Manfred Berg, "The Struggle Against Lynching" (2011)
[EXCERPT; TRANSCRIPTION]

Anti-lynching campaigners did not expect that education and propaganda alone would suffice to end lynching. The NAACP's propagand efforts primarily served to muster political support for coercive legislation. As a special type of murder, lynching was theoretically punishable under the criminal laws of the states. But as long as lynch law enjoyed widespread popular backing, the criminal justice system remained virtually paralyzed. As a rule, coroners' inquests concluded that "persons unknown" had caused the death of a victim. Prosecutors did not bring charges, and, if they did, grand juries rarely issued indictments. In those extraordinary cases where lynchers actually faced trial, juries usually acquitted them. After all, the jurors as well as the official representatives of the law were part of the local communities and often shared the lynchers' values and viewpoints, or at least were unwilling to defy them openly. Fewer than 1 percent of all lynchings that occurred after 1900 resulted in convictions; punishment was usually limited to fines or suspended sentences for offenses such as rioting and disorderly conduct.

Because of the difficulties of prosecuting perpetrators of mob violence, advocates of law and order called for special anti-lynching legislation. Typically their bills defined mobs as assemblages of three or more persons, declared murder by mobs a statutory crime, threatened counties and municipalities where lynchings occurred with fines and indemnity payments to the victim's family, and allowed for the removal of negligent law officers. Anti-lynching statutes also strengthened the authority of the governor to employ the state militia to guard prisoners and repress mobs. In response to the wave of mob violence in the 1890s and early 1900s, about a dozen state legislatures passed laws of this nature, including Georgia, Texas, Alabama, and the Carolinas, states with high lynching rates. The laws, however, proved largely ineffective and did not lead to a significant increase in criminal convictions. Skeptics concluded that as long as lynching mirrored the will of the people, legislation would be powerless.

In contrast, proponents of tough anti-lynching bills argued that the states were simply not interested in enforcing the law. As a consequence, they demanded federal legislation. In 1901 U.S. Senator George F. Hoar of Massachusetts, a Republican and a well-known champion of minority rights,

introduced a “Bill to protect citizens of the United States against lynching in default of protection by the States.” The Hoar Bill echoed most features of state anti-lynching legislation but differed in two crucial respects. It stipulated that all participants in a mob killing “shall be deemed guilty of murder,” and it shifted the jurisdiction to the federal circuit courts where presumably convictions could be won more easily.

Not unexpectedly, critics raised constitutional objections to the Hoar Bill. Even after the Civil War and Reconstruction, most Americans conceived of federalism as a system that strictly separated the powers of the states and the national government. Clearly criminal justice, including the prosecution of murderers, fell under the jurisdiction of the states and the local courts. According to the dominant view among contemporary legal scholars and the public at large, the Constitution did not authorize Congress to legislate on the criminal prosecution of lynchers. The sponsors of the Hoar Bill claimed this authority could be found in the Fourteenth Amendment: states that failed to protect their citizens from mob violence denied them the equal protection of the laws. This right Congress had the power to enforce through appropriate legislation. Regardless, the states’ right argument carried great weight. Even George Hoar himself had qualms about the constitutionality of his bill. In May 1902 the Senate Judiciary Committee, headed by Hoar, sensed little support and voted to postpone the anti-lynching bill indefinitely.

Undaunted, the advocates of federal anti-lynching legislation continued their struggle for another five decades, hoping their reading of the Constitution would eventually prevail. In 1918 the NAACP launched a new attempt when it lobbied for a bill sponsored by Republican congressman Leonidas Dyer of Missouri, which featured sanctions against delinquent public officials rather than the prosecution of lynchers for murder. It was more than three years before the bill came to a vote on the House floor, where it was passed with the votes of the Republican majority. Senate opponents of the Dyer Bill, however, succeeded in preventing a vote indefinitely. Other anti-lynching measures promoted by the NAACP in the 1930s suffered the same fate. Although by then most Americans had come to support federal laws against lynching, and New Deal Democrats in Congress had made anti-lynching legislation a cornerstone of their civil rights agenda, Southern senators successfully obstructed all bills until their adversaries gave in. A 1938 filibuster lasted for more than a month and featured racist diatribes similar to those of the late nineteenth century. The promoters of the anti-

lynching bill, Mississippi senator Theodore Bilbo warned, bore responsibility for the "blood of the raped and outraged daughters of Dixie, as well as the blood of the perpetrators of these crimes that the red-blooded Anglo-Saxon white men will not tolerate." Surely many moderate white Southerners detested race baiters like Bilbo, but they were reluctant to support federal legislation lest they be branded as traitors to the South. ASWPL leader Jesse Daniel Ames, for example, opposed federal bills, fearful that they would offend ordinary Southern whites.

Although the crusade to pass federal anti-lynching laws was ultimately unsuccessful, it should not be dismissed as an outright failure. The struggle against lynching helped mobilize African Americans like no other civil rights issue. Moreover the threat of federal intervention may have played a role in persuading Southern authorities to take a tougher position on mob violence. Defenders of states' rights liked to point to the declining numbers of lynching incidents as evidence that a federal law was not only unconstitutional but also unnecessary because the states were perfectly capable of dealing with the problem. To demonstrate that he could maintain law and order, Mississippi governor James K. Vardaman, a race baiter and apologist for popular justice, repeatedly mobilized his state's National Guard to quell mob violence in the years from 1904 to 1908. For decades, however, neither the states nor local authorities in the South made a credible effort to rein in lynching. Local sheriffs, in particular, notoriously retreated from or actively colluded with the mobs. After the lynching of a black farm worker in Honey Grove, Texas, in May 1930, the sheriff declared proudly: "I handled the thing the best I knew how, and undoubtedly it suited the people of the county. . . . Not a dollar's worth of property was destroyed . . . no innocent people were hurt." A few months later voters reelected the sheriff, rewarding him for splendid discharge of duty.

Most anti-lynching activists agreed that the local sheriffs' indifference to or even complicity in mob violence posed a key problem. Sheriffs were elected by the community and shared the mentality and prejudices of their constituents. Few were willing to risk their popularity by protecting a black prisoner and incur a reputation as a "nigger lover." And collusion with the mob carried little risk. Sheriffs stood almost immune from federal or state interference and could count on the refusal of all-white local juries in the South to convict officers for aiding a lynch mob. The higher courts also showed little resolve. When in 1937 the attorney general of Alabama

attempted to impeach a sheriff charged with negligence in protecting a prisoner, the state supreme court dismissed the case. Even a leading white Southern newspaper acknowledged that "if sufficient pressure were placed on the sheriffs . . . much of the lynching would cease."

The Association of Southern Women to Prevent Lynching made pressure on police officers its main objective. "Conscientious sheriffs," the ASWPL declared, "determined to guard their prisoners at all costs, can do more to stop lynching than any other one factor." The organization worked hard to obtain pledges from law enforcement officials to uphold the law and initiated letter-writing campaigns to commend sheriffs who protected their prisoners. Conversely the ASWPL publicly accused officers who neglected their duties of cowardice and stupidity. By the early 1940s, when the ASWPL dissolved, it had obtained 1,355 pledges from Southern sheriffs. Apparently the efforts of the organization accelerated a trend toward more resolute law enforcement that had been under way for a decade before the founding of the ASWPL in 1930. According to data for the period from 1915 to 1941, gathered by the ASWPL from a meticulous study of newspaper reports, the tide began to turn around 1920, when the numbers of prevented lynchings for the first time exceeded those of completed mob killings. In 1914 lynch mobs carried out almost three times as many lynchings as were prevented. In 1936 only one of ten threatened lynchings resulted in the death of the targeted victim.

Source: Manfred Berg, "The Struggle Against Lynching." An excerpt from *Popular Justice: A History of Lynching in America*, Bloomsbury Publishing, 2011: 153-6.