not produce any reaction from the
White House. State officials were charged with complicity in the December lynching because they had prior knowledge it would occur, making the case for federal intervention in the face of state inaction. While Congress was not in session when Armwood was lynched, it got letters and memoranda in early 1934 that referred to the many lynchings in 1933 and years past in calling for the Costigan-Wagner bill. FDR received many letters in late 1933 protesting lynchings or urging him to endorse the bill.  

The proposal that received the most enthusiastic support was the Costigan-Wagner bill, because of the impeccable credentials of the sponsors. Both men, with their liberal/progressive backgrounds, proved untiring in their efforts to defend Americans against mob violence. Both men wielded a fair degree of influence among their colleagues for their integrity, and they were well respected beyond the Senate. Costigan’s brief career in the Senate followed a period of law practice in Colorado and government service in Washington, D.C. There is no indication of animosity towards Costigan from his colleagues, yet Wagner was not much loved by his Senate colleagues; some of them thought him arrogant and vain, which could very well have hampered his efforts to pass antilynching legislation. Yet it was probably the subject that made this bill unpassable, since he was also busy with his successful bills, taking him away from the fight against mob violence in the early years.
The Costigan-Wagner bill grew out of the efforts of Walter White. White was committed to antilynching legislation because of his early experience battling a lynch mob with his father in Atlanta in 1906. The incident was vivid evidence of racial intolerance, which he pledged at a young age to battle. His entire career as a civil rights activist and writer ironically took advantage of his nearly white complexion to gather information on lynchings and expose racism throughout the United States.®

White, Executive Secretary of the NAACP since 1930, sought a Senate sponsor for the organization’s antilynching bill. White turned to Edward Costigan in November 1933. However, it appeared that Costigan’s bad health would prevent him from championing the bill effectively. White then turned to Robert Wagner, although Costigan remained associated with the bill. White was happy to have the Coloradan and New Yorker laboring on behalf of antilynching legislation, as they were experienced reformers in terms of labor and other issues. But he wanted a Southern Representative to cosponsor the measure in the House. He was unable to convince any Southerners to take the chance. After David J. Lewis of Maryland, the last in a line of Southerners to refuse to cooperate, disappointed him, he accepted Californian Thomas Ford’s offer to promote the antilynching law in his chamber.¹⁰
All three congressmen were particularly moved by the recent San Jose incident, the first lynching in California in many years. Two white men were lynched in front of a crowd numbering in the thousands, with the Governor praising the mob's work. In a subsequent press conference Costigan denounced lynching as a national problem that called for a national solution: "If mob violence is to run riot in America in place of orderly justice the end of free government on this continent will have to come. The sober sense of this country does not, and will not, sanction such menacing lawlessness."\textsuperscript{11}

Costigan led the Colorado progressives since the early twentieth century, and his forthright stands on municipal ownership of utilities, unions, and tariff reform preceded him to the U.S. Senate in 1930. Once there, Costigan served on the Banking and Currency and Finance Committees, providing leadership to several underprivileged groups like labor and the urban unemployed. Wagner's Senate career involved service on various committees, and sponsorship of legislation relating to housing, labor and federal assistance to the states. While neither man was a civil rights advocate, both men lent their names to minority and/or liberal interests. Antilynching legislation was a worthy project which prompted Wagner as well as Costigan to attack lynching. Costigan's colleague Wagner was equally forthright in condemning lynching, particularly when public
officials condoned it by word or deed. He wrote to Walter White in late 1933, "the most painfully won and precious gain in mankind's long march from savagery to civilization has been the subordination of mob rule to constituted authority and the guarantee that constituted authority will dispense equal justice to every race, creed and individual."  

Costigan and Wagner introduced their measure on January 3, 1934 in the Senate, while Ford performed the same duty in the House. Other Congressmen also introduced bills, including the lone black representative, Oscar De Priest of Illinois; in all, sixteen legislators proposed antilynching legislation to their colleagues' attention in 1934. The Costigan-Wagner bill was referred to the Committee on the Judiciary in late January, where it was subject to hearings the following month.

The provisions of the new bill were similar to the earlier Dyer bills of 1919-22. The Costigan-Wagner bill consisted of several sections. None of its provisions punished individual members of lynching mobs, since courts had held that there was no constitutional authority for federal prosecution of private individuals who deprived people of rights, unsupported by "state action." That term refers to a state law or action by a state official or someone under color of law. The key cases that supported this limitation were United States v. Cruikshank (1876) and the Civil Rights
In *Cruikshank*, over 100 whites attacked a group of freedmen as part of an effort to terrorize black voters. The Court found the attack was a violation of the state's law against murder, but that the federal government had no jurisdiction. The Fourteenth Amendment did not permit prosecutions of private individuals but only ensured equal protection against discriminatory treatment by the state. Chief Justice Waite spelled out the very limited powers accorded the federal government under the Constitution, after which he concluded the Enforcement Act was too vague to support the conviction here. In both the circuit court and Supreme Court decisions, Justice Bradley and Chief Justice Waite both acknowledged that under the Thirteenth and Fifteenth Amendments Congress could prohibit private discrimination only if racial hostility is the basis for such discrimination. Where that allegation is not made, indictments under the 1870 Enforcement Act are invalid.

Likewise, the *Civil Rights Cases* defined limits on the Fourteenth Amendment when the Court nullified the 1875 Civil Rights Act as going beyond state sponsored discrimination to illegally reach private acts of exclusion. The Court again recognized that the Thirteenth Amendment could allow for the protection of fundamental rights inherent in a state of freedom, yet here too Justice Bradley limited the power Congress had to abolish slavery by distinguishing between essential civil rights and social rights. Under the facts
of the suit, the denial of equal access to public accommodation was not an essential civil right, not a stamp of slavery that would be illegal. Because of the Court's interpretations, the Costigan-Wagner bill's most important sections provided federal prosecution of state and local officials who failed to protect prisoners from death or injury. It prohibited them from conspiring to help lynch individuals under their control, and it provided that counties whose officials condoned lynching could be assessed up to $10,000 in fines, payable to relatives of lynch victims.

The bill's strength lay in its reliance on malfeasance by local law officers and state officials, which then triggered the bill's protections. In theory it would force these authority figures to stop mobs, something sheriffs and policemen were already legally required to do by many state laws. If they did not defend their prisoners, they faced either jail or the loss of their jobs. The bill was premised on the valid notion that the lynch mobs had community support, rendering the community financially liable for the offense. Just as the sheriffs and other law enforcement personnel would have to defy mobs or risk their livelihoods, residents would suffer financial consequences if they permitted lynchings to continue.

The bill's provisions were suggestive of a Reconstruction statute, the Enforcement Act of 1870. The
1870 Act not only allowed for prosecution of state officials who obstructed the freedmen's right to vote but also provided penalties against private individuals who interfered with the right to vote. The Court chose to ignore the law's constitutionality when overturning the state indictments in Cruikshank, and following Reconstruction the Enforcement Act fell into disrepute because the emphasis was no longer on guarding blacks' civil rights but on civil service and tariff reform. Even if the 1870 and 1871 Enforcement Acts had been used in the 1890s when lynching became a racial phenomenon, their provisions could not have been adopted by antilynching advocates. The laws specifically regulated the voting process and any irregularities or violence that broke out with regard to it, so it did not have any jurisdiction over more general forms of violence unrelated to voting, including lynchings. Furthermore, by the end of the 1890s, blacks lost their right to vote through a variety of legal means, thus practically rendering the Enforcement Acts useless.\(^14\)

Among the weaknesses of the Costigan-Wagner bill was the fact that it did nothing to stop lynchings from taking place; neither the proposed federal bill nor state laws enacted to combat the problem dealt with the attitudes behind lynching. Especially hard to dispel was the widespread belief that communities were entitled to enforce their own brand of justice despite objections of outsiders.
While most of the witnesses at the hearing on the bill would dispute the idea that communities should take the law into their own hands, there were clear indications that others felt differently. For example, residents from Eastern Maryland either disavowed any knowledge of a lynching that took place there in 1933, although they were in the middle of town that evening, or they blamed the lynching on outsiders. Dentist William H. Thompson thought it would be unfair to tax law abiding citizens (such as himself) for a lynch mob's action, while his wife Lillian and neighbor Alice C. Morris defended the town by presuming no community acceptance for lynching despite the Armwood death. Their attitude, summed up by George W. Colburn, was that you cannot legislate morals.\(^{15}\)

That winter's congressional hearings on the Costigan-Wagner bill, which took place on February 20 and 21, may have convinced Ludlow and others who worried about states' rights that states were incapable of preventing lynchings. While the Senate Judiciary Committee, headed by Henry F. Ashurst of Arizona, contained five Southerners, the subcommittee that took testimony on S.1978, headed by Frederick Van Nuys of Indiana, had none. The subcommittee--composed of Van Nuys (D-Ind.), Patrick McCarran (D-Nev.), William Dieterich (D-Ill.), George Norris (R-Neb.) and Warren Austin (R-Vt.)--heard testimony from fellow Senators Costigan and Wagner, Walter White, Arthur Garfield Hays of
the ACLU, Arthur Springarn, and thirty-three other witnesses. Some of the other witnesses were college professors, journalists, ministers, and community leaders, all of whom regarded the Costigan-Wagner bill as a necessary remedy to state inaction.

The purpose of the hearings was to develop a case for the bill. The witnesses stressed the number of lynchings still taking place and the difficulty of prosecuting lynch mobs in locales which hailed their members as heroes. Costigan eloquently invoked the revulsion the nation felt after the November 1933 California lynching and Governor Ralph's ensuing justification of it. His opening statement emphasized not only the pernicious effects of lynching but the inevitable extension of federal authority over this problem which seemed endemic in a land committed to justice as well as law and order:

In a flash our people's wrath, visioning the cumulative horror of two generations of such slaughter, spread from sea to sea. In its advance it submerged the law-abiding technicalities of State lines. It emphasized unavoidable national power and self-respect and drove its appeal past local official anarchy to our land's highest legislative and judicial temples where citizenship and justice can, when necessary, be protected. In every section of the country a demand for a new deal of law enforcement went, rooted in equal rights, fed the flames of resolute intelligence.\textsuperscript{16}

Wagner offered his reasons why the antilynching legislation was needed to a nationwide radio audience:

"Lynching is a stigma upon our nation which must be removed if we are to achieve our own high ideal and avoid the scorn
of enlightened countries." In this and in subsequent speeches, Wagner emphasized the federal law's successive nature, which would operate only where state officials did not prevent lynchings or punish mobs.17

Senators Van Nuys and Dieterich questioned the various witnesses, with Dieterich constantly focusing his inquiries on the fines specified in Section Five. He worried that a diligent sheriff or innocent county resident might suffer for the misdeeds of a violent few; holding innocent Southerners responsible for lynching was for him analogous to holding blameless individuals in Chicago responsible for gangland violence. He referred to this section most when discussing amendments to the bill. Dieterich was bothered by the section's vagueness; he envisioned federal action against gangsters even though "mobs" was intended to cover lynch mobs only. His concerns were considered so serious that several witnesses conceded that Section Five could be amended to render the bill acceptable to the Illinois Democrat.18

Senator Pat McCarran (D-Nev) had his own particular unarticulated questions about the bill's constitutionality, but he favored it. He wanted to be able to vote for it confident it would pass Supreme Court scrutiny, in contradiction to Walter White's sentiment that he would leave the bill's constitutionality up to the Court. White had nothing to lose by that view, since he was not a
legislator with a reputation that would be damaged by assenting to bills of doubtful constitutionality.\textsuperscript{19}

The lawyers who addressed the subcommittee defended the legislation's constitutionality under the Fourteenth Amendment. Karl Llewellyn, the well-known and highly regarded Columbia University law professor, defended the controversial section on fines. It was "... the heart of the bill, ... [and] even should an injustice be done to a county the imposition of a fine or two would bring us back to the downward trend in lynching." He then acknowledged that the bill would more easily pass constitutional muster by restricting protection to persons charged with a crime or already in protective custody. The concession was a practical move to ensure the bill's final passage, while recognizing the constitutional foundation for circumscribing the law's authority over accused criminals and convicted lawbreakers. The Fourteenth Amendment's prohibition on state action that denies equal protection and due process under the law demanded such a restriction, otherwise the Costigan-Wagner bill could have been struck down as overbroad. His understanding of lynchings, however, took into account the fact that lynch victims could also include individuals whose only 'crimes' were breaking social taboos rather than actual harms to society like murder or arson. Llewellyn was not the only witness to make the distinction between the law protecting those victims in custody and
ignoring those not taken from the authorities. Attorney Herbert Stockton with the NAACP Legal Committee believed that to limit the bill in this way would leave one-fourth of lynch victims unprotected.*

Practically all the lawyers and legal scholars who testified at the hearings spoke in favor of the proposed bill. Arthur B. Springarn, Chairman of the NAACP Legal Committee, and Howard University Law Dean Charles Hamilton Houston defended the Costigan-Wagner bill by comparing it to Workers' Compensation laws in that the latter exercised state police power when protecting workers from accident and injury. This was a power the federal government should assume over lynch victims, since it protected federal workers under the Federal Employer Liability Acts. They also pointed out the after effects of lynching on the country and beyond.*

The witnesses called from Maryland to explain what occurred there the previous fall when George Armwood was lynched, not only denied any knowledge of the event but maintained that outsiders were responsible. These witnesses displayed what Baltimore Post Associate Editor Louis Azrael, an attorney, described as "defensive loyalty" when he testified that bystanders stand by their neighbors after a lynching has taken place. Several other witnesses also discussed the emotional and moral factors associated with
lynching, arguing that legislation could influence bystanders against lynchers.\textsuperscript{22}

There was plenty of testimony about local communities’ reluctance to let law officials do their job in holding and trying suspected criminals. As Senator Van Nuys stated at the start of the hearings, "The Senate committee’s purpose is not to fix blame for the failure to prosecute the Maryland lynchers, but rather to demonstrate the impotence of state authorities in the face of lynchings." The second day’s testimony emphasized the mob’s power to overwhelm state guards, and the frustrated Maryland Attorney General’s difficulty in seeking justice after the Eastern Shore lynching. He and the former United States Attorney for Maryland, the only law enforcement officials to testify at the hearings, both advocated federal intervention to overcome local intransigence.\textsuperscript{23}

The sole testimony against the Costigan-Wagner bill came from Representative Hatton Sumner (D-Tex), an attorney who argued that the proposed bill was unconstitutional. Sumner cited the \textit{Slaughterhouse Cases} to support the notion that the bill would "... fetter and degrade the State governments by subjecting them to the control of Congress in the exercise of powers heretofore universally conceded to them of the most ordinary and fundamental character ... ." Sumner gave other reasons for his objection to the bill. He argued that improved Southern attitudes and the sense of
local responsibility would disappear once the federal government stepped into the picture. He cited the Eighteenth Amendment as a compelling example of Americans flouting a law which the states could have enforced but for federal interference.

The subcommittee met briefly in March to report on S.1978, which was amended slightly. It took new testimony, from the Maryland residents and a couple of congressmen, while a brief in support of the bill from attorney Charles H. Tuttle was appended to the Senate Report. The Tuttle brief concentrated on the constitutionality of the bill, citing Article IV, Section 4 which required a republican form of government for every state, and Sections One and Five of the Fourteenth Amendment. In addition, he recited a litany of Supreme Court cases such as Strauder v. West Virginia and Ex Parte Virginia as authority for several propositions that sustain Congress's power to enact antilynching legislation. Similarly, two briefs from 1922, written by Moorefield Storey and Herbert Stockton in favor of the Dyer bill, supplemented the evidence in favor of the Costigan-Wagner bill. The Judiciary Committee then reported the bill favorably 3-2 to the Senate on April 12.

The bill came under discussion over the next two months. On April 18, Vice President Garner introduced an Illinois state legislature antilynching resolution into the record. It appeared to have bipartisan support, since it
approved bills backed by a black Republican Representative and two white Democratic Senators. Congress received other such resolutions that spring from interested Americans.\textsuperscript{26}

The Illinois resolution favored S.1978 and a local representative's antilynching proposal dubbed the "Oscar De Priest bill." The Costigan-Wagner antilynching proposal picked up support not just from hometown supporters but collected former critics among their ranks. Representative Louis Ludlow of Indiana commended fellow Hoosier Van Nuys for his able leadership of the recent hearings, while reporting on the progress of S.1978; noting his own opposition "As a Democrat, believing in local self-government, . . . " Ludlow admitted that in this instance he would not be disturbed if the bill passed because " . . . those guilty of mob savagery will not go scot free." As a one time believer in states' rights, Ludlow favored local solutions to mob violence, thus precluding any federal attempts to erase lynching from the United States. By the spring, however, Ludlow became committed to national antilynching efforts and within a few years he championed several proposals.\textsuperscript{27}

While Costigan, Wagner and Ford shepherded their proposal in Congress, White was busy arranging support for the bill among existing organizations and helping create new groups to bolster the bill's prospects. Yet White had doubts about the legislation. White, Springarn and others
in the NAACP believed that lynching would end only when Americans came to abhor it. White had mixed feelings about relying on the federal government, because experience had taught him that centralizing power into the hands of one man or a group of men could have negative repercussions. He saw the Southern Congressmen as an oligarchy which dictated policy in Washington, more and more with conservative Republicans. Blacks therefore had a hard choice between "the lesser of two evils—to work for federal action against lynching . . . thereby concentrat[ing] more authority in Washington, or to let such dangerous practices continue and spread to the rest of the nation."^28

Besides the NAACP, several organizations came out in favor of the Costigan-Wagner bill in 1934. The American Civil Liberties Union, the Federal Council of Churches, the Women's International League for Peace and Freedom, and the newly created Writers' League Against Lynching advocated passage of the measure. White later estimated that over 53,000 men and women affiliated with churches, labor, women's rights, civil rights, fraternal, professional and other groups endorsed the bill. White did not have to exaggerate in an effort to increase the antilynching movement's influence, since numerous people were moved to express their support through memoranda, resolutions, letters, and other communications to the NAACP, Congress,
and President Roosevelt. It appeared that public opinion definitely supported the Costigan-Wagner bill.²⁹

Since its founding in 1909, the NAACP had always been out front on the lynching issue. Now other organizations, like the ACLU, joined in the mission to eliminate mob violence. The ACLU had originally steered clear of racial issues. There had been what amounted to an understanding between it and the NAACP, with the latter having exclusive rights to the issue of lynchings of black victims since "A kind of official entente . . . left the monopoly undisturbed, even in cases of lynching: by agreement, the ACLU concerned itself only with those fatal to whites." But by the mid 1930s, the ACLU had published several books on racial discrimination and racial lynchings. It even published a pamphlet, Support the Federal Anti-Lynching Bill!, which listed the bill's provisions, answered arguments against the bill (one of which addressed the constitutionality issue by citing the Fourteenth Amendment and Ex-parte Virginia, 100 U.S. 339 (1880)) along with a list of the bill's supporters. The ACLU contemplated reader response with its tearoff coupon on the last page of the pamphlet, yet it is doubtful that the organization's expectations were met. The ACLU's reputation at that time was fairly poor, with "Anti-New Deal conservatives offer[ing] backhanded tributes to the extent of the ACLU's influence in the Administration," inferring that the
conservatives blamed the ACLU for the New Deal's liberal reforms.\textsuperscript{30}

The newest group, the WLAL, was a forum for various notable writers, editors, and publishers who supported antilynching legislation and who determined that they would have far more influence banded together. The League anticipated a tremendous impact on the Congressional proceedings when its members submitted their petition in the spring of 1934, with Mark Connelly representing them at the hearings. Connelly argued the right of all Americans to feel secure, a right denied to blacks in the South.\textsuperscript{31}

Not every reform group joined in the quest for a federal law. The Association of Southern Women for the Prevention of Lynching worked hard to quell lynchings on the local and state levels. But it was not among the organizations which favored the Costigan-Wagner bill. The ASWPL issued a statement, published in the February 1934 issue of The Crisis, advocating state-federal cooperation in stamping out mob violence. The federal antilynching proposal was not exactly compatible with this position, however, since the federal government would preempt the states where the latter failed to prosecute negligent sheriffs. Ames and her group meticulously sought the voluntary cooperation of local lawmen and governors, who Ames felt could most effectively halt lynchings.
Nonetheless, Walter White counted the ASWPL among those organizations supporting federal antilynching legislation.\textsuperscript{32}

Outside support continued to stream into Congress. Wagner read the Writers' League Against Lynching memorial into the record on April 28. The list of signatures was impressive, with representatives from the fields of history, sociology, and education as well as literature having signed it. They denounced mob violence in an eloquent charge that relied on Charles H. Tuttle and other attorneys for their confidence in the constitutionality of the Costigan-Wagner bill. The WLAL wanted to end the shame and ridicule lynching has brought to the United States, and recognized that since the practice shows no sign of abating the federal government must do something about it since the states are unwilling to do so.\textsuperscript{33}

While the hearings were going on, President Roosevelt remained silent on the subject. His only public words on lynchings came in the aftermath of the California lynchings in November 1933, when Governor Rolph intemperately endorsed lynchings as an acceptable means of handling suspected criminals. Roosevelt denounced blatant disregard for law, telling the Federal Council of the Churches of Christ in America that December that anyone who condoned lynch law would not be forgiven. In his annual message to Congress the following month, Roosevelt denounced various forms of
crime, including lynchings, saying they "call on the strong arm of government for their immediate suppression . . ."\textsuperscript{34}

However, in this and other messages, Roosevelt was ambiguous as to which government he was referring to, even though he seemed to imply the federal government. Moreover, he did not specifically call for federal legislation on lynching. In the next few months, Roosevelt did not comment on the proposed bill or the hearings. His characteristic evasions and silence prompted guessing games on whether Roosevelt would support antilynching legislation. Senator Pat Harrison of Mississippi, a friend of Roosevelt since their first meeting in Washington in the 1910s, confidently predicted in January 1934 that the president would not support the proposed law. He based his opinion on his friend's basically conservative nature. Martha Swain, Harrison's biographer, reports Harrison's views of FDR during the NRA fight, which are quite relevant to the antilynching campaign in the 1930s because of Roosevelt's lack of a direct endorsement: "All along Harrison had suspected the President's lukewarmness toward the NRA and sensed that Roosevelt was capable of driving his congressional lieutenants into legislative battles that he himself preferred to shun."\textsuperscript{35}

Will Alexander was one of many Southern liberals who relished the belief that they had an inside track with the president, particularly because he spent so much time at the
polio treatment center in Warm Springs, Georgia. Men like Alexander (who nonetheless eventually endorsed a federal antilynching law) were fairly certain that because FDR followed accepted racial practices while in the South, he would not behave radically different back in Washington. Historian Robert Zangrando wryly observed that "[r]eading Roosevelt’s mind was a favorite sport, even when poorly played—as it invariably was."^{36}

In an effort to get FDR’s support, Walter White was busy arranging meetings with the President and Mrs. Roosevelt. After the February hearings, White met with Eleanor Roosevelt to discuss the antilynching bill and other concerns. Mrs. Roosevelt apologized for not giving a radio address on the bill as White had asked. Her husband had asked her to postpone it, she said, as it would unnecessarily antagonize the bill’s opponents. But she had gotten the President’s assurance that he did support the bill and wished it would become law this session.^{37}

President Roosevelt’s problem with the Costigan-Wagner bill sounded purely political, since it would generate Southern hostility to the New Deal, yet Roosevelt did not share his wife’s enthusiasm for helping the underdogs. As a young man, he dealt with blacks only in the role of employer-employee; as Assistant Secretary of the Navy under Woodrow Wilson his dealings with Haitian government officials were condescending at best.
The First Lady was the more openly sympathetic of the two Roosevelts, frequently counselling White and others about the President's desire to see progress in race relations along with her role as informal spokesman for the administration. It was a role generally more symbolic than policymaking in this area. When the full Senate had the Costigan-Wagner bill before it, Eleanor Roosevelt talked with her husband about the bill. But she could not get him to work for it. "I do not think you will either like or agree with everything that he thinks," she informed White. "I would like an opportunity of telling you about it, and would also like you to talk to the President if you feel you want to."

She did intervene with the President to secure a private session between the two men in May. Sara Roosevelt, the President's mother, was present as well. The President expressed his doubts about the bill's constitutionality, especially the fine provisions. Roosevelt did not get specific with his constitutional objections, but the fines provision caused conservative Democrats like William Dieterich problems. FDR, like Dieterich, probably did not want to see innocent citizens penalized for the malicious act of a few. It really boiled down to a due process argument, making local officials prove they acted to protect prisoners before imposing liability on the county. The President tried to joke his way out of the conversation, but
White kept up the pressure. As Roosevelt raised one objection after another, White answered with assurances from leading attorneys that the bill was constitutional.

Roosevelt fell back on his need to court the Southern Democrats in Congress for his lack of visible support, blaming political necessity for the restraints he faced as President:

I did not choose the tools with which I must work . . . Had I been permitted to choose them I would have selected quite different ones. But I've got to get legislation passed by Congress to save America. The Southerners by reason of the seniority rule in Congress are chairmen or occupy strategic places on most of the Senate and House committees. If I come out for the anti-lynching bill now, they will block every bill I ask Congress to pass to keep America from collapsing. I just can't take that risk."

Historian Nancy Weiss considered the "congressional delegation" reason one of last resort, something Roosevelt could call on to explain his seemingly incomprehensible lack of enthusiasm for a bill that attacked what he only months before had denounced as vile murder. Roosevelt's "Southern leadership" excuse was the practical equivalent of Senator William Borah's excuse of constitutional doubts to avoid acting in favor of antilynching legislation. While they may have shared anti-black biases, Roosevelt was also the head of a party whose Northern and Southern wings had only recently worked together for his election. He relied on his reputation for humanitarian aid while Governor of New York for votes, and his acts benefitted residents in need regardless of race. Moreover, he retained a deep rooted
commitment to states rights, despite the recent expansion in federal authority.  

Despite his reservations, Roosevelt kept the bill's sponsors' hopes alive when he met with them on May 24. He told them he thought the bill would pass and even expressed his wish that it would, but he warned that Southerners might filibuster in the Senate. Roosevelt would not come out directly for S. 1978 in Congress, but told Costigan and Wagner to tell Senate Majority Leader Joseph Robinson of Arkansas "that the President will be glad to see the bill pass and wishes it passed." Roosevelt's feeble endorsement was further compromised by his words "if, in a lull, the anti-lynching bill can be brought up for a vote," indicating it can only be passed when no one is paying attention to what is occurring in the Senate. He timidly sought to sneak this bill past the Southern Democrats.  

Walter White had been anxious to participate in the meeting, but the proponents of the bill wisely kept him out of the conference. FDR's secretary Marvin McIntyre, a Southerner, was present and did not share any sympathy for the antilynching movement, using his influence to steer Roosevelt away from such legislation whenever possible. White's presence, although expected at a conference like this, would have been a handicap to the sponsors' progress with Roosevelt. White had already tried to persuade FDR to publicly endorse the Costigan-Wagner bill, and another
appearance so close in time to his recent meeting with the President may have angered him and further alienated McIntyre.\textsuperscript{42}

The following day, Roosevelt held a press conference at which he was asked about the pending bill; he expressed doubts about its constitutionality, which weakened his subsequent endorsement. The President remained "absolutely for the objective but am not clear in my own mind as to whether that is absolutely the right way to attain the object. However, I told them to go ahead and try to get a vote on it in the Senate." It is hard to tell, but FDR could have been entertaining state action as the best solution to lynching. FDR's support for a federal antilynching bill went to the weak assistance he proffered behind closed doors.\textsuperscript{43}

In Congress, Costigan tried to bolster FDR's ambiguous press conference statements on the antilynching bill, stressing the President's desire for a vote before adjournment. Wagner implored his colleagues to act on what he called his "temperate, unimpassioned and impartial" bill, which would only assist local authorities in doing their duty. He further acknowledged several resolutions for the record and introduced one from a group of Southern church women, while Hamilton Kean of New Jersey urged the bill as necessary.\textsuperscript{40}
Discussion in Congress went into June, but the bill did not come up for a vote before adjournment. This dilatory behavior prompted advocates like Walter White to complain publicly. In a June 7th letter to the [Denver] Rocky Mountain News, he blamed a group of obstreperous Senators for blocking action on the Costigan-Wagner bill, and he solicited citizens to write President Roosevelt and their congressmen to vote for the law. The editorial obviously reflected the view that the more public pressure in favor of the bill that poured in from across the country, the less chance legislators could refuse to enact it.\textsuperscript{45}

Yet White ignored certain political realities which made the bill’s passage problematic. In Congress, Democrats controlled key committees, and Roosevelt’s first priority was putting the country back on its feet. He feared a long session would hurt his recovery program, and the wrangling over the Costigan-Wagner bill only prolonged his anxiety.\textsuperscript{46}

The black press likewise complained about the lack of progress for the Costigan-Wagner bill in the Senate, due to the "U.S. Solons" holding things up. Some of the headlines cynically viewed the proceedings, such as "SenateDodges Anti-Lynch Bill" that appeared in the Chicago Defender. Blacks continued to petition Congress in the waning days of the session, as if there was a real chance the Senate was going to act favorably on the bill.\textsuperscript{47}
During the last month of the session, sponsor Edward Costigan and several others in Congress still promoted the Costigan-Wagner bill. Antilynching proponents continued to introduce resolutions from concerned citizens, propose new antilynching measures, and talk about the benefits of the legislation. Opponents of federal legislation added their views, such as Senator Huey Long's boast that his state suffered no lynchings while he was governor and his opinion that stopping lynching was "... merely a matter of a State performing its duty, which, of course, it can perform better than any other authority."48

Over the course of the Seventy-Third Congress's session, Costigan and other antilynching advocates faced an uphill battle for time and the attention of their fellow Senators. Discussions on such significant topics as industrial reform and tariffs kept debate on antilynching legislation to a minimum. At the end of the session, one which the New York Times opined was dominated by Roosevelt, Congress presented a slew of bills to the President.49

Costigan, frustrated because his bill had been ignored, opposed adjournment but neither he nor anyone else interested in prolonging the session could prevail against the growing opposition to letting the President's important legislation languish while they pushed "secondary" legislation: "We have patiently and persistently pressed for consideration of this measure, ... [and w]e have every
reason to believe that a substantial majority of both branches of Congress desire and would approve the measure." He admitted that constant priority to other bills had hurt his bill. Costigan’s last attempt to get his antilynching legislation considered met determined resistance from Senators "Cotton Ed" Smith of South Carolina and others. Smith and other Southern Democrats expressed their hostility by opposing en masse Costigan’s request for unanimous consent to consider S. 1978 rather than a bill concerning the Interior Department. After the bill was reported back from the Judiciary Committee with amendments, Southerners spoke disdainfully about the whole topic. Senator Joseph T. Robinson sarcastically declared that Congressional legislation had not forgotten the forgotten man yet lynching continued to plague black men.50

During the summer adjournment, lynchings again made the papers. Walter White, disturbed at the large number of them—fourteen in July alone—wired President Roosevelt, urging him to include the Costigan-Wagner bill among his "must" pieces of legislation next January. As White, Senators Costigan and Wagner and others made plans for the upcoming congressional term, a gruesome lynching took place in October in Florida which vividly underscored the necessity of federal antilynching legislation.51

Claude Neal was a Florida black man who was arrested for the murder of a white woman, Lola Cannidy. Cannidy was
Neal's girlfriend. She threatened to expose their relationship, an act which Neal feared might cost him his life. In desperation, police concluded, Neal had killed her. Neal was not safe after his arrest in Marianna, so he was transferred to a supposedly safer location in Brewton, Alabama; angry locals were too impatient, however, to wait to see Neal receive justice in the courts. A lynch mob formed quickly, and word spread about the planned lynching. Newspaper headlines published the time, date and place of the lynching ahead of time, displaying a strikingly blatant disregard for law, order, and morality. The sheriff claimed that he had flooded the county with deputies, "but we never did see the mob." That he and his men failed to find at least 700 people on October 26, after plenty of warning beforehand, suggested connivance.

The lynch mob was especially sadistic, castrating Neal and forcing him to ingest his sexual organs before further torturing and killing him. Once dead, his body hung on public display while photographers took shots of the remains, making money from those who failed to view Neal's body in person. Blacks in Marianna were subjected to random violence as part of the aftermath of the Neal lynching, and the majority of the townspeople, who neither criticized nor explained the action, were oblivious to the national response. They were also heedless of the antilynching bill awaiting action in Congress, and that their barbarism would
undoubtedly become part of the debate between supporters and opponents of the federal legislation. 53

Despite wide public outrage, Attorney General Homer Cummings did not respond to demands to take action of some sort. The facts of the Neal case appeared to Walter White and others to make out a clear violation of the Lindbergh Act. The recent law made it a crime to kidnap a person across state lines; the original requirement, that ransom be demanded as part of the kidnapping, was amended out by the fall of 1934. Antilynching advocates criticized the Department of Justice for not acting under it, when the recent lynching clearly illustrated the need for federal authority where the victim was transported from an Alabama jail back to Florida. Many people wrote to Cummings in the months following the Neal lynching, including members of Congress. But Cummings refused to act. Cummings was quick to extend federal power into ordinary criminal matters when chasing kidnappers, mobsters and other criminals, but he found states' rights an insuperable obstacle to acting where lynchings occurred. "Crime control" was at the top of Cummings' agenda as Attorney General, and he did not want to upset his plans for federal law enforcement by advocating a federal antilynching bill, or by taking action against lynching and antagonizing powerful Southern Democrats in Congress. 54
Try as he might, White could not pressure Cummings into pursuing the Neal lynchers. Nor did Roosevelt speak out, and White could not persuade him to do so. In an October 31 press conference, Roosevelt avoided a question about the Costigan-Wagner bill "in view of the recent developments." Instead, he equivocated on his previous year's statement allegedly endorsing federal legislation after the San Jose lynchings. As the year 1934 ended, the federal government received numerous letters urging that Congress pass the Costigan-Wagner bill, and asking Roosevelt to exert pressure on its behalf. In December, a National Crime Conference convened in Washington. The Attorney General did not formally place lynching on the program, which drew angry demonstrations. In his address to the conference, President Roosevelt spoke on lynchings among other crimes. The controversy led the conference to invite the black Washington Bar Association to address it. Many people now were confident the Costigan-Wagner bill would pass.
CHAPTER VI
"FDR MAY BE COUNTED ON TO SAVE LYNCHING..."

As 1935 began, there was great anticipation because of the Neal murder that President Roosevelt would denounce lynching in the same strong terms that he had in December 1933. On the 3rd the NAACP transmitted to Roosevelt a memorial signed by over one hundred politicians, religious leaders and editors who urged the President to put the Costigan-Wagner bill on his agenda. The resolution referred to the recent abduction and lynching as "... a notorious example of the complete breakdown of the machinery of justice which has grown out of the lynching evil," and claimed that the threat of the Costigan-Wagner bill between January and June 1934 had restrained lynch mobs.¹

The Administration did not respond to the memorial, and Roosevelt's January 4th State of the Union Address contained only a few vague words about crime and no more. Instead, Roosevelt focused on the economy, calling for specific economic and social legislation to put Americans back to work and to provide for insurance. FDR's emphasis on recovery as opposed to civil rights reflected not only the political realities of the day but also his reluctance to
engage so knotty a problem. His silence on lynching, baffling to antilynching crusaders, was a deliberate effort to remain aloof from a sensitive topic which would have called for a confrontation -- something Roosevelt had avoided since his youth; procrastination on difficult, and in this case unpopular, decisions also suited his political and personal style.²

The NAACP was obviously disappointed with the administration for sidestepping the lynching issue, while the nation's black press severely criticized the President for his indifference to the problem. The Pittsburgh Courier, Cleveland Call and Post, Chicago Defender, and other papers not only reproached FDR for his emphasis on restoring capitalism but began to echo the Communists' argument that the government employed the law on behalf of wealthy Americans but not for poor people. The International Labor Defense had already taken on the criminal justice system, as well as Southern racism, by defending the Scottsboro boys, and it lent its support to the antilynching cause. Nonetheless, the black press criticized the International Labor Defense for attacking the American system, while it acknowledged that the government helped the communists' cause by its inactivity in the Neal case.³

But the mainstream press, criticizing Roosevelt's general lack of boldness in his address, was silent on
lynching. The (Denver) Rocky Mountain News quoted different papers on the "Full of 'But'" address, with one editorial characterizing the congressional message as "admirably and encouraging[ly] phrased in every item of generality [as well as] depressingly vague in almost every detail of action and execution."

The brief allusions to crime and security in Roosevelt's address could be construed as favoring federal antilynching legislation. He mentioned his June 1934 message, which "place[d] the security of the men, women and children of the Nation first," and urged that as of January 1935 Congress uphold this ideal in its forthcoming legislation. While FDR really intended to promote Social Security, unemployment and other welfare measures, his words might be read as an endorsement of the Costigan-Wagner bill. The bill literally embodied the principle he enunciated in his speech, but as usual Roosevelt's words were ambiguous. He promised to advise Americans on "other measures of national importance," including "the strengthening of our facilities for the prevention, detection and treatment of crime and criminals." The antilynching bill would certainly qualify under the last statement, but Roosevelt left it up to others to promote such a law.

Despite his disappointing performance regarding mob violence, Eleanor Roosevelt tried to gloss over her husband's speech, assuring Walter White that FDR's stand on
crime included lynching. Mrs. Roosevelt would try over the course of the 1930s to persuade her husband to address the issue forthrightly, but FDR always met her with his customary admonition that "First things come first, and I can’t alienate certain voters I need for measures that are more important at the moment by pushing any measures that would entail a fight." He appeared to place more value on voices within his own party than the men and women who wrote to him for protection for their lives, all because the latter had no political strength to speak of.®

Congress reconvened in early January. By the start of March, Congressmen introduced at least twenty bills to combat lynchings into both houses of Congress. Some of the sponsors were Representatives Joseph Gavagan (D-NY), Emanuel Celler (D-NY), William Brunner (D-NY), U. S. Guyer (R-Kan), Thomas Ford (D-Cal), Louis Ludlow (D-Ind) and Arthur Mitchell (D-Ill). The Democrats held the numerical advantage in championing the antilynching measures, and many of them believed that this advantage could be used successfully to promote racial justice.™

One of the newest Democrats to the House was Arthur Mitchell, the first black Democrat elected to Congress. He represented the Illinois First Congressional District, replacing Oscar De Priest, and pledged in 1934 to introduce an antilynching bill. Opinions varied in early 1935 as to whether Mitchell’s bill should be preferred to the Costigan-
Wagner bill, but Mitchell was so positive that his bill was superior to the Costigan-Wagner bill and all others in Congress that he denigrated the rival measures. "It doesn't stand a chance of passing," he said in Congress. "Those men just have their names stuck to it. Those men haven't read that bill--my bill is the only one that has a chance of passing." Mitchell naively believed that since his mostly Southern Democratic colleagues were "neighborly" towards him, they would honor a pledge to prefer his bill over the others. He also defended the President from "demagogues" who argued that Roosevelt's November 1933 antilynching comments were not intended to address blacks' concerns about lynching.®

In the early months of 1935, the pages of The Crisis and other journals reflected Americans' concern about the inactivity of the antilynching forces. The January issue of the NAACP magazine focused on mob violence, with distinguished writers' protests against lynching: statements from Costigan, Wagner and other Congressmen, poetry, cartoons and articles by Walter White and others. The NAACP surveyed Congress in late 1934, and the positive responses were published in the first two issues in 1935. The Crisis reported the many Senators and Representatives pledged support to the Costigan-Wagner bill, but that it would be several months before the bill reached the stage for debate and action. One Representative, Republican
Theodore Christianson of Minnesota, author of his state’s antilynching law in the 1920s, assured the NAACP that he would support federal antilynching legislation. The journal urged readers to write their congressmen to vote for the Costigan-Wagner bill.²

The nation’s radio companies offered air time to individuals and groups for antilynching broadcasts to promote the Costigan-Wagner bill. One such program starred George Gershwin, Lily Pons, and other celebrities. Even ordinary citizens joined in, like Bennett [N.C.] College professor Farrison who spoke over the local affiliate in favor of the Costigan-Wagner bill in February.¹⁰

The black press started out the new year with editorials in favor of the Costigan-Wagner bill, while concerned individuals wrote to their local journals expressing support for federal antilynching legislation. Yet some people argued that blacks needed to protect themselves against mobs, and that another law was unnecessary; one man, J. A. Rogers, wrote a two-part letter to the editor of the Pittsburgh Courier in which he criticized FDR’s and other presidents’ statements against lynching because they did not act. Rogers believed that far from opposing racial suppression, Roosevelt "may be counted on to save lynching if it will maintain the supremacy of the Democratic party."¹¹
Rogers was perhaps too cynical in his assessment of Roosevelt, but he could only judge the President's inaction on politics. It was clear since the spring of 1933 that Roosevelt needed his fellow Democrats' support for the many reforms he proposed for the country. While Rogers and other disgruntled blacks could not have known about the behind-the-scenes deals necessary to enact legislation, their skepticism about the President's commitment to civil rights was uncanny in light of Roosevelt's propensity to evade sensitive questions on which he did not intend to act; this is the reverse of one of the qualities for which his wife praised him: "FDR never assumed any responsibility that he did not intend to carry through." But, since he assumed no responsibility in this area, he did not have to go out of his way to promote enactment of the law.¹²

While angry citizens expressed their outrage at lynchings and criticized the federal government's dilatory manner of attacking it, the bill's sponsors continued to press for action. Costigan was particularly zealous in promoting the antilynching bill in January, speaking at a New York City antilynching meeting on the 6th. At the same time, both Costigan and Wagner had interviews that appeared in the January Crisis. Both men pushed their bill but emphasized different things. Costigan reiterated Walter White's observation that while the bill had been in Congress in 1934, no lynchings occurred. Costigan argued that this
was evidence that passing the bill would reduce if not eliminate lynching. Wagner emphasized the fact that the Costigan-Wagner bill would strengthen local authority rather than abrogate it.  

Both sponsors spoke out against lynching to a national audience on Lincoln’s birthday, using Lincoln’s words against slavery in their fight against mob violence. Costigan agonized over the "13,000,000 people in this country [who] practically dwell from sun to sun under the unlifting shadows of potential mob violence, despite all lessons taught this world by our fatal experience with human slavery. Wagner contended that "lynching... is a constant profanation of the shrine of Lincoln. Again he emphasized the states would not be deprived of their responsibility to stop lynchings under the bill. 

When the co-sponsors spoke in February, their bill had undergone some revision to aid its passage. It was amended to reflect objections that arose during the 1934 hearings, particularly Senator Dieterich’s concern that an innocent community would be penalized for an action for which it was not responsible. The press referred to the "strengthened" Costigan-Wagner bill, especially in light of the new section which declared the bill valid even if any other section (such as the fines provision) was invalidated. The co-sponsors wanted to make sure the bill would survive Supreme Court scrutiny with a severalty clause.
Mass meetings were held around the country in early February to build support for the Costigan-Wagner bill. On the 1st, in Philadelphia, the Cooperative Committee Against Lynching met to press for the pending federal legislation. In Cleveland the Men’s Ever Ready Club organized a meeting on the antilynching question with guest speaker George Craige of the NAACP. Other concerned Americans across the country rallied and wrote letters hoping that Congress would do its duty by enacting the Costigan-Wagner bill.16

Senator Frederick Van Nuys (D-Ind) opened the second round of hearings on the Costigan-Wagner bill on February 14th, with Walter White again taking a leading role in focusing the nation’s attention on lynching. The newspapers again carried accounts of the proceedings. There were fewer witnesses this year, only nine as opposed to thirty-eight the previous year. In addition to Senators Costigan and Wagner, Representatives Caroline O-Day (D-NY) and Thomas Ford (D-Cal), writer/critic H. L. Mencken and Howard Law Dean Charles Hamilton Houston were among the witnesses. Probably the most dramatic testimony of the hearings came from O’Day, who impressed the panel with her direct talk against lynching, not only as a Southern white woman but as an American who did not want to see her country embarrassed around the world. O’Day testified about her trip to India, when she discovered that a book on lynching Negroes was popular in the Asian country. It shocked her because
violence in America was not considered an international concern, and her travels showed her that America was judged for its failure to live up to its democratic ideals.\textsuperscript{17}

As the hearings began, an extraordinary art exhibit opened in the Newton Galleries in New York City. Its focus was on lynching. The NAACP helped organize the exhibit, as part of the anti-lynching campaign. Walter White, along with interested artists and citizens, were in attendance, but the one person who presence would have probably signified the President's approval was not there. Eleanor Roosevelt wanted to appear at the exhibit, but felt it would be used against the bill: "They plan to bring the bill out quietly as soon as possible although two Southern senators have said they would filibuster for two weeks. He [FDR] thinks, however, they can get it through."\textsuperscript{18}

The NAACP sought to shape public opinion in favor of antilynching legislation by presenting its pernicious effects for society, especially youngsters exposed to the activity. The exhibit originally had been scheduled for the Seligmann Galleries, but it had cancelled due to protests. The owner wanted to keep his gallery "free of political or racial manifestations" by cancelling the show. Several pieces caused a sensation, including George Bellows' lithograph "The Law is Too Slow." Many of the works were graphic in their depiction of the violence of lynching, especially Reginal Marsh's "This is Her First Lynching." It
portrayed a little girl's initiation at a lynching, watching the proceedings much the way Klan members bring children to their rallies to indoctrinate them in hatred.

Over 3,000 viewers attended the exhibit during its brief two-week run. The local newspapers covering it believed it effective. "This exhibit may do much to crystallize public opinion. . . .," the New York World Telegram wrote, "If it upsets your complacency on the subject it will have been successful." The New York Times piece on the show's cancellation at the Seligmann Galleries may have brought curious New Yorkers out to see it. Black newspapers also provided extensive coverage of the event, giving speaker Pearl Buck's feelings on the subject a nationwide audience.29

The Crisis carried an article on the show, of course, complete with photographs of a wood carving and a painting, in its April issue. The NAACP, as the moving force behind "An Art Exhibit Against Lynching," planned to send the exhibit around the country, including the South, if there were sufficient funds. However, although there was eventually a road tour, it was not the extended trip the NAACP had hoped for.20

The hearings on the Costigan-Wagner bill took only a few days. The committee presented a favorable recommendation to the Senate. In contrast to the previous year's reception, "the Senate leadership yielded to quiet
pressure from the White House and the bill was placed on the calendar." Even though Roosevelt would not meet with Walter White to discuss the bill, White believed reports of FDR's behind-the-scenes lobbying with Senators were "... undoubtedly true, otherwise Senator Robinson as majority leader would never have permitted the bill to be taken up at all." Roosevelt would not openly support the Costigan-Wagner bill unless it was a fait accompli, if he followed the same tactic he exhibited with the Wagner Labor Relations Act in July 1935; the latter was not his idea but one for which he took credit nonetheless.  

Costigan tried to bring the bill up early in April, but opponents like Senators Richard Russell (D-Ga) and Kenneth McKeller (D-Tenn) obstructed the effort. Charles McNary (R-Ore) created a minor controversy by requesting clarification of the bill's status, after which Costigan informed his colleagues that that would not again allow discussion of his bill to be put off when it came up on the 16th. On that day Senate Majority Leader Joseph Robinson (D-Ark) tried to bypass the bill but Costigan would not allow it. Wagner offered little help. It is hard to say whether he played a minor role on this bill because others took up too much time, or because he did not want to alienate Southern or even Administration support for his labor and other bills.  

Costigan called for a record vote without debate on April 24th. Several objections prevented such quick action.
Costigan and even Wagner launched debate on the Senate floor with speeches on behalf of their bill. Costigan’s talk ranged from a paean to the Magna Carta in 1215 to a demand for equal justice. He quoted antilynching speeches by Abraham Lincoln and Woodrow Wilson. He called attention to various states’ provisions against lynching, and the economic principle behind those laws which would ensure successful application of federal law. Costigan ended his speech by stating that law as a measuring rod of civilization will judge the achievements of 1930s, which will fall short of its promise if federal antilynching legislation was not enacted. Costigan pointedly referred to Roosevelt’s promise to bring security to Americans in his January Annual Message. That security did not yet exist for America’s most vulnerable citizens, and Roosevelt could fulfill his promise by endorsing the Costigan-Wagner bill.23

Wagner was equally powerful as he spoke to the Senate the following day. He argued that lynching was an assault on law and an injustice to blacks who were the mobs’ primary victims. He conceded that a federal law might not totally squelch lynching, but since its mere threat had already reduced its incidence, his and Costigan’s bill would be a major step in the right direction. Wagner could not stress enough that “this bill does not invade States’ rights. It interferes only with mob rule.” He went to great pains to convey to Southern colleagues that the bill limited federal
authority as narrowly as possible; it was up to local authorities to do all they could to prevent the law from operating by protecting their prisoners and/or rounding up the mob for prosecution afterwards.²⁴

Opposing Senators planned a filibuster on the Costigan-Wagner bill as early as February. Walter White argued that blacks must demand passage or there would be no Costigan-Wagner Anti-Lynching law. But he did not consider whether this might play into the opponents’ hands, especially in light of his perceptive comment that Southern Senators do not approve lynching but argue against it to look good at home. No one at this February meeting, including White, criticized Roosevelt for his silence on lynching in his Annual Message to Congress the previous month. The silence, according to the Call and Post, would most likely kill the bill.²⁵

Various legislators themselves informed the bill’s sponsors that they were going to oppose the bill as it grew closer to a vote, so the week long filibuster that began on April 25 was no surprise. Southerners did their best to prevent discussion of the bill at all through several quorum calls and various parliamentary inquiries, while hindering Senator Matthew Neely (D-WVa) from speaking in favor of the bill by refusing to yield the floor to him. By April the filibuster was on, eliciting "a mixture of disgust and
Southern senators launched an assault on the bill. They argued it was unconstitutional. They worried about how to protect white women from Negro brutes. Hugo Black, future Supreme Court Justice from Alabama, cited the bill's potential misuse against striking workers as one reason for his objection. As his biographer states, 1935 was a bad year to favor the Costigan-Wagner bill because folks at home were ill-disposed toward blacks and Communists, but Black "never descended ... to the cruel and cheap vilification of the Negro [of] which most of his Dixie colleagues were guilty." Political realities prevented Black from supporting federal antilynching legislation in 1935. He wanted to ensure that Alabama sent a pro-Roosevelt delegation to the 1936 convention, and he could not risk his influence with an anti-lynching vote.

Josiah Bailey of North Carolina, Tom Connally of Texas, William Bankhead of Alabama, and James F. Byrnes of South Carolina kept the filibuster going into May. They introduced resolutions against the Costigan-Wagner bill in their efforts to delay action on the bill--a boon for their popularity at home. Connally recalled in his autobiography how Southern Democrats prolonged the filibuster against federal antilynching legislation (whether he referred to the
1935 or the 1938 filibuster is unclear) by reading long speeches and in general talking non-stop.\textsuperscript{28}

Connally believed that the long Southern filibuster could have been prevented if antilynching advocates had wanted to do so. They had various means to end the debate, such as twenty-four hour a day sessions. But, he insisted, "[t]heir purpose was not served by getting the bill passed, but by creating a fuss in which they could pose as heroes." At least one historian has raised the same question about the antilynching advocates' lack of commitment to the bill, because of their tepid efforts to stop the filibuster. Senate debate could have been terminated through cloture which required a two-thirds vote. In addition to moving for cloture, the bill's proponents could have tried to hold round the clock sessions, a tactic used successfully on other occasions to exhaust filibusterers. The bill's proponents, however, opted to recess at the end of the day. They did not want to adjourn the session because the bill probably would have died. Instead they kept the bill alive, but not through round the clock sessions, even if it meant allowing the filibuster to continue. It appears that the bill's supporters optimistically hoped that the bill could survive a prolonged filibuster, an unrealistic hope in light of Southern intransigence on matters regarding race.\textsuperscript{29}

While Costigan probably believed that his bill would ultimately pass, it is unlikely that he believed, as Walter
White did, that there were 52 "sure" votes in favor of the bill. White was correct about one thing—that Senator Long of Louisiana would not lead the 1935 filibuster because he had ambitions for the 1936 election. But he was wrong in predicting that only Southerners would vote against the Costigan-Wagner bill. White's inclusion of William Borah (R-Id) among the bill's supporters was absurd in light of Borah's previous record on the Dyer bill, where he spoke out repeatedly against the antilynching measure on constitutional grounds.³⁰

At least ten Southern senators opposed the Costigan-Wagner bill, along with a few non Southerners, judging by the most vocal filibusterers. Beyond the constitutional arguments many senators made, at least one argument used against antilynching legislation involved issues of authority and due process. Celebrated liberal Republican senator George Norris focused strictly on jurisdictional questions regarding the bill's operation—specifically, when the federal courts would obtain jurisdiction to try lynchers once the states had failed to perform their duty. He was also extremely troubled by the fact that a mere affidavit of a sheriff's neglect would be held conclusive for liability under the law by the court, without the man having any opportunity to rebut the charge.³¹

While Southern Democrats filibustered, many Northern Democrats favored the Costigan-Wagner bill, among them
Indiana's Frederick Van Nuys and Royal Copeland of New York. Since the House did not have the opportunity to vote on the Costigan-Wagner bill, there is no way to judge whether those Republicans who pledged their support to the NAACP as published in the January and February Crisis would have in fact voted for the bill, or against adjournment in case of a filibuster. But out of the Senators' names listed in the January magazine, it is possible to match their words with their actions. The only man to state his unwillingness to vote for the bill, Morris Sheppard of Texas, did vote to adjourn in early May; at least he was honest enough to openly express his antagonism toward civil rights, so that its supporters would not expend energy trying to change a closed mind.32

The other Senators who answered the NAACP survey either promised to study the bill before taking any action or simply declared their support when it came up for a vote. At least James Couzens (R-Mi) did not break a pledge to support the bill later in the year, as did Elbert Thomas (D-Ut) and J. P. Pope (D-Id), when all three men voted for adjournment in May. While a vote for adjournment usually meant a vote against the Costigan-Wagner bill, it prevented more discussion or more importantly a vote on the bill. Couzens was as unconcerned with ending lynching as the White House appeared to be when he voted to adjourn. Others identified in the survey as supporters voted against
adjournment, in order to keep the bill alive. The final vote on May 1 was 48 in favor of adjournment and 32 against. The vote moved the Senate off the antilynching bill and onto "more important business." Some of the surprise votes to adjourn (at least to this writer) came from Senate Judiciary Chairman Henry Ashurst (D-Ariz), and Senator Harry Truman, supposedly beholden to his supporters in the black community in Missouri. William Dieterich's (D-Ill) vote for adjournment was expected, even though he served on the Senate subcommittee which took testimony on the merits of the bill; he was troubled by the possibility of a community being wrongly fined for a lynching it neither committed nor condoned.33

Only 80 Senators voted on adjournment. Sixteen did not participate, including Huey Long. Their votes could have brought a tie only if all 16 had voted against adjournment, which was unlikely because the voting Democrats rejected antilynching legislation by a 3 to 1 margin. Despite the fact the Democrats won overwhelmingly in the fall 1934 election and the New Deal generated significant reforms, the Democrats did not generally attack one of the most pressing social problems to blacks and a growing number of whites. Letters to the President and Attorney General while the bill was pending reiterated the horrors of mob violence and the helplessness of the black community to combat this problem.34
Among the Senators who voted to remain in session, fifteen were Democrats, sixteen were Republicans and one was independent. Only two Southern Democrats voted against adjournment while most of the Republicans present voted to remain in session. Southern Democrats had the support of a significant number of non-Southern Democrats. Perhaps some Democratic opponents voted as Tom Connally said they wanted to but for their constituents:

During one filibuster against an antilynching bill, several so-called proponents sidled up to us Southern Democrats and whispered in our ears that they did not want to vote for the bill. They said that they did not believe in it, but election time was coming on and "We must get the colored vote because if we do not get it someone else will." Democrats were more worried about dividing the party over a racial matter or of endangering the New Deal programs that helped their constituents than securing the fundamental right to stay alive.

After the Senate killed the bill, Roosevelt came under criticism for not having pressed Congress to vote for it. "The feeble effort of most Democratic senators to press for a vote on the anti-lynching measure accurately reflected Roosevelt's lack of commitment," historian Harvard Sitkoff observed. A Crisis editorial found "[e]qually revealing. . . the Great Silence of the Man in the White House [who] said a few words against lynching before the actual test of votes came, but when that crucial hour arrived, he said nothing." Not only the Crisis but other
journals, such as the New Republic and The Nation, blasted the President for not saving the Costigan-Wagner bill from defeat. Newspapers across the country censured Roosevelt for his silence, while Oswald Garrison Villard of The Nation scored Roosevelt for his silence as early as the winter and again after the bill met with defeat.\textsuperscript{36}

The lynching rate for 1935, meanwhile, remained fairly high with 20 or 25 men and women killed, depending on which source is consulted. There were no more spectacles of the Claude Neal variety but the continued state of lynching dramatized the lack of state cooperation in preventing lynchings. Whether or not the Costigan-Wagner bill actually averted any lynchings while before Congress in 1934, it had no such effect in 1935 as headlines from Atlanta to Baltimore proclaimed the mobs’ successful completion of business in Mississippi that spring.\textsuperscript{37}

The debacle in Congress so incensed Walter White that he resigned from the Virgin Islands Council, a government position he held for a number of years, but it did not surprise one veteran of the antilynching fight, Leonidas Dyer. He had written White in January, predicting defeat at the hand of the Democrats; it may have been partisan sour grapes, since his bill could not get past a Republican-dominated Congress, but Dyer’s critique of the unattainability of securing an antilynching law in Congress revealed a knowledge of Congressional obstinacy which
prevented meaningful change in the area of social equality. The bill’s defeat led the Boston Morning Globe to comment caustically, "The anti-antilynch law Senators claim that each State ought to be allowed to allow its own lynchings." The Louisiana Weekly averred that the only way to pass antilynching legislation was for a few more whites to be lynched. Such cynicism derived from the more or less uncontested view that since black life is worthless in America a couple of white deaths would improve a federal antilynching law’s chances in Congress and with the White House.\footnote{18}

As lynchings continued through the end of the year, two deaths in September highlight the lynching problem in different ways. The Macon (Georgia) Telegraph reported the lynching of Ellwood Higginbotham in Oxford, Mississippi while he was awaiting the jury verdict in his trial for murder. His abduction from the local jail underscored the might of community law over formal authority as well as the need for greater incentives so sheriffs will protect prisoners. Huey Long’s assassination that month in Baton Rouge, Louisiana elicited comments a few months later, which tied his death with the lynching phenomenon. Popular attitude, right after Long was gunned down, applauded the Louisiana Governor’s act of pointing a gun and ‘looking to take care of the man’ that killed Long, placing it within the lynch mob psychology. The Louisiana editorial cited
this attitude for the persistence of lynchings and thanked the New York Daily News for rewriting Roosevelt's telegram to Louisiana for its unAmerican activity: "We hope Negroes and their friends soon will stop declaring lynching is un-American. It is one of the few really and truly American crimes."

Antilynching crusaders still worked to rally support for the eradication of lynching, mostly on the state level. The ASWPL maintained its routine of speaking out to women's clubs among other audiences, like the Mississippi State Federation of Colored Women's Clubs in October, 1935. Mrs. L. W. Alford, chair of the Mississippi chapter of the ASWPL, was a guest speaker who travelled around the state on behalf of antilynching programs. The national leadership, starting with Jessie Daniel Ames, opposed federal legislation because "She [Ames] remained convinced that endorsing organizations like the Baptists . . . would withdraw their support if the AWSPL undertook a federal lobbying effort and that sympathy for federal intervention represented only the 'top crust' of southern opinion."

If ASWPL leadership objected to federal antilynching legislation, individual members favored such laws by the end of 1935. Various Commission for Interracial Cooperation leaders and chapters had already called for enactment of a national antilynching law. The CIC's "bombshell" endorsement on April 25th of the Costigan-Wagner bill
probably came too late to make any difference in the filibuster that had just gotten underway in the Senate, but it reflected not just an abrupt change of policy for the organization but a profound statement to Southern congressmen that they must stop the brutality that occurred mostly in the South.
CHAPTER VII

THE LAST "NEW DEAL" EFFORT FOR AN ANTILYNCHING LAW

As the election year 1936 began, Roosevelt's competition had been eliminated through assassination and a shrewd move toward the left during the previous year. Both Huey Long's death and the advent of Social Security both enhanced FDR's chances for a second term. Despite reform in some areas, the antilynching campaign appeared to have petersed out. But though supporters were disheartened by the Costigan-Wagner bill's defeat in the spring of 1935, some held out hope that a future session would fulfill the promise of the Fifth and Fourteenth Amendment due process clauses.

Roosevelt was anxious about the upcoming election. He not only had to build a winning coalition among labor, farmers, immigrants, and other groups, but he also had to beat back challenges from conservatives like Republican Senator William Borah. Having won in 1932 largely because of Republicans' failure to respond to the Depression, Democrats wanted to solidify their victory through a campaign which reminded Americans of the changes they had promoted since March 1933. Blacks, long wedded to the
Republican party because of its traditional pledge to uphold equality, were ready to vote for Roosevelt in large numbers due to the New Deal and its emphasis on the common man. In addition, the practical assistance many blacks, mostly in the North, received under Democratic programs induced them to switch allegiance.¹

Roosevelt, sure that an antilynching bill could not pass Congress in 1936, instead suggested that the Senate investigate the subject. He argued that this would do as much to publicize and perhaps prevent lynchings as the proposed federal law itself. But according to Robert Zangrando, the President knew his proposal was "all very good politics in a keenly political year." Roosevelt knew that to do nothing about lynching would jeopardize his growing support among blacks, who comprised a progressively larger share of Northern urban voters while to propose bold action would alienate Southern white Democrats.²

FDR's declaration that an investigation could combat lynching as well as a federal law suggests that he thought it better to use federal power to encourage public censure of lynching than to use it to actually replace state authority over a local criminal matter. Roosevelt would rather see local law officials handle the problem than have national authority unconstitutionally overstep its bounds. Memoranda from Attorney General Cummings to President Roosevelt the following year clearly indicate the former's
belief the antilynching proposal was unconstitutional; he
was willing, however, to unofficially recommend it to
Roosevelt and worked with others to strengthen the Wagner-
Van Nuys bill "[k]nowing of [Roosevelt’s] deep interest in
this matter . . . " Just how deep FDR’s interest in
antilynching legislation was is debatable, considering he
never spoke specifically about the federal government’s
responsibility to stop lynch mobs. That Roosevelt was
concerned is not in debate, but the depth of his commitment
is in question.3

Roosevelt’s career in New York as State Senator and
Governor emphasized state solutions to problems. Certainly
this emphasis was due in large part to the offices he held,
but it was also likely due to his longstanding idea that the
federal government should not encroach on local and state
governments. According to his wife “part of Franklin’s
political philosophy that the great benefit to be derived
from having forty-eight States was the possibility of
experimenting on a small scale to see how a program worked
before trying it out nationally.” Yet, FDR decried the
Supreme Court’s 1935 decision in Schecter v. United States,
which overturned the National Industrial Recovery Act.
Roosevelt spoke out then against sectionalism and forty-
eight separate solutions to important economic and social
problems, yet lynching never inspired the same unequivocal
call for legislation from the White House.4
As Roosevelt proposed a weak substitute to the Costigan-Wagner bill, Senator Frederick Van Nuys introduced an empty antilynching resolution on January 6. The measure authorized the Judiciary Committee to investigate the lynchings between May 1, 1935 and January 6, 1936 and report back by March 1, 1936. It also authorized hearings, subpoenas, and anything else necessary for its investigation. However, the Committee to Audit and Control the Contingent Expenses of the Senate never reported the resolution out of committee. Senator James Byrnes (D-SC), Chair of the Committee to Audit, claimed that he could not find funds for the proposed investigation. Yet he reported back on a resolution to pay funeral expenses for the late Senator Huey Long and a Committee to Investigate the Munitions Industry. Byrnes’ committee ultimately sat on the Van Nuys resolution for the rest of the session, earning the derision of sympathetic legislators, antilynching advocates and concerned citizens alike.\(^5\)

Although Senator Costigan recognized that his bill was doomed in 1936, the cause was not completely moribund. Costigan was in poor health, and soon retired from the Senate. Robert Wagner, therefore, had to assume greater responsibility for future antilynching measures. Busy with other measures such as his housing bill, which vied for his time and energy, Wagner seemed to give lynching less of his
commitment. Yet he remained an integral part of the antilynching alliance during the New Deal and beyond.⁶

An important member of this alliance, NAACP Executive Secretary Walter White worked feverishly to promote the antilynching measures. After conferring with Roosevelt in early January, he directed the NAACP to collect data in support of the Van Nuys resolution. The NAACP also published a very popular but gruesome pamphlet on the lynching of Rubin Stacy. Black editorials supported this effort to influence Southerners in both state and federal office to act against lynching. White also spoke across the country during the first half of 1936, urging Congress finally to enact the Costigan-Wagner bill.⁷

There was a great deal of lobbying before the Seventy-Fourth Congress adjourned in June. Congressmen introduced a newspaper article on the CIC's lynching investigation into the Congressional Record. Individuals and groups sent Congress telegrams endorsing the Van Nuys resolution and Costigan-Wagner bill. Petitions from across the country expressed support for antilynching legislation. David Walsh (D-MA) introduced a Springfield, Massachusetts NAACP petition that endorsed the Van Nuys resolution, which he forwarded to the Judiciary Committee. The National Federal of Temple Sisterhoods issued its resolution at its Louisville meeting on behalf of the Costigan-Wagner bill. The National Negro Congress, meeting in Chicago in February,
announced its intention to present demands concerning lynching and other evils to the President and Congress the following month.⁸

Even Hollywood seemed to support antilynching measures and messages, as M-G-M released an antilynching movie entitled "Fury," starring Spencer Tracy and Sylvia Sidney. The NAACP urged people to view the film for its educational value, praising its antilynching stance. At the same time, the organization criticized two earlier films, "The Frisco Kid" and "Barbary Coast" for glorifying lynching.⁹

While several groups advocated federal action, the ASWPL began a drive in March to investigate the lynchings that had occurred in 1936. Trying to build local southern opposition to lynching, it also worked to gather 500 signatures of Southern sheriffs. Meanwhile, in late March the CIC issued a report on lynching in its pamphlet The Mob Still Rides. The CIC made several suggestions on methods to end lynching, yet it is instructive that a federal law was not among the suggested means even though the CIC had urged federal action to eliminate lynchings before.¹⁰

Joseph Gavagan (D-NY) was one of many Representatives to introduce an antilynching bill in Congress in 1936. Hatton Sumners of Texas was determined to see that no such bill come out of his committee. By the spring of 1936, many House Democrats were anxious for action on antilynching legislation. With Senator Byrnes’ Audit and Control
Committee bottling up the Van Nuys resolution, in April thirty-nine House Democrats, far more than the twenty-five required, signed a petition calling for a caucus to discuss the pending antilynching bills. The thirty-nine included Thomas Ford, Joseph Gavagan, Louis Ludlow, Caroline O’Day, and many others, out of whom many had already introduced their own bills or had testified on behalf of the Costigan-Wagner bill. They openly chastised their party leadership by signing the petition, possibly leaving themselves subject to censure. Interestingly, Representative Arthur Mitchell did not sign the petition, which he declared was not the proper procedure to follow; it is also possible he sought to retaliate for the NAACP’s lack of support for his own bill in 1935 and 1936. In fact, Mitchell moved to block the caucus.11

Other events also conspired to prevent the caucus. Representative James Taylor, caucus leader, became ill, which postponed presentation of the petition to hold the caucus. Taylor’s illness, whether feigned or real, delayed antilynching efforts. The leadership task fell to Thomas Ford. With only two months left in the Seventy-Fourth Congress, the petitioners still hoped to secure some kind of action on the antilynching proposals, especially if the caucus voted in favor of antilynching legislation. A successful caucus would bind the Democrats either for or against the pending legislation, which made the vote
dangerous to its opponents, who believed the vote would go against them.\textsuperscript{12}

The Democratic leadership cleverly obstructed the advocates of antilynching legislation from using the party caucus. Taylor called the caucus for the crucial vote on a Friday evening in May, giving less than twenty-four hours notice rather than the forty-eight hour notice required. Many congressmen left town for the weekend. Southerners refused to attend the meeting to prevent a quorum. As a result, there was none, and the meeting could not be held. Only 65 Democrats, many of them already antilynching supporters, attended out of a possible 315.\textsuperscript{13}

The black press praised congressmen like William P. Connery, Jr. of Massachusetts who attended the caucus when there was no real pressure from home to do so. Robert Crosser of Ohio was another representative at the failed meeting, in this instance at the behest of Atlanta Life Agency President J. H. Early, Jr. From Cleveland, Crosser had black constituents and undoubtedly found it prudent to support the caucus vote. But he was hailed as a consistent champion of human rights irrespective of political concerns. Although Crosser hoped later meetings would take place to press for antilynching legislation, there were no more attempts to hold a caucus.\textsuperscript{14}

Despite this disappointment, House Democrats continued in their effort to force the antilynching issue. In June,
one hundred ninety-seven congressmen signed a petition in June, this one a petition to release the Gavagan antilynching bill from the House Judiciary Committee. The petition was short twenty-one names, which proponents expected to gather before adjournment in a few weeks. In a display of courage, half the members of the Judiciary Committee signed the petition, risking reprisals from Sumner. Despite the narrow failure of the petition Walter White optimistically predicted that the House would pass an antilynching bill before the summer adjournment, taking credit for the "smashing defeat and rebuke of Hatton Sumner."\(^{15}\)

As proponents of federal antilynching legislation campaigned for action, opponents responded. Thomas Dixon, author of *The Clansman*, labelled the NAACP a Communist group, calling the organization's attempt to resurrect the "rotten" Costigan-Wagner bill an effort to reimpose the Reconstruction-era Force Acts on the South. His allusion to Reconstruction-era legislation was a pointed appeal to the Lost Cause mythology of the South. In dedicating the Jefferson Davis Memorial in June 1936, a less strident supporter of Southern rights, Georgia Governor Eugene Talmadge, declared that states' rights was the great issue facing Americans at the present. He urged young men to emulate Davis's example "to carry the burdens of America in the future."\(^{15}\)
As the Democratic and Republican presidential nominating conventions neared, blacks pressed for antilynching planks. Both Senator William Borah and Colonel Frank Knox vied for the Republican nomination early in 1936: Borah pledged to veto any antilynching bill Congress passed, while Knox supported one. However, the eventual nominee was Governor Alfred Landon of Kansas, who denounced lynching earlier in the year and whose attitude toward blacks was based on both politics and humanitarianism. Landon’s record on race as attorney and politician in his native Kansas reflected a long standing belief in fair play, appointing blacks to high positions despite their small numbers in Kansas. His record, like that of Vice Presidential nominee Col. Frank Knox’s, earned blacks’ friendship.17

Despite the pro-civil-rights record of the eventual nominee, most black delegates were denied seats with Southern delegations out of the GOP’s desire to accommodate Southern whites. Despite the best efforts of many Republicans, the party platform did not contain an antilynching plank but merely promised equal opportunity for colored citizens and pledged "our protection of their economic status and personal safety." Many Republicans hoped that this promise would assuage blacks in the party, who expected the GOP to resume its earlier leadership in the area of antilynching legislation. Landon met with Robert Church of Memphis and other blacks that fall, forcefully
condemning lynching. He called for any legal means to wipe out mob violence, giving the false impression that the party supported any new antilynching proposals. Individuals running for Congress, such as Carl Sheppard, who hoped to win black support in his campaign, gave their support to the antilynching cause.18

When the Democrats convened in Philadelphia in late June, the party courted its black delegates, who in turn promised their support without getting any concrete assurances on lynching or other important issues. The NAACP submitted several planks to the Democrats, including one approving a federal antilynching law. But the Democrats did not include an antilynching plank in their platform either, despite Arthur Mitchell’s stirring defense of the party in his convention speech or the NAACP’s efforts. In fact, the Socialist party was the only one out of the seven running candidates for President that declared its intention to enact and enforce a federal antilynching law, although the Communists declared themselves behind full rights for Negroes and insisted on death for lynchers and penalties against mobs.19

That fall, the Democrats came in for critical editorials that reviewed their role in defeating the Costigan-Wagner bill for the past two years, arguing that Democrats would pay for sidestepping the lynching question in Congress. Some Democrats were worried that blacks might
return to the Republican party over the issue of civil rights, but their campaign downplayed that issue while promoting the party’s economic accomplishments for blacks since 1933. Even though discriminated against in various New Deal programs, blacks did receive needed assistance in the form of jobs and relief. Also, they felt they had friends in the Roosevelts. Roosevelt’s overwhelming victory in November seemed to portend success for antilynching advocates the following year, just as the rate of lynchings dropped to eight in 1936. Walter White was ready to renew his quest for federal antilynching legislation, and would soon gather over two hundred pledges of support for its reintroduction in 1937. At least that many congressmen after the November election pledged their support to the new law sure to come up in 1937.20

When the new session opened in January 1937, Wagner was joined by Frederick Van Nuys of Indiana and Representative Joseph Gavagan of New York as sponsors of new federal antilynching legislation. Gavagan owed his election primarily to blacks in his Harlem District, and this political motivation probably played as big a role in his work for antilynching legislation as humanitarian sentiment. The bill Gavagan introduced differed from the Costigan-Wagner bill in several ways. The changes were reactions not only to the October 1934 Neal lynching but to antilynching criticism of bills in the previous years’ hearings. It had
a narrower definition of lynching, to specifically exclude labor violence and racketeers. Yet it also broadened the scope of coverage to include the "Claude Neal" type of kidnappings and lynchings across state lines. Other changes included Department of Justice investigations into possible violations of the new bill, an affirmative defense for counties where sheriffs diligently protected lynch victims, and a bar to further judgments on other counties upon the "satisfaction of judgment against one governmental subdivision responsible for a lynching . . . "21

Gavagan was not alone in introducing new antilynching bills in the House. By March there were ten similar bills to prevent and punish the crime of lynching and fifty bills for the better assurance of the protection of persons from lynching, mostly from Northern Democrats. Once again, Arthur Mitchell was among those congressmen who lent their support to the antilynching cause by submitting a bill to stamp out mob violence. Memorial after memorial was laid before the Senate from February through May, which several states submitted for Congressional action. Vice President Garner, long time opponent of lynching legislation, was obliged to present them. While all this activity occurred, various congressmen signed a Motion to Discharge to push antilynching legislation out of committee and into the whole House. Arthur Mitchell was among those legislators who did
not sign the motion, probably in an effort to promote his own bill, which he felt superior to all others.\textsuperscript{22}

When Mitchell and other congressmen promoted his weaker bill over the much stronger Gavagan Bill, Mitchell became surrounded by controversy as he had in the past. Hatton Sumners' House Judiciary Committee approved the Mitchell bill in early April since it did not contain strong sanctions against sheriffs, and had much weaker provisions in general. Mitchell was probably flattered that a Southern colleague would support his antilynching measure, since Mitchell had been eager to 'be just another Democrat' in Congress. Sumners' support prompted the NAACP to oppose it. Walter White recalled that Sumners and other Southerners did not believe that the organization would actually oppose another black's proposal because that step would be perceived as an act of treason. For White, however, the prospect of obtaining an ineffective law was more distressing than campaigning against it, even if authored by the only black in Congress. Indeed, not just the NAACP but several black newspapers preferred the Gavagan bill to Mitchell's emasculated proposal. They noted the unusual maneuvering between blacks like Perry Hill, Republican National Committeeman from Mississippi, and Hatton Sumners over Mitchell's bill. Or, as the Pittsburgh Courier wrote, "Lynching, like politics, makes strange bedfellows."\textsuperscript{23}
While debate went on over the Mitchell and Gavagan bills, two murders in Mississippi underscored the necessity of federal legislation. On April 13, a group of twelve men hijacked "Boot Jack" McDaniels and Roosevelt Townes in broad daylight from the sheriff and some deputies. They tortured the men with blowtorches to force confessions to the murder of a merchant killed months before. Finally they murdered the two men. Southern congressmen called for swift punishment in order to hold down pressure for a federal antilynching law, and Mississippi newspapers such as the Laurel Leader-Call warned that Mississippi could not object to federal legislation if the state did nothing to stop mob violence. Other papers around the state predicted passage of the Gavagan bill, since the incident brought shame to the state. But there were no arrests nor even identifications, despite the public nature of the lynchings.²⁴

Some commentators opined that the event "shocked" Congress into voting for the bill or at least influenced the vote, but the lynchings at Duck Hill had negligible practical impact on the course of the federal bill. Northern Democrats were already committed to the Gavagan bill by early April. Southern Democrats stubbornly fought the bill in spite of the Duck Hill murders. Hatton Sumners and Representative John Rankin of Mississippi closed ranks after the gruesome lynchings.²⁵
Yet even Sumners conceded the inevitability of federal legislation. "'Maybe you are right - maybe we will have to have an anti-lynching bill after all,'" he said in a personal exchange with White. The House Judiciary Committee Chairman's remark indicated a potential crack in the impenetrable Southern Democratic wall of opposition, but it came to nothing. The wall held strong as Rankin and others levelled charges that the proposal amounted to a new force bill, designed to "mak[e] Harlem safe for Tammany."^26

The House voted 277-120 in favor of the Gavagan bill, a predictable show of force from the Northern wing of the Democratic party. A few Southern dissenters such as Representative Maury Maverick of Texas also backed the bill. Maverick, professing his love for the South and support for local law enforcement, nonetheless spoke up for federal antilynching legislation because the bill would guarantee the constitutional rights of all Americans. Southern reaction to not just Maverick's speech but all of the pro-antilynching legislation speakers was angry and defensive. John McClellan (D-Ark) opposed an unconstitutional bill whose sole purpose was to embarrass the South, while John Rankin's (D-Miss) entire argument against the legislation boiled down to his fear that social equality between the races would ultimately result from passage of this and other Northern measures. In all, twenty-two Southern representatives voted for the Gavagan bill (counting West
Virginia, Missouri, and Kentucky, along with Tennessee and Texas). But of the twenty-two Southern votes, only three men from the former Confederacy supported the Gavagan bill. Even Arthur Mitchell put aside his differences with Gavagan and the NAACP long enough to speak out for the current measure.  

The Senate again stymied the antilynching effort. Even though the House Judiciary Committee reported the bill favorably to the Senate in June, key Southerners believed that it could be safely ignored, since it was not an Administration priority. By that time, FDR and his staff were worried about the bad publicity from the Court-packing plan. Other issues also consumed his attention. "We had first of all the court fight, and then we had the purge fight, and then we had the third-term fight, and then we had Hitler and the war," presidential advisor Thomas G. Corcoran later remembered. Gavagan lamented that Roosevelt's other concerns kept him from giving much attention to antilynching legislation. 

In fact, the Administration may have wanted to keep the Wagner-Van Nuys bill from coming to the Senate floor for a vote. As historian Nancy J. Weiss has written, "the old argument--that the President could not afford to alienate southern support by coming out for antilynching legislation--was never more true than in the court-packing fight, when Roosevelt would have to hold the southern wing
of his party in order to pass his highly controversial plan." And starting in 1937, Southern Democrats who attacked antilynching legislation not only now vented their anger against Roosevelt but against their Northern colleagues as well. The long-simmering split between the Northern and Southern ranks of the Democrats came over race, not economic policy or rural versus urban concerns. Even the old Civil War animosity between northern and southern members of the party had mostly disappeared by 1900, and in 1912 a southern Democrat was elected President. But FDR’s election and subsequent appeals to black voters in 1936 angered southerners who saw their power to set national policies diminish.29

Roosevelt then had more reason than before to placate antilynching advocates with gentle admonitions about his wife’s role as his representative on racial matters. Walter White and others sought direct recognition from the President rather than settling for an indirect message through Eleanor Roosevelt’s presence in meetings or Congressional galleries. But as Mrs. Roosevelt herself noted in her autobiography, she presented ideas to her husband on behalf of unpopular causes but she never pushed him into acting - as if she really could have done that anyway. She had learned that, because of his schedule, the way to reach the President was through short communications:
One of the lessons nearly all women need to learn is, that when we are dealing with busy people, no matter how interested we ourselves may be in a subject, we must put what we have to say in the briefest possible form. This is even more important if the person to whom we are talking is listening because of our interest, and not because of his own. We may be able to impart some of our enthusiasm to him if we do not first bore him to death and make him impatient because he is being asked to listen to too many words.

Roosevelt, the consummate politician, had other New Deal problems to solve. He had to deal with the recession that began in August, troubles with the nation's poorest farmers as well as farm production in general, and congressional antipathy to a plan to reorganize the executive branch. There was no doubt that Roosevelt would in fact find solutions to the above dilemmas. As his wife so shrewdly observed, mixed with her husband's desire to make life happier for people "was his liking for the mechanics of politics, for politics as a science and as a game which included understanding reactions of people and gambling on one's own judgment." Roosevelt recovered from a political blunder such as the Court-packing plan just as easily as he gained black voters each term without endorsing an antilynching bill.

While farm problems, the recession and other concerns dominated the White House and some Democrats, Wagner and Van Nuys continued to press for a successful resolution on their legislation. Ironically, they were assisted by the ascension of Alben Barkley of Kentucky as the new Senate
Majority Leader. Upon Joseph Robinson's death that summer Barkley could not obstruct the antilynching bill, since he was a novice compared to Wagner. Barkley had recently been honored at a "harmony" dinner which Senate Democrats held, but the accord was short-lived when the antilynching bill was raised. Barkley was unable to block non-Administration bills, like the antilynching bill, from coming up for consideration.  

Many senators wanted to bring the fractious session to a quick close, and escape the summer heat, but Wagner took advantage of Barkley's inexperience by attempting to slip the reform measure behind other proposals. Wagner then tried to take advantage of parliamentary protocol to secure his bill's passage. Wagner was able to bring the legislation to the Senate's attention by adroitly taking the floor when Barkley and William King of Utah missed their turn to take charge of business. Vice President Garner then recognized Wagner, who short circuited the Democrats' plan to escape without getting into yet another wrangle. This caused the Democrats to display even more disharmony. Anxious to leave the August heat, Wagner and his Southern colleagues spent a few days arguing over who could hold out the longest either for or against antilynching legislation. Each side wanted to control the session by either hurrying bills through before adjournment or promising a long floor fight to tie things up. Congress, previously called a
rubber stamp for FDR's proposals, was anything but that in August, partly because of Southern antipathy to the antilynching bill but also due to Roosevelt's ill-fated court packing bill.\textsuperscript{33}

While the Senate debated the Wagner-Van Nuys bill, lynchings went on in the South—following a different pattern than in 1934, when lynchings abated while the Costigan-Wagner bill was pending. In July, two black men were taken from a Tallahassee, Florida jail, where they were held for stabbing a policeman. A crowd shot them with no repercussions. A Covington, Tennessee man, Albert Gooden, met his death at the hands of a lynch mob the following month. The state unsuccessfully sought to prosecute the mob by offering a reward for the lynchers. Southerners remained unperturbed by the congressional proposal, as a grand jury later declined to bring charges in the Gooden murder. They evidently were not intimidated by possible federal action, for while mobs themselves were not outlawed the counties were still liable for the victim's death. Where only a few years before, a Southern mob stopped short of lynching a black man because the Costigan-Wagner bill was pending in Congress, the unlikelihood that antilynching legislation would be enacted by 1937 may have encouraged community sentiment to overrule law and order.\textsuperscript{34}

After futile attempts at discussions, Wagner and his southern colleagues agreed to a compromise. The session
finally ended, but the antilynching legislation would be first on the agenda for the next session. Alban Barkley proposed the resolution to make the Wagner-Van Nuys bill unfinished business, which received a two-thirds vote on August 12, while Charles McNary's (R-Ore) motion to recess carried 36-23. According to Crisis, the bill's supporters saw this step as a victory in that the bill's merits would be discussed in the next session. Many commentators predicted that the bill would finally succeed, naively believing that there were enough votes for passage and that its opponents saw the futility of fighting a bill destined for enactment.\footnote{35}

The New York Times reported that President Roosevelt finally appeared ready to give federal antilynching legislation his public approval in late August. That this possible pressure came after the end of Congress, when it would have no practical effect, is not surprising in light of Roosevelt's penchant for jumping on the bandwagon once a course of action he did not institute had succeeded. As Eleanor Roosevelt recognized, FDR was able to adapt to political changes: "I often wonder how it is possible to adjust oneself to so many different people and their interests in the course of a day, but after all that is one of the things every President must learn to do." He did not take a "mollycoddle" approach to the job, as one columnist wrote, but plunged into the office with relish. Yet he
alone determined which items were top priority, leaving non-
essential issues such as lynching to fend for themselves.36

Things were not quite finished yet in Congress for 1937. A special session convened that fall to deal with the late-year recession. Ever mindful of any opportunity to reintroduce their program, the antilynching forces again proposed their bill in November. Almost immediately after Wagner offered a motion to consider H. R. 1507, Southerners launched a brief filibuster to impede the bill’s progress. Senator Tom Connally led the obstructionist discourse. Josiah Bailey once again castigated the bill as unconstitutional, while Dixie Graves (D-Ala) and others raised their own objections.37

Some southern Senators seemed to believe that antilynching legislation was inevitable. Pat Harrison of Mississippi, at home during the fall, sounded hopeless when he intoned "There is no way to stop it [the antilynching bill], . . . [despite] its ‘complete usurpation of the police powers of the state.’ " Robert Zanrando opined that since Harrison seemingly foresaw the bill’s passage, his sense of political self-preservation motivated his supposed helplessness against a liberal Northern dominated Congress. Harrison shared the same political instinct as his long time friend Franklin Roosevelt, which led both men to accept an inevitable course of action and gain as much as possible for himself. This was a course of action both men followed
throughout the 1920s, when they demonstrated loyalty time and again to the losing party in national politics. This kept their names prominent, which served them well in the 1930s.\textsuperscript{38}

*Time* Magazine probably best expressed the contradictory impulse that seemed to motivate Southern Democrats torn between loyalty to party and section versus growing distaste for New Deal programs:

> Although Tom Connally is supposed to belong to the group of Southern Senators who would love to weaken Franklin Roosevelt’s Southern popularity by making him sign an anti-lynching bill, rarely is there a Southern Senator who does not feel bound to talk against the measure at length on the floor or who does not enjoy himself hugely doing so.\textsuperscript{39}

Their allegiance to the South, and more importantly its racial system, outweighed all countervailing considerations no matter how politically useful or economically profitable for the region. For some time, the Southern Democrats have had to take a back seat in their opinions to their Northern colleagues in terms of importance to the party. They felt their influence slipping away from them, and halting Roosevelt’s plans or making him look foolish would boost their pride if nothing else.

The antilynching campaign had had a definite impact on some congressmen. As Robert Zangrando noted, "Senator Byron (Pat) Harrison of Mississippi and Congressman Samuel McReynolds of Tennessee . . . declared that the momentum for the antilynching bill had reached such proportions that
southerners could no longer stem the tide; the measure would pass when the Senate reconvened." How much of this was their actual belief and how much merely dissimulation is hard to say; however long-standing politicians like Harrison and McKenner (D-Tn) would surely say whatever was necessary to safeguard their careers if indeed antilynching legislation had sufficient support in Washington. Yet leading Southerners had in fact come out in favor of the federal antilynching law during the year. Obviously, not everyone below the Mason-Dixon line condoned lynching.40

Virginius Dabney, one of the best respected editors in the region, took a very liberal position in his editorials in the Richmond Times-Dispatch. Dabney argued on February 2 that "This newspaper's primary objective is to put a stop to the seemingly endless series of mob murders which have disgraced the South and America before the world. That impresses us as far more important than the preservation of something generally referred to as "State sovereignty" or "States's rights." Dabney took a swipe at those politicians who cried states' rights when what the federal government proposes is inconvenient or disturbs the South's racist policies yet will look the other way when the federal government offers relief or jobs to starving people. He correctly pointed out that the Gavagan bill does not prosecute lynch mobs but only law officers who are negligent in protecting prisoners or capturing mobs. He conceded the
bill's questionable constitutional status, but argued that it was up to the Supreme Court to decide the law's constitutionality.41

Later in the year, in a November 27 article in The Nation, Dabney explained that "Dixie Rejects Lynching" because Southern legislators are 'out of touch' with their constituents. Dabney cited a recent poll that revealed fifty-seven per cent of the Southerners answering the question favored the "Wagner-Van Nuys-Gavagan" bill. Along with other optimistic spectators, Dabney speculated that the bill "almost sure[ly]" will pass Congress, that the old anti-Negro hysteria was no longer widely prevalent. Dabney unfortunately did not except Congress from his last observation, because Southerners in the Senate would prove him wrong shortly. While there were few rabidly racist comments during this latest debate on the bill, what Southerners did was in a sense worse--they argued as the Negro's friend (based in one case on a Congressman's having had a mammy) and against the bill because it was designed to merely attract colored voters. In addition to viewing blacks as dupes, they saw their Northern counterparts as amoral in proposing a law they secretly hope will not pass constitutional muster.42

Over the course of the year, there were eight lynchings including the Duck Hill atrocities. All of the victims were black, and they were all victims of Southern mobs. Beside
the double lynching in Mississippi, there was the second double lynching at Tallahassee, Florida in July. One of the state's newspapers, the St. Petersburg Times, noted "'An investigation into the lynching of two Negroes in Tallahassee got nowhere, just as everyone familiar with Florida justice, expected.'" 43

Florida topped the lynchings dishonors that year with three murders, followed by Mississippi with two, and one each in Alabama, Tennessee and Georgia. Author Frank Shay fumed

The total membership of all lynch mobs . . . was under five hundred; the number of peace officers unfaithful to their vows was but seven. This small number of criminals has put the lynching-curse on the rest of the one hundred and twenty-five million Americans and held us up to the contempt and scorn of all civilized peoples.44

By the end of 1937, there was the general sentiment that the Wagner-Van Nuys-Gavagan bill would pass. Jessie Daniel Ames and the ASWPL did not officially endorse the federal law but saw its inevitable success. Americans expressed their view in a Gallup poll in late 1937 that they overwhelmingly supported antilynching legislation.45

The black community was particularly incensed that the Senate failed to vote for antilynching legislation. The leading black journal, The Crisis, wrote in December that an antilynching bill would serve a greater purpose than just saving a few lives - "[t]he passage of the bill, if it does nothing else, will assist the Negro up another notch toward
the status of a full citizen of the republic." Since mob violence could affect any black person regardless of profession or economic standing, its removal as an obstacle to progress would be a major step for all Americans. In The Crisis's judgment, a national problem cried out for a national solution.46

Some commentators spoke of the most effective means of fighting lynching without addressing the issue of federal law. In a letter to the Crisis editor about the wisdom of publishing lynching pictures, David H. Pierce of the American Federation of Teachers not only agreed with the practice but believed "The best defense against a social wrong is a strong offense [and] to fight lynching, every available means of publicity must be employed." Incidentally, Mr. Pierce's philosophy fit perfectly with at least the NAACP's plan of promoting antilynching legislation, from the many pamphlets to the antilynching buttons to the letter writing campaign on behalf of the bill.47

Over the course of the year, black newspapers such as the Norfolk (Va.) Journal and Guide and Los Angeles Age discussed justice on the state level and Senatorial obstruction. The Journal and Guide reviled the Alabama courts for acquitting a sheriff from whom a young man was taken and lynched. Even though there was evidence that the sheriff had arrested the wrong man in addition to providing
the mob an opportunity to lynch the man, the paper called
the Supreme Court's action "fairly representative of all the
actions taken against all law officers that have permitted
lynchings to occur in their jurisdictions." It considered a
federal law an improvement over the present situation, in no
less frank terms than the Los Angeles Age's admonition to
Southern Senators that "[e]nlightened public opinion has
become set against such suspension of law enforcement."
Ordinary African-Americans tried to help. A black waiter
who worked in the Senate restaurant helped Wagner by
depositing in his office a long list of presidential
utterances against lynching and mob violence since the
1890s. Wagner may not have used the gentleman's
information, but it represented an investment of time and
energy. 48

As repeatedly promised the previous year, the Wagner-
Van Nuys-Gavagan antilynching bill was among the first
orders of business when the congressional session started in
January. But Southern and other senators began a lengthy
filibuster on the 6th. They would employ dilatory tactics
to bolster the debate, such as injecting non-bill related
topics into the discussion, in an effort to wear out their
opponents.

Wagner and others were confident that, filibuster or
not, their persistence would pay off. The last few months
of 1937 provided them with substantial assistance.
Roosevelt seemed to give his approval to the bill. The fact that the filibuster would last so long and produce such vehement outbursts by the bill's opponents, which Roosevelt would do nothing to curb, would mean that despite any private feelings he may have had in favor of the bill he could not risk losing Southern support at this point in 1938. By the fall, Roosevelt would commit the second major mistake of his presidency, his attempted purge of the Southern Democrats in the congressional elections. His motivation had nothing to do with opposition to this legislation. Rather he sought to counteract the Southern Democrats' growing rebelliousness on economic and political matters.49

Republican William Borah of Idaho joined leading Democrats James Byrnes of South Carolina, Theodore Bilbo of Mississippi, Tom Connally of Texas, and non Southerners like William King of Utah in the debate against the bill. All of them made long speeches over the course of the filibuster. Their arguments ranged from Bilbo’s fears of racial amalgamation, and Connally’s impassioned plea to save white superiority to Borah’s standard argument that the bill overstepped federal authority.50

Byrnes attacked Walter White and the NAACP. He counselled fellow Senators not to follow White's "orders" to pass the bill. Bynes was troubled that Barkley put aside FDR’s legislative plans for Wagner’s bill, to prevent
embarrassment to the administration. Byrnes concluded that if White's lobbying was successful in this instance, then he would press for further laws that eventually became the Civil Rights Acts of 1957, 1960 and 1964. The filibusterers blamed the President, Vice President, and Majority Leader Barkley for their part in keeping the legislation up for discussion. Roosevelt's role was minimal at best, as demonstrated by his State of the Nation address on January 3rd. He spoke primarily on the economy, with a few words on foreign policy, but proponents could take his words of general policy--not letting the people down, making improvements by remedial legislation, not going back on principles--to stand behind the antilynching fight coming up shortly. The Vice-President's duty was to introduce resolutions and memorials to the Senate. Barkley ordered night sessions in order to kill the filibuster, which proved amenable to the added sessions.  

Supporters of the Wagner-Van Nuys-Gavagan bill did not publicly express themselves. Even Wagner and Van Nuys were delinquent in coming to the bill's defense, although Wagner was ill during the first few weeks of the filibuster. Van Nuys briefly spoke on January 10, filling in temporarily while Wagner took a lunch break, and was subsequently silent. It took a while before a Democrat, Matthew Neely of West Virginia, spoke out in favor of the bill. He proudly claimed his Southern heritage as he answered various
objections to the antilynching bill. He vainly lobbied for cloture, so the Senate could eventually eliminate tragedies like Duck Hill. Other Democrats like William H. Smathers of New Jersey vainly tried to talk down Theodore Bilbo of Mississippi when the latter digressed from the antilynching bill to the subject of repatriating blacks back to Africa.  

Southerners were able to completely dominate the debate because Northern Democrats remained virtually silent. They did not want to draw out the debate, but did not believe it would degenerate into a philippic on blacks and Anglo-Saxon superiority. When they had the opportunity to interrupt, people like David Lewis could not move the debate closer to a conclusion. The Democrats who favored the bill were not nearly as well organized as the filibusterers, who spelled one another almost immediately upon an interruption. The bill’s supporters wasted several opportunities to end the debate, leading some commentators to wonder whether they really wanted to end the filibuster. They would then have to vote either to make their constituents happy, as Connally crowed in his biography, or vote their true feelings and possibly lose votes at home.  

Supporters believed that they could cut off debate by voting for cloture in late January. Past votes for cloture had succeeded, although on less contentious issues than lynching, so Wagner and Van Nuys were hopeful that they could move the Senate past the "fratricidal" debate. A
successful cloture petition requires a two-thirds vote, or sixty-four, which was not achieved on January 27th. Despite the fifty to thirty-seven in favor of cloture (with eight to nine absences or abstentions), Wagner remained positive. He told Barkley that he would "stand firmly for the passage of this measure, . . . so long as a majority of the Senators who likewise believe in it will stand with me." Yet many of his colleagues did not stand with him, including many non-Southerners. A leading Republican, Charles McNary of Oregon, justified his negative vote by declaring that "I am not willing to give up the right of free speech. . . . That right. . . . may be the last barrier to tyranny." Another man who voted against cloture, Hiram Johnson (D-Cal), claimed to favor the bill but would not stifle free speech. However, Wagner tried to shame him by recalling his four previous votes for cloture.54

While Wagner was still confident his measure would prevail, there was the usual silence from the White House about the latest antilynching bill. While the filibuster was raging, a reporter asked Roosevelt whether he favored the bill. He adroitly replied, "I should say there was enough discussion going on in the Senate." FDR would not publicly support this legislation, and the press that fall would characterize his nonchalance as "benevolent neutrality." Many blacks, including White House maid Lizzie McDuffie, tried to persuade the President to speak out on
behalf of the bill but to no avail. He was not predisposed to giving direct responses when he could get by with indirection.  

Blacks, angry that the White House seemed to sanction the filibuster, took to openly criticizing Roosevelt and Congress for entering "... a sort of gentlemen's agreement between the filibusterers and the supporters ..." The black press leveled several volleys against the folks in Washington, following the Senate filibuster closely as the "Dixie Solons" raised a variety of objections to the Wagner-Van Nuys-Gavagan bill. An Atlanta Daily World column, "Disquisition" by attorney Thomas H. Dent, called attention to Borah's clumsy attempt to nullify the bill by eliminating the heirs' compensation. An especially trenchant editorial in the Cleveland Call and Post observed that the Senate filibuster clearly demonstrated the weaknesses of the democratic system, because a minority of men are preventing a vote on a bill that would pass. The letter writers' certainty that a favorable vote would come if the filibuster ended seemed to be based more on sentiment and less on political realities. But to this paper and others, Tom Connally and company were nothing but "unregenerate rebels" whose real objection to the antilynching bill was the later progress that was sure to follow for blacks upon successful enactment of this bill.
Wagner and others did not give up after the January talkathon began. Wagner launched an exhaustive speech on February 3 in defense of the bill; in it, he chiefly addressed the bill’s constitutionality against Borah’s charges that the bill usurped authority from the states. Wagner stressed the fact that state inaction alone triggered federal intervention, so that prompt criminal prosecutions would obviate the law’s provision. But Louisiana Democrat John H. Overton was probably as unconvinced after the start of the new year as he was in November’s special sessions when he debated the wisdom of sections 3 and 5 of the bill, finding the wrong people are prosecuted and the bill "protects criminals." The New York Age praised Wagner for "point[ing] out that it was not up to the Senate to determine th[e] point [of the bill’s constitutionality], at the same time giving assurance that it was within the police powers of the federal government and the 14th amendment."57

During this time, Congress was besieged with memorials both for and against the antilynching bill. Several Southern states submitted petitions requesting Congress not pass the Wagner-Van Nuys-Gavagan bill, which invariably all commended their respective legislators for saving the South and her innocent people from the federal government’s invasion of states’ rights. The Southern Governors even wrote letters in support of their position, after responding to Kenneth McKeller’s "innocent" inquiry on both the success
of state governments in banning lynchings and their views on the proposed federal bill. Other states showed their support for the bill by petitioning Congress to enact it. New York requested the restoration of law and order along with various state Governors, as did private citizens who petitioned Congress under the banner of the American Society for Race Tolerance.58

The antilynching forces tried a second motion for cloture in February, which brought the same invective from Southern Democrats as before. In addition to the old arguments, Tom Connally and Richard Russell invoked the spectre of Communism as well as growing opposition to the antilynching bill in the North and East. The Communist party, while not a real component of the antilynching coalition that coalesced in the New Deal years, did provide assistance to blacks in the Scottsboro cases and provided a tangible alternative to working class southern blacks. The argument that Northern and Eastern opposition to antilynching legislation was on the upswing was based on the growing public frustration with Congress ignoring recovery for a bill that would probably help few people. The Southern Democratic and/or Western Republican opponents also stressed the fact the filibuster took time and energy away from President Roosevelt's program for the country. In essence, the bill's sponsors were being unpatriotic in
pushing their bill while the country still faced serious problems.\textsuperscript{59}

The filibuster served as a huge propaganda device to keep race relations in the hands of Southern demagogues, by hysterically turning "... the debate into a paean to the fair name of Southern womanhood and an attack on the President and the New Deal's aid to blacks." The final vote against cloture was forty-four to forty-five, with predictable results in terms of regional loyalty and political allegiance. Support for cloture went down, only four votes, in a few short weeks, probably because noninterested constituents expressed displeasure at Congressional neglect toward more pressing issues. Southern Democrats voted against cloture along with key Republicans like George Norris of Nebraska and Oregon's Charles McNary, who declared that Republicans, as the minority in the Senate, could not favor cloture. Both opponents and proponents of the bill seemed to play to their constituents, voting for the most popular stand in New York or Alabama. Wagner's cloture petition had the support of several Democrats, from obvious advocates like Frederick Van Nuys and Progressive Senator Robert LaFollette Jr. of Wisconsin to unlikely friends Harry Truman and William Dieterich. It is important to remember, however, that a vote for cloture was not necessarily a vote for the bill, as Alben Barkley so
frequently pointed out in the waning days of the filibuster.60

The White House was customarily silent during this latest debate in the Senate, which partially prompted an exchange between Majority Leader Barkley and Republican McNary. In pleading for a successful cloture vote from the Republicans, Barkley read from the party’s 1924 and 1928 platforms which called for antilynching legislation, in an effort to shame them into upholding their former pledge to Negroes.

Barkley wanted to end the debate so Congress could get on with other legislation, not because he favored antilynching legislation. He was, after all, Majority Leader, and he wanted to move things along. McNary soon suggested that a little assistance from the White House would have helped the bill become law, which infuriated Barkley into making the following statement: "The Senator from Oregon is trying to play a little cheap politics by pretending that the White House could control this proposition; and yet, if the White House attempted to do so, the Senator from Oregon would be the first Member of the Senate to denounce White House dictation in behalf of a measure that is not a partisan measure." The sparring did not end, as McNary’s comment that he might have followed FDR’s lead on the antilynching bill if Roosevelt had been courageous brought a response from Barkley. He told McNary
that the latter's courage was sufficient to vote for this  
measure.  

Whatever the source of McNary's hesitation in voting  
for the bill, his stated reasons for voting against cloture  
revolved around the idea of free speech. The many other  
Republicans who voted against cloture were guided by "...  
political expediency rather than devotion to high principle,  
and... they were out to cut short the Democratic party's  
growing allure to Negro voters by blaming the overwhelmingly  
Democratic Seventy-fifth Congress with failure to enact  
antilynching legislation." Republican logic may have been  
faulty, but they believed that if they could point to the  
lack of Democratic unity over the antilynching bill, they  
could perhaps pick up disenchanted Negro Democrats. What  
they missed was the very same point that Barkley made when  
he argued for cloture, that the Republicans betrayed their  
recent promises for antilynching legislation by voting  
against cloture along with Southern Democrats.  

Senator George Norris of Nebraska was most concerned  
with the thought of reliving Reconstruction and all its  
racial hatreds, while expressing his personal dislike of mob  
violence. While he at one time previously favored an  
antilynching bill, according to biographer Richard Lowitt,  
Norris believed by 1938 that the South had practically  
eliminated lynching, and to pass a bill aimed primarily at  
that region would be a move in the wrong direction.
The public's impatience with Congress, for getting bogged down with a seemingly endless filibuster while more important concerns lay on the table, also worked against Wagner and the bill's supporters. Editorials such as the one in the Washington Post opined that the debate itself was sufficient to quell lynchings, without resort to the "ill-advised" bill that the Senate considered. Among other things, the editor labelled the antilynching bill an "expedient scheme," and a "threat to local autonomy." The St. Louis Post-Dispatch, while not hostile to the bill's goals, did give credence to critics' charges that it was mostly a vote getting measure among black constituents. But at least one letter to the editor, from William C. Lee of Washington, D.C., favored the antilynching efforts of Wagner, Van Nuys and others, when he called obstructing Senators accessories to lynching.64

Southerners blocked Wagner's efforts to table discussion of the bill until a later time. Southerners used this and the bad publicity to make the antilynching supporters the villains in the filibuster. Connally and company must have been extremely pleased when progressives like George Norris called on Wagner and others to drop the bill, when he stated "Perhaps this is not the time ... to open wounds that may not heal."65

Once the Senate had moved on to other matters on February 21st, Wagner tried one last attempt to, if not save
the antilynching bill outright, at least postpone debate until the following month. As the bill’s supporters caved in to pressure to move on to more important pieces of legislation, such as the emergency appropriation to help the country out of the 1937 "Roosevelt recession," Wagner thought he had struck a bargain with Barkley to reconsider the bill March 28th. But Barkley himself seems to have shelved the idea himself back in February.  

The Wagner-Van Nuys-Gavagan bill was all but dead by April 1938, but there were a few benefits that came out of the fight, such as the increased attention brought to lynching. At least one man’s life was actually saved by the Senate debate, when an Alabama planter talked a mob out of lynching a black man accused of assault by reminding them that their action would hurt their Congressmen during the filibuster. According to Walter White, the debate in Washington was responsible for averting other lynchings, while blacks also prevented lynchings from occurring, as when a group of over three thousand people surrounded the Coatesville, Pennsylvania jail (the site of a gruesome 1911 lynching) to protect an innocent man.  

Weeks after the filibuster ended, President Roosevelt finally spoke publicly about lynching. He suggested in a March 22 news conference his agreement with possible Department of Justice investigations of lynchings. Roosevelt’s idea would rely on public opinion in following
up reports on lynching with calls to prosecute lynchers. Since the Justice Department would be involved, Attorney General Cummings' reluctance to act without legal direction would necessitate passage of a law.®®

Blacks greeted Roosevelt's suggestion with skepticism, if Crisis' May editorial is any indication. It noted that the Attorney General had not commented on the March 22 suggestion, and Congress had not attempted to draft any legislation in line with the proposal. While it wondered "Did the President mean what he said on March 22, or was he trying to hold the Negro voters in the North in line for the fall elections?", Roosevelt held a meeting with several black spokesmen and women April 12 about antilynching legislation. He encouraged them to continue fighting for the measure, implying that he would give no more assistance than in the filibuster. He excused his recent inaction by explaining that any endorsement would have helped Southerners in their race baiting tactics that fall.®®

At least one Congressman sought to implement the President's idea on federal investigations. Louis Ludlow of Indiana suggested both a study of lynching and legislation against it to Attorney General Cummings. Ludlow believed that the Justice Department was capable of overseeing the apprehension and prosecution of members of lynch mobs the same way that it pursued kidnappers. While there seemed to be sufficient support in Congress to force Cummings at least
to consider the proposal, it was unlikely that he would not advocate a course so strikingly in contrast to his response during the Claude Neal lynching in 1934.  

Indeed, in August Cummings told Ludlow that despite his own views on lynching, Congress bore primary responsibility for its eradication. Nonetheless, Ludlow’s proposal was forwarded to the Justice Department, which reiterated Cummings’ position that it was not the right body for this project. The Department added that criminal statutes already on the books covered the problem, without saying how or when those statutes had been used to actually combat the problem.  

But, as all knew, lynchings continued in the late 1930s, albeit at a slower rate, despite the existence of various criminal statutes. While the threat of a federal antilynching law encouraged some local sheriffs to resist lynching deaths in their communities, it nonetheless did not totally prevent them from occurring. There were a total of six lynchings in 1938, and an undetermined number of near lynchings.  

There were continued protests in 1938. The National Negro Congress orchestrated protests on behalf of the Wagner-Van Nuys bill across the country, and tried to overwhelm Congress with large numbers of antilynching legislation supporters. Congressmen were busy that fall working on a new bill for the next antilynching bill, along
with NAACP input. In fact, the organization anxiously awaited the coming year and made an unfounded projection of likely success for the new bill. Since written pledges of support often evaporate in the course of congressional politics, The Crisis would have been wise to refrain from raising expectations needlessly with its tally of votes before the January session.
CHAPTER VIII
1939 TO THE PRESENT

As the New Deal wound down, the fight for antilynching legislation did not end. People rallied on behalf of these laws, and eventually there was official sanction for those laws after the 1930s. The Democrats and Republicans listed antilynching planks among their many reforms in the 1940s and 1950s. In 1968, the Civil Rights Act which Congress enacted contained an anti-violence provision against civil rights workers and activists, which is the closest to an antilynching law Congress would ever pass.¹

At the end of the 1930s, the antilynching crusade no longer commanded the same attention it once did. The coming war with Hitler became America's major preoccupation, but antilynching advocates in 1939 prepared to launch a new campaign for their legislation. Joseph Gavagan reintroduced his bill soon after the start of the new Congress on January 3, 1939, while Senate sponsors Wagner and Van Nuys gave their assistance in the upper house. Along with Gavagan's bill, Representative Louis Ludlow and others submitted proposals that ultimately made no headway in the session.²
A noteworthy aspect of Ludlow’s proposal was the prohibition of the use of telephones, telegraphs, radios, or the mails to facilitate lynchings by soliciting mob members through such means. Ludlow sought to avert the kind of spectacle that took place during the 1934 Neal lynching when word spread several days before the event, across state lines. With this new provision, the federal authorities like the FBI would have the clear authority to intervene which it claimed it lacked in the past.\(^3\)

Frank Murphy, former Governor of Michigan, replaced Homer Cummings as Attorney General in February 1939, a hopeful sign to antilynching advocates. They now believed that the Justice Department would finally act against lynching. Murphy announced early in his term that the Department of Justice (through the federal attorneys) would investigate every lynching for possible federal law violation, but most investigations only resulted in findings that local or state authorities had jurisdiction over the acts in question. That year, the Department gained a new Civil Liberties Unit in its Criminal Division. The new unit would later become known as the Civil Rights Section, and eventually the Civil Rights Division. In 1939, it was empowered to follow up on civil rights violations based on federal law, and prosecute all such violations that occurred. Meanwhile, the second session of the 76th
Congress ended on November 3, 1939 without a resolution on this issue.4

Antilynching bills languished with the Senate Judiciary Committee until January 1940, when H.R. 801 (the Gavagan bill) came up for a vote. Pressure from the NAACP and interested Congressmen resulted in House Resolution 103, which made Representative Gavagan's bill the order of business before the chamber. Once the Gavagan bill came to the floor, the House voted 252 to 131 in favor of the bill, with predictable margins coming from Northern Democrats. Men and women like Louis Ludlow (Ind.), Arthur Mitchell (IL), William Sutphin (N.J.), Caroline O'Day (N.Y.), Robert Crosser (OH) and William Connery (MA) all supported the bill, with help from Republicans like Everett Dirkson (IL).5

The bill reached the Senate on January 11, 1940. The Senate Judiciary Committee subsequently conducted its customary hearings with the usual witnesses pro and con. Walter White testified that the Senate must pass the present bill for democracy to survive in this country amid totalitarian world governments; he did not want the United States to look ridiculous by not passing a law that would ensure an end to lynching (something White assured the committee was the first thing a group of emigré scientists told him they had heard about America). Tom Connally, perennial foe of antilynching legislation, tried to force White to admit that the law overreached in its efforts to
abolish lynching, and would adversely affect states in their ability to prevent or punish murders. But White quickly defused the Senator's hostile questions by focusing on his own near lynching in the Senator's state of Texas in 1939.⁶

Supporters Wagner and Republican colleague Alexander Wiley of Wisconsin sought to emphasize the fact that Southern whites feared the proposed law because it allegedly interfered with the states' prerogative to prosecute murderers. They made sure to discuss the fact that states' rights was also at issue, and that the federal protection of the bill would only take effect once the state denied a person due process.⁷

The Senate Judiciary Committee voted for the bill in April, but the full Senate did not follow the Committee's written recommendation. Cosponsors Wagner, Democrat Matthew Neely (WVa) and Republican Arthur Capper (Ks) tried to advance the bill by going on a national radio broadcast on April 29th. Walter White also participated in the NBC airing, which was listed as an NAACP program.⁸

In addition to the radio broadcast that April, Senate Majority Leader Barkley was quoted that summer as holding the opinion the antilynching bill would come to a vote before Congress adjourned. But he soon backed away from this pledge, however, even going so far as to deny a story in September in which he said the bill was "a dead horse" because of a deal between the two parties to keep it out of
the fall campaign. Arthur Vandenberg (R-Mi) noted that the Senate could have broken a southern filibuster with round the clock sessions but no one was willing to risk their career on such a controversial measure, even him. Just why this action would have been controversial is easy to understand, since civil rights was still such a progressive stand which called into question all of the racist assumptions prevalent throughout America.9

Roosevelt ran for an unprecedented third term in 1940, as the third session of Congress lasted from January 3, 1940 to January 1941. Roosevelt, preoccupied with his third term run and with war clouds over Asia and Europe, did not express any views on the pending bill, unlike his wife who spoke out the previous year on behalf of the bill. Roosevelt was not spared denunciation for his silence, especially in view of his opinion on the brutality Germany and Japan perpetrated in their quests for world power. The Democrats pledged in 1940 to "fight for Americans' right to security in their homes" and ensure that Americans could live together in "peace, security and freedom," which must have insulted blacks because the Democrats refused to pass antilynching legislation in the 1930s.10

The Republican platform moved beyond platitudes, declaring that "Mob violence shocks the conscience of the nation and legislation to curb this evil should be enacted." Since they were out of power, their statement is more self-
serving than honest since important Republican Senators had voted against antilynching legislation over the previous few years. Still, Wendell Willkie told a black audience in Chicago on September 13 that federal law must eradicate lynching, which drew a sharp response from *The Crisis*. It believed the only way to end lynchings involves Southern blacks getting to vote, to "unelect" officials who tolerate mob violence; blacks everywhere need to band together to press for federal antilynching legislation. Black voters may have appreciated the Republicans’ belated recognition of their concerns, but they continued to vote for Roosevelt.\(^{11}\)

Harry Hopkins, one of Roosevelt’s most vociferous defenders, acknowledged that Roosevelt was moving as fast as he could in this area. Hopkins and others in Roosevelt’s cabinet provided their boss with excuses to explain away his hesitation to endorse antilynching legislation out of loyalty as well as the honest belief that Roosevelt acted in the best interest of all Americans.\(^{12}\)

Since the public appeared to be less interested in antilynching legislation, the federal government was likewise less inclined to act against mob violence even though individual congressmen introduced legislation throughout the early 1940s. Gavagan, Arthur Mitchell, Louis Ludlow and others did not let the lynching issue die despite the decreased incidence of lynching. Regardless of their
motives here, they pressed antilynching legislation before their colleagues once World War II began.¹³

During the early 1940s, the number of lynchings remained relatively low--5 in 1940, 4 in 1941, 6 in 1942, 3 in 1943--yet advocates continued to call for federal protection. When Cleo Wright was lynched in Sikeston, Missouri on January 25, 1942, the federal government had a perfect opportunity to intervene through the new Civil Rights section in the Justice Department's Criminal Division.¹⁴

The state and federal governments both sought to bring the lynchers to justice, but in both instances the juries failed to indict or prosecute their fellow Missourians for punishing an alleged rapist. The federal investigation was particularly significant, for "the FBI inquiry into a lynching on behalf of state authorities set a precedent, though [Governor] Donnell and [U.S. Attorney General Francis] Biddle protected state rights and federal authority." The timing of Wright's lynching, a little more than a month after Pearl Harbor, made the results of the investigation important. The United States had just gone to war with three totalitarian governments, but could not control local mobs and compliant state authorities.¹⁵

As 1942 progressed, the National Negro Congress and the National Emergency Committee to Stop Lynchings sponsored a rally for that fall. It sought assistance from the
President and Adam Clayton Powell, Jr. to do what they could. Roosevelt was especially urged to use his power to stop terrorism in Mississippi. The Wright murder was followed by several more that year in Mississippi and Texas, prompting renewed Justice Department efforts to prosecute the guilty parties.\(^{16}\)

The Department of Justice tried to use old Reconstruction statutes in the Wright case, once the state proceedings went nowhere. Title 18, U.S. Code Sections 51 and 52, called for penalties ranging from ten years in prison, fines of five thousand dollars, and ineligibility for federal office to one year in prison and one thousand dollars in fines. The Attorney General and federal attorneys failed to impress local juries with the violation of these laws, prompting editorials and others to renew calls for a federal antilynching law. Critics like the St. Louis \textit{Post-Dispatch} called the federal jury's act of calling for a federal antilynching law, while looking for the Governor to protect states' rights, an "unusual step," and the July 31 editorial called for federal law to ensure "sure and swift Federal punishment." The Pittsburgh \textit{Courier} sarcastically compared the events in Washington, D.C. that summer, when a federal circuit court convened to deal with German POWs, with the President and Congress, which could not pass an antilynching law.\(^{17}\)
From 1943 to 1945, the number of lynchings dwindled down to one, probably due to both concentrated efforts to win the war and blacks' increased voter participation. The Republicans specifically called for an antilynching law in their 1944 platform, but the Democrats merely urged Congress to protect minorities in their constitutional rights. The party did recommend, however, that Congress pass the Equal Rights Amendment, evidencing more interest in women's rights than in civil rights. Women were voting in greater number than blacks, so their importance as a constituency warranted inclusion of their interests.  

Things may have quieted down during the war, but during the postwar period the number of lynchings rose for a variety of reasons. The primary reason, however, would be the collision of blacks' wartime expectations and whites' stout defense of the status quo, as was the case after World War I. Now, as then, black veterans were attacked while in uniform, a blatant sign of disrespect intended to deter blacks from pursuing their civil rights. Congressman David Lane Powers (R-NJ) proposed H.R. 1689 on January 24, 1945 specifically to protect black veterans from lynching. Men like Governor Millard Coldwell of Florida made Powers' mission even harder, since Coldwell condoned the lynching of Jesse Payne, whom a mob took from jail and shot to death. Coldwell was more concerned about sparing the alleged rape victim further (and worse, in his view) injury by giving
testimony in open court rather than urging law and order be allowed to proceed.¹⁹

There was an especially heinous lynching with four victims on July 25, 1946. A black war veteran, George Dorsey, his wife Mae and another couple, Roger and Dorothy Malcom (who were expecting a baby in two months), were led from a small town in Georgia to a large field. A group of men shot them down in cold blood. Malcom had been arrested for wounding a white farmer, and it was this charge that led to their deaths. A 10 year old boy who witnessed the event with a friend informed the sheriff of the mob’s action, but was told to forget what he had seen. He did that for 46 years until he spoke out on national television in 1992, in an attempt to assuage his conscience about the lynchings. No one was ever prosecuted for the murders, and this man’s statement came too late because several of the principal actors had since died.²⁰

President Truman became interested in the murders, ordering the FBI to investigate. The Bureau’s efforts went unrewarded, and other lynchings in Louisiana and Texas led to renewed calls for antilynching legislation. Robert Wagner promised to sponsor a new law, and the Saturday Evening Post’s August 24, 1946 issue called for federal measures because of the postwar violence.²¹

Assistant Attorney General Theron Lamar Caudle urged federal law against lynchers in an address to the North
Carolina Bar Association in August 1946. Other prominent Americans spoke out against lynching, including Detroit Mayor Edward J. Jeffries, who urged President Truman to condemn racist violence taking place around the nation. A black veteran's brutal blinding and assault in South Carolina that summer so incensed Truman that the event and the subsequent meeting with Walter White and other antilynching advocates led to Truman's decision to issue Executive Order 9808 on December 5, 1946. It established a Presidential Commission on Civil Rights, composed of leading citizens from various fields. It received information on lynchings as they occurred, like the Willie Earle lynching on February 21, 1947 in Greenville, South Carolina. The Committee also received letters that attacked lynching and advocated a federal law prosecuting lynchers.22

FBI Director J. Edgar Hoover and Attorney General Tom Clark both testified in the spring of 1947 before the Commission about the need for a federal antilynching law, with Hoover preferring a narrow law which prosecuted everyone involved. He thought private citizens as well as public officials should be prosecuted, but wanted to restrict the law's coverage to accused criminals in custody. Clark likewise approved of wider application to individual citizens, something Robert Zangrando claimed "attested alike to the expansion of federal powers in the New Deal-Fair Deal
years and to the NAACP's success in making lynching an issue of national concern."23

Congressman Earl Michener (R-Mi) was House Judiciary Committee Chairman, and as such wielded considerable power over which bills reported out to the entire House, just as his predecessor Hatton Sumners controlled the fate of antilynching legislation during the previous decade. Michener stated in personal letters that he did not believe in expending energy on a bill he deemed incapable of passage, despite the enormous amount of support the proposal had among various congressmen like Emanuel Celler and John Blotnik. Robert Taft (R-Oh) was also of the opinion that antilynching legislation, which he actually favored, along with other federal laws could not end injustice: "It is just about as difficult to prevent discrimination against negroes as it is to prevent discrimination against Republicans . . . "24

The Commission published its recommendations in December 1947, in a report entitled To Secure These Rights. President Truman gave a special message to Congress in February 1948, emphasizing the report's reforms including federal antilynching legislation. All during Truman's tenure as President, he argued on behalf of civil rights, not just out of political expedience but also out of personal growth on the issue.25
Several congressmen introduced antilynching bills in the late 1940s, including Representative Clifford Case (R-NJ), Robert Wagner and Senator Wayne Morse (R-Ore). Before the 80th Congress ended in December 1948, nineteen antilynching bills had been submitted for enactment. Subcommittee hearings on the different bills took place in the Winter of 1948. Both the House and the Senate held hearings on the antilynching bills that winter. NAACP spokesmen along with several Representatives testified in favor of the legislation at the House hearings, with Rep. Sam Hobbs (D-Ala) opposed to antilynching legislation. Hobbs claimed that lynchings would only increase, and proffered that blacks were treated fairly in Southern courts. Meanwhile, in the Senate hearings John Stennis (D-Miss) devoted his remarks to a defense of the South, which did not want or need outside interference to take care of a problem that has practically disappeared (only one lynching for 1947). Once the House hearings ended, the subcommittee was anxious to have the full Judiciary Committee vote on the bill immediately.\(^{25}\)

During the 1948 election, one party that obviously failed to endorse antilynching legislation was the States' Rights party, with South Carolina Governor J. Strom Thurmond and Governor Fielding L. Wright of Mississippi as its candidates. The other new party that year, the Progressive Party, produced a liberal platform that included a pledge
for an antilynching law. Candidate Henry Wallace urged passage back in February of the Wagner-Morse-Case bill, when he wired Senator Homer Ferguson in support of the measure. The Communists considered lynching one of the election's chief issues, and called on progressives to battle lynching. The Communists did not, however, endorse antilynching legislation, which is a curious lapse of conviction from its 1940 platform endorsement of the Wagner-Van Nuys-Gavagan bill. Since there was no platform in 1944, the weak reference to lynching in 1948 should be considered significant especially in light of the growing anti-Communist hysteria since the war's end. Coming under attack on all fronts, the Communist party's antilynching stand only made the party more of an anathema especially to Southerners.  

The Democrats did not succumb to Walter White's pleas for inclusion of civil rights in their platform, but with Truman's strong stance earlier in the year, the party was in no real danger of losing its black support. The Republicans on the other hand maintained their recent characteristically progressive platform which contained an endorsement for antilynching legislation. Various Republicans had proposed many such laws but there was still the widespread perception that the party was less concerned about blacks and civil rights than their opponents. 

The lynching rate during the Truman years steadily decreased to the point there were years in which no lynchings took place. From six in 1946 to zero in 1952, it appeared that there was no more need for a federal law against mob violence. Indeed, the Justice Department had instituted suits, albeit usually unsuccessfully, under several underused statutes that required proof of conspiracy. Sections 241 and 242 served as the basis for prosecution of alleged inaction by sheriffs and other local law enforcement officers, something that would force them to do their jobs.  

Despite the above facts, some members of the black press predicted imminent passage of a federal antilynching law, based on the Democrats’ victory in November and President Truman’s stand in favor of civil rights. One of the problems that previously stymied antilynching proponents, cloture, would still pose an insurmountable obstacle in the Senate due to a slight change in procedure in 1949.  

Wagner was once again party to new antilynching legislation, co-sponsored by Hubert Humphrey (D-Minn) and Wayne Morse. They introduced their bill on March 25, 1949, while the following month Representative Brooks Hays (D-Ark) and the White House submitted proposals on the same topic. All of these measures were weakened versions of the New Deal
bills, as these latest ones eliminated county liability and required proof of conspiracy between mob members.32

When Dwight Eisenhower became president in January 1953, the government's interest in civil rights in general and antilynching legislation in particular was practically non-existent. The new president and his administration were more concerned about international affairs throughout the decade, starting with the Korean War down to the Cuban Revolution and planned invasion of the island. Domestic matters which touched on or related to international problems also took much of the administration's time, like the McCarthy campaign against internal Communist spies. Our space program, launched in 1957, was directly due to the Russians' prior advances into outer space. Yet civil rights intruded on the national conscience, primarily due to the momentous Supreme Court case which overturned school segregation.

Brown v. Board of Education was decided May 12, 1954, and blacks and a few liberal whites greeted the ruling with jubilation and trepidation. The unanimous decision was brief, in order to present a united front to the South. The South as expected did not quietly accept the opinion, and by the Little Rock confrontation in 1957 resistance had erupted across the region. During the first few years of the Administration there were no lynchings but one spectacular
murder in 1955 focused national attention on a small Mississippi town.\textsuperscript{32}

The Emmitt Till lynching on August 25, 1955 tragically resulted in civil rights advances later in the decade, but his death only highlighted the inadequacies of the Southern legal system. Till, a fourteen-year-old black from Chicago, visited relatives down South. One evening, he was with teenage relatives and friends when he broke Southern etiquette by whistling at a white woman. Furthermore, he jokingly grabbed the woman and allegedly tried to kiss her with her relatives nearby. This soon incurred the wrath of the woman’s husband and brother-in-law, who masterminded Till’s abduction and murder later that night. Till’s body was soon found in the Tallahatchie River, weighted down with a large tire. His open casket funeral in Chicago was a media event, as was the trial of his alleged murderers, with both black and white newspapers and magazines criticizing the breakdown of justice in Mississippi. The case made international headlines which held the United States up to ridicule for its hypocrisy in not practicing democracy at home while attacking countries like France for their overseas treatment of colonial subjects.\textsuperscript{33}

There were no convictions in the Till case, and the Administration was similarly quiet. E. Frederic Morrow, a black man who was Administrative Officer for Special Projects with the White House, recalled in his memoirs his
unsuccessful attempts to involve the Administration in efforts to quell the rising racial tension in the aftermath of the Till lynching, and realization that the President did not want to alienate Southern Congressmen. Yet Congress passed the Civil Rights Act of 1957 only two years later, and Eisenhower signed it into law that September. It offered some protection to individuals trying to exercise their constitutional right to vote. The first national civil rights law in over eighty years, it did not specifically prevent lynchings nor was that its intention. More than a concern over voting rights motivated the bill's sponsors, however, for while Representative Emanuel Celler's civil rights proposal contemplated a greater opportunity for the federal government to protect Southern blacks' rights, the White House and members of Eisenhower's Cabinet sought to steal some of the Democrats' thunder with an administration proposal. Also, the 1950s was a time of escalating international competition between the United States and the Soviet Union over influence in Asia and Africa. Any acts which embarrassed the United States were popular in the Soviet press, so this and other civil rights measures which corrected racial injustices must also be seen in this context. There were valid national concerns reflected in this law as well, especially since the Supreme Court led the way in dismantling racial discrimination in the schools. The
new law provided for federal protection of voting rights, giving the government jurisdiction to bring injunctions for voting violations. It also created the Civil Rights Commission, a federal watchdog to gather facts and expose discrimination against blacks. Both of these features had been weakened in the final bill. Compromise led by Senate Majority Leader Lyndon Johnson (D-Tx) and Southern intransigence to civil rights were responsible for the gutted law. Eisenhower's "weak leadership" was in evidence on this matter when he claimed no knowledge of the Act at a mid-summer news conference, allowing opponents to argue that the bill was so complex the President could not understand it. Frederic Morrow was against the law because it was so weak, and was shocked the NAACP would work with Senators Lyndon Johnson, James Eastland (D-Miss) and Richard Russell (D-Ga). At least Congress took the initiative in addressing a serious problem even though it did not tackle the question of lynching, which admittedly became less pressing during the 1950s.36

Despite the Till murder, lynching was not a serious matter. Yet Senator Paul Douglas (D-Ill) urged his colleagues to vote for popularly endorsed federal antilynching legislation. It, lynching, was a sporadic occurrence that was nonetheless troubling when it happened. In 1957 a white man was lynched and Charlie Mack Parker, a black man, was lynched in 1959 for raping a pregnant white
woman. His chance of obtaining a fair trial in southwestern Mississippi from a judge who was a member of the White Citizen's Council was negligible. Parker was abducted from the Poplarville jail before the trial because whites did not want to chance Parker's going free on appeal. This was a real possibility, since the United States Fifth Circuit Court of Appeals had recently reversed Robert Lee Goldsby's conviction for murdering a white woman in the same state.\(^37\)

The Parker case reminded citizens of Goldsby, which they were determined to prevent even it meant a lynching:

Disenfranchisement . . . meant exclusion from the jury system as well. As a result--an intended result--white juries tried black criminals. Then came the Goldsby decision, which overturned the conviction of a black man because his trial jury had not included blacks. The Goldsby decision underscored the fact that the white South had crippled its own court system by rendering it incompetent to try black criminals. Unfortunately, the only alternative in many white minds was lynch law.\(^38\)

The lynching took place amid a growing atmosphere of editorial tirades and rumors of Parker's impending lynching on April 24, 1959. As usual, there were no subsequent prosecutions despite an FBI investigation, extensive media coverage, and labor unions' petition to the government "to use all the powers of the government to investigate vigorously" the Parker case. A new Civil Rights Act in 1960 was also primarily concerned with voting rights across the South. Yet the bill was a response to the Parker lynching, according to Senate sponsor Paul Douglas (D-Ill), even
though it dealt primarily with voting rights and not the violence occurring across the region. Senate Minority Leader Everett Dirkson (R-Ill) worked with Lyndon Johnson in bringing a civil rights bill to the floor and guiding its passage. The new law, signed May 6, 1960, contained a provision regarding FBI authority over bombings, but no antilynching provision or anything that can be considered an intrusion into local law enforcement.39

The lynchings that now periodically occurred resulted almost directly from the growing civil rights movement. Whites threatened by the disintegration of the old caste system of black inferiority reacted in one of the few ways that they believed was available to them. While there was still no antilynching law on the books, people were not immune from federal prosecution. Particularly in the 1960s, when blacks made substantial progress in expanding their rights under the 1964 Civil Rights Act, old Reconstruction laws were again used to bring lynchers to justice but with greater success.40

The lynching rate in fact increased during the 1960s because of all the demonstrations and unrest erupting everywhere across the country. One of the most horrendous events to take place during the civil rights movement was the lynching of Schwerner, Cheney and Goodman during the summer of 1964. Their deaths and those of many others in the civil rights movement shocked the nation and focused
attention on the violence. Over the course of the 1960s, the violence continued until a few federal (and state) judges and some courageous state leaders moved to stop the violence through judicial enforcement of the law and decisive action to bring murderers to justice.41

Lynching did not entirely disappear after the 1960s. A few recent events have been labelled lynchings, which led to a monetary judgment to the victim’s family or conviction for the perpetrators. The Ku Klux Klan lynched a young black man in Alabama in 1981 while a group of whites in Bensonhurst, Queens chased a young man into traffic leading to his death in 1989 respectively. These attacks, condemned in most quarters and drawing a good deal of publicity, yet demonstrate the William Graham Sumner truism that law can’t change folkways, or "ways of thinking or acting adopted unreflectively by the members of a group as part of their shared culture." But what the law can change is the larger community’s response to the violent and illegal manner in which groups like the Klan or a gang in Queens act as mob to vent their frustrations on blameless citizens.42
CHAPTER IX
CONCLUSION

There will always be people willing to disobey the law, or there would be no need for lawyers, courts and prisons. The tremendous efforts of countless men and women during the New Deal, as well as before and after that epoch-making period, to enact federal antilynching legislation were unsuccessful; but, would such a law have made a difference for the victims of mob action? Historians do not like to answer such questions because they would merely lead to speculation. There are, however, indications based on state antilynching laws and the Prohibition laws that a "Costigan-Wagner Anti-Lynching Act" would probably not by itself have stemmed lynchings.

The state laws passed in the 1890s did not lead to the elimination of lynching wherever they appeared, and the fact new antilynching laws were enacted after World War I adds more weight to the argument that the earlier statutes were largely ineffective. Studies since the 1920s have demonstrated that Prohibition was not a total failure, leading to changes in drinking habits for some Americans. But the rampant violations of the Eighteenth Amendment and
the Volstead Act illustrated Americans' willingness to ignore restrictions on the manufacture, distribution and sale of alcohol. It must be said that most Americans did not condone the violence that accompanied much of the illegal alcohol trade but cheered on law enforcement officials who performed their duty.

With lynching, however, while a growing number of Americans protested against mob violence, there was enough support in various communities to sustain the practice in the face of mounting opposition. In opinion polls in the late 1930s, a majority of Americans favored some kind of federal antilynching proposal. In light of the New Deal advances for economic and social reform, is it surprising that antilynching legislation had such a hard time in Congress? Looking back on the progress in areas like economic regulation, rural electrification and housing, Roosevelt was concerned with getting the 'common man' back on his feet with his experiments for the country. In all of the New Deal programs, the focus is on large segments of society--farmers, business, banks--and not insular groups such as minorities.

Yet the Social Security Act would seem to contradict this statement because the elderly, the handicapped and the unemployed appear to qualify as insular segments of American society. The philosophy behind the Social Security Act, however, was to assist workers in their old age. Many
workers were not covered by the new law, such as restaurant and migrant farm workers, leaving mostly racial minorities vulnerable to low-paying, non-unionized jobs.²

The federal government generally failed to venture into the civil rights area in the 1930s. While the executive and legislative branches did not get involved in battles on behalf of blacks, the Supreme Court had been steadily issuing decisions that advanced voting rights, housing opportunities and economic rights since the early twentieth century. **Guinn v. Oklahoma** (1915), **Buchanan v. Wharley** (1917) and **Bailey v. Alabama** (1910) respectively obtained greater rights for blacks through the energies of the NAACP. By the early 1930s, the Court stood as the sole arbiter of equal treatment with such cases as **Moore v. Dempsey** (1923), which protected the right to a jury trial against the threat of mob violence influencing the proceedings. With the "cause célèbre" of 1931 and beyond, the Scottsboro boys' trials represented to that time the judicial highpoint of interference with the South's system of racial etiquette.³

**Powell v. Alabama** (1932) upheld the defendants' constitutional rights to due process, which was denied through the defendants' lack to access to legal counsel as guaranteed by the Sixth Amendment. Only a few years later, in **Brown v. Mississippi** (1936), the Court extended the reach of the Bill of Rights further by prohibiting states from using coerced confessions in criminal proceedings. All of
these small cracks in the wall of white dominance probably frightened Southern congressmen into holding out against antilynching legislation after World War I and especially during the New Deal.¹

With so many real and imaginary encroachments on states’ rights by the federal government, the South used its legislative influence to block measures that by 1938 garnered the support of a majority of Americans. While personally horrified by lynching, Southerns consistently argued that federal intervention was unnecessary and would in fact be harmful to all of the progress made in terms of racial harmony. Indeed, some of that progress included a reduction in the lynching rate, so that by 1938 only a few black men lost their lives to mob violence.

To the countless men and women who campaigned for federal antilynching legislation, accepting even low numbers was tantamount to sanctioning vigilantism by individuals, often with state connivance. For the law’s supporters, silence was as damning as outright opposition, especially from the President. Roosevelt, the first chief executive since Lincoln to so completely capture blacks’ devotion, nonetheless did not fulfill his promise of a New Deal to the lynch victims during his terms. His unwillingness to publicly champion the Costigan-Wagner and Wagner-Van Nuys-Gavagan bills may not have cost him blacks’ support at the polls, but "[i]n moral terms, the horror of racism made a
mockery of lauding anyone as a humanitarian who compromised with its existence, as Roosevelt did repeatedly."

Neither Roosevelt nor the bill's Congressional opponents were able to adequately sidestep the moral implications of the proposal. The law serves as a proclamation of society's values, and an antilynching law would have been the best statement of America's commitment to equality for everyone. While it did not come to pass, the bill's many supporters repeatedly asserted the fundamental question of the nation's treatment of millions of its citizens for public scrutiny, and on that score Roosevelt and the bill's opponents failed to accept the principle of fair play for all.
FOOTNOTES - CHAPTER ONE

1Arthur Raper, The Tragedy of Lynching (Chapel Hill, North Carolina: University of North Carolina Press, 1933), pp. 1-2; other sources have indicated a slightly larger total number of lynchings for the year, 25 (24 blacks, one white). Frank Shay, Judge Lynch: His First Hundred Years (New York: Ives Washburn, Inc., 1938), p. 275.

2Raper, Tragedy of Lynching, p. 331.

3Raper, Tragedy of Lynching, p. 471. Shay, Judge Lynch, p. 275 lists one more victim for that year, another black individual, in his Appendix. While the number of Black women who faced lynch mobs is small, there are reported instances of black and a small number of white women who were lynched since 1882 when records were begun at Tuskegee Institute.


8Claudia Ferrell, Nightmare and Dream: Anti-Lynching Legislation in Congress, 1917-1922 (New York and London:


Zangrando, *NAACP Crusade*, pp. 103, 247. (Several commentators addressed the lawlessness in Alabama in their own works, ibid.) Ibid, p. 103. Shay, *Judge Lynch*, pp. 207-11. But Zangrando, *NAACP Crusade*, pp. 103-104, 27, citing FDR Files, has a different account of Governor Ritchie in the aftermath of the George Atwood lynching. One of the CP-USA leaders tried to get Ritchie removed from office because state officials failed to bring anyone to justice. Specifically Ritchie felt local courts could punish the mob members in the face of community skepticism that the mob would be prosecuted. New York Times.


FOOTNOTES - CHAPTER TWO


15Wells, *Red Record*, p. 67; see also *Cong. Rec.*, 58th Cong. 2d. Sess., March 16, 1904, pp. 3342, 3826-29 on Congressman Thomas Spight's comments on exterminating blacks in order to protect Southern white women. There have been a few reported instances of black men lynching a white man or even other blacks. Shay, *Judge Lynch*, p. 83; Chadbourn, *Lynching and the Law*, p. 45.


According to Raper, about twenty-four per cent of the lynchings between 1889-1932 were for "All Other Causes." Black women accounted for at least 60 out of 83 women victims between 1892-1922.

Some of the other reasons cited for lynchings include the small number of blacks in the community, lynchings as a way to divide blacks and whites, a way to deflect anger against the Bourbon class in the South, too few restraints on white behavior and as a way to hold in place the prerogative to interracial sex that white men held. See Zangrando, *NAACP Crusade*, p. 8.

22When blacks achieved economic prominence in the late nineteenth century, they sometimes faced what happened to friends of Ida B. Wells in the early 1890s. These friends in Memphis, Tennessee were doing too well for some in the community, and her friends were lynched when they refused to abandon their business. Afterwards, Wells vigorously campaigned against lynching in her newspaper, and eventually had to flee for her life when she too was threatened. From this point, Wells became a tireless antilynching/civil rights advocate. See Wells' works and her autobiography, *Crusade For Justice: The Autobiography of Ida B. Wells*, edited by Alfreda M. Duster (Chicago and London: University of Chicago Press, 1970).

withdrawn, Southern "Redeemer" governments were in place across the former Confederacy, undoing many of the reforms enacted by the earlier administrations and controlling the freedmen by any means necessary.


26 Court cases that limited federal power to protect Americans include United States v. Bivens, 13 Wall. 581 (1872), United States v. Cruikshank, 92 U.S. 542 (1876), United States v. Harris, 106 U.S. 629 (1883); in an unusual case, Ex parte Milligan, 4 Wall. 2 (1866) limited executive powers to emergencies since civilian powers had not been extinguished during the late war.


28 The 1894 law is an indication the government is no longer concerned with voting rights. 28 Stat. 36-37, "An Act to Repeal All Statutes Regarding Supervisors of Elections and Special Deputy Marshals, and for other purposes." For Cleveland's addresses, see James D. Richardson, A Compilation of the Messages and Papers of the Presidents, 1789-1897, 10 vols. (Washington, D.C.: Government Printing Office, 1896-99) 9:389-93; 434-60 for 1st Annual Message.


29 Logan, Betrayal of the Negro, p. 23.


United States v. Shipp, 214 U.S. 386, 419 (1909); the Supreme Court also rendered opinions at 203 U.S. 563 (1906) and 215 U.S. 580; see also Chattanooga (Tenn.) Evening Star, March 20, 1906, p. 17; November 9, 1909, p. 2; November 16,


38 These figures are from Zangrando, *The NAACP Crusade*, pp. 6-7. Only twenty-five of the year's victims for 1901 were white, while two of the eight victims in 1932 were white.


Logan, Betrayal of the Negro, p. 58. For a more complete picture of the Republican party’s pronouncements on blacks and their civil rights, see Sherman, Republican Party and Black America, passim.


Ibid., p. 204.


Duster, Crusade for Justice, pp. 47-52, 87-113; see also Grant, Anti-lynching Movement, p. 32.


52 Recorder, March 17, 1904 quoted in Meier, Negro Thought, pp. 109, 293; Robert L. Factor, The Black Response to America: Men, Ideals and Organizations from Frederick Douglass to the NAACP (Reading, Mass.: Addison-Wesley, 1970), pp. 293-306.

53 Indianapolis Freeman, August 28, 1897, p. 4 quoted in Grant, Anti-Lynching Movement, pp. 38, 36; Grant, Anti-Lynching Movement, p. 38.

54 Grant, Anti-Lynching Movement, p. 38.


57 The Mob Still Rides (Atlanta: Commission on Interracial Cooperation, 1936); Arthur Raper, The Tragedy of Lynching; Chadbourn, Lynching and the Law.

58 See infra, chapter 3 on state antilynching laws in the twentieth century.
FOOTNOTES - CHAPTER THREE


2See Chapter 1, footnote 28, supra, and chapter 3, footnote 48, infra.


5Mary Church Terrell, "Lynching from a Negro's Point of View," North American Review 178 (June 1904), 853-68.


17Suggs, Black Press, p. 430.


19Meier on the A.M.E. Church Review in Negro Thought, pp. 35-36.


21See Chapter 1, footnote 50 for Wells' success overseas and efforts by critics to impugn her name in the United States.


23On the InterOcean, see Otto H. Olsen, Carpetbagger's Crusade: The Life of Albion Winegar Tourgée (Baltimore: Johns Hopkins Press, 1965), pp. 281-96; see also Duster, ed., Crusade, pp. 125-187 on Miss Well's letters to the Inter-Ocean while in Europe; the future critic was Theodore L. Gross, in Albion W. Tourgée (New York: Twayne Publishers,
Inc., 1963), p. 188. Gross was very hostile about Tourgée's political journalism, calling the latter's essays on Grover Cleveland "vindictive, puerile and unimaginative." Ibid, pp. 116-117.


25Sheldon Hackney, Populism to Progressivism in Alabama (Princeton, New Jersey: Princeton University Press, 1969), pp. 145-146. Another governor, William Dorsey Jelks was according to Hackney "sincerely devoted to the prevention of lynching" but nonetheless pardoned two out of three lynchers convicted in 1901 after serving only one year of a ten year sentence. Ibid., pp. 184-185, citing Governor's Office Records ADAH and Birmingham Age-Herald, June 9, 1902. Obviously, politics played some part in their early release from prison, given his "abhorrence" to lynching.


28See Chapter 3, footnote 31, infra.

29For white journalists, see Wright, Racial Violence in Kentucky on Watterson, pp. 65-66, quote at p. 66; Thomas D. Clark, The Southern Country Editor, 1st Ed. (Indianapolis: Bobbs-Merrill Co., 1948), pp. 232, 226-244.

30The disenfranchisement movement got a boost from Williams v. Mississippi, 170 U.S. 213 (1898) which declared the state's new constitutional provision regarding literacy tests for voting purposes a nondiscriminatory measure; Plessy v. Ferguson, 163 U.S. 537 (1896).

31A New York Times editorial, March 19, 1901, p. 8 a black man's lynching after being cleared of wrongdoing but the editor was more concerned with the mob's complete contempt for law than with an innocent man's death; A Charleston News and Courier correspondent was discussed in the Timeg's October 16, 1900 editorial page, p. 6, and he
expressed similar view about an Alabama lynching going overboard (burning in lieu of hanging the victim) because it demoralized the town involved and heaped outside criticism [read: from the North] on the people.


MARKED THROUGHOUT.

FOOTNOTES - CHAPTER FOUR

1Henry Lewis Suggs, in P. B. Young, Newspaperman: Race, Politics and Journalism in the New South 1910-1962 (Charlottesville: University Press of Virginia, 1988), p. 60 on the Virginia antilynching law in 1928. The book declared it the first state law against lynching, when it was in fact not even the first effort by the state to pass an antilynching law; it was, however, the most recent (up to that point) in a long line of antilynching laws.


See David A. Gerber, Black Ohio and the Color Line, 1860-1915 (Urbana: University of Illinois Press, 1976), pp. 280-88, for the relationship between blacks and the police and the stereotypes of black criminality; Numan V. Bartley, The Creation of Modern Georgia (Athens: University of Georgia Press, 1983), passim; and Ayers, Vengeance and Justice, passim, contain examples of hostility toward blacks not only from the police but from society in general, out of which the police came.

Laws 1858, ch. 25, quoted in Chadbourne, Lynching and the Law, p. 39; City of Atchison v. Twine, 9 Kan. 239, 240 (1872) and Adams v. City of Salina, 58 Kan. 246, 48 Pac. 918 (1897).

Brown, Strain of Violence, p. 214; Wright, in Racial Violence in Kentucky, p. 41, states that Brown underestimates the number of lynchings.

Rev. Code of Alabama, 1867, Section 3684 on Lynching was on the books when Willia C. Luke was killed by a mob in 1870, the subject of Howard, Death at Cross Plains; some cases that construed the law include Gunter v. Dale County, 44 Ala. 639 (1870), Dale County v. Gunter, 46 Ala. 118 (1871), Dekalk County v. Smith, 47 Ala. 407 (1872).

Wright, Racial Violence in Kentucky, pp. 25-33; the New York Times, from January to August 1871 carried the story of the turbulent situation in Kentucky, while it later published in 1874 the successful conclusion to the state’s problems with the Klan.

See Grant, The Anti-Lynching Movement, pp. 68, 73, citing NAACF records.

Stanley P. Hirshson, Farewell to the Bloody Shirt; Northern Republicans and the Southern Negro (Chicago: Quadrangle Books, 1968), pp. 200-237 on the Lodge bill from its inception through its death.


Cutler, Lynch-Law, pp. 233-34, citing Constitution of South Carolina, Section 6, Article 6 and Acts of South


Cleveland Gazette, October 20, 27, December 1, 22, 1894, cited in Gerber, Black Ohio and the Color Line, p. 251; McKinley supported the 1896 law in his last annual message to the state legislature, Gerber, "Ohio Anti-Lynching Law," p. 47; for earlier action against mobs, see Gerber, Black Ohio and the Color Line, p. 251.


New York Times, March 14, 1897, p. 3.

Wright, Racial Violence in Kentucky, pp. 180-82.


33Grant, Anti-Lynching Movement, pp. 71, 74.

For the situation in Pennsylvania that led to its 1923 antilynching law, see Downey and Hyser, No Crooked Death, passim.


Gerber, "Lynching and Law and Order," pp. 45-49; Gerber, Black Ohio, pp. 252-53. The law did not prevent future lynchings, but the Ohio Supreme Court upheld the law as constitutional in cases like Board of Commissioners of Champaign County v. Church, 57 N.E. 50, 62 Ohio St. 318 (1900).

Another chief executive, Governor Atkinson of Georgia, also recommended that prisoners be armed if sheriffs will not defend them. Cutler, Lynch-Law, p. 231. The Kentucky law gave law enforcement officials the discretion to arm prisoners. Ibid, p. 239; Wright, Racial Violence in Kentucky, p. 181.


Link, The Paradox of Southern Progressivism, p. 61 about class divisions in the white community as a reason to control lynch mobs.


Chadbourn, Lynching and the Law, p. 13; The South Carolina lawsuit was Brown v. Orangeburg County, 55 S.C. 45, 32 S.E. 746 (1899); see Cutler's account of the proceedings at Lynch-Law, pp. 246-48.

For Georgia, see John Dittmer, Black Georgia in the Progressive Era, 1900-1920 (Urbana: University of Illinois Press, 1977), pp. 208-209, citing Hugh Dorsey's A Statement from Governor Hugh M. Dorsey as to the Negro in Georgia (Atlanta, 1921); for Kentucky, see Wright, Racial Violence in Kentucky, pp. 202-205; for the other states, see Chadbourn, Lynching and the Law, pp. 201-203, 174; on the new Klan, see David Mark Chalmers, Hooded Americanism: The


47Civil Rights Cases, 109 U.S. 3 (1883); Ibid at p. 25.


50Barron, 7 Peters 243 (1833); Slaughterhouse Cases, 16 Wall. 36 (1873).

51Urofsky, A March of Liberty, p. 476; see also Michael Les Benedict, "Preserving Federalism: Reconstruction and the Waite Court," Supreme Court Review (1978): 39-79 (the Court preserved the older view of federalism that left the States in charge of most questions in day to day life); Benedict, in "Preserving the Constitution: The Conservative Basis of Radical Reconstruction," Journal of American History 61 (June 1974):65-90, argued that the Radicals were more conservative than assumed, which is why Reconstruction did not lead to the sweeping changes modern critics believed had been enacted.

52Labor cases include Ritchie v. People, 155 Ill. 106 (1895); Godcharles and Co. v. Wiseman, 113 Pa. St. 431 (1886), the suit that overturned the law which prohibited employers from paying wages in scrip; Virginia v. Rives, 100 U.S. 339 (1880) and U.S. v. Reese, 92 U.S. 214 (1876) are only 2 cases in which the Supreme Court appeared to disregard the rights of blacks when it implemented what Kaczorowksi called "decentralized constitutionalism." Civil Rights Cases, 109 U.S.3 (1883); Plessy v. Ferguson, 163 U.S. 537 (1896).
53Wright, Racial Violence in Kentucky, p. 183; see Ronald Takaki, Strangers from a Different Share: A History of Asian Americans (Boston: Little, Brown, 1989); for other minorities' treatment in America.


55Logan, Betrayal of the Negro, pp. 87, 89-90.

56Sherman, The Republican Party and Black America, chapter 4 on the Taft Administration; during his run for reelection, the Republicans included a lynching platform to increase black voter support. Ibid. See also New York Age, June 6, 1912, p. 4, quoting Taft's May 16th comments on judicial recall.


58Ibid, February 23, 1900, p. 2153.


60Cong. Rec., 65th Cong., 2d Sess., July 6, 1918, p. 8827 for his motivation in his own words; see also Zangrando, NAACP Crusade, pp. 43, 229; Jesse Reeder, "Federal Efforts to Stop Lynching," Ph.D., 1948, pp. 81-85; Grant, Anti-Lynching Movement, pp. 158-59.


62The New York Times, April 20, 1908, reported that William Borah defended a group of Negroes about to be lynched in Boise, Idaho in 1905, but by the 1920s he steadfastly opposed antilynching legislation. Then he quoted the Constitution and covertly battled with Henry Cabot Lodge, another powerful Republican senator over top ranking on various Senate committees; see Ferrell, Nightmare and Dream, pp. 236-74; Zangrando, "Efforts of National Association for the Advancement of Colored People," pp. 120-21, 126, 128, 185; the Democrats' agenda toward the Dyer bill was complete annihilation, as demonstrated in the 1922 Congressional debates. Cong. Rec., 67th Cong., 2d Sess., July 13, September 21, 1922, pp. 10224-10225, 13082-13086; Oscar Underwood was quite blatant in discussing the South's power to kill the Dyer or "Force" Bill: "I think all men
here know that under the rules of the Senate when 15 or 20 or 25 men say that you can not pass a certain bill, it can not be passed. You could not pass your tariff bill last summer until we agreed to vote on it, and you are not going to get an agreement to vote on this bill." 3rd Sess., November 28, 1922, p. 332.
FOOTNOTES - CHAPTER FIVE

^Raper, Tragedy of Lynching, p. 359.


^Raper, Tragedy of Lynching, p. 143; also in Chadbourn, Lynching and the Law, p. 69. See footnote 4 above for lawmen doing their jobs in protecting prisoners.

'^Cong. Rec., 73rd Cong., 2nd Sess., May 7, 1934, p. 8152 (Illinois resolution); June 15, 1934, p. 11602 (New Jersey resolution); April 10, 1934, p. 6290 (petition seeking passage); February 2, 1934, p. 1819 (documents); May 28, 1934, p. 9654 (Women's Missionary Council of the Methodist Episcopal Church South on behalf of Costigan-Wagner bill).

^New York Times, September 24, 1933, Section IV, p. 5, December 11, 1933, p. 6, December 17, 1933, Section II, p. 1; for Cong. Rec., see footnote 6 above; U.S. Department of Justice, Record, Group 60, Box 1277, folder 1.

'^Costigan served only six years till his retirement in 1936, while Wagner represented New York twenty-two years. Biographies on the two Senators were written by J. Joseph Huthmacher, Senator Robert F. Wagner and the Rise of Urban Liberalism (New York: Atheneum, 1968), and Fred Greenbaum, Fighting Progressive: A Biography of Edward P. Costigan (Washington, D.C.: Public Affairs Press, 1971). At least one non Congressman who held both men in high esteem was H. L. Mencken, the ascerbic columnist to the Baltimore Sun. He called them "two of the best lawyers in the Senate" at the February hearings. U.S. Senate, Hearings, February 20, 1934. The negative views about Wagner surfaced in a
magazine article on "Borah the Lynch Bill-Buster," in Ken, April 7, 1938, p. 90. The article implied that by 1938, the other senators turned on Wagner, whom they had secretly disliked for some time, and stated that it was a "known fact" that only six out of ninety-six either believed in or cared about the bill. Ibid., pp. 88, 90. The article is found in the Robert F. Wagner Papers, Georgetown University, Antilynching Files, Folder #7.


10Walter White to Edward P. Costigan, NAACP Papers--White even wrote to the Ohio Representative Charles West on January 10, 1934 to first get a Southerner to introduce the bill, then get West to do it. Wagner Papers, Antilynching Files, Folder #3.

11White to Costigan, Edward P. Costigan Papers, University of Colorado, November 17, 1933, Box 41, File 16.

12Wagner to Walter White, Wagner Papers, Antilynching Files, Folder #2.

13At least one witness mentioned the possibility of prosecuting individuals under the Costigan-Wagner Act, if the provision was modeled on the Revised Stats. United States v. Cruikshank, 92 U.S. 542 (1876), at 551, 559; The Enforcement Act of 1870, 16 Stat. 140; The Civil Rights Cases, 109 U.S. 3 (1883).


15U.S. Senate, Hearings, March 16, 1934.

16U.S. Senate, Hearings, February 20, 1934, pp. 5-6.


18On Dieterich, Ibid, passim.

19On McCarran, Ibid, pp. 16-17; on White, Ibid, p. 15.


21Ibid, pp. 63-67, 82-91.
See footnote 13 for citation and Maryland citizens' testimony; Azrael, U.S. Senate, Hearings, February 21, 1934, pp. 43-48; some of the other witnesses who discussed the non-legal costs of lynching include Rev. Asbury Smith of the Maryland Antilynching Federation, February 21, 1934, p. 107 ("emotional stress" blamed for lynchings, akin to temporary insanity) and Harvey Kestin of Nashville, Ibid, pp. 167-168 (who argued against lynching because of its bad impact on whites). "Existing moral sentiment" can only be channeled by the federal courts, according to Professor Albert Barnett. Ibid, February 20, 1934, pp. 50-51.

Washington Post, February 21, 1934, p. 6; Ibid, February 22, 1934, p. 1; Simon E. Sobeloff was less encouraging about the bill's constitutionality than William Preston Lane, and Sobeloff favored a limited bill—one that punished state activity only. U.S. Senate, Hearings, February 21, 1934, pp. 136-137.

Ibid, February 21, 1934, pp. 238-39. His views in their entirety are found at pp. 236-49.

Tuttle referred to Strauder v. West Virginia, 100 U.S. 303, 307 (1880) (liberal construction of the Fourteenth Amendment); Prigg v. Pennsylvania, 16 Pet. 539 (1842) (on Congressional power to legislate on constitutional rights); United States v. Reese, 92 U.S. 214, 217 (1876) (on Congressional power to protect constitutional rights); Ex parte Virginia, 100 U.S. 339, 347 (1880); Home T and T Company v. City of Los Angeles, 227 U.S. 278, 286 (1913); Virginia v. Rives, 100 U.S. 313, 318 (1880); Raymond v. Traction Company, 207 U.S. 20, 36 (1907); City of Chicago v. Sturges, 222 U.S. 313 (1911); Ex parte Siebold, 100 U.S. 371, 395 (1880). He relied on Article IV, Section IV and the Fourteenth Amendment, Sections One and Five for authority. The Storey and Stockton briefs reiterated Tuttle's constitutional arguments, as well as tried to dispel some of the opponents' authority such as James v. Bowman, 190 U.S. 127 (1903), which stated that Rev. Stat. §5507 was too broad in trying to reach misbehavior under the Fifteenth Amendment. Other cases that hurt antilynching advocates include Hodges v. United States, 203 U.S. 1, (1906) (exempting individuals from Fourteenth Amendment violations) and Ex parte Riggins, 134 F.404 (5th Cir. 1904) (Judge here distinguished between lynching and murder for purposes of United States v. Logan, 144 U.S. 263 (1892)); Both Logan and U.S. v. Shipp, 203 U.S. 563 (1906) (the first of three decisions) dealt with federal action against a mob when the victim is in federal custody; and they were of no assistance to proponents of federal law because of the Fourteenth Amendment's state action requirement.
U.S. Senate Report No. 710, March 1934; Cong. Rec., 73rd Cong., 2d Sess., Apr. 18, 1934, p. 8152 regarding the Illinois resolution in favor of both the Costigan-Wagner bill and the DePriest bill. Among the other state and local resolutions include the New Jersey Joint Resolution and the Donora, Pennsylvania resolution (which was given to the Judiciary Committee). Ibid, pp. 11602, 6290.

Ibid, p. 6673.

White, A Man Called White, p. 120.

NAACP Records, Reel 4, frames 000425-28 for the WLAL pamphlet, and Reel 2, frame 000226 on the joint ACLU-NAACP conference in late 1933; see footnote 6, supra, for the congressional documents; see footnote 50, infra, on the government's letters, etc., D.O.J., R.G. 60, Box 1278.


Crisis 41 (February, 1934) p. 43; Ibid; (March, 1934), p. 66.

See footnote 27 for April 28, 1934 Cong. Rec. citation.


Swain, "The Lion and the Fox: The Relationship of President Franklin D. Roosevelt and Senator Pat Harrison," Journal of Mississippi History 38 (November, 1976): 333-59, at 343-44. In Pat Harrison: The New Deal Years (Jackson: University Press of Mississippi, 1978), chapters 3-10, Swain concentrated more on Harrison's congressional activities than his dealings with the President, but the tension between Roosevelt and Harrison developed by 1935, after
which Harrison was less and less loyal to Roosevelt's policies.

36Zangrando, NAACP Crusade, p. 113; Ibid, p. 113.

37Eleanor Roosevelt Papers, Reel 19, February 1934, Tamara K. Hareven, Eleanor Roosevelt: An American Conscience (New York: Da Capo Press, 1975), p. 120; White wrote to Wagner of his planned meeting with Mrs. Roosevelt on January 26, 1934, and he sought Wagner's wisdom whether or not to try to arrange a meeting with FDR through his wife. Wagner Papers, Antilynching Files, Folder #3, January 18, 1934 letter.

White, A Man Called White, pp. 168-169; quote from Eleanor Roosevelt papers, Reel 19.

39This quote can be found in several books and articles on Roosevelt and his relationship to the black community in the 1930s, including White, A Man Called White, pp. 169-70, and Nancy J. Weiss, Farewell to the Party of Lincoln: Black Politics in the Age of FDR (Princeton, New Jersey: Princeton University Press, 1983), p. 106.

Roosevelt's anti-black biases are addressed in the following chapter, while William Borah's racial views are discussed in Weiss, pp. 106-107, biographies such as listed in Chapter 5, infra. Roosevelt's devotion to states' rights throughout the 1930s, a stand compatible more with the Solid South than the Northern branch of the Democrats, did not disappear but by the end of the decade appeared to do so.

41FDR's quote to Costigan and Wagner found in June 11, 1934 Edward P. Costigan letter to Joseph T. Robinson, copy in Wagner Papers, Antilynching Files, Folder #3. Senator Hubert Stephens (D-Miss) promised the bill would come to a vote over his dead body. Greenbaum, Fighting Progressive, p. 165.

White, A Man Called White, pp. 168-170; Zangrando, NAACP Crusade, p. 119.


44Cong. Rec., 73rd Cong., 2d Sess., May 28, 1934, p. 9654 for Costigan's speech to rehabilitate the bill in line with the President's views; Kean appeared to refer to a recent lynching which should want to make Congress press for an antilynching law. Ibid, p. 9655.
White's letter to the editor was printed in the [Denver] Rocky Mountain News, June 7, 1934, p. 10.

On the political realities of the antilynching bill, see White's letter to Wagner and Costigan, April 21, 1934, (joint) Wagner Papers, Antilynching Files, Folder #3.


Chicago Defender, June 16, 1934, pp. 1-2; [Washington] Afro-American, July 28, 1934, p. 9. There was a curious editorial in the Indianapolis Recorder, August 18, 1934, p. 4 about a group of blacks lynching another black at the behest of a Louisiana lawman. He rather confidently proclaimed that the death would probably go unpunished.


NAACP Files, cited in McGovern and Howard, "Private Justice," p. 552; random violence was noted in the [Washington] Afro-American, November 3, 1934, p. 1; New York Times, October 28, 1934, p. 1; McGovern, Anatomy of a Lynching, p. 115. The debate would have to wait until next January, since Congress was out of session until then.

Black papers like the [Washington] Afro-American and white papers like the New York Times carried the story of Neal's public murder, prompting groups and individuals to telegram both President Roosevelt and Attorney General Cummings to take action. The Lindbergh Act, U.S. Stat. at Large, 47 Stat. 326, was arguably applicable to the Neal murder, but the Attorney General read the Act narrowly. Earlier in the year, in a May 12, 1934 radio address on "How

Complete Presidential Press Conferences, 4:156-57; D.O.J., R.G. 60, Box 1279, Folders #1, 5 contained letters, memorials, newspaper editorials about the Costigan-Wagner bill, and one letter mentioned FDR's message to the National Crime Conference. The January 1935 issue of Crisis, 42, p. 26 reported on the Conference.
FOOTNOTES - CHAPTER SIX

1The (Washington) Afro-American, week of January 5, 1935, p. 2. A check of the Crisis for the first half of 1934 revealed that no lynching statistics were published, but in the September issue 14 lynchings were recorded as of August 15th.

2Weiss, Farewell, p. 110; Zangrando, NAACP Crusade, p. 124; Frank Freidel, Franklin D. Roosevelt: A Rendezvous with Destiny (Boston: Little, Brown and Co., 1990), pp. 34, 55; other occasions include his action regarding Wagner’s National Labor Relations Act in 1935, when he supported the bill only when it became clear that it would pass Congress. Roosevelt also withdrew his support from bills which he originally favored, like the Wagner-Lewis bill in 1934 regarding unemployment compensation. Patrick J. Maney, The Roosevelt Presence: A Biography of Franklin Delano Roosevelt (New York: Twayne Publishers, 1992), p. 61.

3Chicago Defender, February 2, 1935; Cleveland Call and Post, January 12, 1935, pp. 1, 2.


5Washington Post, January 5, 1935, p. 3; Ibid.


8The (Washington) Afro-American, March 2, 1935, p. 1; opinions in the black press concerning H.R. 4457 ran from support in the Cleveland Call and Post because Mitchell was


Crisis, January 1935, pp. 14, 25; February 1935.

Walter White to Edward Costigan, November 19, 1934, Costigan Collection, Box 42, folder 20; Cleveland Call and Post, March 2, 1935, p. 2.


Crisis, January 1935, pp. 7, 22.


Senate, Subcommittee of the Committee on the Judiciary, Hearings (S. 24).


The New York Age carried a story on the cancelled show, quoting Seligman as saying that he "want[ed] to keep the galleries free of political or racial
manifestations . . . ," February 16, 1935, pp. 1,3; 
Pittsburgh Courier, February 23, 1935, p. 5;

20Cleveland, Washington, D.C., and Philadelphia among other cities all requested that the exhibit travel there once its run in New York City ended. Pittsburgh Courier, February 23, 1935, p. 5; Crisis, April 1935, p. 106; NAACP Records, Reel 3, frames 000001-98.

21Greenbaum, "Anti-Lynching Bill," p. 78; Weiss, 
Farewell, p. 112; Zangrando, NAACP Crusade, p. 127.

22Cong. Rec., 74th Cong., 1st Sess., April 9, 1935, 

23Cong. Rec., 74th Cong., 1st Sess., April 24, 1935, 
p. 6290-95.


The mass antilynching meeting was announced as early as February 2.

26Cong. Rec., 74th Congress, 1st Sess., April 25, to 
May 1, 1935, pp. 6351-6687 passim; Neely made his remarks the day after the motion to adjourn passed on May 1. Ibid, 
pp. 6773-76. Zangrando, NAACP Crusade, p. 128.

27Virginia Van der Veer Hamilton, Hugo Black: The 

28Thomas Terry Connally, My Name is Tom Connally (New 


30Cleveland Call and Post, April 27, 1935, p. 1. Ibid. He [Borah] also believed that blacks should oppose antilynching legislation by upholding the Civil War Amendments and thus the integrity of the Constitution. Marian C. McKenna, Borah (Ann Arbor: University of Michigan Press, 1961), p. 325.

31Cong. Rec., 74th Cong., 1st Sess., April 29, 1935, 
pp. 6531-32.
Crisis, January 1935, p. 14; Cleveland Call and Post, May 11, 1935, p. 6 (editorial on the Costigan-Wagner bill's non-existent chance of survival after the adjournment).

Cleveland Call and Post, May 18, 1935, p. 6; Eugene Francis Schmidtlein, "Truman the Senator," Ph.D., University of Missouri, 1962, pp. 98, 134, 222-223, although Schmidtlein did not give any reasons why blacks would support Truman, such as any jobs they may have obtained under the construction programs he oversaw in Missouri. Yet see William E. Pemberton, Harry S. Truman: Fair Dealer and Cold Warrior (Boston: Twayne Publishers, 1989) who observed that while Truman held on to racist views, as part of the Pendergast machine he helped blacks in various ways, pp. 24-25, 186.

D.O.J., R.G. 60, Box 1279, letters urging federal antilynching legislation, especially in light of the Democrats' big win that fall.

Sitkoff, A New Deal for Blacks, p. 288. The Crisis, June 1935, p. 177. Ibid; [Washington] Afro-American, March 2, 1935, p. 18 where Villard contended that had Roosevelt spoken out in 1934, the bill would have passed in that year's Congress, while The Nation in its May 29, 1935 issue contained a searing indictment of Congress for weakening the federal antilynching bill in order to make it more constitutionally acceptable. William Seagle argued that lynch victims not held in custody needed as much or more protection than those in jail. Ibid, p. 626. On Roosevelt's silence regarding antilynching legislation, see the Roosevelt biographies mentioned above.


Letter from Leonidas Dyer to Walter White, January 28, 1935, copy, Eleanor Roosevelt Papers, Reel 19; his insight into the Democrats as well as Republicans who held up his antilynching bill can be found in the Cong. Rec.
67th Cong., 2d and 3rd Sess. (January through November 1922) along with Ferrell, Nightmare and Dream, chapters 4-8. Boston Morning Globe, cited in Crisis, July 1935, p. 211. Crisis, November 1935, p. 339. This view dovetailed with the frequently expressed belief that Claude Neal’s death was not prosecuted under the recently amended Lindburgh kidnapping law because he was poor and black.

35Telegraph, September 19, 1935, in Ginzburg, 100 Years, p. 227; Crisis, December 1935, p. 369.

40Crisis, December 1935, p. 368; see Hall’s Revolt Against Chivalry, pp. 215-216 regarding Bessie Alford’s activities around Mississippi as well as other ladies’ commitment to antilynching. Hall, Revolt Against Chivalry, pp. 244-245.
See Weiss, Farewell, Chapter X for the reasons blacks were attracted to Roosevelt and his party in the 1930s.

For Roosevelt’s suggestion on a Senate investigation, see Costigan Papers, Box 45, Folder 1, and Zangrando, NAACP Crusade, p. 132; Roosevelt quote found in Zangrando, NAACP Crusade, p. 132.

February 11, 1937 and n.d., 1937, Homer Cummings letters to Franklin D. Roosevelt, Department of Justice records, Record Group 60, Box 1285, Folder 5 and Box 1286, Folder 1.

News accounts from the New York Times from 1930, especially March 30, 1930, portrayed Roosevelt as very concerned with protecting states from federal domination. Of course, as Governor he had to be concerned about his state’s welfare vis-a-vis the federal government. Edgar Eugene Robinson, in The Roosevelt Leadership, 1933-1945 (Philadelphia: J. B. Lippincott and Co., 1965), referred to a radio address on the "dangerous drift toward [the] disregard of States rights." FDR’s theory of government focused on ‘state’ responsibility toward its citizens, something both Rexford Tugwell noted in The Democratic Roosevelt: A Biography of Franklin Delano Roosevelt (Garden City, New York: Doubleday and Co., Inc., 1957) p. 205 and Eleanor Roosevelt in her Autobiography of Eleanor Roosevelt (New York: Harper and Brothers, 1961), p. 153. While FDR was primarily focused on Prohibition in 1930, he never lost his local and state orientation even as President, as his wife inferred. Eleanor Roosevelt, Autobiography, p. 154. While FDR sought national solutions to the country’s problems during the 1930s, they were usually implemented on the local level which allowed local prejudices to operate against minorities.

Edward Costigan’s retirement hurt the antilynching effort while Wagner’s role in antilynching coalitions in the future was not enough to accomplish the goal of a federal law.
7 Cleveland Call and Post, Jan. 9, 1936, p. 1, Chicago Defender, Jan. 11, 1936, p. 3; Call and Post, Jan. 30, 1936, p. 2; Defender, Feb. 1, 1936, p. 4; Call and Post, Jan. 23, 1936, p. 6; Defender, Jan 25, 1936, p. 5.


9 Chicago Defender, June 20, 1936, p. 11; Time, June 1936, pp. 40, 42; Zangrando, NAACP Crusade, p. 135; NAACP criticism of other movies found in the Defender, Mar. 28, 1936, p. 6; Ibid, June 13, 1936, p. 13.

10 On the ASWPL’s drive, see the New York Times, Mar. 22, 1936, Section 2, p. 6; Call and Post, Mar. 26, 1936, p. 1; The Mob Still Rides (Atlanta: The Commission on Interracial Cooperation, 1936); on the CIC, see the New York Times, Mar. 16, 1936, p. 5; Call and Post, Apr. 2. 1936, p. 2.

11 Call and Post, Apr. 16, 1936, p. 3., on the petition; a Call and Post editorial of April 16, p. 6 speculated that Mitchell’s snub played into the Southern Democrats’ hands, who would use it as an excuse not to work for federal antilynching measures if the only black in Congress did not support the petition. Cong. Rec., 74th Cong., 2d Sess., May 22, 1936, pp. 7825-26 for Mitchell’s antilynching views. See also the Pittsburgh Courier, May 28, 1936, pp. 1, 6 for its assessment on Arthur Mitchell.

12 Information on the caucus process can be found in such works as the Call and Post, Apr. 30, 1936, p. 6; Defender, May 16, 1936, p. 2.

13 Call and Post, May 28, 1936, pp. 1, 7; Defender, May 30, 1936, p. 4.

14 Call and Post, June 4, 1936, p. 1; Ibid, June 11, 1936, p. 8; for information on Crosser’s progressive background, see Biographical Directory of the American Congress 1774-1971, p. 757.

The Indianapolis Recorder, June 20, 1936, p. 1 cited pressure from Democratic bosses to pass the bill and put the Republicans on the spot for their platform. A letter to the editor in the Norfolk Journal and Guide on antilynching legislation asked why this law was unconstitutional but federal relief was allowed. June 6, 1936, p. 8. The writer also cynically observed that Southern black leaders insisted on state action against lynching "in order to keep in with certain whites." Ibid. For Talmadge remarks, see the Atlanta Constitution, June 4, 1936, p. 3.

Defender, June 13, 1936, p. 3; Ibid, June 20, 1936, pp. 1-2; Norfolk Journal and Guide, June 13, 1936, p. 10; New York Times, Jan. 30, 1936, p. 1; Defender, Feb. 8, 1936, p. 4. Donald McCoy, Landon of Kansas (Lincoln: University of Nebraska, 1966), p. 240 where the author related the story that someone told the Associates Negro Press in early 1936 of Landon's feelings against lynching, which was covered under a Kansas law outlawing mob violence; see Ibid for Landon's political and personal stands for blacks, pp. 32, 45, 56. The Indianapolis Recorder, black weekly, reported on Landon's record viz blacks in Kansas. The Atlanta Constitution, June 4, 1936, pp. 2, 10 published articles on the black Republicans' travails at the convention, while the Norfolk Journal and Guide reported that only Robert Church and Perry Howard of Tennessee and Mississippi respectively were the only black delegates seated. Yet there was a prominent black Republican from South Carolina who participated in the activities that week.

Johnson and Porter, comps., National Party Platforms, p. 36; Call and Post, May 21, 1936, p. 7 concerning the black councilman; the ACLU also urged the Republicans to adopt a civil rights plant that year, in the Defender, June 27, 1936, p. 3. Blacks also drafted planks for inclusion in the Republican platform, including one on the federal antilynching bill. Former congressman Oscar DePriest intended to present the latter plank at the Cleveland convention. Defender, June 13, 1936, p. 6; the Indianapolis Recorder read the GOP plan as one endorsing the antilynching law June 20, 1936, p. 10. Call and Post, Oct. 15, 1936, p. 2; Weiss, Farewell, p. 195; Call and Post, Sept. 17, 1936, Akron section, p. 1.

Call and Post, Oct. 1, 1936, Akron section, p. 1; for earlier anti-Democratic comments, see Call and Post, May 28, 1936, p. 7 and Defender, May 30, 1936, p. 4; Crisis, Dec. 1936, p. 3.


Cong. Rec., 75th Cong., 1st Sess., Feb. 22-May 3, 1937, pp. 1465, 2136, 2193, 3571, 4078, on the memorials; the motion to discharge with 218 signatures, is found at Ibid. March 29, 1937, pp. 2856-57.

The newspaper quote came from its Apr. 10, 1937 issue, p. 10; the above editorial noted how much Sumners wanted the Mitchell bill, after having fought so many antilynching bills in the past, and the paper a week later accused Mitchell of toady ing up to the Southern Democrats rather than serving the interests of blacks across the country through a better antilynching bill. Pittsburgh Courier, Apr. 17, 1937, p. 10. Other views on the Mitchell vs. Gavagan bills can be found in the Defender, Apr. 17, 1937, p. 7 which listed black editors from the New York Age, Chicago Defender, Baltimore Afro-American, Pittsburgh Courier, and others who supported the Gavagan bill. See the congressional debates over the two bills in question, Cong. Rec., 75th Cong., 1st Sess., April 13, 1937, pp. 3439-43. For Walter White's thoughts on the subject, see A Man Called White, p. 172.


27Cong. Rec., 75th Cong., 1st Sess., April 15, 1937, pp. 3563-64; Maverick was one of several supporters to enter the day’s debate, Ibid, pp. 3536-40; McClellan is found at Ibid, pp. 3545-46; Rankin’s remarks at Ibid, pp. 3546-49; Mitchell, Ibid, pp. 3541-42.


29Weiss, Farewell, p. 243; Time, Apr. 26, 1937, p. 17 speculated that the South would likely filibuster to disguise its opposition to the White House’s court-packing plan. George C. Rable, "The South and the Politics of Antilynching Legislation, 1920-1940," Journal of Southern History 51 (May 1985):201-220, p. 212; see also Tom Connally’s comments in his autobiography, My Name is Tom Connally, passim.


33Cong. Rec., 75th Cong., 1st Sess., August 11-12, 1937, pp. 8694-96, 8737-59. Barkley’s dinner was discussed in the New York Times, Aug. 11, 1937, p. 4 and in Patterson, Congressional Conservatism, 156; Cong. Rec., 75th Congress, 1st Sess., August 11-12, 1937 pp. 8694-8759; Wagner Papers, Antilynching Files, folder #8, Aug. 13, 1937; St. Louis Post-Dispatch, Aug. 16, 1937, pp. 1-C, 2-C; The Atlanta Constitution railed against the antilynching rider Royal Copeland (D-NY) attempted to attach to the wage and hour


35Cong. Rec., 75th Cong., 1st Sess., Aug. 12, 1937, pp. 8731-70; Crisis, Sept. 1937, p. 278; Time, Aug. 23, 1937, p. 10; Crisis, Sept. 1937, p. 279, Senator Bennett Champ Clark (D-Mo); Crisis, Sept. 1937, p. 279, several others who spoke to the NAACP regarding the chance of a favorable vote in the next session; Crisis, Sept. 1937 p. 279, Walter White was uncharacteristically cautious on the antilynching law’s chance for passage.

36Eleanor Roosevelt, My Days, pp. 120-21, 79-80 concerning an October 1936 headline on Roosevelt’s popularization of easy life (presumably through Social Security and other government programs), which ignored his fight against polio. The New York Times’s report on Roosevelt’s presumed advocacy of antilynching legislation appeared Aug. 28, 1937, p. 1. He was expected to make several speeches after Constitution Day (Sept. 17) about the need for several laws, including the antilynching bill, which would make the latter an important part of the agenda for the special Congressional session in November.


Zangrando, *NAACP Crusade*, p. 146.

Richmond *Times-Dispatch*, Feb. 2, 1937, reprinted in *Crisis*, March 1937, p. 76. It was also found among the newspaper clippings in the Eleanor Roosevelt Papers.

The Nation, Nov. 27, 1937, pp. 579-80; Cong. Rec., 75th Cong., 2d Sess., Nov. 17, 19, 22, 1937, pp. 645-65, 65-69, 175-176, 177, 212-213. Tom Connally, Ellison D. Smith (S.C.), and Charles O. Andrews (Fla.) posed as the black man's defender and friend while Dixie Graves (Ala.) made the usual state's sovereignty argument. Another neutral reason for voting against the bill was the fact that lynching was practically nonexistent by late 1937.


*Crisis*, letter to the editor, Mar. 1937, p. 93.


Huthmacher, *Senator Robert F. Wagner*, p. 239; see footnote 31 as to anti FDR hostility in mid-1937.


Van Nuys resented the implication that he was not working hard enough to fight the filibuster, [Washington] Afro American, Jan. 22, 1938, p. 5; Ibid for an article on the missed opportunities to end the debate, which meant letting James Ellender speak to as few as one person in Congress and letting Hattie Caraway get away with leaving because of her sex.


Roy Wilkins' comment contained in Feb. 1, 1938 letter in the NAACP Papers, cited in Zangrando, NAACP Crusade. Not all blacks took a harsh view of Roosevelt and the bill's supporters. The Atlanta Daily World's editorial page defended FDR, asserting that his open denunciation of lynching in 1933 and the fact that the bills have been reintroduced in Congress are evidence of his support. While such evidence is hardly conclusive, it is the best that people could point to since Roosevelt never pushed for this legislation as he did for his economic measures. Atlanta Daily World, Jan. 10, 1938, p. 6; Call and Post, Jan. 27, 1938, p. 8; Ibid, Jan. 13, 1938, p. 8 and in other newspapers where Southern leaders were called "unregenerated rebels" (or unreconstructed rebels) with visions of winning the Civil War in these debates. While one black editorial viewed the bill as "a symbol of freedom [whose eventual passage] will mean our second emancipation;" Call and Post, Feb. 3, 1938, p. 8, Southern Democrats were distraught over the possibility of future racial reforms.

South Carolina messages; Ibid, Feb 10, 1938, p. 1744 for Virginia memorial; New York memorial at Ibid, Feb. 8,, 1938, p. 1619; Governors of Kansas, Iowa and North Dakota and other signatories of American Society for Racial Tolerance at Ibid, Feb. 7, 1938, p. 1530. Southern and non-Southern Governors from several states sent telegrams to Senator Kenneth McKeller (D-TN) urging Congress not to pass antilynching legislation, citing such reasons as the lack of lynchings in recent years, the ability of the states to address this problem and the nature of the federal remedy—a "force" bill. Ibid, January 17, 1938, pp. 625-27.

^Cong. Rec., 75th Cong., 3rd Sess., February 16, 1938, pp. 2002-2006; the cloture vote was taken that day, after which Senator Barkley on February 21, closed out the discussion on the unsuccessful antilynching measure and the delay other business. Ibid, pp. 2201-2202.

Sitkoff, A New Deal for Blacks, p. 292. Alben Barkley adamantly distinguished between a vote for cloture and vote in favor of the bill when he argued in the Senate for cloture. He did not want to discuss the merits of the bill but only wanted to end the filibuster. Cong. Rec., 75th Cong., 3rd Sess., February 16, 1938, pp. 2005-2006. Perhaps he wanted to make amends with his fellow Southerners, since he was widely viewed as FDR's errand boy.


Alabama near-lynching discussed in newspapers like the New York Age, January 22, 1938, p. 6 (editorial, calling Section 5 the "only effective deterrent" to lynching because it assessed fines on the county for any mob violence committed there); Coatesville, Pa. lynching that was averted is discussed in Downey and Hyper, No Crooked Death, pp. 158-59.

Complete Presidential Press Conferences of Franklin D. Roosevelt, 11:245-46 (March 22, 1938); Crisis 45 (March 38), p. 118.

Crisis 45 (May 1938), p. 149; Zangrando, NAACP Crusade, pp. 154-55.

D.O.J., R.G. 60, Box 1288, Folder #1.

Tbid.

Zangrando, NAACP Crusade, p. 7.

FOOTNOTES - CHAPTER EIGHT

1See Porter and Johnson, National Party Platforms, pp. 435, 487, 542, on the Democrats' pledge for personal security whereas the Republicans promised a federal antilynching law, Ibid., pp. 452, 504; the 1968 Civil Rights Acts is found at 82 Stat. 76. Whitfield, in A Death in the Delta, pp. 106-107, and McGovern, in Anatomy of a Lynching, p. 147, both treat this provision as if it were a federal antilynching law along the lines of the Costigan-Wagner bill.


3Cong. Rec., 76th Cong., 1st Sess., January 5, 1939, Appendix, pp. 54-57, includes correspondence with Department of Justice officials Homer S. Cummings and Joseph B. Keenan; Reeder, "Federal Efforts to Control Lynching," pp. 94-95; Zangrando, NAACP Crusade, chapter 7.


7Kyvig, FDR's America, pp. 109-11.


9Crisis 47 (August 1940), pp. 232, 265 an editorial and article which quoted Barkely as telling an audience of black Democrats in July that the bill would be brought up to the floor this session; June 8, 1940, Chicago Defender quoted author Helen Burlin, who flayed Barkley for being unwilling
to inform the public when the bill would be brought up in
her call for antilynching legislation.

10 The black press commented on Eleanor Roosevelt’s
courageous stand on antilynching legislation, in light of
her husband’s refusal to endorse the measure, when the New
York Times reported on her plea to pass antilynching
legislation. January 13, 1939, p. 6; Crisis 47 (November,
1940), p. 343 on Roosevelt’s silence regarding this issue;
Porter and Johnson, comps., National Party Platforms,
p. 338; Crisis 47 (October, 1940), pp. 311, 321

11 Crisis 47 (September 1940), pp. 279, 293; Crisis 47
(October, 1940), p. 324, quoting September 14, 1940 Chicago
Defender; Porter and Johnson, comps., National Party
Platforms, p. 393; Crisis 47 (October 1940), p. 311 on the
Republicans’ message that an antilynching law should be
enacted.

12 Lash, Dealers and Dreamers, p. 420, concerning Harry
Hopkins on FDR in 1940-41; Ibid, pp. 416, 418 on Hopkins’s
own role in promoting civil rights in the Roosevelt White
House.

13 Gallup, The Gallup Poll, 1:209; see also Time, January
22, 1940, pp. 1819; Cong. Rec., 77th Cong., 2d. Sess., March
18, 1942, p. 2691; Ibid, 79th Cong., 1st Sess., January 3-
March 22, 1945, pp. 20, 22, 25, 26, 230, 448, 461, 2595.

14 Zangrando, NAACP Crusade, p. 7.

15 Dominic J. Capeci, Jr., "The Lynching of Cleo Wright:
Federal Protection of Constitutional Rights During World War
II," Journal of American History 72 (March 1986),
pp. 859-87, at 869.

16 October 19, 1942 communications, in National Negro
170, 269; see also Victor W. Rotnem, "The Federal Civil
Right ‘Not to Be Lynched,’ " Washington University Law
Quarterly 28 (February, 1943), pp. 57-73.

17 Capeci, "The Lynching of Cleo Wright," p. 869; New
York Times, January 27, 1942, p. 20, editorial condemning
the lynching; St. Louis Post-Dispatch, July 31, 1942, p. 2c,
editorial which called for a federal law to ensure "sure and
swift Federal punishment;" black editorials appeared in The
Crisis 49 (March 1942), and the Pittsburgh Courier, August
4, 1942, p. 6, which analyzed the events in Sikeston and the
lack of an antilynching law (respectively) in light of
Japanese propaganda (using anti-Negro events in the United
States to criticize American democracy); the National Negro


21 Saturday Evening Post 219 (August 24, 1946), p. 120; Newsweek 28 (August 26, 1946), p. 9.

22 Caudle speech reported in the New York Times, August 31, 1946, p. 13, about inadequate federal statutes on the books and what needs to be done: "Perhaps intolerance cannot be legislated out of existence," he said, "but we can and should legislate to punish those acts of violence that intolerance breeds."


25 Cong. Rec., 80th Cong., 2d Sess., February 2, 1948, pp. 927-29 for the President’s Civil Rights Message recommending a federal law on lynching and a permanent President’s Commission on Civil Rights among other reforms. One of Truman’s critics that spring, Representative William M. Colmer (D-Miss) predicted the end of constitutional government if Congress "punish[ed] innocent taxpayers under
the antilynch bill." Cong. Rec., 80th Cong., 2d Sess., April 8, 1948, pp. 4270-71. Colmer further saw Truman's proposals as purely political, designed to appeal to minorities' arrogant demands and encouraging the same. Ibid.

26 Cong. Rec., 80th Cong., 2d Sess., March 2, 1948, p. 2014 (Case's bill, H.R. 5673); Ibid., 80th Cong., 1st Sess., May 27, 1947, p. 5818 (Robert Wagner and Wayne Morse, S. 1352); The New York Times provided extensive coverage on the Congressional hearings, February 5, 1948, p. 5 and February 21, 1948, p. 7. Among those who testified at the House hearings were Walter White, Rep. John W. Heselton (R-Ma), Helen Gavagan Douglas (D-Ca), T. Millet Hand (R-NJ), Emanuel Celler (D-NY). Keating also proposed one of the bills pending before the House Judiciary Committee, so his interest in getting something enacted was more than academic.


28 NAACP Press Release, NAACP Papers, Library of Congress, cited in Zangrando, NAACP Crusade, pp. 194, 276; New York Times, July 11 and 14, 1948, p. 4, reported that Northern Democrats pledged to fight for a civil rights plank on the floor of the convention, but the fight was defeated; Porter and Johnson, National Party Platforms, p. 435.


1949, pp. 16, 20, 21, 22, 78, 294, 295, 2552 and 6301, for
the other antilynching proposals that term.


34 Stephen J. Whitfield's A Death in the Delta: The
Story of Emmett Till (New York: Free Press; London: Collier
Macmillan, 1988), chapters 2-4, give an excellent account of
the lynching, trial and aftermath, while a contemporary
record of the events, Louis E. Burnham's Behind the Lynching
of Emmett Till (New York: Freedom Associates, 1955), is only
one of many emotionally charged works on the tragedy.
Crisis 62 (October-December 1955), pp. 480-81, 546, 546-47;
St. Louis Argus, November 11, 1955, pp. 1, 14; New York
Times, September 20, 1955, p. 32; Newsweek, October 3, 1955,
pp. 24, 29-30; Life, October 3, 1955, pp. 36-38, October 31,
1955, pp. 17-18; Crisis surveyed the French press in its

35 The Republicans did not respond to the Till murder but
were anxious to capture black votes, which left them in a
quandary, according to E. Frederic Morrow in his memoir of
his years with the Eisenhower administration. Black Man in
the White House: A Diary of the Eisenhower Years by the
Administration Officer For Special Projects, the White
House, 1955-1961 (New York: Coward-McCann, [1963]), pp. 27-
28. Part of the administration's motivation for supporting
the 1957 Civil Rights Act was to enlist black support.

36 Whitfield, A Death in the Delta pp. 71-76 on President
Eisenhower's reluctance to deal with civil rights; Robert
Fredrick Burk, The Eisenhower Administration and Black Civil
Rights (Knoxville; University of Tennessee Press, 1984),
passim.

37 Morrow, Black Man in the White House, pp. 165-68;
16784.

38 71 Stat. 637 (1957); Cong. Rec., 85th Cong., 1st
Sess., January 3-March 4, 1957, pp. 65, 70, 71, 82, 85, 342,
344, 491, 939, 1223, 1337, 3064 for the antilynching bills
15; Ibid., February 16, 1957, p. 13;

39 Smead, Blood Justice, p. 32.

40 74 Stat. 90 (1960); Cong. Rec., 86th Cong., 2nd Sess.,
January 26, February 16, February 27, 1960, pp. 1311-19,
2563, 3691-92 on the Poplarville, Mississippi lynching and
the legislation introduced to prevent more mob deaths; See
also Smead, Blood Justice, pp. 126, 226; Burk, The Eisenhower Administration, pp. 240-246.


40By the mid 1960s, as Michal Belknap argues in Federal Law and Southern Order, pp. 183-251, Southern communities were themselves ready to enforce the law against the mobs within their midst, without which the courts were essentially powerless to halt mob violence. But Adam Clayton Powell, Jr. and William F. Ryan (D-NY) still believed that a federal antilynching bill would solve the problem of racial violence. Cong. Rec., 89th Cong., 1st Sess., June 29 and October 21, 1965, pp. 15204, 27908.

41See footnote 40 above for Belknap citation.

FOOTNOTES - CHAPTER NINE


2Editor Roy Wilkins and George Edmund Haynes were two blacks who decried the discriminatory Social Security law. Crisis 42 (March 1935), pp. 80, 85-86.

3Guinn, 238 U.S. 34; Buchanan, 245 U.S. 60; Bailey, 219 U.S. 219; Moore, 261 U.S. 86.

4Powell, 287 U.S. 45; Brown, 297 U.S. 278.

5Sitkoff, A New Deal for Blacks, p. 396.
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