The CONGRESSIONAL DIGEST

PUBLIC CONDUCT LEGISLATION

History of Anti-Lynching Legislation in Congress

March, 1922: p. 10

A bill to punish the crime of lynching was first introduced in the 57th Congress, on December 2, 1901, by Representative Wm. H. Moody, of Massachusetts. Mr. Moody became Attorney General of the United States and later Associate Justice of the United States Supreme Court.

His idea in framing Federal Legislation to handle the lynching problem, was to enforce the provisions of the 14th Amendment to the Constitution which guarantees to every citizen of the United States the equal protection of the law and denies or prohibits the passage of any law by any State denying the equal protection of the law.

This underlying principle of the anti-lynching legislation obtains in the present* measure, H.R. 13 pending in Congress and lays the foundation for many bills similar to Mr. Moody's subsequently introduced by other members. Representative Dyer, of Missouri, author of H. R. 13, followed Mr. Moody as an ardent advocate of Federal anti-lynching legislation. Beginning with the 62nd Congress in 1911, Mr. Dyer has introduced a constant succession of anti-lynching bills. In 1913, the 64th Congress, Representative Dallinger of Massachusetts, took up the fight and has also introduced anti-lynching measures constantly in every succeeding Congress, including the present one.

Public* hearings have been held from time to time by the House Judiciary Committee, where the bills were referred, to determine public sentiment on the issue as well as to settle contested points of constitutionality involved in such legislation. In 1918, anti-lynching legislation took on a significant aspect due to war conditions and a special hearing was held in June of 1918, on the Dyer bill H. R. 11270, to hear testimony from the Military Intelligence Branch, of the War Department.

No report was made by the Committee and the bill died with that Congress. In the 66th Congress public hearings were again held, from Jan. 15-29, 1920, at which many individuals and organizations, mostly of the colored race, testified in support of Federal anti-lynching legislation. The opposition to such legislation, which constitutes almost the entire south, where the Negro problem still overshadows the peace of every community, has never appeared at these hearings. Their reasons for decrying federal intervention in a problem peculiar to their locality, are a point beyond argument according to their Representatives in Congress, who maintained a solid front against the bill when it reached the floor of the House.

After the hearing held in the 66th Congress, the Judiciary Committee reported the Dyer bill to the House. No action was taken by that body and the bill died with the Congress.

Four anti-lynching bills appeared in the House of Representatives with the 67th Congress, two Dyer bills, another by Mr. Dallinger, and one by Mr. Gahn of Ohio, who is serving his first term in Congress. All of these bills were again referred to the House Judiciary Committee. The question at issue was on the constitutionality of a Federal anti-lynching law, and extensive legal reports and decisions were presented at hearings held before the Committee in June, July and August.

On Oct. 31, 1921, the Dyer bill H. R. 13, greatly altered and shortened by Mr. Volstead, chairman of the House Judiciary Committee, was reported to the House favorably with amendments (Report No. 452) and placed on the House Calendar.

On Dec. 19th, a long bitter debate on the bill was launched on the floor of the House and continued until Jan. 26th, 1922, when the bill was passed by a vote of 236-119. The bill went to the Senate and was referred to the Senate Committee on the Judiciary, where it rests today. That Committee already has before it S. 2791, a bill introduced by Senator France, of Maryland, on December 6th, 1921, which is similar in purpose to the Dyer bill.

Early in the first session of the 67th Congress a bill S. 409 was introduced by Senator McCormick of Illinois, to create a Commission to investigate the lynching question, and another was introduced by Senator Spencer, of Missouri, to investigate the racial question. Since none of these bills have been acted upon by the Committee they have not yet been discussed on the *floor of the Senate.

Report of House Judiciary Committee on Dyer Anti-Lynching Bill

WM. C. WRIGHT
(continued)

"It not only encroaches upon, but obliterates the rights of the sovereign States and seeks to substitute Federal for State laws, and transfer from the State to the Federal courts a class of offenders for the trial and punishment of whom ample provision has already been made by laws of the several States."

HON. R. WALTON MOORE, VIRGINIA

"In Virginia, instances of mob violence resulting in homicide have become so infrequent that we can regard lynching as practically a thing of the past in that State, due to the enforcement of the laws, supported by a strong public opinion.

"And what has happened in Virginia is going on in the other Southern States. He must be a very pessimistic American who thinks we will not work the problem out in the manner now pursued and without formal legislation, and he must be a very blind Member of this body who cannot see that legislation of this kind is more than apt to increase the offenses that we all desire to do away with. There are strong possibilities in that direction. It is not improbable if this bill is enacted into law it will defeat its declared purpose. It may serve to discourage and weaken the operation and influence of public opinion in upholding and insisting on the enforcement of State laws."

HON. FINIS J. GARRETT
TENNESSEE

"Do these gentlemen realize that when they vote for this bill they are voting to put the whole police force of their city and State absolutely under the control of the Federal Government?

"Can gentlemen from the western coast, who are confronted with a racial problem, fail to realize that in a very few years, if this bill shall pass and be sustained by the court, an overwhelming majority of representatives from other sections of this coun-

Report of House Judiciary Committee on Dyer Anti-Lynching Bill

FINIS J. GARRETT
(continued)

try, in order to avoid the dangers of war, will rise up and crush their just local institutions and practices on the western coast in regard to their schools and their alien land laws?

"This measure is confessedly in violation of the Constitution of the United States. If we can but center the attention of the bar of this country, if we can but center the attention of the officers of the States and of the municipalities who are to be brought within the purview of this act, if we can but center the attention of the great masses of people upon the fact that here, by this law, by law of Congress, we are to destroy the Constitution and to do violence to all the philosophy upon which our dual systems of government rest, we will be ready to meet that issue, those ofu s who oppose this bill."

HON. THOS. W. BELL, GEORGIA

"In my judgment the bill now being considered, if it should be adopted, would be, without avail, dangerous and fraught with many consequences. We are drifting too much to Federal control of our affairs, and the day is coming, in my judgment when the Nation will suffer on account of our tendencies and activities. We must halt. We cannot afford to continue to further disregard the spirit and letter of the Constitution and usurp police powers delegated to the States. That this measure is sectional in its nature there is no doubt. That it has some political significance there appears but little question. If this is the thought which engages the proponents of this measure, they will find themselves badly mistaken in the result.

"To advocate political equality between the races carries with it social equality, as it would be impossible to separate one from the other to a certain and marked degree. To wish upon the South a division of political preferences with the Negro is something which will never be tolerated and should not be advocated by anyone."

History of Anti-Lynching Legislation in Congress

Outline of Dyer Anti-Lynching Act

(H. R. 13) As Passed by House of Representatives, January 26, 1922.

March, 1922: p. 11

(The phrase "mob or riotous assemblage," when used in this Act, shall mean an assemblage composed of three or more acting in concert for the purpose of depriving any person of his life without authority of law as a punishment for or to prevent the commission of some actual or supposed public offense.)

PURPOSE

If any State or governmental subdivision thereof fails, neglects, or refuses to provide and maintain protection to the life of any person within its jurisdiction against a mob or riotous assemblage, such State shall by reason of such failure, neglect, or refusal be deemed to have denied to such person the equal protection of the laws of the State, and, to the end that such protection as is guaranteed to the citizens of the United States by its Constitution may be secured, it is provided:

OFFENSE AND PUNISHMENT

That any State or municipal officer charged with the duty to protect the life of any person that may be put to death by any mob or riotous assemblage, who fails, neglects, or refuses to make all reasonable efforts to prevent such person from being so put to death, or any State or municipal officer charged with the duty of apprehending or prosecuting any person participating in such mob or riotous assemblage who fails, neglects, or refuses to make all reasonable efforts to perform his duty in apprehending or prosecuting to final judgment under the laws of such State all persons so participating, shall be guilty of a felony, and upon conviction shall be punished by imprisonment not exceeding five years or by a fine of not exceeding $5.00, or by both such fine and imprisonment.

Any State or municipal officer, having in his custody or control a prisoner, who shall conspire, combine, or confederate with any person to put such prisoner to death without authority of law as a punishment for some alleged public offense, or who shall conspire, combine, or confederate with any person to suffer such prisoner to be taken or obtained from his custody or control for the purpose of being put to death without authority of law as a punishment for an alleged public offense, shall be guilty of a felony, and those who so conspire, combine, or confederate with such officer shall likewise be guilty of a felony. On conviction the parties participating therein shall be punished by imprisonment for life or not less than five years.

Any act committed in any State or Territory of the United States in violation of the rights of a citizen or subject of a foreign country secured to such citizen or subject by treaty between the United States and such foreign country, which act constitutes a crime under the laws of such State or Territory, shall constitute a like crime against the peace and dignity of the United States, punishable in like manner as in the courts of said State or Territory, and within the period limited by the laws of such State or Territory, and may be prosecuted in the courts of the United States, and upon conviction the sentence executed in like manner as sentences upon convictions of crimes under the laws of the United States.

JURISDICTION

The district court of the judicial district wherein a person is put to death by a mob or riotous assemblage shall have jurisdiction to try and punish, in accordance with the laws of the State where the homicide is committed, those who participate therein: Provided, that it is first made to appear to such court that the officers of the State charged with the duty of prosecuting such offense under the laws of the State fail, neglect, or refuse to apprehend or punish such participants, or that the jurors for service in the State court having jurisdiction of the offense are so strongly opposed to such punishment that there is no reasonable probability that those guilty of the offense can be punished in such State court. A failure for more than thirty days after the commission of such an offense to apprehend the persons guilty thereof shall be prima facie evidence of such failure, neglect, or refusal.

FORFEITURE

Any county in which a person is put to death by a mob or riotous asemblage shall forfeit $10,000, which sum may be recovered by an action in the name of the United States against such county for the use of the family of the person so put to death; if he had no family, then to his dependent parents; otherwise for the use of the United States. Such action should be brought and prosecuted by the district attorney of the United States of the district in which such county is situated in any court of the United States having jurisdiction therein. If such forfeiture is not paid upon recovery of a judgment, such court shall have jurisdiction to enforce payment by levy of execution upon any property of the county, or may compel the levy and collection of a tax, or may otherwise compel payment by mandamus or other appropriate process; and any officer of such county or other person who disobeys or fails to comply with any lawful order of the court in the premises shall be liable to punishment as for contempt and to any other penalty provided by law.

In the event that any person so put to death shall have been transported by such mob or riotous assemblage from one county to another county during the time intervening between his capture and putting to death, the county in which he is seized and the county in which he is put to death shall be jointly and severally liable to pay the forfeiture.

Report of House Judiciary Committee on Dyer Anti-Lynching Bill (H.R.13)

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Six Arguments in Favor of the Legislation:

MAJORITY REPORT

The prevalence in many States of the spirit which tolerates lynching, accompanied too often with inhuman cruelty, and the inability or unwillingness of the public authorities to punish the persons who are guilty of this crime, threaten very seriously the future peace of the Nation. Not only is lynching a denial of the right secured by law to every man of a fair trial before an established court in case he is charged with crime, not only does it brutalize the communities which suffer it by breeding a spirit of lawlessness and cruelty in the young people who see barbarities unpunished and uncondemned, not only does it terrorize important bodies of our citizens, but it inevitably leads the people whose rights are thus trampled upon to leave the regions where their lives, their families, and their property are in danger, and move to others where they can find peace and protection, thus disturbing the labor situation all over the country.

Patriotic citizens throughout the country feel the shame which lynchings cast upon the Nation. The time has come when the United States can no longer permit the setting at naught of its fundamental law. We can no longer permit open contempt of the courts and lawful procedure. We can no longer endure the burning of human beings in public in the presence of women and children; we can no longer tolerate the menace to civilization itself which is contained in the spread of the mob spirit.

It is made the duty of the Congress under the Constitution to enact such laws as may be needful to assure that no State shall deny to any person within its jurisdiction the equal protection of the laws. Within the limits of the jurisdiction thus conferred the Congress has the right to exercise its discretion as to what laws or what means can best accomplish the desired end.

The bill reported by this committee seeks to prevent lynchings as far as possible; (1) by punishing State and municipal officers who fail to do their duty in protecting the lives of persons from mobs; (2) to punish the crime of lynching; and (3) to compel the county in which the crime is committed to make compensation.—Extract.

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Pro JANUARY

HON. LEONIDAS C. DYER, MISSOURI

Author of Bill.

"My interest in this legislation comes from lynchings that have occurred in my own State, which have been quite numerous, too numerous, of course, and some of them have been very disgraceful. My special interest in this legislation came five years ago, when at the very doors of my house, in the city of East St. Louis, Ill., occurred one of the most disgraceful lynchings and riots known in civilization. In that lynching and in that mob riot there were 100 and more persons injured and killed—innocent men and innocent women.

"The charge that this legislation is aimed at any section of the country, or that any particular section of the country is in favor of lynching is an absolute untruth. I have taken pains to gather extracts from papers all over the country and have gathered them from Southern States as I have from Northern States. I find that the press and the good people of the Southland are as much against this crime as are the press and the good people of the Northland. It is only the criminal element, the mob spirit that is in favor of this outrage against human life and human justice.

"The Tennessee conference of charity and correction, which met at Memphis in 1918, passed resolutions calling on the President to appeal to the people of the South against lynching, and its resolutions concluded not only in appealing to the President, but also says that, whereas such acts do in fact amount to a crime against the Nation, 'we do further petition Congress to pass an act so declaring, and give Federal grand juries and the courts the right to indict and try these charges thereunder.' Not only that, but I have other petitions to the President and the Congress begging that action be taken so that the United States courts may have jurisdiction to investigate and try men charged with this crime.

"If this bill is enacted into law, it will help to save the lives of human beings and to protect communities from mobs and these lynchings that have come to disgrace our Republic.

"The Constitution of the United States gives us the authority to legislate. We brought before our committee distinguished lawyers to argue and consider the constitutionality of it. The Attorney General of the United States says the bill is constitutional.

Report of House Judiciary Committee on Dyer Anti-Lynching Bill

Author of Bill.
(continued)

"There is no way to keep people from continuing to commit this crime except to bring in a law that will give the courts of the United States jurisdiction, and thereby bring the juries from other sections to consider the offense who will not be afraid to indict."

HON. ANDREW J. VOLSTEAD, MINNESOTA

"When a State fails to punish those who commit mob murder, it fails to afford due process of law and the equal protection of the laws. Aside from immediate police protection, which in most instances cannot be given, the one method recognized and relied on by every government as the appropriate, the necessary, and effective means for protecting persons against lawlessness is the punishment of those who violate law.

"There is nothing in the language of the fourteenth amendment that prohibits action against individuals when the State makes default; that is, if Congress has power to enforce its plain purpose, and I can see no sense in refusing to apply to this amendment the familiar rule that it must be construed so as to carry out its purpose. The contention that such a construction is inadmissible because it would give the Federal courts jurisdiction of every criminal offense is an argument against a policy and not against the power of Congress. It is the function of Congress and not the courts to determine policies."

HON. RICHARD YATES, ILLINOIS

"This bill is a good bill and ought to pass, because it is a bill for law and order—for order against disorder, for law against lawlessness.

"It is not a bill for or against the South or any section; it is not a bill for or against the white man or any other color; it is a bill to enthrone order and to dethrone disorder.

"Mob spirit strikes at all Government and legislation concerning it is not and cannot be in this day and generation peculiar to any one section of the land. This bill is not an imputation on one section of our united country, namely, the South. It may be so construed by some men too sensitive. It may af-

Report of House Judiciary Committee on Dyer Anti-Lynching Bill

RICHARD YATES
(continued)

fect temporarily that section more than another. But mob law has entered other States, many States, almost all States.

"The great Government of the United States and the great Congress of the United States can do no more righteous work, and no more vital work for our children and our children's children than to stamp this monster, this brutality, this demon into the earth."

HON. FREDERICK W. DALLINGER

MASSACHUSETTS

"The members of the House appear to be unanimous on the question of the existence and the undesirability of the crime of lynching. We are all agreed on that, and every man that has spoken either for or against this bill professes to be in favor of stopping this awful blot on American civilization. Neither is there any question about the demand for Federal legislation. I hold in my hand a memorial from men and women representing one-tenth of the entire citizenship of this country, who are asking for this legislation. There was a time when a great statesman from my State was ensured by the House of Representatives for presenting a petition signed by black men, but thank God that time has gone, as they are now citizens of the United States under the provisions of the Constitution and are entitled to be heard.

"There is no question about the demand for some Federal legislation that shall deal in a comprehensive way with the whole question of preventing, if possible, this barbaric practice and of protecting the lives of American citizens and of citizens of other countries in cases where the State authorities neglect or refuse to perform that imperative duty. There is no question at all but that the provisions of this bill which punish the officers of a State for refusing or denying to the citizens of the United States the equal protection of the law are constitutional under the provisions of the fourteenth amendment."

HON. THEODORE E. BURTON, OHIO

"The passage of this bill should not be regarded as raising a sectional question. You gentlemen of the South, as well as the rest of us, condemn this

Report of House Judiciary Committee on Dyer Anti-Lynching Bill

THEODORE E. BURTON

(continued)

terrible reproach upon our civilization. We are entering a new era now in these wonderful years succeeding the war. We should enter that era with new ideals as to equality, as to liberty, as to the sacredness of human life. It is not enough that we are great in material civilization. We have no fear from the pestilence that walketh in darkness or the destruction that wasteth at noonday, but we have for the more insidious attack upon the very framework of our institutions from those outbursts of violence which disgrace the land, from the brutality, the murder, the disregard of law and order; and for one as I stand here I am not ready to assume the responsibility of failing to take every possible step to bring to an end this condition and substitute for it universal protection by the broad shield of the United States over every citizen in the Republic, however weak, however humble, whatever his race, whatever his color."

Six Arguments Opposed to the Proposed Legislation:

MINORITY REPORT.

This bill, in the judgment of the minority, is without constitutional warrant. It *is definitely and* directly antagonistic to the philosophy of our system of government, and within the limit of its effectiveness, if it should be held constitutional, would be destructive of that system.

If enacted and operative it would not add to the protection of person or the general efficiency of government, or strengthen the relationship between the Federal Government and the States. On the contrary, this proposed intervention of the Federal Government directed against local power, supplanting and superseding the sovereignty of the States, would tend to destroy that sense of local responsibility for the protection of person and property and the administration of justice, from which sense of local responsibility alone protection and governmental efficiency can be secured among free peoples.

This bill challenging as it does the relative governmental efficiency of the States and the integrity of purpose of their governmental agencies, placing the Federal Government, as it does, in the attitude

Report of House Judiciary Committee on Dyer Anti-Lynching Bill

MINORITY REPORT.
(continued)

of an arbitrary dictator assuming coercive powers over the States, their officers, and their citizens, in matters of local police control, would do incomparable injury to the spirit of mutual respect and trustful co-operation between the Federal Government and the States essential to the efficiency of government.

As a precedent, this bill, establishing the principles which it embodies and the congressional powers which it assumes to obtain, would strip the States of every element of sovereign power, control, and final responsibility for the personal and property protection of its citizens, and would all but complete the reduction of the States to a condition of governmental vassalage awaiting only the full exercise of the congressional powers established.

H. W. SUMNERS, Texas.
A. J. MONTAGUE, Va.
J. W. WISE, Ga.
J. N. TILLMAN, Ark.
F. H. DOMINICK, S. Car.

HON. HATTON W. SUMNERS, TEXAS
Leader of Opposition.

"I assume that there is no difference of opinion among men representing the different sections of the country in reference to the fact that the crime of lynching is a crime which nobody can defend, a crime which must be suppressed. The question is how best to proceed to do the thing that ought to be done. We people who believe we understood the situation are convinced that you men are fixing to cut the cord that holds in leash the passion of race conflict in the South and bring to the South such tragedies as that of East St. Louis, in which almost as many people were killed in that one city in one riot as are killed in the entire South by mobs in two years.

"Nobody on this earth can protect the black man who is in danger of such mob violence except the people in the community at the very time of the danger. If the Federal Government interposes its power, assumes responsibility now borne entirely by the people, so that the man on the ground will feel it is not his duty to protect, but that the Federal Govern-

Report of House Judiciary Committee on Dyer Anti-Lynching Bill

HATTON W. SUMNERS
(continued)

ment has stepped in and will take care of the situation, then you are likely to turn loose the passions of race conflict in that community.

"Suppose this other thing happens—and you can do it under this bill—suppose that a black man takes a little white child and drags her off into seclusion where no voice can hear and no hand can help, and the father of that child and the brothers of the child come up on him, and the Federal Government takes them away in the face of public sentiment and places them in the Federal penitentiary, and then has a tax of $10,000 levied against the county for the benefit of the culprit's family, a part of which sum might go to buy that family an automobile to ride by the home of the innocent victim, do you think, as a matter of common sense, with such a policy you could long prevent a condition it that country like those which developed in East St. Louis, Omaha, and Chicago?

"This bill has incorporated therein provisions which no lawyer in this House or elsewhere can defend. Yet you will be asked to pass the bill. They whisper in your ears 'political expediency' and ask you to yield to it. That is the same whisper which comes to the ear of the sheriff when the mob is battering at the jail door. A wonderful example they ask you to set to the constabulary of this country."

HON. WM. C. WRIGHT, GEORGIA

"I do not palliate or condone the violation of law, and condemn lynching and mob law in any form. One of its dangers is, there is no limit to its jurisdiction. But I am equally opposed to a violation of the Constitution under the guise of the enactment of a law which if enacted and enforced would be clearly subversive of the plain term of the Constitution and destructive of our system of government and the institutions and principles upon which it was founded.

"The Dyer anti-lynching bill is not only pernicious and unjust, but is clearly violative of the plain terms and provisions of the Constitution and contrary to the genius and spirit of our institutions and time-honored traditions.