

## Historical Anti-Lynching Legislation

Student Name \_\_\_\_\_ Date \_\_\_\_\_

### Dyer Anti-Lynching Bill

Text of H.R. 13, often referred to as the Dyer Anti-Lynching Bill, favorably reported out of the Senate Judiciary Committee on July 28, 1922.

An act to assure to persons within the jurisdiction of every State the equal protection of the laws, and to punish the crime of lynching.

*Be it enacted, etc.,* That the phrase “mob or riotous assemblage,” when used in this act, shall mean an assemblage composed of three or more persons acting in concert for the purpose of depriving any person of his life without the authority of law as a punishment for or to prevent the commission of some actual or supposed public offense.

Sec. 2. That if any State or government 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:

Sec. 3. That any State or municipal officer charged with the duty or who possesses the power or authority as such officer to protect the life of any person that may be put to death by any mob or riotous assemblage, or who has any such person in his charge as a prisoner, 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 is apprehending or prosecuting to final judgment under the laws of such State all persons so participating except such, if any, as are or have been held to answer for such participation in any district court of the United States, as herein provided, shall be punished by imprisonment not exceeding five years or by a fine of not exceeding \$5,000 or by both such fine and imprisonment.

Any State or municipal officer, acting as such officer under authority of State law, having in 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.

Sec. 4. That 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 shall be charged in the indictment that by reason of the failure, neglect, or refusal of the officers of the State charged with the duty of prosecuting such offense under the laws of the State to proceed with due diligence to apprehend and prosecute such participants the State has denied to its citizens the equal protection of the laws. It shall not be necessary that the jurisdictional allegations herein required shall be proven beyond a

### ***NAACP and Anti-Lynching Legislation***

reasonable doubt, and it shall be sufficient if such allegations are sustained by a preponderance of the evidence.

Sec. 5. That any county in which a person is put to death by a mob or riotous assemblage shall, if it is alleged and proven that the officers of the State charged with the duty of prosecuting criminally such offense under the laws of the State have failed, neglected, or refused to proceed with due diligence to apprehend and prosecute the participants in the mob or riotous assemblage, forfeit \$10,000, which sum may be recovered by an action therefore in name of the United States against such county for the use of the family, if any, of the person so put to death; if he had no family, then to his dependent parents, if any: otherwise, for the use of the United States. Such action shall 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 therefore, such court shall have jurisdiction to enforce payment thereof by levy or execution upon any property of the county, or may compel the levy and collection of a tax therefore, or may otherwise compel payment thereof of 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 the law therefore.

Sec. 6. That 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 herein provided.

Sec. 7. That 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 a 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 for crimes under the laws of the United States.

Sec. 8. That in construing and applying this act the District of Columbia shall be deemed a county, as shall also each of the parishes of the State of Louisiana.

That if any section or provision of this act shall be held by any court to be invalid, the balance of the act shall not for that reason be held invalid.

**Excerpt from Warren Harding's Letter to James Weldon Johnson  
June 18, 1921**

Source: Warren Harding Papers, Library of Congress

“I have been much interested in what you have written me about the forthcoming Twelfth Annual Conference of the National Association for the Advancement of Colored People at Detroit. Of my Association I hardly need assure you, for your attention will have been called to various public expressions of my views. In my first message to the Congress, on April 12<sup>th</sup>, of this year, I included the following paragraph:

‘Somewhat related to the foregoing human problems is the race question. Congress ought to wipe the stain of barbaric lynching from the banners of a free and orderly, representative democracy. 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 its difficulties might be enlightened 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 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 independence of the races and the maintenance of the rights of citizenship lies the road to righteous adjustment.’

At this time, I do not feel that I can add anything very significant to the foregoing. I wish your convention to be assured, however, that I design just as early as possible to proceed further along the line of the expression to the Congress. I feel strongly that there is opportunity for accomplishment of great and lasting good and that whatever measures will enlist the cooperation of intelligent and broad leaders of both races will serve the most useful purpose.”

**Excerpt from Letter by Warren Harding's Secretary to James Weldon Johnson  
December 8, 1922**

Source: NAACP Papers, Library of Congress

“...I can readily understand the disappointment of the colored people over the inability of the Senate to function in the consideration of the Dyer Anti-Lynching bill. I also feel that our colored citizens will justly place the responsibility for this where it belongs, to wit, upon the Democratic minority whose filibustering under the existing Senate rules would not only prevent the passing of the Anti-Lynching bill but in so doing defeat the entire legislative program for the session, appropriation bills included, to the benefit of no one but to the detriment of the entire country. As you know, the President recommended the Anti-Lynching bill to Congress. The Republican House passed it. The Republican Majority in the Senate has labored earnestly and sincerely, last summer and now, to bring about its enactment. The bill is blocked by the Democratic filibusters.

The fact is that the Senate operates under rules which render it impotent to do anything when a considerable minority sets out to block any decisive action by carrying on a determined filibuster.”

## **NAACP and Anti-Lynching Legislation**

### **Excerpt from Attorney General H.M. Daugherty's Letter to A.J. Volstead**

August 9, 1921

Source: NAACP Papers, Library of Congress

“While under the statutes governing my office I am not authorized to give an official opinion to your committee relative to the bill, my interest in securing to persons within the jurisdiction of every State the equal protection of the laws, especially with reference to lynching, is so great that I feel warranted in submitting to you as my personal and not official opinion certain thoughts which have occurred to me as the result of a somewhat hasty examination of the bill.

As pointed out by Col. Goff in his statement before your committee, the first seven sections, providing for the removal of cases under certain conditions to the Federal courts, and providing for the punishment of persons obstructing or resisting officers of the United States, are in effect but elaborations of existing law. They appear to be well drafted and within the competency of Congress to enact.

Considerable discussion has taken place as to the constitutionality of the proposed legislation, it being contended that the fourteenth amendment gave Congress power to legislate so as to prevent a denial of the equal protection of the laws by the States and not as acts of individuals not clothed with State authority. In support of this proposition the following cases have been cited: *United States v. Cruikshank* (92 U. S., 542); *Virginia v. Rives* (100 U. S., 313); *Ex Parte Virginia* (100 U. S., 339); *Civil Rights Cases* (109 U. S., 3); *United States v. Harris* (203 U. S., 1); *James v. Bowman* (190 U. S., 127); *Hodges v. United States* (203 U. S., 1); *United States v. Wheeler* (245 U. S., 281).

Col. Goff has very thoroughly gone over this question in his statement before your committee, and I heartily concur in the views he there expressed. It will be observed that in the cases above cited the court hold that the state may act through its legislative, its judicial, or its executive authorities, and the act of any one of these is the act of the State. This is concisely set forth in the opinion of the court in *Ex Parte Virginia* (100 U. S., 339, at 346).

...Section 10 imposes a penalty upon every county in which an unlawful killing occurs, and section 11 imposes a like penalty on every county through which the victim may be carried before being put to death. While the question whether the United States may penalize and instrumentality of a subdivision of a State may cause some doubt, it is at least an open one so far as the decisions of the Supreme Court are concerned. There has been conferred on Congress the power by appropriate legislation to enforce the prohibitions of the Fourteenth Amendment and the imposition of penalties is a well-established means of enforcing the laws, and is so recognized by numerous decisions of all courts and is no doubt an appropriate method of so enforcing the law. This being true and the States having consented by their adoption of the provisions of the Constitution and its amendments to such enforcement of the law by the Federal Government, it would seem there could be but little question of the power of Congress to provide such penalties.

Section 12 and section 13 provide for the punishment of State and municipal officers who fail in their duty to prevent lynchings or who suffer persons accused of crime to be taken from their custody for the purpose of lynching. These sections seem to me to strike at the heart of the evil, namely, the failure of State officers to perform their duty in such cases. The Fourteenth Amendment recognizes as pre-existing the right to due process of law and to the equal protection of the law and guarantees against State infringement of those rights. A State officer charged with the protection of those rights who fails or refuses to do all in his power to protect the accused person against mob action denies to such person due process of law and the equal protection of the laws in every sense of the term. The right of Congress to do this is fully sustained by the decision of the court in *Ex Parte Virginia*, supra. (See pp. 346, 347.)”

**Excerpt from Guy D. Goff's Statement to House Judiciary Committee**

July 20, 1921

Source: House of Representatives Report No. 452 to Accompany H.R. 13 (October 31, 1921)

...My conclusion is this: Must the Congress of this country sit supinely by when it knows that a State, either affirmatively or negatively is denying that right? If the State omits to give or withholds to protection through motives of indifference or inability, is the guaranty performed and the duty of the Federal Government discharged? In a word, is the fourteenth amendment meaningless because of State negativity? I hope not, and I think not. The Congress of the United States clearly is charged under the Constitution, as interpreted by the Supreme Court, with the duty of seeing that the States do not neglect this right. Then if the Congress of the United States decides that the States have, by omission, neglect, incapacity, or local prejudice, if you please, failed to insure and secure to every citizen within those States the full protection of the laws and the right to life, liberty, and property, then does not the obligation arise to protect these rights?

We are all familiar with that state of affairs where if the Congress of the United States – and it has recently decided it – concludes as a matter of fact that a republican form of government does not exist in a State because a State has not the means or the instrumentalities by which such forms of government are recognized and protected, that it, the Congress of the United States, has the right to go into that State and see that a republican form of government is maintained and preserved...

If a State omits affirmatively to legislate upon such questions it has denied this protection by not taking affirmative action; if it takes affirmative action and does not enforce that action, or if it says it will take no action because, within the judgment of the State, no action along those lines should be taken, then I say the Federal Government can say to a particular state, "You have denied negatively," "You have failed to give," "You have defaulted," if I may so phrase it, "to the citizens of these States the protection that the Constitution of the United States, as interpreted by the Supreme Court, says they are entitled to receive." Now, I contend that under the general police power, the Federal Government may go in and, side by side with the States, as it does in bankruptcy, aid the States in securing the protection which for any reason the local governments can not give.

The Federal Government was given the power to curb the States in these particulars – and the States reserved the correlative right to so "police" its citizens that in maintaining order it would not deprive any person life, liberty, or property. And if it fails to preserve these rights – and the Congress concludes, that such rights are denied the people and that they are deprived of due process of law – no matter the cause – then are we to be told that these guarantees can not be enforced by appropriate legislation.

...But does the State not violate and render meaningless the provisions of the amendment by neglecting to legislate, refusing to enforce its laws, or by allowing its laws and its officials to drift into a condition of utter helplessness and indifference? Are "citizens" and "persons" to be thus deprived of life, liberty, and property when the people of the States have clothed the Federal Government with the power to see that they, the States, do not deny such rights, and have expressly empowered the Congress and directed it "to enforce" such commands by appropriate legislation?

## **NAACP and Anti-Lynching Legislation**

### **Excerpt from James Weldon Johnson's Letter Supporting Dyer Anti-Lynching Bill**

January 21, 1922

Source: NAACP Papers, Library of Congress

Dear Sir:-

In the debates which have taken place in Congress on the Dyer Anti-Lynching Bill (H.R. 13), a statement has been made which gives rise to doubt the constitutionality of the measure in the minds of a number of Representatives, namely, that if the Federal Government has the power to legislate for the punishment of lynching, it also has the power to legislate for the punishment of murder and other crimes committed in the States. It appears that this latter power the Federal Government would undoubtedly have if the States proved themselves unable or unwilling to deal with, say, the crime of murder.

But the analogy is not a true one. Lynching is murder, but it is also more than murder. In murder, one or more individuals take life, generally for some personal reason. In lynching, a mob sets itself up in place of the State and its actions in place of process of law to mete out death as punishment to a person accused of a crime. It is not only against the act of killing that the Federal Government seeks to exercise its power through the proposed law, but against the act of the mob in arrogating to itself the functions of the State and substituting its actions for the due processes of law guaranteed by the Constitution to every person accused of crime. In murder, the murderer merely violates the law of the State. In lynching, the mob arrogates to itself the powers of the State and the functions of government. It apprehends, accuses, tries, condemns and executes by meting out death as the punishment—a very different thing from murder.

This bill is aimed against lynching not only as murder but as anarchy – anarchy which the States have proven themselves powerless to cope with. The States deal more or less effectively with the crime of murder, but it is not unreasonable to estimate that not less than 250,000 persons have taken part in lynchings, and it is known that not a round dozen of these have ever been punished...

It is a strange contradiction that it should even be contended that this nation has not the power to remedy a situation within its own borders which would call forth cries of horror from Americans if it existed anywhere else in the world.

Very truly yours,

James Weldon Johnson  
Secretary

**Excerpt from James Weldon Johnson's Letter to Senator Henry Cabot Lodge**

June 14, 1988

Source: NAACP Papers, Library of Congress

...It is absurd to talk about leaving to certain states a right which they for more than thirty years have proven themselves unable to exercise.

If the Dyer Anti-Lynching Bill is unconstitutional, then the so-called constitutional guarantees are utterly meaningless. American citizens in those states where lynching prevails then find themselves in the anomalous position of being residents in states which refuse to guarantee them trial by due process of law when accused of crime and citizens of a government which confesses its inability to do so.

But we believe there is warrant in the Constitution. Those who deny that the Federal Constitution gives the Federal Government power to protect its citizens within its own borders against illegal trial and execution by a mob are not looking at the Constitution itself but are lost in a maze of judicial decisions on the Constitution, decisions which in the case of the Fourteenth Amendment were arrived at through hair-splitting and sophistry and given for the express purpose of modifying, limiting and even nullifying that Amendment.

The colored people of the country are looking to their friends in the Senate to avert the calamity of an unfavorable report on the Anti-Lynching Bill. Such an action would have deplorable effects. First, the psychological effects upon the colored people themselves would be a feeling of utter hopelessness following the realization that the Federal Government admitted its powerlessness to protect them in their most fundamental right of national citizenship.

Second, an unfavorable report on the Bill would be tantamount to issuing a license to mobs and there would probably follow a reign of lynching terror too horrible to mention.

Third, the political effect would be very bad, since the Party platform contained a pledge for anti-lynching legislation followed by a recommendation from the President in his first message to Congress calling for the same...

**Except from Walter White's Letter to the Senate**

December 1, 1922

Source: NAACP Papers, Library of Congress

“In view of the fact that the fight on the Dyer Anti-Lynching Bill centers on the question of constitutionality, I want to present to you as a friend of the Bill certain facts which will, I believe, adequately answer such objections.

One of the statements made is that if the Federal Government has the power to legislate for the punishment of lynching, it has the power to legislate for the punishment of murder and other crimes committed in the various states. It appears that this latter power the Federal Government would naturally have if the states proved themselves unable or unwilling to deal with the crime of murder or any other infraction of the law which threatens the safety of the national government.

But the analogy is not a true one. Lynching is murder, but it is also more than murder. In murder one or more individuals take life, generally for some personal reason. In lynching a mob sets itself up in place of the state and its actions in place of due process of law to mete out death as punishment to persons accused of crime.

It is not only against the act of killing that the Federal Government seeks to exercise its power through the proposed anti-lynching law but against the act of the mob in arrogating to itself the functions of the State and substituting its actions for the due processes of law guaranteed by the Federal Constitution to every person accused of crime. In murder the murderer merely violates the law of the State. In lynching, the mob arrogates to itself the powers of the State and the functions of the government. It apprehends, accuses, tries, condemns and executes by meting out death as a punishment – a very different thing from a murder.

This Bill is aimed against lynching not only as murder but as anarchy – anarchy which the States have proven themselves powerless to cope with. The States deal more or less effectively with the crime of murder, but it is not unreasonable to estimate that no less than 250,000 persons have taken part in lynchings, and it is known that not ten of them have ever been punished.

The argument that the Dyer Bill is unconstitutional made by its opponents is not a tenable one when all the facts are considered. No one can make this decision save the United States Supreme Court. Certain it is that the great preponderance of evidence is in favor of the constitutionality of the measure.

The constitutionality of the Dyer Bill has been affirmed by the Attorney General of the United States and by Judge Guy D. Goff of the Department of Justice, and by the Judiciary Committees of both the House of Representatives and the Senate. Further the Senate has been petitioned to pass the measure by forty-seven lawyers and jurists including two former attorneys general of the United States, and by nineteen State Supreme Court justices and many other eminent citizens, including twenty-four State governors and thirty-nine mayors of large cities, North and South, three archbishops, eighty-five bishops, and many editors and other in public life.”

**Excerpt from Walter White's Letter to Alice M. Robertson**

December 21, 1921

Source: NAACP Papers, Library of Congress

“I am taking the liberty of presenting certain facts to you for your consideration in connection with the Dyer Anti-lynching Bill, H.R. 13. I present these facts for your consideration with the hope that they may enable you to see more clearly the necessity for federal action against lynching. I have been informed that you are at present opposed to the bill.

May I first make clear to you the position of the National Association for the Advancement of Colored People with reference to this legislation. First, there is no sectional bias in our advocacy of federal action against lynchings. We are as opposed to lynching in the North as we are in the South and we condemn as uncompromisingly the lynching of a white person as we do of a colored. I believe that you will agree with me in the statement that a great deal of the present disregard of and disrespect for law is due to the fact that many states in America either could not or would not stamp out lynching or punish lynchers. Last summer I was in England and a number of times was forced to hang my head in shame when a prominent Englishman intimated that many of the citizens of America must be barbarians with a thin veneer of civilization since lynchings and burnings at the stake had been allowed to go unchecked. It is amazing the disrepute into which America has fallen because of the practice of lynching.

From 1889 through December 19, 1921 there have been 2,434 know lynchings in America. Of that number 570 or only 16.6 percent of the victims have been lynched for rape. In each of these cases rape was alleged to be the cause and both you and I know of many cases in which it has been discovered after the lynching that the victim was not guilty. Mobs have found that they can lynch American citizens for any crime whatever and oftentimes for no crime other than personal unpopularity of the victim and then justify their actions by attributing rape to a victim.

Of the 3,434 lynchings quoted above 64 of the victims - 53 white and 11 colored - have been women. Certainly no charge of rape could have been placed against them.”

**Excerpts from Excerpt from Walter White's Letter to Editor of the New York World**

December 27, 1921

Source: NAACP Papers, Library of Congress

“May I again comment on the position which the World takes on the Dyer Anti-lynching Bill, H. R. 13, which is now pending before Congress. I refer particularly to your editorial of December 27, “Congress Outside the Constitution”, in which you declare that in spite of the notorious failure of certain states to stop mob murder, the federal government is without power to correct such evils, and you further argue that attempts to end lynching can only be through state action.

I seriously question the analogy which the World draws when it says,

“If Congress is constitutionally competent to enact an anti-lynching law, it is constitutionally competent to enact an anti-bandit law and assess damages of ten thousand dollars against the City of New York for every hold-up within its bounds for the benefit or the plundered victims.”

If in New York City, for thirty years, bandits had been allowed to ply their trade unmolested, if law officials had passively or actively aided the bandits, and the lives and property of citizens of New York (who are also citizens of the United States) were placed in jeopardy, then Congress most certainly would not only have the right but would be under solemn obligation to enact anti-banditry legislation. The Fourteenth Amendment to the Constitution and Supreme Court decisions under that amendment clearly define the right of Congress to so legislate.

Further, your analogy is faulty when you compare the attempts of law officials in New York to check banditry with those of law officials in certain states to check lynching. Bandits have been apprehended and punished in New York. Whatever their success, officers of the law do check the robbery of citizens of New York. Courts of New York do punish bandits when found guilty. On the other hand, there have been nearly four thousand known lynchings in the United States during the past thirty-two years. In less than a half dozen cases have lynchers been punished. Unless the Federal Constitution has become “a scrap of paper”, then it is and must ever be able to cope with so alarming and dangerous crime as lynching.”

**Moorfield Storey's Letter to Senator William Borah**

June 5, 1922

Source: NAACP Papers, Library of Congress

“...It is a disgrace to this country for the Senate to say that not only that this bill is bad, but that the power to pass a good bill does not exist. This is practically saying to the colored people of the United States, “You can be murdered, burned and robbed with absolute impunity and this country which uses you as soldiers and taxes you as citizens cannot help you”. Are you prepared to say this? I fancy that if the question whether the Fourteenth Amendment would justify the legislation which we ask for were presented to you as a new question, you would agree with me, but you feel bound by the decisions which the Supreme Court of the United States has rendered on substantially different questions. My feeling is that the Senate of the United States has a right to construe this amendment for itself and to challenge the Supreme Court of the United States to change its position.

If sitting on the Supreme Court and dealing with this question as a new question, you would insist that there was no power of the Federal Government to protect the colored people, I could not quarrel with your speaking and voting accordingly, nor would I for a moment suggest that you should vote against your conscientious convictions. But your feeling in this matter is an opinion on a doubtful question of law, and in such cases no lawyer violate his conscience by putting the question in the way of being settled by the highest court. I feel that you ought not to be so sure that you are right as not to do this. If I understand your position you feel that some such law against lynching ought to be enacted, but question the power to pass it. Your proposed action destroys the chance of having such a law, because you are sure that you are right on a doubtful question. For Heaven's sake, do not tell the negroes that their case is hopeless, that this great country cannot protect them from absolute wanton murder with the connivance and of ten with the assistance of the officers appointed by law to defend them, and with absolute indifference on the part of the United States.”

**Excerpt from William Borah's Letter to W. Hayes McKinney**

May 22, 1922

Source: William Borah Papers, Library of Congress

I have your telegram of the 21<sup>st</sup>, in which you say "Unfavorable Judiciary Sub-committee Report on Dyer Bill will become as infamous as Dred Scott decision if allowed to stand, and so forth".

I realize, Mr. McKinney, how deeply you and all your people feel in regard to this matter. You should bear in mind also that some people not of your race feel as deeply and sincerely about this as you do. It may be that the race question brings it more directly home to you, but we feel the disgrace upon our country by reason of these lynchings as you do and we are just as anxious to remedy I am sure.

But you must permit me to say that the best evidence of sincerity in dealing with this is the determination to know that our work shall not be in vain. When I attempt to serve the Negro in this grave matter, I propose to have behind it my conscience and my convictions, and I do not intend out of sheer politics or unseasoned desire to serve to do a vain and useless thing. It will not help your people and it will only add another chapter of insincerity and disgrace to our dealing with the Negro question.

I do not believe that the present law, as proposed, is constitutional. I do not think there is a single constitutional principle upon which to base the law. The Supreme Court has as definitely decided it as any question which has ever been before the Court, in my judgment. I have spent weeks going through the decisions and examining the arguments, both for and against, and if I should support this law, I would feel I was trifling with a question which involves the honor of the country. You will pardon me for saying I do not propose to take any such course and the mere suggestion that my course will be "as infamous as the Dred Scott decision" does not move me at all to do a purely expedient thing without convictions or conscience or law behind it.

However, the program now is to make an effort to draft a law which will comply with the Constitution. It is no easy thing to do. I doubt if the national government can ever deal with the subject without an amendment to the Constitution.

But I can assure you that there are plenty of men on both sides of the aisle in the Senate who are deeply interested in this question and who will work out a solution if, under the Constitution, it can be done. But there are also men who are deeply interested in it who will not violate their oaths in an open effort to disregard the Constitution.

If those who are in favor of this bill will cite us to the authorities and decisions upon which it can be framed, they will not only render their Committee a great service than by denunciation of those who are seeking in a constitutional way to solve the question.

**Excerpt from William Borah's Letter to the Editor of The Boston Transcript**

June 8, 1922

Source: William Borah Papers, Library of Congress

“My dear Mr. Editor is it not apparent that the great problem which confronts us in constitutional government is that of a redistribution of power between the State and the national government – shall the national government be authorized to take over the police power of the State in whole, or in part? There is no dodging the question. If the people of this nation want to redistribute the powers of the government, let's face the question through a constitutional amendment and put an end to this constant pressure upon the Constitution. For twenty years we have been compromising with our oath and passing child labor laws – all in vain. The child is not yet subject to the jurisdiction of the Federal government. Do the people want to transfer unquestionably the power to Congress to deal with this subject – if so, let the insane be met openly and intelligently, and I trust with great deliberation.

If we take the police power of the State to protect the child from the exploitation in industry, will it not also be found advantageous to give the Federal government the power to see that the child is properly educated? Will the State, which is incapable or unwilling to protect the child physically, be fit, or willing, do you think to look after its mental and moral development. And if the State is unfit to protect the child, the coming citizen, from cruel and unusual hours of labor, will you still leave to the state the role right and power to protect the life of a citizen against the attacks of the mob? If you want the Federal government to have the power to reach the individuals who compose the mob, is it not a vain and ineffective thing to try to deal with the subject by visiting punishment upon an officer alone?”

**Senator James W. Wadsworth, Jr.'s Letter to James Weldon Johnson**

August 9, 1922

Source: NAACP Papers, Library of Congress

“I am in receipt of your favor of August 5<sup>th</sup> with reference to the so-called Dyer Anti-Lynching Bill in which you ask if I will vote for it and if I will exert my efforts for its prompt consideration. In reply permit me to say that in spite of the opinions of some prominent persons that the bill would be constitutional I have grave doubts on the question. I do not want to vote for a bill that I believe to be unconstitutional. The Congress has gotten into the very bad habit, in recent years, of deliberately passing bills which a large share of the membership believe to be unconstitutional and relying upon the Supreme Court to declare them null and void. This is a demoralizing practice. It excites among the ignorant hostility toward the Supreme Court and that tremendously vital feature of our Constitution which establishes the courts as the guardians of the Constitution and the rights of the States and of individuals. I am not a lawyer and I am, therefore, more than willing to listen to arguments concerning the constitutionality of the bill. I say frankly, however, that I am now inclined to believe that the Federal Government has not the power to take jurisdiction over crimes against the person in violation of State laws—crimes which do not involve interference with those Federal prerogatives specifically set forth in the Constitution. Nor can I believe that the Federal Government has a right to assess a fine against a municipality. This, to my mind, is the most extraordinary proposal in the bill.

I abhor lynching. Its frequency is a disgrace to the country. If the Federal Government can help in stopping it, well and good; we must be careful, however, to preserve our form of Government. We are a Federal union of states. Let us not destroy that Union. At least the Congress should not pass acts which will destroy the federal union, on the theory that the Supreme Court may come to the rescue with an adverse opinion.”

**Excerpt from Burton French's Letter to James Weldon Johnson**

February 3, 1922.

Source: NAACP Papers, Library of Congress

“...I have been compelled to point out the features in the Dyer bill that I think are disastrous.

I am sending you herewith a copy of the remarks that I made while the bill was pending that indicate my criticisms of the measure briefly.

I question the constitutionality of the provisions fixing a penalty or assessment upon counties. In my remarks I did not develop particularly the reasons why I think these features are not constitutional for the burden of proof rests upon the proponents of the bill to establish the constitutionality. I have given careful consideration to the arguments and I cannot agree with the conclusions, notwithstanding and distinguished ability of those who press them for consideration.

Again, if these features are constitutional, I believe that fundamentally they are not in harmony with our system of government,--that they would prevent the enforcement of law.

One of the reasons why I am opposed to mob violence is because the innocent is frequently made to suffer. Remember that under the Dyer bill, the inhabitants of a county may be wholly free from guilt, yet under the bill a penalty of ten thousand dollars may be imposed upon these people.”

**CONGRESSIONAL RECORD – HOUSE**  
**Comments by Meyer London**  
January 18, 1922

Mr. Meyer: As a Socialist, believing that the only salvation of the human race is love, guided by intelligence, and that the only process of human civilization should be obedience to the collective expression of an enlightened will, through the duly chosen representatives of the people, I repudiate every form of mob action.

Now a word as to the police power of the Nation. The expression “police power” is improperly interpreted by those who would give a narrow interpretation to the Constitution. The State has become a mere nominal unit of the Nation. The United States to-day is a Nation. It is not a confederacy of States. It is not an American league of nations, a league of 48 sovereign States. Industrial evolution, inventions, the economic course of society have obliterated State boundary lines. The city of Jersey City, in the State of New Jersey, is more a part of the city of New York, in the State of New York, than is Buffalo, although separated technically by State lines. State lines have disappeared. The National Government has such police power as is necessary to effectuate the purposes for which the National Government has been organized and for which it exists. The Nation can, if it desires, punish murder. It can, if it desires, punish mob action. The Nation which assumed the power to enter every home in every State of the Union and conscript every young man, can reach every criminal who deprives an American citizen of elementary rights guaranteed by the American Constitution and by every tenet of civilized society. [Applause.]

That power cannot be denied. That power exists outside of the fourteenth amendment. That amendment, designed by its framers for the protection of the helpless, the submerged and unfortunate colored man, has by crooked lawyers been employed to serve for the protection of corporate interests. It has never been used to protect human life or human dignity.

**CONGRESSIONAL RECORD-HOUSE**

**Comments by Edgar Ellis**

January 18, 1922

Mr. Ellis: I will not discuss the evidence of this in detail, but if anyone will read the matter my colleague [Mr. Dyer] has inserted in the record of this debate, he will be convinced not only of the demand but that the demand was quite as insistent and almost as general in the South as in any other part of the country. In 1920 the Republican Party was out of power. It was appealing to the American people to be put back into power. As a part of that appeal to voters it engaged to grapple—held out assurance that a Republican Congress would grapple—with this monstrous evil. This bill is the effort of the Republican Party now in power to keep faith. Now, why and where does the shoe pinch? The shoe pinches because our brethren of the minority, fine gentlemen all of them, smart politicians, clearly see and realize that if this bill shall be perfected, shall be enacted into law, and shall work—shall be effective in suppressing in some substantial degree the lynching evil—the Republican Party will profit, just as a political party always profits that keeps faith with the people in doing things that ought to be done. But that is not all. It is just as clearly seen that if the Republican Party should make no effort, or if, making the effort, shall fail in this program, it will suffer loss, just as a party always suffers loss when it breaks faith or fails to keep faith with the people. So the spirit that is troubling the waters here is not the spirit of a mob; it is the spirit of the politician. The party responsible for what is not done is not to be stampeded by threats. Gentlemen of the minority, in the play of politics, may prance before us, call us names and apply epithets, we shall not be perturbed if only they do not forget to smile.

But, Mr. Chairman, they tell us in thunder tones that this proposal is unconstitutional. It may be, in little part or big part or altogether. As I said at the beginning, I am disposed to discuss the policy of this proposal. I shall be troubled neither by the constitutionality question nor by my duty under my oath with respect to the measure until it is perfected here. The people want something done, and so help me, so far as I am concerned, the opponents of this bill must marshal some other argument beside the old, pestiferous bugaboo of State rights. I demand to be shown that my National Government has not the inherent right and power to protect its citizens from mobs and to preserve its very life and conserve its civilization.

**CONGRESSIONAL RECORD-HOUSE**

**Comments by: A.J. Volstead**

January 18, 1922

Mr. Volstead: There is no merit in blinking the fact that we are face to face with the situation that lynch law is the only law that functions under certain circumstances. The mob is the judge, the jury, and the executioner. Its acts are sanctioned by the weakness or supineness of the State. The fact that the mob does not consult statutes or measure the punishment it inflicts with the nicety of the ordinary court does not make it any the less a tribunal for the punishment of crime. The lawlessness of the punishment it inflicts should not be made a shield against prosecution. It cannot be material that the mob does not claim to represent the State or that it has no authority from the State when it usurps and performs the functions that no one but the State can lawfully perform. The enforcement of the lynch law is not revolution against the State; but is, as the phrase goes, the act of the public taking the law into their own hands. While I do not believe that it makes any difference whether the mob has any authority from the State or not, I confess I can see no good reason why the mob should not be held to represent the State when it assumes to function for the State. Its action is the only administration of law when it puts a person to death as a punishment for a crime. It seems to me there is as much reason for holding its act to be the act of the State as there is for holding that an unauthorized act of a State officer is the act of a State. We punish such an officer upon the theory that he acts for the State; why not make the members of the mob subject to like punishment? The officer has no more warrant from the State for his action than has the mob.

The question of whether Congress can punish those who interfere with an officer of a State was carefully considered by the circuit court in *United States v. Powell* (151 Fed., 658). This case was affirmed by the Supreme Court because, as I construe the decision, it rests on statutes that are direct instead of corrective. Statutes that only protect against the invasion of the rights and privileges secured to citizens by the Constitution of the United States and not rights and privileges pertaining to citizens of a state that are only guaranteed to such citizens by the fourteenth amendment. In my view of the law the Supreme Court was right in affirming this case.

**CONGRESSIONAL RECORD-HOUSE**

**Comments by John Sandlin**

January 18, 1922

Mr. Sandlin: I make my appeal to the fair-minded and patriotic men of the East, the West, and the North to join hands with the men of the South and put to rout the proponents of this unnecessary, unconstitutional, harmful, and dangerous measure.

Why, Mr. Chairman, if this measure is placed on the statute books of this country it is going to weaken local responsibility and will be an encouragement to the viciously inclined. By the growth of a healthy public sentiment mob law is greatly on the wane in the South, but enact this bill and there will be a lessening of the efforts to check and abate it. The citizen will feel that the matter has passed out of his hands since the Federal Government has intervened, and will look to the Government to control and punish. He will feel that the United States has usurped his functions in this regard. Local officials will take much the same view and will not be so keenly alive to their own individual responsibility. The imposition of a penalty on a county or parish will not deter the members of a mob. The criminally inclined will draw surcease from the provisions of this bill. Gaining the impression that the power of the National Government will save him from the wrath of the mob, he thus is encouraged to commit the unspeakable crime. Instead of making for law and order, it will be but a breeder of disregard for law, and encourage the brute to seek the gratify his unholy propensities, imagining himself secure because a law has been placed on the statute books which penalizes the county where a lynching occurs and imprisons those who dare lay hands on him.

The Constitution of the United States declares that "the powers not delegated to the United States by the Constitution, nor prohibited to it by the States, are reserved to the States, respectively, or to the people." This proposed measure plainly violates this provision of the Constitution of the United States and aims at the destruction of local self-government.

In conclusion, Mr. Chairman, let me say that I deplore the rapid change in our Government from a democracy to a bureaucracy, and unless we turn about and retrace our steps the of this country will soon awake to the realization that they have no local self-government and are living under a centralized form of government, with their everyday actions directed and controlled by Federal agencies. If demands for legislation of this character are acceded to by the Congress, there will be no limit it will not be urged to go and which it can consistently refuse to grant. Let me, then, appeal to Members of this House, regardless of the section from whence you come, to stand together and resist and defeat this assault upon the Constitution and the inherent rights of the States guaranteed to them by the provisions of that immortal document.

**CONGRESSIONAL RECORD-HOUSE**  
**Comments by Thomas Montgomery Bell**  
January 18, 1922

Mr. Bell: If the bill as written should be enacted into law, it will, of course, be held unconstitutional. No court would jeopardize its reputation for integrity and knowledge of legal procedure by declaring such law valid and constitutional. To construe it otherwise would constitute one of the most infamous judicial rapes of our National Constitution ever recorded in the annals of legal jurisprudence. I cannot understand how an unbiased person with legal knowledge, who has studied our Constitution and the provisions of the bill, can reach any other conclusion.

Where and when did the States delegate to the Federal Government the right to make criminal laws to govern any State? What paragraph of the Constitution denies to the States their full enjoyment and discharge of such rights and powers?

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people. (See Article 10, Constitution.)

It is admitted by all that there is no authority for the proposed legislation unless it be found under the provisions of the fourteenth amendment. Let us, therefore, consider the question in the light of the decision of our courts.

The fourteenth amendment provides that no State shall "deny to any person within its jurisdiction the equal protection of its laws".

What does this mean? Regarding the amendment in the case of the United States *v.* Cruikshank (1 Woods, 308), the court said:

It is a guaranty against the exertion of arbitrary and tyrannical power on the part of the Government and the legislature of the State, not a guaranty against the commission of individual offenses; and the power of Congress, whether express or implied, to legislate for the enforcement of such a guaranty does not extend to the passage of laws for the suppression of crime within the States. The enforcement of the guaranty does not require or authorize Congress to perform the duty that the guaranty itself supposes it to be the duty of the State to perform, and which it requires the State to perform.

In One hundred and sixth United States, page 638, the above is approvingly cited in the case of United States against Harris.

Again, in United States *v.* Cruikshank et al. (92 U. S., p. 542), the court said:

Sovereignty for the protection of the rights of life and personal liberty within the respective States rests alone with the States.

In Virginia *v.* Rives (100 U. S., p. 313) the court holds:

The prohibitions of the fourteenth amendment have exclusive reference to State action. It is the State which is prohibited from denying to any person within its jurisdiction the equal protection of the law-

**CONGRESSIONAL RECORD-HOUSE**

**Comments by Patrick Drewry**

January 17, 1922

MR. DREWRY. Mr. Chairman, in a legislative experience of some years I thought I had seen bills presented for attention that held within them possibilities of evil so great that it was inconceivable how the human mind could imagine such measures being enacted into law; but in my whole experience I have never seen a bill that seemed to me to be fraught with so many and such possibilities of danger in it as this, known as the anti-lynching bill. This measure is unnecessary and would be useless if enacted. It is unjust and unfair to a certain section of our country, because it would create a dangerous condition among the people of that section. It is unconstitutional in that it nullifies the most fundamental principles of our government, principles which have been established for nearly 50 years.

I am not opposed to a proper law to prevent lynching. No one denies that lynching is a crime. I admit, however, I can see no real necessity for another law to punish murder—for that is what lynching is, of course. We now have laws to prevent homicides, but you can hardly pick up a newspaper that you do not read of several. The trouble is not a lack of laws but a lack of enforcement. We have too many laws, and the country would be better off if there could be a suspension of legislation for a few years while the authorities have a chance to catch up with those already on the books. The Republican Party is now being blamed by the country for its continuous sessions of law enactment. Businessmen everywhere are saying that if they had been allowed to struggle along and depend upon themselves they could have worked out their own salvation by this time; instead of that they waited on Congress to pass laws to make them prosperous, and in a Micawber-like attitude you can see them all over this country of ours still waiting; and they will continue to wait, for legislation of itself does not make men prosperous any more than it makes them good.

Human nature is the same today as it was yesterday and as it will continue to be 100 years hence. You may have a law that prescribes punishment for a murderer, but murders are still committed and will be committed until you impress in the heart of man the love for his fellow man that crowd out the blackness of hate and ignorance. You can then go further and pass a law penalizing every specific method by which a homicide is committed. In the pursuance of that you can specifically describe the punishment to be meted out to anyone who deprives or attempts to deprive another of life without authority of law. You will then have another law on your statute books, that is true. But when the good wife, bleeding and choking and gasping for breath from the cruel fingers at her throat so recently released, staggers out into the field where her husband is working and tells him that a fiend in human form attacking her while she, sitting in her home, was preparing for his home-coming, and that her tender body had been outraged and the sacred purity of her womanhood had been violated; when that husband picks her up senseless from the shock and bears her back to the home which they were making together, and after the doctor has arrived and the woman is told that the death she craves to hide her shame will not come, what then becomes of your man-made laws? Back to the old Mosaic law the husband goes, back further than that, way back to the jungle days of his primitive ancestry, when the male protected his female from those who would do her harm. All the laws under heaven will fail to restrain his desire to punish the injury. His friends and neighbors join him with the same instinct aroused in them, and the further fear that the same horrible thing may happen to them if that brute or other brutes who hear him boast of his exploits were to escape the consequences of their crimes. Only too well they know the law's delay—their minds revolt at any chance of uncertainty of his punishment. It is the primal instinct of man and can not be trifled with. The criminal must be punished, and without delay. Those are the two elements that cause what is called “lynching”—a feeling of retributive justice to be meted out, and the desire that there should be no possibility of escape for the criminal.

**Excerpt from Governor Robert Carey's Letter to James Weldon Johnson**

March 17, 1922

Source: NAACP Papers, Library of Congress

“...I do not believe in lynching under any consideration, and further I do not believe in mob rule. No citizen or community should have the right to take the law into their own hands and it is much better to permit guilty men to escape than that innocent men should be punished. It is disgraceful that in certain sections of this country local authorities will not attempt to enforce the law and particularly that they will willingly turn over to a mob persons to be lynched. I cannot conceive how the Governor of any State will make no effort to protect the lives of people threatened, with lynching and, where local authorities either refuse to do their duty or are unable to do so, will not lend the assistance of the State government to stop outrages such as lynchings are.

It is not that I approve of mob rule of lynchings that I do not want to subscribe to the Dyer Anti-Lynching Bill, but solely for the reason that I believe the Federal Government, as well as the Federal Courts, are constantly encroaching upon the rights of States. If the Federal Government has power to legislate to prevent lynchings, it probably has the power to legislate on any matter in which Congress does not happen to be in accord with the State Governments. In other words, it can supersede both State Courts and State Governments. I have never felt that the men who were responsible for this country and its constitution had any such thought in mind, but rather that the States should be permitted to conduct their own business as they saw fit. No doubt the situation as regards lynching is not only most disgraceful but very serious in many states, yet I believe that there are enough decent citizens in any community that if a proper campaign was made the states themselves would clean house and bring about better conditions.”