

THE DYER ANTI-LYNCHING BILL
THE MOVEMENT FOR FEDERAL CONTROL OF LYNCHING 1900-1922

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INTRODUCTION

Recently Americans have become genuinely disturbed by incidents of racial violence in the United States. Modern mass media, especially television, has made millions eye-witnesses to the brutality of lawless mobs. For the first time many people have been forced to acknowledge the double standard of justice which has existed for the American Negro for nearly eighty years, and have been made aware of the paradox of mob rule existing in a country which guarantees all its citizens the equal protection of the law. The historical background of today's racial violence contains many practices which defied our traditional concepts of law and equality. Most conspicuous of these was lynching.

The lynching phenomena showed an intrinsic lack of respect for humanity and for organized society, and it is not treated very extensively in most narratives of American history. In the United States, nevertheless, lynchings were not accidental occurrences, but a surprisingly prevalent part of the American scene. The records showed

that from 1885 to 1917 approximately 3,740 lynchings occurred in this country, 2,743 of these had Negro victims, and 997 had white victims.¹ Approximately 90 per cent of the lynching victims in the first two decades of the twentieth century were colored.²

Besides being a racial phenomenon lynching was predominantly a regional one, with nearly 90 per cent of the lynchings taking place in the South.³ Several explanations based on southern history and the southern environment may be offered. Slavery's legacy to the South was a double standard of crime and punishment based upon race. Slaves formed no part of the judiciary or punitive machinery of southern society, and had no legal rights that they could

¹National Association for the Advancement of Colored People, The Fight Against Lynching (New York: April, 1919). Corresponding statistics for the number of lynchings during these years can be found in Crisis, XIV (July, 1917), 4; Monroe Work, Negro Year Book (Tuskegee: Tuskegee Institute, 1912), 148-149; Chicago Tribune, December 31, 1914.

²Southern Commission on the Study of Lynching, Lynchings and What They Mean (Atlanta: The Commission, 1931), 10. The N.A.A.C.P., The Fight Against Lynching, says that from 1900-1917 inclusive, 86.7 per cent of the lynch victims were Negroes and 13.3 per cent were whites.

³Southern Commission on the Study of Lynching, Lynchings and What They Mean, 8, 10.

assert. The slave system set up a separate legal framework for the Negro in the definition of crimes, in the processes of legal decision, and in the punishments imposed. Showing remarkable durability this system survived emancipation, the defeat of the South, and the Fourteenth Amendment. The mores and customs of the white South were unchanged, and the gap between law and custom was bridged by a variety of illegal or psuedo-legal expedients, ranging from the lynch mob to covert and systematic discrimination by law officers, judges, and juries.⁴ After the Civil War the South fought a bitter struggle to check any possible rise in prestige and economic status of the Negro.⁵ The majority condoned the use of violence to prevent the Negroes' emergence from the lowest economic, educational, and cultural position.⁶

The prevailing justification for mob violence, however, was that it was the only effective method of protecting

⁴Nathaniel Weyl, The Negro in American Civilization (Washington, D.C.: Public Affairs Press, 1960), 122.

⁵Edwin R. Embree, Brown America (New York: The Viking Press, 1931), 217.

⁶Walter White, Rope and Faggot (New York: Alfred A. Knopf, 1929), 11.

southern womanhood. Accordingly, the South created an image of the Negro as inferior, dangerously addicted to sex crimes, and likely to burst into unimaginable activities if the pressure on him were eased.⁷ Apologists for lynching, therefore, claimed that it would not stop until the Negroes ceased their ravishing and murdering. The underlying principle of the lynchers seemed to be then a determination to end the raping of their women by what they considered an inferior race.⁸ Statistics made these contentions suspect, for only one-sixth to one-third of the Negro lynchings resulted from an assault upon women.⁹ The accusations of rape and attempted rape combined accounted for less than one-fourth of the lynchings, and post lynching investigations often proved these charges

⁷Ibid., 15, 16.

⁸Thomas Nelson Page, "The Lynching of Negroes--Its Cause and Its Prevention," North American Review, DLXVI (January, 1904), 39. William P. Pickett, The Negro Problem; Abraham Lincoln's Solution (New York: G. P. Putnam's Sons, 1909), 190-191.

⁹Work, Negro Year Book, 1912, 149. The Southern Commission on the Study of Lynchings, Lynchings and What They Mean, 19.

to be unfounded.¹⁰

Despite the facts, fear of sexual assault by Negroes upon white women remained one of the greatest emotional spurs to lynching, and proved to be a powerful force in blocking a solution to the problem.¹¹ Southerners continued to define lynching as the natural human nature to wreak vengeance for an outrage.¹² An example of all these sentiments can be seen in a letter from Representative Frank Clark of Florida to labor leader Samuel Gompers in 1919:

The men of no country or section of country, in my opinion are worth a "tinkers dam" if they do not respect and protect, at any and all hazards, the virtue and chastity of their women . . . where they "let the law take its course," innocence and virtue are prostrate at the feet of the hell-born lust of the beast.¹³

¹⁰The Southern Commission on the Study of Lynchings, Lynchings and What They Mean, 19.

¹¹White, Rope and Faggot, 55.

¹²William Hayne Level, "On Lynching in the South," The Outlook, LXIX (November 16, 1901), 731-733. Winfield Collins, The Truth About Lynching and the Negro in The South (New York: The Neale Publishing Company, 1918), 65.

¹³Congressional Record, 66 Congress, 1 Session, LVIII (July 19, 1919), 2867.

In addition to its slave heritage and its almost monomaniacal concern for the safety of its white women, the South was predominately a rural area, and figures showed that individuals were in greatest danger from mob violence in sparsely settled rural counties. There was a direct correlation between the population per county and the rate of lynchings, the rate being highest in counties with the fewest inhabitants.¹⁴ Higher lynching rates in sparsely populated areas seemed to be due to inadequate or collusive local police action. In populous, well organized regions there were usually enough men and sufficient wealth to keep the peace under most conditions. Scattered communities, however, found the organization and maintenance of law and

¹⁴The Southern Commission on the Study of Lynching, Lynchings and What They Mean, 13. The following table shows lynchings per ten thousand population in fourteen southern states over a thirty year period (1899-1929). Ibid., 14.

Counties of less than 10,000 population . . .	3.2
10,000- 20,000 population	2.4
20,000- 30,000 "	2.1
30,000- 40,000 "	1.7
40,000- 50,000 "	2.4
50,000-100,000 "	1.0
100,000-200,000 "	0.6
200,000-300,000 "	0.3
300,000-and over "	0.05

order difficult and sometimes impossible.¹⁵ Also there was a disinclination of peace officers, court officials, and citizens to request outside assistance.

The special circumstances which surrounded lynching in this country, combined with the unfortunate psychological effects of this particular brand of outlawry caused many thoughtful people to seek an effective solution to the problem. Their fear was that the prejudice at the root of mob lynchings might spread if preventive measures were not taken. The Nation summarized this feeling succinctly in 1903:

When once you depart from the principle that all men as such have fundamental and equal rights, or from doing justice even upon the vilest under the strict forms of the law, you cannot tell to what fearful consequences you may be driven.¹⁶

Even though thousands of Southerners were as opposed to the lynching of a Negro as their counterparts in the North, it seemed that in many rural areas in the South those opposed to Negro lynching were in the minority.

¹⁵Page, "The Lynching of Negroes Its Cause and Its Prevention," 241-242.

¹⁶Nation, LXXVII (July 2, 1903), 4.

If the solution to the problem was left to these states to handle, then the paramount problem would have been to turn this minority into a majority. The environment would have to be altered so that local law enforcement officials would be able to protect Negroes from mob action without fear of losing their prestige in the community and their jobs.¹⁷

An alternative solution was to use the resources of the national government to control lynching by means of a federal anti-lynching law. The growth of this idea in a period of strong national anti-Negro sentiment, and its culmination in the Dyer Anti-lynching Bill will be the focus of this thesis.

¹⁷Rev. Quincy Ewing, "How Can Lynching be Checked in the South," The Outlook, LXIV (October 12, 1901), 360.

CHAPTER ONE

THE MOVEMENT FOR FEDERAL CONTROL OF LYNCHING, 1900-1918

The American Negro faced a generally hostile environment in the first two decades of the twentieth century. During these years the Negro saw disfranchisement, segregation, and inadequate police protection become accepted as the status quo for his race in this country.

At first glance it appeared that the Negro had an ally in his fight for first class citizenship in the Republican Party. The Republican National Platform of 1900 stated that,

it was the plain purpose of the Fifteenth Amendment to prevent discrimination on account of race or color in regulating the elective franchise. Devices of State Governments, whether by statutory or constitutional enactment to avoid this amendment are revolutionary, and should be condemned.¹

¹Rayford W. Logan, The Betrayal of the Negro from Rutherford B. Hayes to Woodrow Wilson (New York: Collier Books, 1965), 346. Kirk H. Porter and Donald Bruce Johnson, National Party Platforms 1840-1960 (Urbana: The University of Illinois Press, 1961), 123.

The Negro plank in the 1904 platform demanded congressional action to determine whether the Fourteenth Amendment was being violated and, if so, that it be enforced.² In 1908 the Republicans demanded equal justice for all men without regard to race and color, and stated their full support for the enforcement of the Thirteenth, Fourteenth, and Fifteenth Amendments.³ The Democrats, on the other hand, contented themselves by deprecating these ideas as attempts to renew racial and sectional strife.⁴

Holding the presidency and controlling both Houses of Congress from 1900 until the 1910 elections, the Republicans had an excellent opportunity to implement their platforms. They did nothing, however, to fulfill their promises. Peonage and the convict-lease system continued to violate the Thirteenth Amendment. Congress refused to enact legislation for the enforcement of the second section of the Fourteenth Amendment despite the disfranchisement of Negroes, and it did not seek to

²Porter and Johnson, National Party Platforms 1840-1960, 139.

³Ibid., 160.

⁴Ibid., 134.

enforce the Fifteenth Amendment.⁵

Negroes had hoped that Theodore Roosevelt would be sympathetic toward the plight of their race, but they soon realized Roosevelt's friendship was neither systematic nor sustained.⁶ After making a dramatic beginning by inviting Booker T. Washington to dine with him at the White House, Roosevelt proved unwilling to take any positive steps to alleviate the problems of the Negro. His handling of the Brownsville, Texas riot in 1906 dispelled any lingering hopes that he would do anything to improve the lot of the Negro in the United States. In August 1906 three companies of the Twenty-fifth Regiment, composed entirely of Negroes, were involved in a riot in Brownsville, Texas. During the disturbance one citizen was killed, one wounded, and the chief of police injured. On the basis of one inspector's report, Roosevelt summarily dismissed the entire battalion without honor and disqualified its members for future service in either the

⁵Logan, The Betrayal of the Negro from Rutherford B. Hayes to Woodrow Wilson, 347.

⁶John Hope Franklin, From Slavery to Freedom (New York: Alfred A. Knopf, 1947), 428.

military or civil service of the United States.⁷ Negro leaders were outraged by Roosevelt's action, and thereafter had no confidence in him.

President William Howard Taft also paid little heed to his party's platform. Shortly after his election, Taft embarked on a speaking tour of the South. The dominant themes of his speeches were that the southern white man was the Negro's best friend, and that the South need have no fear of a policy of social equality. Expressing confidence in the South, Taft implied that the federal government had no intention of enforcing the Fifteenth Amendment.⁸

By 1912 the Negro felt fairly well isolated in the American political system. He had no confidence in Roosevelt or Taft, and doubted whether a southerner, Woodrow Wilson, would be of any help to his cause. The Negro was further alienated by Roosevelt when Negro

⁷ Ibid., 434. It was not until 1909 that Congress established a court of inquiry to pass on the cases of the soldiers, and to compensate those cleared and qualify them for full citizenship rights.

⁸ Logan, The Betrayal of the Negro from Rutherford B. Hayes to Woodrow Wilson, 347-348.

delegates were turned away at the Bull Moose Convention in favor of lily white representatives from the South. Taft did nothing to combat the charge that he had surrendered to racism.⁹ Wilson, on the other hand, made several expressions of good will toward the Negro, and convinced many that his progressivism and education might overcome his southern background. Negro support for Wilson was not decisive, but it was greater than many Republicans would have believed possible.¹⁰

It did not take long to discover that Wilson's progressivism did not embrace the Negro. One of his first acts after taking office was to segregate Negro federal employees in their use of eating and rest room facilities. This was done by an executive order. In November 1914 William Monroe Trotter led a delegation of Negro leaders to call on President Wilson in order to protest these policies. The same group had appeared before Wilson in 1913, and had received no satisfaction. During the

⁹ Elliot M. Rudwick, W.E.B. DuBois, A Study in Minority Group Leadership (Philadelphia: University of Pennsylvania Press, 1960), 158-159.

¹⁰ Franklin, From Slavery to Freedom, 445.

second meeting Wilson claimed the segregation was necessary because of friction between colored and white clerks. Trotter became angry with this explanation, and replied that this could not be the reason because white and colored clerks had worked together without difficulty for fifty years prior to Wilson's Administration. This retort offended Wilson, and he stated that if the group ever desired another meeting with him it would have to be without Trotter. Wilson quickly ended the interview when Trotter told him the colored leaders were being denounced as traitors to their race in their own churches because they supported the Democratic ticket in 1912.¹¹

During the first several years of the Wilson Administration, there was a flood of bills proposing discriminatory legislation against the Negro. These bills advocated the segregation of the races on public carriers in the District of Columbia, the exclusion of Negroes from commissions in the Army and Navy, and the exclusion of all immigrants of Negro descent.¹² Congress did not pass

¹¹Crisis, IX (January 1915), 119-127. New York Times, November 13, 1914.

¹²Franklin, From Slavery to Freedom, 446.

any of this anti-Negro legislation, but it certainly did nothing to advance civil rights.

The whole thrust of progressivism seemed to bypass the Negro. Even the muckrakers, who usually advocated legislation to correct social ills, had a different solution for the Negro problem. In his book Following The Color Line, Ray Stannard Baker counseled that time, patience, and education were the only solution to the wrongs suffered by the Negro.¹³

In 1915 the film "The Birth of a Nation," based on the violently anti-Negro writings of Thomas Dixon, was acclaimed as one of the finest movies ever made in the United States. It told a sordid and obviously distorted story of Negro emancipation, enfranchisement, and debauchery of innocent womanhood.¹⁴ The widespread popularity of this film, the revival of the Ku Klux Klan, the increase in the number of residential segregation ordinances, and the increase in racial violence all

¹³Ray Stannard Baker, Following the Color Line; An Account of Negro Citizenship in the American Democracy (New York: Doubleday, Page & Company, 1908).

¹⁴Franklin, From Slavery to Freedom, 446.

indicated a strong anti-Negro sentiment among the American public.

Considering the mood of the nation, it was not surprising that the Federal Elections Bill of 1890 was the last significant effort made by Congress in behalf of equal political rights for the Negro until the middle of the twentieth century.¹⁵ The Elections bill provided for the supervision of state registration and election procedures by federal court-appointed officers from both major parties. Its central feature was to make the federal courts rather than the state governors and state certifying boards the final arbiter of congressional election procedures and returns. Upon the petition of one hundred or more citizens in a congressional district, the court-appointed federal supervisors could investigate charges of election bribery, intimidation, and fraud. They would have had the power to determine the candidate elect in disputed elections.¹⁶ The main purpose of the bill was

¹⁵ Richard E. Welch, Jr., "The Federal Elections Bill of 1890: Postscripts and Prelude," The Journal of American History (December 1965), 525.

¹⁶ Ibid., 514.

to insure the right to vote to the Negro as guaranteed by the Fifteenth Amendment.

Leading the fight for the Elections bill was a man who's first interest in politics had been excited by the wrongs of the Negro--Senator George Frisbie Hoar, a Massachusetts Republican.¹⁷ Hoar's motivation represented the hopes and fears of the old line-traditionalist faction within the Republican party. He wished to redeem his party's promise to the Negro, and simultaneously to make inroads for his party in the Democratic South. It seemed that he pursued both aims with complete sincerity. Regardless of party allegiance, Hoar saw the Elections bill as something he and his party owed the Negro.¹⁸

The Elections bill failed to become law, and reflecting upon its defeat Hoar wrote an article for the Forum in April 1891.¹⁹ He predicted that if the Negro question

¹⁷Frederick H. Gillett, George Frisbie Hoar (Cambridge: The Riverside Press, 1934), 33.

¹⁸Welch, Jr., "The Federal Elections Bill of 1890: Postscripts and Prelude," 522-523.

¹⁹George Frisbie Hoar, "The Fate of the Election Bill," Forum, XI (April 1891).

was not settled by the white power structure while it was still in their power to do so, that a solution would ultimately "be asserted through convulsion and in blood."²⁰ Hoar's genuine sympathy with the plight of the Negro, and his concern over the possible use of violence resulting from racial tension led him on December 9, 1901 to introduce a bill to protect citizens of the United States against lynching in lieu of protection of the states.²¹ This kind of anti-lynching legislation would be the only measures attempted by Congress during the first two decades of the twentieth century designed to help the Negro. Significantly no political equality was involved, but merely a guarantee against mob action and violent death. The movement for this rudimentary civil rights legislation followed a tortuous path in a generally hostile environment from 1900 to 1922.

Senator Hoar's 1901 bill called for the federal government to supercede state and local authorities when

²⁰Quoted in Welch, Jr., "The Federal Elections Bill of 1890: Postscripts and Prelude," 526.

²¹Congressional Record, 57 Congress 1 Session, XXXV (December 9, 1901), 212.

Negroes were lynched or were in danger of being lynched because of inadequate local protection.²² Not long after receiving the measure, the Senate Judiciary Committee reported adversely and postponed it indefinitely.²³ The Committee stated flatly that Congress had no constitutional right to exert its authority in a matter specifically reserved to the states. Providing equal protection of the law was a state function, and there was no legal foundation for Congress to act unless the states passed legislation explicitly denying it.²⁴ A similar bill in the House, introduced by William Henry Moody, Republican from Massachusetts and later a Supreme Court Justice, met an identical fate.²⁵ If the Republicans had been sincere about redeeming its promises to the Negro, these bills probably could have been reported favorably from the committees and sent to the Congress for consideration. The Republicans controlled the Senate Judiciary Committee

²²Ibid.

²³Ibid., (May 26, 1902), 5904.

²⁴Ibid., 5905.

²⁵Ibid., (December 2, 1901), 51.

eight to four, and the House Judiciary Committee eleven to six.²⁶ Evidently Hoar's conception of the purpose of the Republican party was not accepted by the majority of his colleagues, as they failed to act on these measures.

On the same day that the anti-lynching bill was reported adversely to the Senate, Senator Jacob Harold Gallinger, Republican from New Hampshire, called for a federal investigation of lynching:

Resolved that the Committee on the Judiciary is hereby directed to make inquiry into the subject of lynching in the United States and to report to the Senate whether, under the laws and the Constitution of the country, there is any remedy for the evil.²⁷

Gallinger, a staunch conservative, was an astute politician. His purpose for introducing the resolution was primarily to ascertain the popularity of using the federal government to prevent lynching. This was evident in his statement that "many good people in the country felt that the federal power ought to be exercised," and that he desired

²⁶Congressional Directory, 57 Congress 1 Session (Washington: Government Printing Office, 1902), 147, 168.

²⁷Congressional Record, 57 Congress 1 Session, XXXV (May 26, 1902), 5902.

an authoritative statement on that point.²⁸ Gallinger was to quickly disassociate himself from the project when it elicited immediate opposition from both Democrats and his own Republican colleagues.

The reaction of the press to these proposals was mixed. The Republican Boston Evening Transcript desired Congress to settle the question of whether the United States was competent to maintain the peace and dignity of the law while protecting the rights of citizens within her borders. The Transcript felt that it was a part of the duty of government to gather and classify the evidences of lynching, and also to attempt a remedy.²⁹

Another Republican newspaper from Massachusetts, the Springfield Weekly Republican, said that lynching was made possible by a local public sentiment strong enough to defy the efforts of local authorities to apprehend and punish the guilty ones. What would happen if this shield thrown over the lynching was broken by federal authority? If this was done, was there not a possibility of intensifying

²⁸Ibid., (June 3, 1902), 6214

²⁹Boston Evening Transcript, May 27, 1902.

the general disposition to protect lynchers? The Republican claimed that the problem of preventing the exercise of mob rule revolved upon the elimination of Anglo-Saxon contempt for people with dark skins, and only this would provide the solution to Negro lynching. A federal anti-lynching law was not the answer for the inevitable tendency of any legislation like that proposed would have been to destroy the police power of the states altogether and to turn them over to the federal government. The paper did not favorably regard what it considered a breakdown of the federal system.³⁰

In Congress these measures naturally provoked immediate and strong southern opposition. Southern representatives believed that the Negro question had been permanently settled since the Compromise of 1877, and resented any new attempt to make Negro rights an issue that concerned the federal government. The northern Republicans were uncertain of the advisability of bringing the question of protecting Negroes in the South to a fight in Congress.³¹

³⁰Springfield Weekly Republican, May 20, 1902.

³¹Ibid., December 20, 1901. Congressional Record, 57 Congress 1 Session, XXXV (May 26, 1902), 5902-5905.

Fearing a virulent sectional debate and doubting united Republican support, the sponsors of federal action to control lynching withdrew their plans.

Thus Congress abandoned its first attempt to investigate lynching, and to pass a law which would effectively prohibit it. Lynchings continued, however, and the brutality with which they were carried out increased noticeably. Elaborate torture and burning at the stake became a regular feature of lynching; and concomitant with this increase in savagery was a buttressing of the arguments put forth by those who defended lynching.³²

People who sought to rationalize lynching offered a variety of reasons for the phenomenon. The natural human propensity to wreak vengeance for an outrage was the strongest and most frequently made justification for lynching. Following directly from this sentiment was the belief that the average Negro feared nothing so much as force, and that terror was the only effective restraining influence on him. A contributing factor was that in many

³²Ralph Ginzburg, 100 Years of Lynching (New York: Lancer Books, Inc., 1962). This is a volume of newspaper accounts of the increasing atrocities committed by lynchers, especially during the 1900 to 1920 period.

rural southern communities the Negroes out-numbered the whites, and lynching was a means of keeping the Negro in an inferior position. The supposedly slow process of the law and frequent miscarriages of justice was one more reason that made lynchings seem necessary to some people.³³

As a section, the South appeared to blame the Reconstruction Era itself for the rise of lynching. The argument held that during the whole period prior to Reconstruction an assault by a Negro on a white woman was unheard-of. After the Civil War all this changed, as the southern Negro became indoctrinated with ideas of equality. It was when the Negro began to assert these ideas against the whites in the South that racial violence appeared.³⁴ Thus, the harmony that allegedly had existed between the races was disrupted. Deleted from this rationalization was that lynching was absent from the pre-war South primarily because the Negroes were precious pieces of property as slaves, and too valuable to kill. After

³³ William Hayne Levell, "On Lynchings in The South," Outlook, LXIX (November 16, 1901), 732.

³⁴ Thomas Nelson Page, "The Lynching of Negroes--Its Cause and Its Prevention," North American Review, DLXVI (January, 1904), 39.

emancipation, however, the black man was expendable, and was subjected to outbursts of violence from the smoldering resentment, hatred, and fear of the southern white man.

Southern white feeling ran deep that until the Negro ceased assaulting women and children lynching would never be totally eradicated.³⁵ This line of thinking led to such extreme statements on lynching as the one made by John Temple Graves of Georgia at the Chantangua Conference on the Mob Spirit in 1903:

The mob stands today as the most potential bulwark between the women of the South and such a carnival of crime as would infuriate the world and precipitate the annihilation of the Negro race.³⁶

Graves concluded by remarking that the evil consisted not in lynching, but in the lawlessness of lynching. To him the solution to the problem of racial violence was to legalize the mob.

There were protests against the practice of lynching in the first decade of the twentieth century, but there was not much sentiment for a federal law to control it.

³⁵Ibid., 46.

³⁶Outlook, LXXIV (August 22, 1903), 960.

The majority of the people who were aware of the problem felt that there were enough laws to check lynching if governors, sheriffs and police officers would enforce the existing statutes.³⁷ Laws against murder were ample, and lynching was no more than a form of murder, so that further enactments were not needed. What was not realized by many people, however, was that as a general rule the constituted authorities were shamefully delinquent in their duty. Prior to a lynching Negroes were frequently inadequately protected, while after a lynching seldom was there any serious effort to punish the participants. The whole structure of American government seemed to turn its back on this situation, and politicians generally avoided the question.³⁸

The lack of an effective protest against lynching was due partly to the absence of any feeling of national concern. To most people outside the South the reality of the lynching phenomenon was completely extraneous. Lynchings were given scanty coverage in the press at a

³⁷Nation, LXXVII (July 30, 1903), 86.

³⁸Winthrop Sheldon, "Shall Lynching be Suppressed, and How," The Arena, XXXVI (September 1906), 233.

time when the newspapers constituted the only means of mass media in the country. An occasional small news item concerning a heinous mob murder of a Negro elicited little more than a solemn shake of the head from the few who read it.

It was more, though, than a lack of information that explained the public indifference to lynching. Those who were aware of the problem considered it strictly a regional, not a national one. The vast majority of Negroes lived in the South, so the feeling was to let the South deal with them as they desired. Since the Reconstruction Era, there was nothing in the American experience to convince people that the Negro was a national concern. The hypocrisy of mob justice reigning in a major section of a country guaranteeing equal justice to its citizens was little more than an interesting conundrum for a small number of intellectuals. It would take many revolutionary events to make the importance of the problem clear to enough responsible citizens so that an organized effort could be made to rectify it.

Another reason for the lack of a telling protest was the dearth of effective leadership for the Negro. The

most prominent Negro leader from 1900 to 1915 was Booker T. Washington, and his conciliatory philosophy was not suited for the formation or the support of federal control over lynching. The central theme in Washington's ideology was that through thrift, industry, and Christian character Negroes would eventually attain their constitutional rights. Taken on the moral level at which Washington spoke, it meant that Negroes could earn their rights by the traditional American process of individual initiative, hard work, and responsibility. At its most cynical level, as expressed by southern whites, it meant that the Negro must peacefully earn the right not to be lynched.

On lynching itself, Washington talked of the harm that it did to the lynchers--to their moral fiber, to economic conditions, and to the reputation of the South--and at the same time counseled Negroes to cultivate industry and to cease the idleness that led to crime.³⁹ An excellent example of Washington's technique was a letter published in the New York Tribune in 1904:

³⁹August Meier, Negro Thought in America, 1880-1915: Racial Ideologies in the Age of Booker T. Washington (Ann Arbor: The University of Michigan Press, 1963), 109.

I have always been among those who condemn in the strongest terms crimes of whatsoever character committed by members of my race, and I condemn them now with equal severity, but I maintain that the only protection of our civilization is a fair and calm trial of all people charged with crime and in their legal punishment if proved guilty. There is no shadow of excuse for deviation from legal methods in the cases of individuals accused of murder. . . . The rule of the mob destroys the friendly relations which should exist between the races, and injures and interferes with the material prosperity of the communities concerned.⁴⁰

Washington was a Negro leader who pleased the white power structure. His philosophy of self-help and accommodation was well within the tradition of the American experience. To the responsible leaders of the nation his method seemed to be the most suitable for the development of the American Negro. Ironically, it was Washington's prestige in the white community that helped to undermine his support among the Negroes. The feeling was growing that a stronger philosophy and leadership was needed to successfully improve the Negro condition, and that this new approach might not be so popular in the white community.

Aside from Washington, who conceived his role

⁴⁰ New York Tribune, February 29, 1904.

differently, there was no significant person or organization during the first years of the twentieth century to coordinate individual protests and to apply political pressure for solutions to Negro problems. In February, 1909, however, a small group of prominent liberals founded the National Association for the Advancement of Colored People in an effort to rectify the situation.⁴¹ The organization had an interracial character, and this was fundamental to its success. It gave the agitation for Negro rights a wider audience, better financial support, and the prestige of names of well known whites such as Moorfield Storey, Franz Boas, Clarence Darrow, and Oswald Garrison Villard.⁴² Except for William Edward Burghardt DuBois all the chief officials of the N.A.A.C.P. were white, while the constituency of the organization, the branches and their membership, consisted chiefly of college-educated Negroes.

In the first year of its existence the N.A.A.C.P. launched a program to widen the industrial opportunities

⁴¹Meier, Negro Thought in America, 1880-1915: Racial Ideologies in the Age of Booker T. Washington, 165.

⁴²Ibid., 182.

for Negroes, to seek greater police protection for Negroes in the South, and to carry on a crusade against lynching and lawlessness.⁴³ The methods set up by the N.A.A.C.P. to accomplish its ends were to gather and publish information about lynchings to inform the public, to try to bring lynchers to justice through the courts, and ultimately to obtain such legislation as would effectively abolish lynching.⁴⁴ Its impact on the national scene was not too great in its early years, largely because of a chronic lack of funds and a limited membership. Managing to investigate the most outrageous lynchings, the N.A.A.C.P. also published a monthly magazine called the Crisis, a pamphlet called Notes on Lynching in the United States (1912), and Annual Reports.

Weak as it was, the N.A.A.C.P. was important in its early years because it was the only organization having the eradication of lynching as a primary objective. It began to promote the idea of federal control of lynching,

⁴³ John Hope Franklin, Up From Slavery (New York: Alfred A. Knopf, 1956), 439.

⁴⁴ Seventh Annual Report of the National Association for the Advancement of Colored People, Freeing America (1917).

and struggled to make its cause heard. Meanwhile, two events--the great migration of Negroes to the North and World War I--strengthened the N.A.A.C.P. and increased its efficiency in the fight against lynching.

The migration of Negroes from the southern to the northern section of the United States was one of the largest internal movements of a people in the history of this country. Negro discontent with the continued existence of lynching in the South and its increased barbarism was an important factor in this movement, but not the only one.⁴⁵ There was a labor depression in the South which began in 1914; a disastrous encounter with the cotton boll weevil in the summers of 1915 and 1916 which damaged the cotton crop in Louisiana, Mississippi, Alabama, Georgia, and Florida; and a continued system of low wages despite a rising cost of living.⁴⁶ Another factor in the migration was the effect of World War I on the labor supply in the North. The biggest competitor

⁴⁵ Emmitt J. Scott, Negro Migration During the War (New York: Oxford University Press, 1920), 13.

⁴⁶ Ibid., 14.

of the Negro in northern industry had been the immigrant, and he had in effect crowded the Negro out of employment in the North and held him in the South under adverse economic conditions. The war drastically stemmed the tide of foreign immigration, and seriously depleted the labor ranks at a time when new industries designed to meet the needs of war demanded an increase in the labor supply. A concomitant rush of white men to higher paid positions resulted in an almost complete exhaustion of the unskilled labor market. The Department of Labor at first urged southern Negroes to move north, but it withdrew its support when it became aware of the possible magnitude of the movement.⁴⁷

Many Southerners initially greeted the departure of Negroes with relief as the eventual solution of the race problem. Soon, however, they became apprehensive about the immense economic loss resulting from the hundreds of thousands of acres left uncultivated because their laborers had fled. Resort was had to the old stand-by of a considerable majority of Southerners in dealing with Negroes--

⁴⁷Ibid., 51-53.

reliance upon terrorism and persuasion by brute force.⁴⁸ At the same time, northern urban centers were encountering difficulties in accommodating the increased number of Negroes, and there was a growing resistance to their presence.⁴⁹ Now there was a potential for increased racial violence in the South and the North.

In response to these increased racial tensions the N.A.A.C.P. in July, 1916 launched a \$10,000 anti-lynching fund to organize sentiment in the South, and to fight lynchings by legal actions, publicity, and political agitations.⁵⁰ The association began a scientific diagnosis of lynchings, and made an attempt to bring the pressure of social contempt upon the classes in whom the will to lynch flourished.⁵¹ By January, 1917, the N.A.A.C.P. had received almost all of the money for the fund.⁵²

Joining the N.A.A.C.P. and its official magazine, the

⁴⁸White, Rope and Faggot, 110-111.

⁴⁹Richard Bardolph, The Negro Vanguard (New York: Vintage Books, 1961), 132.

⁵⁰New York Times, July 7, 1916.

⁵¹The New Republic (October 14, 1916), 262.

⁵²New York Times, January 12, 1916.

Crisis, in the stepped up fight against lynching were such militant Negro publications as the Washington Bee and the Chicago Defender. The Defender was particularly vehement in its denunciation of lynching. In February, 1916 the paper charged that:

the intelligent and cultivated people of Georgia lynched sixteen colored people, which was a record breaker even for this state of backward civilization where violence triumphs over law. As ghastly as are the horrors of the European war, man's inhumanity to man is not confined to our brethren across the sea. We have this same hideous story every year. Are we ever going to do anything about it?⁵³

There were several reasons for a heightened interest in appeasing racial tensions at the end of 1917. Lynchings increased in 1917, there was a bloody race riot in East St. Louis, Illinois, and there was a growing fear that Negro soldiers would not be willing to submit to the old indignities when they returned from the European battle fields. Of much concern to the nation's leaders was the German's attempt to use the racial disturbances of 1917 as a part of their war time propaganda program. For example, in East St. Louis at least forty Negroes lost

⁵³Chicago Defender, February 12, 1916.

their lives in a riot that grew out of the employment of Negroes in a factory holding government contracts. Negroes were stabbed, clubbed, and hanged; and a two-year old Negro child was shot and thrown in the doorway of a burning building. The Germans made the most of these unfortunate incidents in their effort to spread anti-war sentiment among Negroes. They kept a record of lynchings and attacks of whites on Negroes, and urged Negroes to desert the struggle out of which they were gaining nothing.⁵⁴ These factors, plus the fact that the migration to the North gave thousands of formerly disenfranchised Negroes the right to vote and exert political pressure, were the initial catalysts behind the effort to obtain a federal anti-lynching law in April, 1918.

⁵⁴Franklin, Up From Slavery, 467.

CHAPTER TWO
THE INTRODUCTION OF THE DYER BILL,
1918-1920

On April 19, 1918 Republican congressman Leonidas Carstorphen Dyer of Missouri introduced an anti-lynching bill in the House of Representatives.¹ Dyer represented the twelfth congressional district in Missouri from 1911 to 1933, failing only in 1913 to win re-election. He was motivated by two factors in his support of a federal anti-lynching bill, the composition of his constituency and an apparently sincere moral commitment to acquire the equal protection of the law for the Negro.

Any elected official must be aware of the special problems and desires of the people he represents. In 1920 there were 178,241 Negroes residing in Missouri of which 50,381 lived in St. Louis, or 28 per cent of the Negroes in the state.² Missouri's twelfth district was one of

¹Congressional Record, 65 Congress, 2 Session, LVI (April 19, 1918), 5362.

²Noel Gist, Missouri, Its Resources, People and Institutions (Columbia, Missouri: University of Missouri, 1950), 219. Also see Department of Commerce Bureau of

three representing St. Louis, and furthermore was where the Negro population was most heavily concentrated. It took no great political strategist to calculate that this heavy and enfranchised Negro population must be satisfied if one wished to remain a representative from this district.

Through its research staff and field organizers, the N.A.A.C.P. became aware of the political situation in Dyer's district and contacted him as early as 1916. They found a willing liaison who eagerly discussed and defended the Negro in Congress. Dyer repeatedly recounted the loyalty and heroism of Negro soldiers, and the educational and economic progress of the race as a whole.³ Although it is often difficult to analyze the sincerity of remarks made in Congress, the fact that Dyer was working with the N.A.A.C.P. was a good indication of his honest commitment to the Negro. He could have placated the majority of his Negro voters without working with an organization which

the Census, Fourteenth Census of the United States 1920, II, Population 1920 (Washington: Government Printing Office, 1922), 1349.

³ Specific examples can be found in the Congressional Record, 64 Congress, 1 Session, LIII (March 14, 1916), 560, 561. Ibid., 65 Congress, Special Session, LVI (April 9, 1917), 501.

was considered more radical and demanded more positive steps to insure Negro rights than any reform group had previously done. Risking the prospect of censure from conservative elements, Dyer hoped that the Negro could be helped more readily by this more militant, direct approach.

Neither was Dyer averse to calling on the power of the federal government to deal with problems of national scope. At the same time that he introduced the anti-lynching bill, he was sponsoring what later became known as the National Motor Vehicle Theft Act (1919). This act provided for a punishment of \$5,000 and/or five years imprisonment for stealing a car and transporting it from one state to another. It levied the same penalty for any one who received a stolen car in another state for the purpose of selling or disposing of it.⁴ Dyer's argument for the necessity of the Motor Vehicle Theft bill sounded similar to his defence of the federal anti-lynching bill. "There has been and is now a most widespread demand for such a law. State laws on the subject have been inadequate

⁴Congressional Record, 66 Congress, 1 Session, LVIII (September 15, 1919), 5472.

to meet the evil."⁵ The power for Congress to enact such a measure, however, was derived from the commerce clause while the basis for the anti-lynching bill was the Fourteenth Amendment. Dyer relied exclusively on the right of Congress to control interstate commerce as the legal basis for the Theft Act.⁶

The Supreme Court had first recognized the use of the commerce clause for police purposes in Champion v. Ames (1903).⁷ Justice John Marshall Harlan said: "The power to regulate commerce among the several states is vested in Congress as absolutely as it would be in a single government."⁸ The Court ignored the fact that the purpose of the law under question was not the regulation of commerce but the control of gambling, which was a matter previously reserved for the state.⁹ Thereafter the Court

⁵Ibid., 5471.

⁶Ibid., 5472.

⁷188 U.S., 321.

⁸Ibid.

⁹Alfred H. Kelly and Winfred A. Harbison, The American Constitution. Its Origins and Development (New York: W. W. Norton & Company, 1963), 586.

generally approved of the growth of the federal police power under the commerce clause. In Hoke v. United States (1913) it sustained the Mann Act, and in Hipolite Egg Co. v. United States (1911) it upheld the Pure Food and Drug Act.¹⁰ Occasionally the Court revived the distinction between commerce and outright prohibition as in Hammer v. Dagenhart (1918) which invalidated the Child Labor Act of 1916.¹¹ The general trend, however, was to allow the extension of the federal police power through the commerce clause.

Dyer approved of the extension of federal power when problems seemed insolvable by state action alone. Believing that the commerce clause did not apply in a plan to control lynching, Dyer attempted to use the Fourteenth Amendment as a means to extend the federal police power in the realm of civil rights. Because of his political constituency, his moral commitment, and his political philosophy, Dyer seemed to be a natural and believable sponsor of federal control over lynching.

¹⁰227 U.S., 308, 220 U.S., 45.

¹¹247 U.S., 251.

Dyer conferred with James Weldon Johnson, the Field Secretary of the N.A.A.C.P., and they agreed that an anti-lynching bill could eventually be passed in the House if it could be reported from committee to the floor for debate. The real problem, however, was to get such a bill reported favorably from the Committee on the Judiciary.¹² In addition to the controversial nature of the legislation and Congress's usual reluctance to act on measures designed to revive the Negro problem in national politics, the make-up of the Judiciary Committee posed an impressive obstacle to the supporters of the bill. The Committee was composed of twelve Democrats--nine from southern states--and nine Republicans.¹³ It was obvious that until northern Republicans could gain control of the Committee all efforts on behalf of the bill would not prevent it from being held by the Committee.

It is necessary to examine the contents of the Dyer bill at this time in order to see that its provisions

¹²James Weldon Johnson, Along This Way, the Autobiography of James Weldon Johnson (New York: The Viking Press, 1935), 362.

¹³Congressional Directory, 65 Congress, 2 Session (April-December 1918), 190.

implied several departures from traditional legislation.

The first section of the bill made it clear that the measure was based on the assumption that the Fourteenth Amendment was not severely limited to action by the states, but was applicable to actions by individuals against other individuals within each state. Thus anyone faced with an arrest who felt that his personal safety was in jeopardy because:

he has reasonable cause to apprehend that he will be denied the equal protection of the laws by the State within whose jurisdiction he is or by any officer or inhabitant of such State such person shall be entitled to the protection of the courts and officers of the United States to the end that the protection guaranteed by the Constitution of the United States may be given.¹⁴

This concept of the scope of the Fourteenth Amendment was a departure from the traditional view taken by the Supreme Court and will be dealt with when the question of the constitutionality of the Dyer bill is discussed.

Sections 2, 3, and 4 defined the legal process by

¹⁴Committee on the Judiciary, House of Representatives, 67 Congress, 1 Session, Constitutionality of a Federal Antilynching Law (Washington: Government Printing Office, 1921), 60.

which a person charged with a crime could obtain the protection of the federal government if threatened with a lynching. Any person charged with a felony or other crime could file a petition in the district court of the United States which had jurisdiction over him. The petition was required to contain the following: (1) the fact that the petitioner had been charged or arrested for a felony or a criminal act, (2) the nature of this act, (3) a reason to believe that the petitioner was likely to be denied the equal protection of the law by the courts, the officers, or other inhabitants of the state in default of protection by the state because of his race, and (4) a statement that other members of his race charged with a similar offense had been put to death, assaulted, or denied a fair trial in the courts of the state. This petition could be filed by the person in question, or by another person in his behalf. Until a hearing could be held on the petition, the clerk of the circuit court was to authorize a United States marshall to take custody of the petitioner and protect him. If the petition was not upheld, the petitioner would be returned to the custody of any officer from whom he had been taken. In case he had not been taken from an

officer, he would be set free and the costs of the proceedings would be taxed against him. If the petition was upheld, the petitioner would remain under the marshall for protection and tried in the proper district court of the United States. For the purpose of such a trial, the district court would have jurisdiction to try and determine any and all proceedings which would be removed from any state court under this act.

Sections 8 and 9 declared that the actual killing of a person by a mob or riotous assemblage (three or more persons openly acting in concert in violation of the law) "in default of protection of such person by such state or the officers thereof" was a violation of the peace of the United States and an offense against the same."¹⁵ The defendants would be tried in any district court of the United States having jurisdiction in the area where the offense occurred. Thus the federal system would supercede the jurisdiction of the state in certain types of murder.

Sections 6, 7, 12, and 13 levied penalties against private citizens and state officials for obstructing the

¹⁵Ibid., 61.

legal process by positive or negative actions. A \$10,000 fine and a ten year prison sentence were set for persons who resisted any duly authorized official while protecting the rights of a citizen. Any person who actually abducted a prisoner from authorities, and was in any way connected with a subsequent killing, would be charged with murder and tried in a federal court. Any state or municipal officer empowered to keep the peace would be fined \$5,000 or imprisoned for five years if he failed, neglected, or omitted to prevent a lynching. The state or municipal officer would also be prosecuted in a United States district court.

Sections 10 and 11 prescribed a \$10,000 fine against the county in which a lynching took place, and the fine was to be collected by a suit by the United States against the county. In the event that a lynching victim was transported from county to county before being killed, all counties would be jointly liable.

Section 15 included foreigners who were citizens or subjects of another country under all provisions of the bill.

The Dyer anti-lynching bill described above probably

would have been killed in the Committee on the Judiciary if it had not been for the manifestation of a new Negro spirit and the realization that the increasing power of the Negro voter might influence the 1920 election. There was a greatly increased Negro militancy from 1918 to 1920 which was generally accounted for by Negro participation in World War I, and by the increased migration of Negroes to northern urban centers. Military service increased the self-confidence of the Negro and also increased his desire to see this self-confidence, developed in the service of the nation, acknowledged by the nation. The World speculated on the effect of military service upon Negro attitudes, and asked:

Is there anybody at the South or elsewhere who imagines that the compulsory service of 360,000 Negroes in the United States Army, in many instances so creditably as to win high commendation, has had no influence upon them or the mass of their people at home? Who is foolish enough to assume that . . . the blacks, whose manhood and patriotism were thus recognized and tested, are forever to be flogged, lynched, burned at the stake or chased into concealment whenever Caucasian desperadoes are moved to engage in their infamous pastimes?¹⁶

¹⁶The World, July 23, 1919.

To the intelligent Negro, the logic of the situation convinced him that he should attempt to gain his recognition on a par with the white man in civilian life as he had done as a soldier.

Negro publicists discovered a fresh and more effective basis for their appeals in the slogans of the War. The Houston Informer declared:

The black man Fought to make the World Safe for Democracy, he now demands that America be made and maintained safe for Black Americans.¹⁷

In the official organ of the N.A.A.C.P., the Crisis, W.E.B. DuBois concurred:

Make way for Democracy! We saved it in France, and by the Great Jehovah, we will save it in the United States of America, or know the reason why.¹⁸

This new attitude displayed by the Negro spread a feeling of uneasiness among southerners about the returning Negro soldiers. The Negroes of the nation, North and South, were manifesting a restlessness not heretofore known

¹⁷ Houston Informer, October 11, 1919. Quoted in Robert T. Kerlin, The Voice of the Negro; 1919 (New York: E. P. Dutton and Company, 1920), 34.

¹⁸ Crisis, May 1919. Quoted in Kerlin, The Voice of the Negro; 1919, 36-37.

among them.

At the beginning of 1918 James Weldon Johnson headed a committee of four in a private interview with President Woodrow Wilson. During the course of the session, Johnson told Wilson that since the President had spoken out so eloquently to the world for the cause of humanity, that the Negroes of the United States felt that he could help their cause by speaking out against the specific evil of lynching. Pressed for a promise to make a statement against lynching Wilson demurred, expressing doubt that any word from him would have any special effect. Finally he rather weakly promised to seek an opportunity to say something.¹⁹

Knowledge of Wilson's record toward the Negro and his past sessions with Negro leaders tended to dampen any hope that he would act positively. He did, however, make an appeal to the nation to stop the lynching of Negroes. In an address on July 26, 1918 Wilson, using his usual moralistic rhetoric, called for an end of the mob spirit, and added that every lynching was "a blow at the heart of

¹⁹ Johnson, Along This Way, The Autobiography of James Weldon Johnson, 323-325.

ordered law and human justice."²⁰ The safety of the Negro was not the only issue on the President's mind as he emphasized that:

Every mob contributes to German lies about the United States what her gifted liars can not improve upon by the way of calumny. They can at least say that such things cannot happen in Germany except in times of revolution when law is swept away.²¹

Obviously Wilson was aware of reports that the lynching of Negroes were being used by the Germans as evidence that the stand of the United States as the champion of democracy was a sham.²² There was a vague fear that the German propaganda might cause American Negroes to lay down their arms if lynching continued unabated. Indeed the main thrust of his message implied that the President was more concerned with the effect of Negro lynchings on the war effort than with the plight of the Negro.

Wilson's personal appeal did not bring about any spectacular results. In August, 1918, in response to the President's message, the San Antonio Express announced

²⁰ New York Times, July 27, 1918.

²¹ Ibid.

²² Ibid.

that it had set aside a fund of \$100,000 to combat lynching by offering rewards for the apprehension and conviction of lynchers. While this action merited particular attention because it was taken by a southern newspaper, Wilson's appeal failed to elicit any widespread disposition to end lynching.²³ The Chicago Defender noted that even the President's opposition to lynching would be ignored unless the crime was made a federal offense.²⁴

With the Dyer bill still tied up in the Judiciary Committee and with President Wilson's appeal failing to evoke much of a positive response, the N.A.A.C.P. called for a national conference on lynching in New York on May 5, 1919, in an attempt to focus more attention on the problem. The New Republic urged that the conference explicitly label lynching as a crime that challenged the authority of the nation, just as a rebellion against the government of the United States would challenge this authority. The magazine emphasized federal action as a remedy.²⁵

²³Nation, CVII (August 31, 1918), 218.

²⁴Chicago Defender, August 3, 1918.

²⁵New Republic, XIX (May 3, 1919), 8.

The main speaker at the conference, which was held at Carnegie Hall, was former Supreme Court Justice Charles Evan Hughes. Describing lynching as a manifestation of the Hun Spirit, he said that the country owed it to the Negroes who served in the war to abolish its practice. Hughes held little hope for the future of any country, however it phrased its formal language in a constitution or in statements of government principle, if there was within the country a disposition to enthrone mob violence and the rule of force. One could not expect a lawless sentiment to be confined to any one section of the country, and if lawlessness succeeded in one place it would break out in another. Hughes said: "You cannot dethrone justice in the South and let lynching go unpunished there, and expect to be secure in the metropolis of New York."²⁶

The seriousness of racial tensions in the North became apparent to the nation when in July, 1919 full scale race riots erupted in Washington, D.C. and Chicago, Illinois. Social, economic, and housing grievances were the underlying causes of the riots. All that it took were some

²⁶New York Times, May 6, 1919.

hot, humid summer days, however, to show what the same mob spirit that was responsible for lynchings could lead to in a populous urban area. The new Negro psychology was evident in these riots as the Negro began to fight back vigorously against the white mobs. Disquieting as this was, it awakened many Americans to the fact that the Negro would lash back at his fellow white citizens if pushed too far.

Many people attributed the rise in racial tensions and the new Negro attitude to Communist influence among the American Negroes. At the time of the race riots, investigations into seditious activities were a major part of the Red Scare that gripped a large segment of the country in 1919. Apprehensive of the effects of the Bolshevik victory in Russia, the United States government sponsored and sanctioned a crusade of moralistic Red hunting. The race riots attracted the attention of the investigators, and on July 28, 1919 a New York Times headline proclaimed that "Reds Try to Stir Negroes to Revolt."²⁷ Evidence in government files was supposed to have shown

²⁷Ibid., July 28, 1919.

that the Negroes were the object of a well-financed effort to stir up discontent. From this evidence, the conclusion was drawn that the unrest among the Negro population was due to the incendiary writings and speeches of leftist agitators.²⁸

It was difficult to ascertain exactly how much influence the radical socialists and communists had among the American Negro. Undoubtedly they were active in fanning the discontent which already existed, for no group in the United States should have been more amenable to communist propaganda than the American Negro. In the aggregate they were unskilled workers, and were the most conspicuously persecuted minority in the country. For them the communists painted a picture of brotherhood and equality based on working class solidarity and not based on race. Workers of all colors were equal partners in the struggle against the capitalists.

The communists and radical socialists did not count on the emotional attachment of the Negro to the American system of government despite the fact that he was not given

²⁸ Ibid., July 28, 1919; August 4, 1919; August 24, 1919.

a real chance to become a part of it. The American Negro had faith that they would some day be allowed first class citizenship, and they were amazingly unaffected by the agitators. But how long could the Negro be expected to retain this faith in his country if nothing was done to help alleviate his suffering? A letter from a Negro to the Nation expressed the exasperation that the American Negroes felt in August 1919:

But what would you advise Negroes to do when the Federal or State Government withholds from them its protection, as it invariably does? Should Negroes remain supinely inactive? . . . For America this is the greatest aftermath of the war . . . yet all the little politicians, from the President down, ignore it.²⁹

Because racial unrest and violence had gained national prominence during 1919, many politicians began to look at the growing Negro voting power and to contemplate its effect on the 1920 election. W.E.B. DuBois claimed that the Negro voter would hold the balance of power in Illinois, Michigan, Indiana, and Kentucky. In a close election the Negro might be the decisive factor in Maryland, New

²⁹Nation, CIX (August 16, 1919), 223.

Jersey, New York, and Ohio.³⁰ DuBois was guilty of some exaggeration, but it appeared that the Negro vote might influence close elections in the states mentioned above. Also Negro voters did hold large power in many congressional districts in Connecticut, Delaware, Iowa, Kansas, Massachusetts, Minnesota, Missouri, Pennsylvania, and West Virginia.

The N.A.A.C.P. attempted, through its official organ the Crisis, to dramatize the possible effect of the Negro vote to the candidates. Seventeen men mentioned as possible presidential candidates received a questionnaire from the Crisis asking them for their position on lynching, "Jim Crow" cars, disfranchisement, Haiti, national aid to Negro common schools, colored army officers, and segregation in the civil service.³¹ The questionnaire was mostly ignored by these men, but the same form was sent to congressional candidates with better results, especially in districts with large Negro populations. Whether impressed by the need of such support or not, politicians were notified of a large bloc of votes that was theirs

³⁰W. E. Burghardt DuBois, "The Republicans and the Black Voter," Nation CX (June, 1920), 758.

³¹Crisis, XX (June, 1920), 69.

for the taking.

The N.A.A.C.P. also tried to influence the platforms of the two major parties. On the Advisory Committee on Platform and Policies of the Republican Party was the ubiquitous James Weldon Johnson. Conferring with the Chairman of the Platform Committee and appearing before the Platform Committee, Johnson made it clear that the N.A.A.C.P. wanted the party to endorse a federal anti-lynching measure such as the Dyer bill.³² Johnson's exhortations resulted in one sentence of the 1920

Republican Platform:

We urge Congress to consider the most effective means to end lynching in this country which continues to be a terrible blot on our American civilization.³³

A similar delegation at the Democratic convention in San Francisco was not even able to gain this small concession for their cause.³⁴

Negro leaders in general supported the Republican

³²Ibid. (September, 1920), 230.

³³Official Report of the Proceedings of the Seventeenth Republican National Convention (New York: The Tenny Press, 1920), 105.

³⁴Crisis, XX (September, 1920), 230.

ticket, but as election time approached a general despair descended over the Negro community. Neither the Democrats with their continued dismissal of Negro problems on the national level, nor the Republicans with their conservatism seemed to offer much hope for the Negro. More radical Negroes such as Chandler Owen and A. Philip Randolph, editors of the Negro magazine the Messenger, supported Socialist and Farmer-Labor parties. DuBois and the majority of other Negroes, however, believed that since one of the major parties would inevitably win, any voting for splinter parties would have created additional antagonisms and disabilities.³⁵

Following the sweeping Republican victory in 1920, Johnson met with President Harding, reminded him of the platform statement, and convinced him of the necessity of including a statement on lynching in his first message to Congress.³⁶ Harding accordingly made the following suggestion on April 12, 1921.

³⁵Elliot M. Rudwick, W.E.B. Dubois, A Study in Minority Group Leadership (Philadelphia: University of Pennsylvania Press, 1960), 258.

³⁶Crisis, XXII (June, 1921), 68.

Congress ought to wipe the stain of barbaric lynching from the banners of a free and orderly, representative democracy.³⁷

Negro leaders took this sentence to be an endorsement of a federal anti-lynching bill, and chose to ignore the bulk of his statement which shied away from the strongly worded opening. Harding continued:

We face the fact that many millions of people of African descent are numbered among our population, and that in a number of States they constitute a very large proportion of the total population. It is unnecessary to recount the difficulties incident to this condition, nor to emphasize the fact that it is a condition which can not be removed. There has been suggestion, however, that some of the difficulties might be ameliorated by a humane and enlightened consideration of it, a study of its many aspects, and an effort to formulate, if not a policy, at least a national attitude of mind calculated to bring about the most satisfactory possible adjustment of relations between the races, and of each race to the national life. One proposal is the creation of a commission embracing representatives of both races, to study and report on the entire subject. The proposal has real merit. I am convinced that in mutual tolerance, understanding, charity, recognition of the interdependence of the races, and the maintenance of the rights of citizenship lies the road to righteous adjustment.³⁸

³⁷ Congressional Record, 67 Congress, 1 Session, LX (April 12, 1921), 172.

³⁸ Ibid.

Opponents of an anti-lynching bill used this part of the statement to argue that Harding in no way had ever thrown his support behind such a measure. Enough had been said by the Republicans, however, to indicate that the Dyer bill would receive more serious consideration than it had previously, and to raise false hopes among its supporters that it might one day become the law of the land.

CHAPTER THREE

VICTORY IN THE HOUSE

Ambiguous as it was, the Republicans had made a commitment to do something about the lynching problem. The Dyer bill was in the Committee on the Judiciary in the House where it had been buried for three years, but getting it out of committee was no longer a formidable task. By this time, the Judiciary Committee consisted of fifteen Republicans and six Democrats, and the Chairman, Andrew J. Volstead, Republican of Minnesota, was a supporter of the measure. Dyer also had the assurance of the N.A.A.C.P. and its personal lobbyist James Weldon Johnson that the organization would "stir the Judiciary Committee to favorable action."¹ This was to be done by Johnson's personal lobbying in Washington, complemented by a campaign of letter writing by the association's membership to impress members of the Judiciary Committee

¹James Weldon Johnson, Along This Way, the Autobiography of James Weldon Johnson (New York: The Viking Press, 1935), 362.

with the strength of support for the bill.

In the Committee itself, the major consideration was the constitutionality of the proposed legislation. Those favoring the bill relied mainly on the opinion of Attorney General Harvey M. Daugherty. He based his case on the power conferred on Congress to enforce, by appropriate legislation, the prohibitions of the Fourteenth Amendment. Specifically, Daugherty contended that lynching victims were denied equal protection of the law, and the lack of adequate state action in the protection of these victims was responsible for such denial. Concluding his opinion, the Attorney General reasoned that a lack of state action constituted the same denial of equal protection that an explicit state law would, and that on this basis the federal government could act under the Fourteenth Amendment. Daugherty added:

My examination of the proposed legislation causes me to believe that all of its provisions' are predicated upon some action--either negative or positive--upon the part of the States and that therefore the same is wholly within the competency of Congress to enact.²

²Committee on the Judiciary, House of Representatives, 67 Congress, 1 Session, Constitutionality of a Federal Antilynching Law (Washington: Government Printing Office, 1921), 58, 59.

Opponents of the bill did not accept Daugherty's premise that a state could violate the Fourteenth Amendment by a lack of action. They maintained that the state could not in any way be held responsible for the acts of individuals against other individuals within the state. Beginning from this premise, their position was consistently upheld by the Supreme Court. As early as the Slaughter House Cases in 1873, the Court had denied that the Fourteenth Amendment transferred the protection of civil rights from the states to the federal government, and it reaffirmed this doctrine in United States v. Cruikshank et al. (1876).³ In Ex Parte Virginia Mr. Justice Strong asserted:

The prohibitions of the Fourteenth Amendment are directed to the States, and are to a degree restrictions of State power. It is these which Congress is empowered to enforce, and to enforce against State action.⁴

The Civil Rights Cases (1883) established the doctrine that the Fourteenth Amendment was effective only against state action, and that individual invasion of individual

³16 Wallace, 77. and 92 U.S., 554, 555.

⁴100 U.S., 346.

rights was not the subject matter of the Amendment. Mr.

Justice Bradley said:

. . . It is proper to state that civil rights, such as are guaranteed by the Constitution against State aggression, cannot be impaired by the wrongful acts of individuals, unsupported by State authority in the shape of laws, customs, or judicial or executive proceedings. The wrongful act of an individual, unsupported by any such authority, is simply a . . . crime of that individual . . . ; but if not sanctioned in some way by the State, or not done under State authority, his rights remain in full force, and may presumably be vindicated by resort to the laws of the State for redress.⁵

Opponents of the bill seemed to have judicial precedent on their side; and precedent appeared to say that since lynching was a crime involving the violation of an individual's rights by other individuals, that the federal government had no basis for usurping the state's power to prosecute the offenders.

This does not mean, however, that the bill's supporters had no legal leg to stand on. Their legislation was based on a different, but genuine, interpretation of the Fourteenth Amendment. They held that the state's lack of action in preventing lynchings, and its general refusal

⁵109 U.S., 17.

to bring lynchers to justice gave state sanction to the crime. Since lynching violated rights guaranteed under the Constitution and was sanctioned by the state, the federal government had the power to pass a law guaranteeing equal protection. They introduced a new idea which paralleled lack of state action with positive state action specifically denying a right guaranteed by the Constitution. In view that the Constitution is what the judges say it is, and that the final decision of the Supreme Court on a matter such as this depended on the social, economic, and judicial philosophy of the men presently sitting on the Court, the bill's sponsors had a legitimate case to present.

On October 20, 1921 the Judiciary Committee ordered the bill out favorably and placed it on the calendar, but this in itself was no guarantee that it would be debated or voted upon.⁶ The controversial nature of the bill made Dyer feel that the only method of securing prompt action was to have the Steering Committee place the bill among other measures to be considered, and to have the Committee on Rules adopt a resolution limiting debate.

⁶New York Times, October 21, 1921.

Johnson, therefore, began to work on the influential Republican members of both committees to initiate these actions. Johnson described these activities in his autobiography:

I saw them many times and brought to bear on each one all the suasion and pressure I could command. I kept in touch with our New York office . . . , and members of the Committee who needed greater suasion and pressure began to receive letters and telegrams from their constituents back home.⁷

The strategy succeeded, and on December 19, 1921 the following resolution was read in the House:

That upon adoption of this resolution it shall be in order to consider H.R. 13 (anti-lynching bill) . . . that there should be not to exceed ten hours of general debate on said bill.⁸

The resolution set off a determined three-and-one-half hour fight against the adoption of the special rule, and presaged what could be expected in the manner of debate on the bill. For the initial response of Congress to the Dyer bill left no doubt that an acrimonious and vitriolic debate would follow.

⁷Johnson, Along This Way, The Autobiography of James Weldon Johnson, 364.

⁸Congressional Record, 67 Congress, 2 Session, LXII (December 19, 1921), 541.

In charge of the bill were Republican Representatives Dyer and Volstead, while Democrats Finis James Garrett of Tennessee and Edward William Pou of North Carolina led the opposition.⁹ The first volley from the Democrats was aimed at exposing Republican support of the measure as a political device, designed to retain the Negro vote in the next election.¹⁰ Accusations that the bill was politically motivated had little effect on the debate until the Democrats began to develop a more specific argument based upon this theme. What if the Republicans were merely setting up a political smoke screen in an attempt to deceive the Negro voters? What if the Republicans were throwing the Dyer bill to the Negroes as a sop to hold them in their traditional voting pattern? What if the Republicans had no intention of making an honest effort to make the Dyer bill a law? If these suspicions were accurate then the Republicans were guilty of an insidious plot which should be rejected without further consideration. The Democrats did not discover

⁹ New York Times, December 20, 1921.

¹⁰ Congressional Record, 67 Congress, 2 Session, LXII (December 19, 1921), 546.

this more effective line of argument, however, until later in the fight against the bill.

In the interim they groped for an effective criticism of Republican motives. An attempt was made by James B. Aswell, Democrat from Louisiana, when he claimed that the bill was being used by the Republicans to satisfy Negro agitators, who were represented by such publications as the Crisis and the Defender. Describing them as vicious, Aswell designated them as the worst enemy of the Negro race. His advice to the Republicans was not to listen to Negro leaders of this type, and not to trust those who advocated measures such as anti-lynching bills, which all informed friends of the Negro recognized as detrimental to that race.¹¹ Obviously Aswell's basic premise was that only southern whites were competent to deal with the Negro.

After much bickering the Special Rule was adopted, and the House went into Committee of the Whole to consider the Dyer bill. Republican Simeon D. Fess of Ohio, speaking for the bill, expressed his concern for the ease with

¹¹Ibid., 545-546.

which many congressmen excused unlawful acts. Countering the charge that the bill was intended only to placate the Negro, he said that it was not in the interest of any particular race that legislation to protect the lives of citizens be enacted. In answering the charge of "sectional" legislation, Fess pointed out that to apply the law where the crime occurred was not sectional. If it happened to occur only in one place then the crime was sectional--not the law. The bill was primarily in the interest of respect for law and order.¹²

In contrast to the rather moralistic argument for the bill, Finis J. Garrett countered with a traditional and emotional southern argument:

You don't know what it is to live in a section in which your wife dare not travel alone for a distance of a mile through wood or field.¹³

He wanted the bill amended to read "a Bill to encourage rape," and contended that if those who were prone to commit atrocities believed that there was less risk of punishment, then there would be an increase in the

¹²Ibid., 543.

¹³Ibid., 548.

commission of these crimes.¹⁴

The bill's backers hesitated at this point to press for a vote before the holiday recess, for certain absences reduced the Republican working majority to such a narrow margin that they feared the result of a definite test of strength.¹⁵ Forty Republicans had gone on a junketing trip to Panama, and twenty others had accompanied the body of Representative Elston, who had recently died, to California.

On January 4, 1922, after the holiday recess, the House began to move seriously towards a vote on the Dyer bill. The Democrats spent three hours in roll calls, demanded by Garrett, in a futile attempt to head off discussion.¹⁶ When the debate began both sides dusted off their old arguments; supporters of the bill emphasized the evil of lynching and the failure of states to protect Negroes, while those opposing the measure charged that it

¹⁴ Ibid.

¹⁵ Johnson, Along This Way, The Autobiography of James Weldon Johnson, 364, 365.

¹⁶ New York Times, January 5, 1922.

was politically expedient, a violation of state's rights and police powers, and ignorant of the true nature of the Negro problem.¹⁷

The one new idea introduced in the debate was taken from an editorial in the New York World, and used by Theodore E. Burton of Ohio in his argument for the bill. Southern representatives looked ludicrous, observed the World, in opposing the Dyer bill as a dangerous invasion of the police power of the states. For the most deadly blow ever struck the residuary rights and powers of the states was the Eighteenth Amendment and its enforcement, and for that the South and its representatives in Washington were predominately responsible. Why did they care so little for state police power in the case of prohibition, and applaud when the enforcement of it virtually merged this power within the national government? What hypocrisy when they sanctified state police power in arguing against the Dyer bill, whose invasion of state jurisdiction was not as great as that effected by the Eighteenth Amendment.¹⁸

¹⁷ Congressional Record, 67 Congress, 2 Session, LXII (January 17, 1922), 1278.

¹⁸ New York World, January 8, 1922.

Democrats received help from a rather unexpected source when Ira G. Hersey, a Republican from Maine, stated that his colleagues were supporting the bill only for political profit. Hersey said that he was aware that many congressmen found themselves with strong organizations of colored voters in their districts who called themselves Republicans, and who could elect or defeat many members of the House. This group of voters had one interest, and that was to defeat any member of Congress opposed to the Dyer bill. Reminding his colleagues that the national Republican Platform had nowhere advocated a federal anti-lynching law, he added that the politicians had more sense than to recommend legislation in violation of the Constitution.¹⁹ Hersey went further and declared:

I know the awful pressure that is brought to bear upon certain of my colleagues to vote for this bill. . . . I hope that the Supreme Court will finally save the Nation from the folly of the Republican leaders, who by a party rule attempt to force this bill through the House.²⁰

The majority of Republicans were not swayed by Hersey's

¹⁹Congressional Record, 67 Congress, 2 Session, LXII (January 10, 1922), 1019.

²⁰Ibid., 1020.

dissent, and the Democrats found that it did not help them in their fight to defeat the measure.

As the debate drew to a close, southern representatives became both nostalgic and more vitriolic in their opposition. William C. Lankford, Georgia Democrat, longed for the days when the Negro wanted no higher privilege than the honor of being helpful and courteous to others.²¹

Mississippi Democrat Thomas Upton Sisson charged:

We of the South are fighting the battles of the white man. You who are supporting this bill are traitors to the white race. We are fighting to prevent the destruction of our white civilization. You who vote for this bill are destroying our white civilization.²²

The following dialogue between Sisson and Republican Henry Allen Cooper of Wisconsin showed to what level the discussion had fallen on the last day of the debate.

Mr. Cooper of Wisconsin: It is the first time that I have heard mob law openly advocated in the Congress of the United States.

Mr. Sisson: I never advocated mob law. Does the gentleman advocate rape?

Mr. Cooper: Oh, this is simply silly.

Mr. Sisson: The gentleman is just as idiotic as any man I know.

²¹Ibid. (January 18, 1922), 1368.

²²Ibid. (January 25, 1922), 1718.

Mr. Cooper: Oh, that is pretty cheap.

Mr. Sisson: Of course, you are always cheap.²³

Sensing that their constitutional argument appeared weak, the Republicans argued once again that the most fundamental function of a government was to protect the lives of its citizens, and that there should be no barriers of legalistic quibbling to prevent abolishment of the supreme anachronism of civilization.²⁴ The Democrats made one last attempt to have the Dyer bill recommitted to the Committee on the Judiciary and failed.

On January 26, 1922 the Dyer bill passed the House by a vote of 231 to 119, with four members voting present and 74 not voting.²⁵ Only eight of the 131 Democrats in the House voted for the bill, and seven of these were representatives from the northern urban districts of Boston, Brooklyn, Buffalo, Chicago, Jersey City, and New York. Only 17 out of 301 Republicans voted negatively. These votes came mostly from the border and western states,

²³Ibid., 1721.

²⁴Nation, CXIV (June 7, 1922), 664.

²⁵Congressional Record, 67 Congress, 2 Session, LXII (January 26, 1922), 1795.

and northern rural districts. Thus, it was almost a straight party vote, and given the pattern of representation at the time, almost a straight sectional vote.

The initial press reaction to the Dyer bill, while it was being debated, showed that those who favored the legislation did not necessarily believe that it was a panacea which would eliminate lynching in a single stroke, but regarded it as a long overdue step in the right direction. The St. Louis Times explained that laws, however, stringent, could not be counted upon to curb passions, and that the Dyer bill would not accomplish the impossible. What The Times felt that it would achieve was a quickening of individual and public sense of responsibility under such circumstances which threatened to set aside the law by mob violence.²⁶ Claiming that the bill was another invasion of state's rights by the federal government, the Greensboro, North Carolina Daily News conceded that it was justified in this instance because none of the states had

²⁶The Times, St. Louis, Missouri, October 22, 1921 quoted in the Congressional Record, 67 Congress, 2 Session, LXII (January 4, 1922), 792.

made an honest effort to prevent lynchings.²⁷ The New York Times observed that foreigners had continuously expressed wonder that a nation so ready to cry out upon the lawless cruelties in other lands, could be so lethargic about those within its own borders. The Times was thankful that Congress was at last trying to find and apply a remedy.²⁸

A Democratic newspaper, The News and Courier of Charleston, South Carolina, recognized that a wave of moral indignation against lynching had been rising, and that unless lynchings abated the eventual passage of such a law as the Dyer proposal was inevitable.²⁹ In spite of this the paper strongly backed James F. Byrnes, Democrat from South Carolina, in his opposition to the bill. Byrnes held that the probable effect of the passage of a federal anti-lynching bill would be to weaken those in the South who opposed lynching, and that public sentiment was the

²⁷The Greensboro, North Carolina Daily News, December 10, 1921 quoted in the Congressional Record, 67 Congress, 2 Session, LXII (January 4, 1922), 792.

²⁸New York Times, December 16, 1921.

²⁹The News and Courier, Charleston, South Carolina, December 21, 1921.

only effective remedy for this evil.³⁰

Surveying the general feeling in the South over the Dyer bill, the Literary Digest observed that this section viewed the bill as being aimed at the South and in line with the usual Republican endeavor to bring the South, in all matters concerning the Negro, under strict Federal control. Furthermore, it was precisely this mischievous policy that had done much to engender racial animosity and sectional ill feeling that otherwise would not have existed.³¹

The reaction to the actual passage of the Dyer bill again revealed rather mixed feelings towards it by supporters of government intervention to control lynching. It was not always regarded as a serious attempt to solve the problem, and it appeared to some like an attempt on the part of members of the House to leave the question up to the Senate. The Boston Evening Transcript said that it was the Senate's task to take the matter up in a spirit of serious determination, and to pass a law which would hold

³⁰ Ibid.

³¹ Literary Digest, LXXI (December 31, 1921), 12.

water in the courts. It saw the Dyer bill as being a mere gesture.³²

The opposition had no mixed feelings--the bill was no good in all aspects. The New York World expected the measure to be vitiated by the partisan purposes of its promoters. Negroes were being fooled into believing that the Republican Party was doing something for their benefit, and in order to accomplish this the Republicans called on Congress to exceed its powers.³³ The Raleigh, North Carolina, News and Observer fixed the inspiration of the act as playing politics to court favor with the big Negro vote in New York, New Jersey, Delaware, Maryland, Ohio, Indiana, Missouri, Oklahoma, and Kentucky. The paper maintained that the ascendancy of the Republican Party in the nation rested upon the solid Negro vote, and therefore the Dyer bill was introduced and supported to enable the Republican politicians to say to the Negro voters: "See what we have done for you. Now come and vote for us." Legislation of this type would have no effect upon reducing lynching, but might have an effect in increasing crime on

³²Boston Evening Transcript, January 27, 1922.

³³New York World, January 28, 1922.

the part of the most brutal of the Negro race. The News and Observer called the bill another example of "Negro Coddling."³⁴

E. E. Miller, the editor of the Southern Agriculturist, conducted a popular opinion survey in the South, and produced an article titled "What Southerners Think of the Dyer Bill."³⁵ General sentiment was that the federal government was interfering in too many things already, and what was needed was not more laws, but better enforcement of the laws already on the books. The majority of Southerners felt that it was better for a few lynchers to go unpunished than for the national government to further weaken the power of the states.³⁶ Ironically, it was precisely this feeling which led proponents of the bill to believe that the southern states would never completely abrogate lynching without outside intervention. Miller did find, however, a deepening conviction that lynching must be

³⁴Raleigh, North Carolina News and Observer, January 28, 1922.

³⁵E. E. Miller, "What Southerners Think of the Dyer Bill," The Outlook, CXXXII (December 6, 1922).

³⁶Ibid., 599.

stopped by the nation if the states would not do it.³⁷ Thus the South was opposed to the Dyer bill, but there was a growing sentiment to stop lynchings in that section.

The N.A.A.C.P. was extremely pleased with the passage of the Dyer bill. It had worked long and hard for this triumph, and James Weldon Johnson proudly claimed that the Dyer bill produced the greatest concerted action the colored people had ever taken.³⁸ Dyer sent a congratulatory letter to Johnson, after the passage of the bill by the House, thanking him and the N.A.A.C.P. for the assistance they rendered in the fight. Dyer informed Johnson that the Senate had over a year in which to take action upon the bill that passed the House, and expressed confidence that the Senate would pass it. Stating that it was his belief that Congress had not undertaken more important legislation for a long time, Dyer concluded his letter by remarking that the United States must end the horrible crime of lynching and that the Dyer bill would do it. He pledged to continue his best efforts to insure that his

³⁷Ibid.

³⁸Johnson, Along This Way, The Autobiography of James Weldon Johnson, 365.

bill would be put upon the statute books and enforced to the letter.³⁹

Now that the bill had passed the House, the same type of pressure must be applied to the Senate by its supporters. Whether it desired it or not, the Republican Party would be held responsible for the success or failure of the Dyer bill. Convinced that if the Republicans remained solidly behind the bill there was no need to fear a southern filibuster, The Crisis warned:

If then the Senate does not pass the Dyer anti-lynching bill, the Negro who votes for the Republican Party at the next election writes himself off as a gullible fool.⁴⁰

The Crisis seemed to overlook the fact that even if all the Senate Republicans favored the bill, they would need seven votes from the Democrats to muster the two-thirds majority to limit debate. Given the past record of the Republicans in carrying out programs for the Negro, it seemed unlikely that supporters of the bill could get the necessary Republican backing to break a filibuster.

³⁹Crisis, XXIII (March, 1922), 202.

⁴⁰Crisis, XXIII (April, 1922), 248.

CHAPTER FOUR

DEFEAT IN THE SENATE

The Dyer bill passed the House, and after celebrating the victory, the supporters of the measure began to realize that the prospect for success in the Senate was not quite as certain as some of the more optimistic among them had predicted. A sense of urgency was apparent as W.E.B. DuBois and others stated that the bill must be reported to the Senate from committee before Congress adjourned for the summer recess scheduled for June. If this did not happen, they predicted that chances for success would be greatly diminished.¹

One reason for this desire for rapid action on the bill was indeed ironic. A downward trend in the number of lynchings in the United States threatened to hamper the efforts of those trying to establish legislation designed to end lynching. Not only did the absolute number of lynchings decrease in 1921, but statisticians

¹Crisis, XXIV (May, 1922), 25.

were recording a new classification into the lynching record. This was the number of cases in which threatened lynchings were prevented by local officials. In 1921 there were more lynchings prevented, seventy-two, than there were lynchings, fifty-two. Of those prevented, eight occurred in northern states while sixty-four occurred in the South.² Thus it seemed that the South was moving to eradicate lynching, and threatening to make the Dyer bill an anachronism before it could be enacted. Many Republicans began to doubt the wisdom of establishing a precedent for an expanded national police power if the situation seemed to be ameliorating itself.

The Dyer bill began its journey through the Senate in a sub-committee on the Judiciary consisting of three Republicans and two Democrats. According to James Weldon Johnson, one of the key figures in the fight for the bill was the chairman of the sub-committee, Senator William E. Borah, Republican from Idaho. Johnson was either overly optimistic or naive to think Borah would champion the Dyer bill. The Senator's record, especially on the

²St. Louis Daily Globe-Democrat, January 4, 1922.

Nineteenth Amendment, strongly indicated how he would react to a federal anti-lynching bill. Borah had favored the extension of woman suffrage, but had vigorously opposed the national amendment. He did not regard these positions as incompatible. Reasoning that the states which did want woman suffrage could have it without a national amendment, he opposed the national amendment for the benefit of the states which did not want it.³ Johnson, nevertheless, thought he could convince Borah to support a bill which would force all the states to designate one type of murder as a federal offense. Borah told Johnson he would do anything possible to stop lynching short of violating the Constitution. The pressure put upon Borah to act quickly on the bill seemed to irritate the Senator. On May 18, 1922 he rather testily informed Johnson that Senator Henry Cabot Lodge had ordered a report on the bill, and that he would hold it no longer. Borah said he had had insufficient time for a thorough study of the constitutionality of the measure, and he would be forced to report the bill unfavorably. This, claimed the Senator,

³Claudius O. Johnson, Borah of Idaho (New York: Longmans, Green & Co., 1936), 183, 184.

was in accordance with the only opinion he had been able to form until that time.⁴ The time element was not a critical factor in Borah's decision. In 1935 he was still saying that he would support any measure which was constitutional to end lynching, but he knew of no power which the national government had to reach into the states and take hold of a violation of the law.⁵ Borah's action awakened many supporters of the Dyer bill to the fact that the solidarity required of the Senate Republicans to pass the bill might not be forthcoming, and that if action on the bill was delayed the chances for Republican unity were diminished.

The bill was placed before the full Senate Judiciary Committee and promptly ignored. This was not a surprising move considering that in addition to the adverse report from the sub-committee, many Republicans who had championed the bill in the House started to question the advisability

⁴James Weldon Johnson, Along This Way, The Autobiography of James Weldon Johnson (New York: The Viking Press, 1935), 367, 368.

⁵Marion C. McKenna, Borah (Ann Arbor: The University of Michigan Press, 1961), 325.

of bringing the measure up for discussion at this time.⁶ The N.A.A.C.P. urged the committee to act, but the chairman, Senator Knute Nelson of Minnesota, showed no disposition to direct the attention of his colleagues to the proposed legislation. This lack of response, lamented Johnson and the N.A.A.C.P., was due to the lack of sensitivity to Negro votes of the Republicans on the committee. All these men, Knute Nelson of Minnesota, Albert B. Cummings of Iowa, Frank B. Brandagee of Connecticut, Borah of Idaho, William P. Dillingham of Vermont, Lebaron B. Colt of Rhode Island, Samuel M. Shortridge of California, Thomas Sterling of South Dakota, George W. Norris of Nebraska, and Richard P. Ernst of Kentucky were without large Negro constituencies.⁷ To make things more difficult for the bill, a number of Republicans not on the committee publicly expressed their doubts as to whether Congress could pass any law that would be constitutional and at the same time provide an

⁶New York Times, March 5, 1922.

⁷Crisis, XXIV (May, 1922), 25. Johnson, Along This Way, The Autobiography of James Weldon Johnson, 366.

effective means for checking lynching.⁸

Other Republicans now desired to shirk the responsibility for the bill by arguing that it was up to the Supreme Court to determine the constitutionality of legislation, and that the Senate should pass the Dyer bill and let the court be responsible for determining its fate. This legislative willingness to allow an exclusive judicial determination of constitutionality was a well established pattern by 1921 and largely responsible for the increased stature and power the Supreme Court accumulated in the twentieth century.⁹ Senator Sterling felt that this was a convenient way of preventing an intraparty struggle by the Republicans over the Dyer bill, and recommended its passage even though he thought it was unconstitutional. He wanted the Supreme Court to assume the responsibility of making the Dyer bill inoperative or the law of the land.¹⁰ Senator Borah, who was becoming an outspoken

⁸ New York Times, May 24, 1922.

⁹ This process is labeled "legislative acquiescence" by Professor Stanley Kutler of the University of Wisconsin.

¹⁰ Ibid.

critic of the bill, opposed the course chosen by Sterling.

Borah protested that,

It has come to be a settled principle apparently that the Congress should disregard the constitution and leave the Supreme Court alone to protect it. No, NO, No!¹¹

Borah wanted the Senate to live up to its responsibilities, and in his opinion, defeat the Dyer bill because it exceeded the powers granted to Congress by the Constitution.

There was a feeling that even if the Dyer bill were reported to the Senate, it would be placed on the calendar and remain there, never to be brought up for decision. Still to be dealt with by the Sixty-seventh Congress was the tariff, the military bills, the ship subsidies, and the bonus bill. There did not appear to be much of a chance that the Senate would allow itself to get bogged down by any anti-lynching legislation.

While the committee was considering the bill, supporters of the legislation tried to persuade the Senate to act favorably upon it. The arguments revolved around the horror of lynching, and the threat of a Negro revolt from the Republican Party if the Dyer bill was not

¹¹Ibid., June 12, 1922.

passed. The Chicago Defender, with its usual emotion, charged that the majority of the lawmakers did not seem to care that American democracy was being held up to ridicule in such countries as Turkey and Russia. The Defender felt that the massacres and pogroms that occurred in these lands, and which the United States viewed with horror, did not equal the barbarism of lynchings.¹² The Nation reviewed the history of the Republican Party's relationship to the Negro, and noted that the Republicans had appealed to the colored voters ever since the Civil War on the ground that they were the party of Abraham Lincoln. During all those years lynching had flourished virtually unchecked. If the Senate failed to pass the Dyer bill, the Nation predicted that the Negro would know that the spirit of Lincoln no longer lingered in the Republican camp and would cast his vote elsewhere.¹³

The logic and sincerity of attacks on the constitutionality of the measure was also questioned. To say that the state was not responsible because its officials

¹² Chicago Defender, February 4, 1922.

¹³ Nation, CXIV (June 7, 1922), 664.

took only a negative part in lynching was for many reducing logic to an absurdity. Yet this was the logical nub on which the argument against the constitutionality of the Dyer bill turned for many of its opponents.¹⁴ The Crisis mocked this argument with an analysis of what had been considered unconstitutional in the past:

We can stop lynching. Of course it is "unconstitutional" now. It was unconstitutional to stop secession; it was unconstitutional to take charge of the railways; it was unconstitutional to do a thousand things the national government has done; we did these things because we had to in order to survive, because no nation can survive which supinely submits to rebellion, or cannot regulate its traffic, or permits systematic and continued mob murder as a form of public debauchery.¹⁵

In June, 1922, Negroes intensified their effort to shame the Senate to act favorably on the Dyer bill. A "silent parade" was staged by Washington, D.C. Negroes protesting against continued lynchings, and asking for prompt and favorable action on the anti-lynching bill. It was estimated that several thousand Negroes joined this June 14 demonstration.¹⁶ On June 23, the N.A.A.C.P. held

¹⁴ Ibid.

¹⁵ Crisis, XXIII (February, 1922), 152.

¹⁶ New York Times, June 15, 1922.

its thirtieth annual conference in New York, and issued the following statement:

The Republican Party has always received the bulk of the Negro vote; the Republican Party is in power; the Republican Party has promised by its platform and its President to pass the Dyer bill.¹⁷

This, of course, was a major distortion of what the Republicans and Harding had promised to do, and indicated that the Association knew the bill was in trouble. By spuriously trying to make the Republicans stand by a pledge they had never explicitly made, the N.A.A.C.P. thought it could force them to support the legislation. Thus the statement ended with a promise:

Unless the pledge is kept we solemnly pledge ourselves to use every avenue of influence to punish the persons who defeated it.¹⁸

Finally, on July 28, 1922, the Senate Judiciary Committee reported the Dyer bill favorably to the Senate, but by only a one vote margin. Senator Borah voted against the measure stating that it was unconstitutional. James W. Wadsworth of New York promised to join the fight against

¹⁷ Ibid., June 24, 1922.

¹⁸ Ibid.

the bill when it was brought up, and it was rumored that several other Republican Senators were disposed to join the opposition.¹⁹

It seemed at this point that only a positive endorsement from President Harding could save the Dyer bill from defeat. Although the prospect of this was minimal, Harding temporarily raised the hopes of the bill's supporters. When a delegation of Negro women visited the President at the White House on August 14, 1922, he promised that he would urge final Congressional action on the Dyer bill as soon as consideration of the tariff and bonus measures was completed.²⁰ Again the President was misinterpreted as stating his support for the Dyer bill, and once again Negro leaders either misunderstood or ignored Harding's total noncommitment to their particular piece of legislation. He did not promise to support the bill, but merely promised that if possible he would urge the Senate to determine its fate. The President even expressed doubt that the

¹⁹Congressional Record, 67 Congress, 2 Session, LXII (July 28, 1922), 10735. New York Times, July 29, 1922.

²⁰New York Times, August 15, 1922.

Senate would have time to consider the Dyer bill.²¹

Harding had said he would sign the Dyer bill if Congress passed it and would be happy to let the Supreme Court decide on its constitutionality.²² The Chicago Defender claimed Harding and Republican leaders decided to exclude the Dyer bill from the Senate calendar for the remainder of the term.²³ Although impossible to verify this report, it was apparent that Harding was largely indifferent to the fate of the bill. He planned to defer to the wishes of Congress, and expressed a willingness to let the Supreme Court assume the responsibility of enforcing or invalidating the measure if passed. On this as on other matters during his administration, Harding displayed a passiveness which illustrated his conception of the role of the executive. Another factor which explained the president's indifference toward the Dyer bill was Harding's lack of interest in the problems of the Negro. With no positive word from the president,

²¹Ibid.

²²Ibid.

²³Chicago Defender, September 2, 1922.

it seemed that those who had been uncertain about the Dyer bill would now come out against it.

On September 21, 1922, Senator Lodge informed James W. Johnson that Senator Samuel M. Shortridge would place the bill before the Senate for consideration at two o'clock that afternoon.²⁴ Shortridge had the advantage of surprise because the opposition had not anticipated a move for the bill so close to adjournment. Through several acts of courtesy, however, he lost the floor as the Democrats sensed what the Californian was up to. Senator Pat Harrison, Democrat from Mississippi, held the floor for two hours before Shortridge was able to introduce the Dyer bill and make his speech for it. There was a quorum when he began his speech, but, not surprisingly, no quorum when he called for a vote to take up the bill. Quickly the Democrat's point of no quorum was sustained, and shortly thereafter the Senate adjourned until November 20.²⁵

²⁴Johnson, Along This Way, The Autobiography of James Weldon Johnson, 369.

²⁵St. Louis Globe-Democrat, September 22, 1922. Congressional Record, 67 Congress, 3 Session, LXII (September 21, 1922), 1302-1306.

When Congress reconvened in November, the Democratic opposition was effectively organized under Senator Oscar W. Underwood of Alabama. The tactics of the opposition consisted mainly of parliamentary devices such as leaving the Senate Chamber without a quorum, raising multiple points of order, and making extended and irrelevant speeches. All this prevented the bill from being officially brought up for debate and a vote. Not much opposition to these tactics was forthcoming from the Republicans. The Republican majority received notice from Senator Underwood that there would be no other business transacted until the anti-lynching bill was withdrawn. If the bill was withdrawn for the remainder of the Sixty-Seventh Congress as the Democrats wished, then the House would have to pass the measure again in the next Congress.

Johnson conferred with Senators Lodge, Curtis, and Watson, and pleaded with them not to give up on the bill. He claimed he was assured that it would not be abandoned, but on December 3, 1922 the papers announced that a caucus of Republican Senators had decided to abandon the bill.²⁶

²⁶New York Times, December 3, 1922. Johnson, Along This Way, The Autobiography of James Weldon Johnson, 371.

Despite Lodge's protest that it had not been permanently dropped, this marked the final defeat for the Dyer anti-lynching bill.

CHAPTER FIVE

CONCLUSION

So the movement for a federal anti-lynching law which had evolved slowly in the first two decades of the twentieth century, amidst strong national anti-Negro sentiment, culminated in the defeat of the Dyer bill in December of 1922. Many events and circumstances led to the introduction and the subsequent defeat of the bill.

In the early 1900's many people felt that the lynching of Negroes could only be stopped by the federal government. Without proper organization, however, this group failed to advance its case to a national audience. Lynchings were regarded with horror by the majority of Americans, but it seemed to be the particular problem of only one section of the country. Most were disposed to let the South handle the problem. In 1909 this began to change with the formation of the N.A.A.C.P. Through this organization, the argument for federal control was disseminated more widely than ever before.

It was not until the advent of World War I, though, that the movement for federal action showed signs of

making any headway. The demands of the war industries and the curtailment of immigration created a tremendous demand for labor in the North, and this was the main catalyst for the mass migration of Negroes from South to North during the war years. Not only did this migration give the Negro problem a national scope, but it gave the Negro a new weapon in his fight for equal protection of the laws--political pressure. It also increased racial tensions in the North, and gave that section a stake in relieving sources of racial violence. Finally, the use of Negro troops in World War I fermented a new spirit among the Negroes. No longer willing to submit supinely to racial injustice after risking their lives for democracy, they became political activists and agitated for their rights as American citizens.

By 1918 the N.A.A.C.P. was ready to introduce an anti-lynching bill in Congress. This had to be done through the Republican Party since it was the only major political force that even nominally recognized Negroes as American citizens. The motivation of the Republican support for an anti-lynching measure was hard to gauge. Undoubtedly many felt that such a bill was necessary and

morally correct. Unfortunately there were also many who supported it only because of a direct sensitivity to the Negro vote, or because of concern for their fellow congressmen who needed the Negro vote. In Leonidas Carstarphen Dyer the N.A.A.C.P. did find a sincere believer in its cause, and with a concerted joint effort they successfully guided the Dyer anti-lynching bill through the House of Representatives.

As for the Republican leadership in the Senate and President Harding, in whose hands the fate of the bill was to be determined, there was a significant division over the advisability of the bill. They made vague pledges of support to end lynching, but for the most part avoided endorsing the Dyer bill itself. Advocates of the measure desperately attempted to make concrete pledges of support out of these indirect and general statements on lynching, but their twisting of the facts did not win many converts to their cause. Also foreshadowing the eventual failure of the Dyer bill in the Senate was that the Senate Republicans were less responsive to the Negro vote than were their counterparts in the House. The pattern of Negro migration during the second decade of the twentieth

century resulted in large concentrations of Negroes in northern areas. While in most cases the total number of Negroes in northern states was not a determining factor in state wide elections, in many congressional districts they formed a majority or a near majority of the voters. In the 1922 elections, moreover, only a handful of Republicans were up for re-election.

Furthermore, there were honest doubts on both sides as to the effectiveness of the proposed legislation. One of the major defects of the bill was that federal action could take place only when the victim had been accused of some crime. This excluded by definition any action in such cases as the East St. Louis, Chicago, and Washington, D.C. race riots. In effect it would limit the application of federal intervention primarily to the South. This gave a certain amount of credibility to the South's charge that the Dyer bill was a sectional legislative measure. There was also some justifiable doubt as to whether the federal courts would be any more successful than the state courts in punishing lynchers. No matter where the trial was held, federal or state court, convicting mob murderers would depend on the disposition of local

people to give frank testimony, the desire of local officers to faithfully gather evidence, and the local jurors ability to set aside their prejudices in order to return a verdict in accordance with the evidence submitted.

The Dyer bill created, as all controversial measures do, a long and acrimonious debate over its constitutionality. As usual the debate was carried on at two levels, emotional and legal. The southern Democrats thought that any legislation which brought the Negro under the purview of the national government was insidious, and they dusted off their traditional constitutional arguments to strengthen their case. Likewise, northern Republicans who felt that the legislation was morally correct searched for new constitutional points to support their position. There were also those who, disregarding their own preconceptions of whether the legislation was good or bad, studied it on purely legal grounds.

After selectively judging the arguments set forth by all of the groups above, it seemed that the opponents of the bill had the strongest case. The bill called for an interpretation of the Fourteenth Amendment that the Supreme Court had never taken. It must be said, however, that the

Dyer bill could have been called constitutional if it had ever come up before the Court, but in retrospect the chance that this could have happened appears slim. Even today there is no anti-lynching law, and in recent years Civil Rights laws have been based more on the Commerce Clause than the Fourteenth Amendment. This indicates a lingering doubt that the amendment can be used by the federal government to protect the lives of individuals within a state.

What were the immediate reactions to the defeat of the Dyer bill? James Weldon Johnson charged that the Republicans had betrayed the Negro by abandoning the bill. He insisted that all the Senators knew that it would have been passed if it had been brought to a vote.¹ This notion was not supported by the reality of the situation. Considering the dissension within the Republican Party, the solid Democratic opposition, and the final lack of support from President Harding, it hardly seems likely that the Dyer bill could have survived a vote. The

¹James Weldon Johnson, Along This Way, The Autobiography of James Weldon Johnson (New York: The Viking Press, 1935), 371.

threatened mass desertion of the Negro from the Republican fold failed to materialize as many Negroes believed that the Republicans had done as much as possible for the Dyer bill. Dissatisfaction with the Republican party was growing, however, and Negroes did begin to leave the Republican ranks. Robert M. LaFollette made an attempt to align the Negro with his Progressive Party in the 1924 election. LaFollette said that the Negro had been faithful to the Republican Party for half a century, and in return had received nothing but broken promises.² He gained some Negro support, and the process was started which by 1933 would see the voting pattern of the Negro drastically altered.

The Dyer bill was important for two main reasons. It stimulated discussion and made the facts of lynching known to millions of Americans, and it was the only Congressional action attempted in the area of civil rights during the first two decades of the twentieth century. Furthermore, the fact that the South opposed the Dyer bill

²Herman L. Elkern, Papers, Speeches and Press Releases 1922-1943, Wisconsin Historical Society.

and assumed the responsibility for defeating it had some significant consequences for that section. It imposed a burden upon southerners to control lawless elements and to see that men were elected to office who would enforce the law. Since the bill was defeated on the premise that only the state could effectively control lynching, now the state was forced to make an honest attempt to halt this type of lawlessness. It is a fact that lynchings declined rapidly in the twenties, and many attributed this to the southern state's response to the Dyer bill. There is no way to prove that this was the case, but it seems to be a plausible explanation. If this was true, then the Dyer bill, though defeated, was a worthwhile venture.

BIBLIOGRAPHICAL ESSAY

The most important primary source for this paper was the Congressional Record. Not only was this the main source for the facts concerning the Dyer bill's progress in the House and the Senate, but it gave a valuable indication of the sentiment of different parts of the country toward the bill. Much data on lynching itself was gleaned from the pages of testimony, speeches, and debate in the Record. Hearings before the Committee on the Judiciary, House of Representatives, 66 Congress, 2 Session, Antilynching (Washington: Government Printing Office, 1920) proved useful for understanding the background of the Dyer bill, and why its supporters felt it was necessary. The Committee on the Judiciary, House of Representatives, 67 Congress, 1 Session, Constitutionality of a Federal Anti-lynching Law (Washington: Government Printing Office, 1921) contained the most cogent argument for the constitutionality of the Dyer bill.

James Weldon Johnson's Along This Way, The Autobiography of James Weldon Johnson (New York: The Viking

Press, 1933) supplied the only first hand narrative of the events affecting the Dyer bill in Congress. Unfortunately, Leonidas Carstarphen Dyer's papers are not available if, indeed, they exist at all. Wisconsin politicians were not sufficiently involved with the Dyer bill to leave note of it in their papers at the Wisconsin Historical Society. The Johnson account, therefore, had to be checked against the Congressional Record, newspapers, and periodicals for accuracy. Johnson's interpretations and narrative were colored by his role as the N.A.A.C.P.'s lobbyist for the bill.

Useful in following the N.A.A.C.P.'s drive for the federal control of lynching were documents published over the years by that organization. Their Notes on Lynching in the United States (New York, 1912), Fourth Annual Report (New York, 1914), Freeing America (New York, 1917), The Fight Against Lynching (New York, 1919), and Tenth Annual Report (New York, 1920) all contained data on lynching and reported the progress made toward federal control.

A document which contained lynching statistics and discussed the social and economic conditions which

precipitated lynchings was the Southern Commission on the Study of Lynching, Lynchings and What They Mean (Atlanta: The Commission, 1931).

The newspaper giving the best coverage on lynchings and the Dyer bill was the New York Times. Following the progress of the bill, the Times gave equal consideration to the proponents and the opponents of the measure. Editorially the paper tended to favor federal control of lynching, but was ambiguous on the question of whether the Dyer bill was a satisfactory piece of legislation. Other papers which proved useful in gauging opinion on the Dyer bill were The News and Courier of Charleston, South Carolina and the Raleigh, North Carolina News and Observer, both Democratic papers and opposed to the measure. Republican papers such as the Boston Evening Transcript and the Springfield Weekly Republican displayed the uncertain backing given to the bill by many of its supporters. A militant Negro newspaper, the Chicago Defender, showed the emotional support the Dyer bill elicited from many Negroes.

Periodicals which most consistently printed articles and editorials on lynching and its remedy were the Nation,

the New Republic, the North American Review, and the Outlook. The Nation and the New Republic were particularly useful and contained many facts and opinions relevant to this paper. Of great importance was the official publication of the N.A.A.C.P., the Crisis. Under the guidance of its editor W.E.B. DuBois, the magazine constantly discussed lynching and the Dyer bill. It gave an excellent portrayal of one side of the problem of controlling lynching and for this reason it had to be used with caution. The Crisis had no aversion to stretching the facts to fit its point of view.

There was a vast amount of secondary material available for the background of this paper. For a general survey of the Negro in American history see John Hope Franklin, From Slavery to Freedom (New York: Alfred A. Knopf, 1947) and Rayford W. Logan, The Betrayal of the Negro from Rutherford B. Hayes to Woodrow Wilson (New York: Collier Books, 1965). A good psychological study of lynching in the United States is Walter White, Rope and Faggot (New York: Alfred A. Knopf, 1929). Two excellent works on the ideology of Negro leaders in the first two decades of the twentieth century are August Meir, Negro

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on the Dyer bill, E.E. Miller, "What Southerners Think of the Dyer Bill," Outlook CXXXII (December 6, 1922).

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