

**The Politics of  
Federal Anti-lynching Legislation  
in the New Deal Era**

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September 17, 2007

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MA Area Studies (United States)

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## Introduction

“Two Negroes were taken from...custody...as they were being returned to jail...After they were seized the mob tortured their victims by searing their flesh with blasts from gasoline blow torches. After thus brutally burning them, the wild mob piled brush high about them, saturated the brush with gasoline, and touched a match to the pyre.” This description of the horrifying death of two African Americans at the hands of a lynch mob in Duck Hill, Mississippi, while the House of Representatives debated the merits of the 1937 Gavagan anti-lynching bill, was read to the chamber from a newswire report. It galvanised the House to pass the bill two days later.<sup>1</sup> The bill’s passage proved to be the peak of a decades-long campaign for federal anti-lynching legislation, spearheaded by the National Association for the Advancement of Colored People (NAACP).

Lynching derives its name from an unidentified ‘Judge Lynch’ of revolutionary-era Virginia, who allegedly meted out summary justice to Tory plotters.<sup>2</sup> Over time, the practice came to primarily refer to often-lethal mob vigilantism directed against African Americans in the southern states. Campaigners for anti-lynching legislation sought for the federal government to act to prevent the violation of two of the most basic tenets of American

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<sup>1</sup> *Congressional Record*, 75<sup>th</sup> Congress, 1<sup>st</sup> Session, 3434, 3563

<sup>2</sup> Christopher Waldrep, *The Many Faces of Judge Lynch*, (New York, 2002), 15

democracy, the right to life and right to due process. The government's refusal to enact this legislation during the New Deal makes clear the difficulties African Americans confronted when seeking change within the American political system.

The various anti-lynching bills considered by Congress in the 1930s were the only civil rights measures it dealt with during the decade, a period that saw great change in many other areas of American life, as labour relations and business regulation were revolutionised and a welfare system established, for instance. At a time when the federal government was extending its reach into new aspects of its citizens' lives, it refused to enact a law to allow federal agencies to step in when a state failed to provide its citizens with their constitutional rights as guaranteed by the Fourteenth Amendment. The House of Representatives passed an NAACP-sponsored bill in 1937, but despite the professed support of a majority of senators, Senate filibusters were allowed to kill the measure in both 1934-35 and 1937-38.

Studies of the campaign for federal action against lynching have tended to focus on either the role of pressure groups such as the NAACP and the Association of Southern Women for the Prevention of Lynching (ASWPL), or have discussed the failure to pass a federal anti-lynching law as part of a broader analysis of the Roosevelt administration's record towards African Americans.<sup>3</sup>

One article focuses on the politics behind southern opposition to federal

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<sup>3</sup> Robert Zangrando, *The NAACP Crusade Against Lynching, 1909-1950*, (Philadelphia, 1980); Jacquelyn Dowd Hall, *Jessie Daniel Ames and the Women's Campaign Against Lynching*, (New York, 1979); Nancy Weiss, *Farewell to the Party of Lincoln*, (Princeton, 1983), chapters 5 and 11; Harvard Sitkoff, *A New Deal for Blacks*, (New York, 1978), chapter 11

legislation.<sup>4</sup> While this necessarily entailed some discussion of congressional politics, there has been no in-depth study of why, time after time, proposed legislation failed to get through Congress. cursory examinations lay the blame with the southern Democrat opponents of any civil rights measures, or, by focusing on President Roosevelt, suggest that his failure to endorse any of the measures proposed during his administration was the key factor.

This study looks at how and why the anti-lynching bills of the New Deal years were passed by the House against the wishes of that chamber's supposedly strong leadership, but failed to overcome minority opposition in the Senate. It first examines the social and political climate in which lynching—and anti-lynching—became a significant issue during the years of New Deal reform, before analysing the specific circumstances that led to the bills' contrasting fate in the two houses of Congress.

Lynching gradually declined over the next two decades without federal action, although the NAACP continued its fight for federal legislation until 1950. No bill ever came close to passing after 1938, however, and for over 20 years the Association, and the African-American civil rights movement more broadly, shifted its strategy for accomplishing meaningful change away from legislative action.

In the 1930s, the still-emerging African-American vote was too weak to induce the largely indifferent leaderships of both parties to make anything more than a lacklustre attempt to overcome highly motivated congressional opponents.

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<sup>4</sup> George Rable, 'The South and the Politics of Antilynching Legislation, 1920-1940,' *Journal of Southern History*, (May, 1985), 51(2):201-220

Given the institutional impediments faced by civil rights measures in the Senate, this proved to be fatal to the bills' chances.

## **Lynching, Congress, and the New Deal**

In 1933, at the beginning of a period of profound change in the United States, the NAACP launched its new campaign for federal anti-lynching legislation. The country was in the midst of an unprecedented economic catastrophe and a new president apparently committed to the 'forgotten man' was in the White House. He headed a newly united national Democratic coalition of urban liberals and rural conservatives from the south and west.

Federal anti-lynching legislation had been off the agenda for ten years, since the defeat of a bill introduced by Republican congressman Leonidas Dyer of Missouri in 1922. The Dyer bill, after having passed the Republican-controlled House, was blocked by the threat of a southern filibuster in the Senate. Over the next decade, the GOP made increasing overtures to the south, pushing yet further aside its historical commitment to civil rights. But as the Depression bit, campaigns by the NAACP and southern white liberals against a rise in mob violence helped to bring lynching more to the fore of the nation's consciousness.

The reformist atmosphere of the New Deal gave hope to black leaders and race liberals that the Roosevelt administration would address the specific needs of African Americans. Individual states had traditionally been allowed to control their own race relations, but as the federal government assumed a greater role in its citizens' lives during the New Deal, liberal reformers hoped to see this

change.<sup>5</sup> Ultimately, though, the New Dealers' focus always lay with economic recovery. Even when they did consider racial issues, it was within a framework that the "Negro problem' was fundamentally a class problem and treated best by economic reform."<sup>6</sup> For some liberals, this attitude extended even to counteracting mob violence, which they expected would die out as opportunities for both whites and blacks improved.<sup>7</sup>

There were 4,608 victims of lynching in the United States between 1882 and 1932, of whom more than seven in ten were African Americans.<sup>8</sup> From a high of 230 in 1892, the number of victims steadily decreased during the twentieth century, dropping below double figures for the first time in 1932. The next year, the Roosevelt administration's first year in office, the number of lynchings soared to 28, with the rise possibly aggravated by the economic turmoil of the Depression.<sup>9</sup>

Although lynching had occurred in almost every state in the continental United States, during the twentieth century it became an increasingly southern phenomenon, with overwhelmingly African American victims. Until the early 1900s, lynchings were treated as local matters, and even particularly brutal cases barely made headline news. By the 1930s, anti-lynching campaigns had helped make it a more mainstream issue, increasingly commented on by the white press and in magazines such as the *Nation* and *Literary Digest*.<sup>10</sup> The Duck Hill

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<sup>5</sup> Weiss, *Farewell*, 36-7

<sup>6</sup> John Kirby, *Black Americans in the Roosevelt Era*, (Knoxville, 1980), 232

<sup>7</sup> Morton Sosna, *In Search of the Silent South*, (New York, 1977), 31-33

<sup>8</sup> Statistics from Zangrando, *NAACP*, 6-7

<sup>9</sup> For a discussion of this link see *ibid.*, 9-11

<sup>10</sup> Waldrep, *Judge Lynch*, 172; Hall, *Revolt*, 354-61

lynching—at the height of the House anti-lynching debate—made only page 52 of the *New York Times*, but page one of the African-American paper, the *Chicago Defender*.<sup>11</sup>

A southern-based movement against lynching developed in the decades before the New Deal, as white southern liberals began to address some of the problems facing their region. The Commission on Interracial Cooperation (CIC) was established in 1919 to promote interracial understanding. One of its main aims was to eliminate lynching.<sup>12</sup> The CIC's Southern Commission on the Study of Lynching published its findings in 1933 as Arthur Raper's *The Tragedy of Lynching* and James Chadbourn's *Lynching and the Law*, which educated a wider audience about mob violence. In 1930, the ASWPL was set up under the aegis of the CIC. This group of upper-class southern women aimed "to create a new public opinion in the South which will not condone for any reason the acts of mobs or lynchers."<sup>13</sup> Its founding was welcomed by the white and African-American press, which seized upon the apparent shift in southern opinion.<sup>14</sup>

These women, like most southern liberals, believed that change could only be effected from within the south, through education and the spread of more liberal values. For many years, these organisations, along with leading southern newspapers, refused to back federal legislation as a solution for lynching, believing that mob justice was best dealt with through white southerners' own

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<sup>11</sup> *New York Times*, April 14, 1937, 52; *Chicago Defender*, April 17, 1937, 1

<sup>12</sup> Sosna, *South*, 20-41

<sup>13</sup> Sitkoff, *New Deal*, 274

<sup>14</sup> Hall, *Revolt*, 166

efforts.<sup>15</sup> But by 1937, concerned with the south's continued failure to protect victims and prosecute lynchers, most progressive papers had endorsed the latest anti-lynching bill.<sup>16</sup> Nevertheless, the ASWPL continued to oppose it, with Jessie Daniel Ames, the organisation's executive director, going so far as to write to one of the bill's leading opponents—Senator Tom Connally (D—Texas)—in the midst of a Senate filibuster to congratulate him for his successful opposition: “It will be a great relief to the public to have that measure laid on the shelf in order that the Senate may go about important and far-reaching legislation.”<sup>17</sup>

For the NAACP, an anti-lynching campaign was a good means of raising funds and awareness during the Depression decade, as its basic message was more palatable to potential white donors and apolitical African Americans than addressing the economic and political issues facing black Americans.<sup>18</sup> Its success in raising awareness of lynching among the political classes during the 1930s is shown by the increase in anti-lynching measures put before Congress. Between 1925 and 1932, no anti-lynching bills had been submitted, with two in 1933 and

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<sup>15</sup> George Fort Milton to White, January 31, 1935, I:C237, Records of the National Association for the Advancement of Colored People, Manuscript Division, Library of Congress, Washington, D.C. (Hereafter 'NAACP Papers'); Kenneth Janken, *White: The Biography of Walter White*, (New York: 2003), 206-7

<sup>16</sup> 'For a Federal Antilynching Bill', *Richmond Times-Dispatch*, February 2, 1937, 6 and 'Federal Check on Lynching,' *Macon Telegraph*, February 15, 1935, I:C427, NAACP Papers; George Tindall, *The Emergence of the New South 1913-1945*, (Baton Rouge, 1967), 552

<sup>17</sup> Ames to Connally, January 28, 1938, container 127, Tom Connally papers, Manuscript Division, Library of Congress, Washington D.C.

<sup>18</sup> Raymond Wolters, *Negroes and the Great Depression*, (Westport, CT, 1970), 337; Philip Klinkner, *The Unsteady March*, (Chicago, 1999), 129-30

ten in 1934. In the 74<sup>th</sup> Congress (1935-1936), thirty-three such bills were proposed.<sup>19</sup>

These bills faced a Congress of a very different complexion to the one that had considered Dyer's bill. A raft of new Democratic congressmen came in on the coattails of Roosevelt's landslide victory of 1932, giving the party a huge majority over the disorganised, unhappy, repudiated Republicans.<sup>20</sup>

Before the New Deal, southerners had dominated the Democratic party. Between 1896 and the start of the New Deal, the party received only around 40 percent of the popular vote in congressional and presidential elections outside the south, compared with a share of at least 86 percent in the south.<sup>21</sup> The northern urban working-class and ethnic minorities had increasingly supported the Democrats since 1910, but Roosevelt was the first leader to unite these disparate wings into a national coalition. Nevertheless, southerners retained their dominant position, as they disproportionately chaired powerful congressional committees.

The Democrats' urban liberal wing eventually transformed the party into a vehicle for realising African Americans' constitutional rights, straining the south's historic ties to the party, but during the 1930s this process had only just begun. African Americans lagged behind other elements of the Roosevelt coalition in switching to the Democratic party and in 1932 maintained their traditional allegiance to the Republican party, despite the failure of the Hoover

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<sup>19</sup> Sitkoff, *New Deal*, 284

<sup>20</sup> James Patterson, *Congressional Conservatism and the New Deal*, (Lexington, 1967), 5-7

<sup>21</sup> Ira Katznelson *et al.*, 'Limiting Liberalism: The Southern Veto in Congress, 1933-1950,' *Political Science Quarterly*, (Summer, 1993), 108(2):284

administration to deal with issues affecting black people. Roosevelt's choice of running mate, Texas's John Garner, did little to convince black voters that the Democrats offered any alternative to Hoover's neglect. The 1932 election results show that the proportion of African Americans that joined the Roosevelt coalition was much smaller than of other minority groups. Not until 1936 did they vote in large numbers for the Democrats.<sup>22</sup>

Black migration from the South, which began during World War I and was given only added impetus by the economic instability of the Depression, transformed the northern political scene, as African Americans became a significant electoral force. Between 1910 and 1940, the proportion of black people living outside the south increased from 10 to 23 percent.<sup>23</sup> The number of black voters in the northern cities increased by 400,000 between 1930 and 1940, with the number of blacks registered to vote doubling, enough to hold the balance of power in Pennsylvania, Ohio, Indiana, Michigan and Illinois.<sup>24</sup> The 1934 midterm elections saw the first concerted efforts by Democrats to appeal to the northern black electorate, with some campaigning in African Americans areas for the first time. As black voter registration increased during the 1930s, so politicians increasingly paid at least lip service to their needs.<sup>25</sup>

Southern congressmen greeted this with apprehension. "The catering by our National Party to the Negro vote," Josiah Bailey (D—North Carolina) wrote,

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<sup>22</sup> Weiss, *Farewell*, 32, xiii

<sup>23</sup> Frances Piven and Richard Cloward, *Poor People's Movements*, (New York, 1977), 190-92

<sup>24</sup> Anthony Badger, *The New Deal*, (New York: 1989), 252; Raymond Wolters, 'The New Deal and the Negro,' in John Braeman *et al.* (eds.), *The New Deal*, (Columbus, 1975), 209

<sup>25</sup> Sitkoff, *New Deal*, 88

“is not only extremely distasteful to me, but very alarming to me. Southern people know what this means and you would have to be in Washington only about three weeks to realize what it is meaning to our Party in the Northern states. It is bringing it down to the lowest depths of degradation.”<sup>26</sup>

A number of scholars point to Roosevelt’s failure ever to endorse any federal anti-lynching bill as the reason the various bills were never enacted. His first comments on lynching came only after California’s governor, James Rolph, praised the lynching of two white men who had confessed to a kidnap-murder in San Jose in November 1933 as “the best lesson that California has ever given the country. We show the country that the state is not going to tolerate kidnapping.”<sup>27</sup> In the wake of the national outcry that greeted Rolph’s remarks, the president finally condemned lynching as a “vile form of collective murder” in a nationally broadcast address.<sup>28</sup>

Nevertheless, in his message to the new session of Congress in January 1934, Roosevelt made no proposal for federal anti-lynching legislation, merely grouping it with “organized banditry, cold-blooded shooting,” and kidnapping as crimes that “call on the strong arm of government for their immediate suppression”.<sup>29</sup> He made no reference to its racial aspect.

Roosevelt explained his unwillingness to endorse federal legislation against lynching to the NAACP’s executive secretary, Walter White, at a meeting

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<sup>26</sup> Bailey, March 1, 1938, quoted in James Patterson, ‘The Failure Party Realignment in the South, 1937-1939,’ *Journal of Politics*, (August, 1965), 27(3):603

<sup>27</sup> Quotation from Walter White to Edward Costigan, Nov 27 1933, I:C233, NAACP Papers

<sup>28</sup> ‘President & God,’ *Time*, December 18, 1933

<sup>29</sup> Weiss, *Farewell*, 101

in May 1934. After the president had spent most of the conversation avoiding the issue, he told White that he was unwilling to challenge the southern Democrats:

“I did not choose the tools with which I must work...Had I been permitted to choose them I would have selected quite different ones. But I’ve got to get legislation passed by Congress to save America. The Southerners by reason of the seniority rule in Congress are chairmen or occupy strategic places on most of the Senate and House committees. If I come out for the anti-lynching bill now, they will block every bill I ask Congress to pass to keep America from collapsing. I just can’t take that risk.”<sup>30</sup>

White believed vocal support from the president would help convince wavering members of Congress to back federal legislation, and turn public opinion against obstructive senators.<sup>31</sup> Behind the scenes, Roosevelt did make some effort to bring the bill to a vote, but he left his wife to be the face of the couple’s racial liberalism, which gave him a measure of distance from the issue without alienating African Americans. As a pragmatic politician above all else, he was not going to expend political capital on such contentious issues as anti-lynching legislation.

Whether Roosevelt’s intervention would have been enough to force a bill through the Senate is debatable, as by 1938—when the anti-lynching bill came closest to passing—he had lost much of his ability to push through his priority legislation.<sup>32</sup> While the economy appeared to be recovering, opposition to the administration was muted, but the ‘Roosevelt recession’ of 1937 undermined the administration’s claims to have returned the country to prosperity. The special session of Congress in November and December 1937 failed to pass any of the

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<sup>30</sup> Walter White, *A Man Called White*, (London, 1949), 169-70

<sup>31</sup> Fred Greenbaum, *Fighting Progressive*, (Washington, D.C., 1971), 174

<sup>32</sup> Weiss, *Farewell*, 246

president's desired legislation: the farm bill, wages and hours legislation, executive reorganisation and regional planning.<sup>33</sup> If he was unable to get the legislation he truly favoured passed, it is unlikely that he would have been the decisive factor in the anti-lynching fight, though his silence certainly did not help.

The difficulties facing proponents of anti-lynching legislation also affected other legislation concerning African Americans. The need to attract the support of southern senators resulted in discriminatory clauses being written into much of the legislation enacted during the New Deal.<sup>34</sup> Domestic and agricultural workers—black Americans' main job categories—were excluded from the National Recovery Administration codes and Social Security.<sup>35</sup> Conservative southerners opposed minimum-wage legislation because they feared its impact on the region's competitive advantage. It also risked disrupting the southern economic and social structure by guaranteeing workers higher wages, making workers of all races less dependent on established white elites. They were successful in getting regional differentials written into the legislation. The list could easily go on.<sup>36</sup>

Not all of the New Deal's efforts were discriminatory, and African Americans did receive some tangible benefits during the decade, not least the millions who were put to work or on relief, or who benefited from literacy classes

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<sup>33</sup> James MacGregor Burns, *Roosevelt: The Lion and the Fox*, (New York, 1956), 321

<sup>34</sup> The literature on this point is extensive. See Sitkoff, *New Deal*; Kirby, *Black Americans*; Weiss, *Farewell*; Wolters, *Great Depression*; Klinkner, *Unsteady March*

<sup>35</sup> Ira Katznelson, *When Affirmative Action Was White*, (New York, 2005), 43, 56-7

<sup>36</sup> Katznelson, 'Limiting Liberalism,' 297

offered by the federal government.<sup>37</sup> The level of racial discrimination in New Deal agencies largely depended on the attitude of their heads, and while FDR did nothing to change their attitudes, he appointed race liberals such as Harold Ickes, Will Alexander and Aubrey Williams to his administration. Where they could, these men, and the 'Black Cabinet' of African-American advisers, went some way to minimising the negative effects of the New Deal on America's black population.<sup>38</sup>

In the United States' bicameral system of government, both houses of Congress—the House of Representatives and the Senate—must pass a bill for it to become law. A bill's passage through the two chambers is affected by the distinctly different politics of each house, much of which results from their different composition. The New Deal Senate was made up of 96 senators, two from each state, who all served a six-year term, with only a third of the seats at stake every two years. The House comprised 435 members, generally representing a district-level seat, all up for election every two years. The more concentrated electoral pressures on members of the House make them more parochial and more heavily influenced by local pressures than senators. Representatives almost always represent a smaller, more homogeneous electorate than senators, who answer to a more varied statewide constituency.

A highly structured system of rules was set up to govern the House's activities, which because of its size could have easily got out of hand and struggled to pass legislation. This resulted in stronger leadership and a more

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<sup>37</sup> Sitkoff, *New Deal*, 69-72

<sup>38</sup> Weiss, *Farewell*, 136

centralised chamber than the Senate, which was more flexible and where individual senators had greater influence. The House also tended to be the more conservative chamber, in part because of rural overrepresentation.<sup>39</sup>

Legislation introduced in either chamber is first considered by the relevant committee and sub-committee, which then refer the measure back to the full chamber. If a committee does not refer a bill for consideration, the bill can go no further. In the House, the Rules Committee controls if and when a bill is brought to the floor. As the Senate is less centralised, this decision is worked out by the majority and minority party leaders as a “unanimous consent agreement”, the main purpose of which is to “limit floor debate and thus avoid a filibuster.”<sup>40</sup> House procedures, however, allow for a representative to circumvent the leadership by submitting a petition to discharge a bill from committee consideration. In 1935, the House leaders’ fear of more liberal members representing emerging interest groups, including African Americans, led them to increase the number of signatures required on a discharge petition from 145 to 218, a simple majority.<sup>41</sup> These differences between the two congressional chambers had a profound impact on the fate of the anti-lynching bills considered by the legislature during the New Deal, and an understanding of them is necessary in order to examine the outcome of the campaign for anti-lynching legislation.

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<sup>39</sup> John Lees, *The Political System of the United States*, (London, 1975), 189-90

<sup>40</sup> Richard Benschel, *Sectionalism and American Political Development, 1880-1980*, (Madison, 1984), 234

<sup>41</sup> Patterson, *Conservatism*, 34

The NAACP's anti-lynching drive set it at odds with white southern liberals, who maintained a paternalistic attitude towards race relations. The Association believed that the New Deal offered the best opportunity for many years to enact federal anti-lynching legislation, with Washington flooded with reformers and the federal government taking an increasingly active role in Americans' everyday life. The expansion of the northern black population opened up the possibility of making northern politicians more sensitive to race issues, presenting African Americans with the chance to influence them at the polls. In pursuit of this goal, the Association turned to its liberal allies in the Senate, who proved unable—and unwilling—to surmount the formidable obstacle of the chamber's powerful southern contingent.

## The Senate

When the NAACP launched a new campaign for federal anti-lynching legislation in 1933, the Association decided to focus first on the Senate, where it claimed two recent successes in influencing national policy in favour of African Americans, and where it had two seasoned advocates willing to sponsor the legislation.<sup>42</sup> Despite its relentless efforts throughout the New Deal years, no anti-lynching measure was ever brought to a vote. Two failed attempts to end debate on a 1938 bill were the closest any legislation ever came to passing, but moderate Democrats, unwilling to sacrifice party unity over the issue, allied with conservative southern Democrats to kill the bill. Too few were willing to vote solely in accordance with their professed moral convictions and the emerging African-American vote was too small to exert the political pressure needed to inspire an effective attempt to overcome a well-organised southern filibuster.

In late 1933, the NAACP recruited two leading liberal Democrats, Senators Edward Costigan of Colorado and Robert Wagner of New York, to sponsor their bill. Of the two, Costigan was less well-known at a national level, but had a history of supporting liberal reform, having represented the United Mine Workers in a bloody 1914 strike dispute and helped found the Colorado

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<sup>42</sup> Walter White to Edward Costigan, November 27, 1933, I:C233, NAACP Papers; Zangrando, *NAACP*, 115

Progressive party. He was a consistent supporter of the New Deal's liberal legislative agenda.<sup>43</sup>

Robert Wagner was a leading light in the urban-liberal strand of the new Democratic coalition. Born in Germany, Wagner emigrated to the United States at the age of eight, and after a career as a lawyer, state senator and New York Supreme Court justice, was elected to the United States Senate in 1926. During the New Deal, he was the driving force behind two of the era's most significant laws, the 1935 National Labor Relations Act (NLRA) and the 1937 Public Housing Act, and he was also involved in crafting the National Industrial Recovery Act and the Social Security Act. Wagner had long been the NAACP's champion in the Senate, working with the Association on investigations into discrimination in the Mississippi flood-control project during his first term. In the 1930 debate on Judge John Parker's Supreme Court nomination, he was the only senator to mention Parker's alleged racial bias.<sup>44</sup>

Costigan introduced the bill on January 4, 1934. The principle behind the measure was not to punish lynch-mob members themselves, but rather to penalise state officials for their frequent acquiescence to—or even complicity with—the mob. In his study, Arthur Raper estimated that “at least one-half of the lynchings are carried out with police officers participating, and that in nine-tenths of the others the officers either condone or wink at the mob action.”<sup>45</sup>

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<sup>43</sup> Fred Greenbaum, 'Edward Prentiss Costigan,' *American National Biography*, Volume 5, (New York, 1999), 559-60

<sup>44</sup> Joseph Huthmacher, *Senator Robert F. Wagner and the Rise of Urban Liberalism*, (New York, 1971), 205, 199, 172

<sup>45</sup> Raper quoted in Gunnar Myrdal, *An American Dilemma*, (New York: 1944), 563

The Costigan-Wagner bill defined a mob as three or more people acting “without authority of law” with the aim of killing or injuring any person suspected, charged, or convicted of a crime. The legislation would only be invoked if a state or district failed to protect its citizens, on the grounds that the state had denied the victim due process of law and the equal protection of the law. State or local officials who failed to protect citizens or to pursue members of the mob would be liable for a fine of up to \$5,000 and/or a five-year jail term. Officials found to have conspired with the mob would face five to twenty-five years’ imprisonment. A federal district court would take up the case only if, after thirty days, state and local law enforcement had failed to respond to the lynching. The most controversial clauses provided for the county in which the lynching occurred to be held liable for a fine of \$10,000, to be paid to the victim or his or her relatives. If the victim was transported or taken through any other counties, they would be mutually liable for this fine.<sup>46</sup>

After weeks of delay in which the Judiciary Committee appeared to be avoiding consideration of the bill, a Judiciary subcommittee, chaired by Frederick Van Nuys of Indiana, finally approved it on February 21, 1934, after two days of hearings. The testimony was broadcast on nationwide radio by NBC, an indication that lynching was intruding into mainstream, white America’s consciousness. In early April, the full, northern-dominated Judiciary Committee favourably reported the bill with two main amendments: the county fine could

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<sup>46</sup> S.24, January 4, 1934, I:C233, NAACP Papers. For its differences to the Dyer bill of 1922, see Rable, ‘Antilynching,’ 209.

range from \$2,000 to \$10,000, and the bill would only apply to victims taken from enforcement officers, which covered less than half the victims since 1918.<sup>47</sup>

Over the next two months, the threat of a southern filibuster was enough to keep the measure off the floor. Despite pressure from the NAACP and its sponsors, Senate Majority Leader Joseph Robinson of Arkansas ignored the bill. Walter White met a number of times with Eleanor Roosevelt, who acted as his intermediary with her husband, to press for action from the administration. He finally secured a visit with the president in May, at which Roosevelt outlined his reasons for not endorsing anti-lynching legislation. With no pressure in favour of the bill from Roosevelt on the party leadership, the Senate adjourned in June with no action having been taken.<sup>48</sup>

A similar situation prevailed in 1935. The Democrats had picked up nine seats in the November elections, taking their total to 69, compared with the Republicans' 25. Seven of these seats were in states with a significant African-American population.<sup>49</sup> This did not translate directly into political power, however, as low levels of voter registration and political engagement among African Americans, along with manipulation of their vote, served to weaken their political leverage.<sup>50</sup>

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<sup>47</sup> Zangrando, *NAACP*, 118

<sup>48</sup> Weiss, *Farewell*, 104-6

<sup>49</sup> Indiana, Maryland, Missouri, New Jersey, Ohio, Pennsylvania, and West Virginia. The other two seats were in Connecticut and Rhode Island. Statistics from 'Historical Census Statistics on Population Totals By Race, 1790 to 1990,' <http://www.census.gov/population/www/documentation/twps0056.html>

<sup>50</sup> See Ralph Bunche, *The Political Status of the Negro in the Age of FDR*, (Chicago, 1973), for African-American suffrage in the north and border states during the New Deal, especially 467-74 and 572-606

The Democratic party in most northern states was strongest in urban areas, where the black population was concentrated.<sup>51</sup> While this increased blacks' relative importance to party politics, city machines often controlled their vote. In Pennsylvania, Joseph Guffey promised African Americans ten percent of the state's patronage and equity in relief in exchange for their votes; he was elected to the Senate in 1934. Other bosses copied Guffey's successful model, including Tom Pendergast, Harry Truman's patron, in Kansas City. Truman won election to his first Senate term in 1934 with the help of 88 percent of Missouri's black vote.<sup>52</sup> Their increased participation in politics did not always translate into long-term gains, as these senators were now safe for six years, with their election-time promises to African Americans all-too-frequently forgotten.

The NAACP publicised a barbaric lynching in late 1934 to demonstrate the continuing relevance of anti-lynching legislation. In October that year, a mob seized Claude Neal, a young, black Floridian accused of the murder of a local white woman, from the Alabama jail he had been taken to for his own safety, and returned him to Florida. In a lynching that had been announced days beforehand by local radio stations and newspapers, the mob burned, shot and mutilated his body during a long night of unspeakable brutality, before hanging his body from a courtyard tree in Marianna, Florida.<sup>53</sup> Despite Neal having been taken across

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<sup>51</sup> Robert Garson, *The Democratic Party and the Politics of Sectionalism, 1941-1948*, (Baton Rouge, 1975), x; Badger, *New Deal*, 248-252

<sup>52</sup> John Allswang, *The New Deal and American Politics*, (New York, 1978), 55; Robert Ferrell, *Truman and Pendergast*, (Columbia, 1999), 122

<sup>53</sup> A Report from Walter White on the Lynching of Claude Neal, [http://www.digitalhistory.uh.edu/learning\\_history/lynching/white6.cfm](http://www.digitalhistory.uh.edu/learning_history/lynching/white6.cfm)

state lines, the Justice Department refused to invoke the federal Lindbergh Kidnapping Act, as the lynch mob had not asked for a ransom.

Public outrage over the Neal lynching, and calls for the passage of the Costigan-Wagner bill from white governors, clergy and intellectuals could not get Roosevelt to publicly endorse the measure, although through his wife he informed White that he was speaking privately with individual senators. “This was unquestionably true,” White agreed, “otherwise Senator Robinson as majority leader would never have permitted the bill to be taken up at all.”<sup>54</sup> Roosevelt’s endorsement was always unlikely in the 1935 session; the measure threatened his legislative priorities, including social security legislation, the Emergency Relief Appropriation Act, and public utilities and banking bills, all of which were controversial in their own right.<sup>55</sup> Wagner’s attention, meanwhile, was concentrated elsewhere, on his campaign for a NLRA.<sup>56</sup>

When the bill finally reached the floor, it immediately provoked a filibuster by southern senators. Robinson moved to adjourn—thereby laying the bill aside—three times, each of which failed to pass. Eventually, after six days, with the filibuster delaying more and more legislation, the motion to adjourn passed by 48 votes to 32. The Republicans, hoping to delay the administration’s programme, opposed the motion by 18 to five, while only fourteen Democrats were against it.<sup>57</sup> No effort was made to break the filibuster through round-the-clock sessions or

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<sup>54</sup> Report of the Secretary to Board of Directors, May 6, 1935, I:A18, NAACP Papers

<sup>55</sup> Zangrando, *NAACP*, 128; Leuchtenburg, *Roosevelt*, chapters 6 and 7 has a good discussion of the rash of legislation considered by the 74<sup>th</sup> Congress.

<sup>56</sup> Leuchtenburg, *Roosevelt*, 150-51

<sup>57</sup> *Cong. Rec.*, 74<sup>th</sup> Cong., 1<sup>st</sup> Sess., 1935

calling a vote to end debate. The author of the first major history of filibusters was scathing: “The North had capitulated to the South.”<sup>58</sup>

The position members of Congress take on various issues is usually determined by three main factors: their own attitude towards the issue or bill; their perception of their constituents’ feelings; and the preferences of their party.<sup>59</sup> Opposition to anti-lynching legislation was largely based on the first two factors. Very few, Mississippi demagogue Theodore Bilbo and one or two others excepted, endorsed lynching even obliquely. Referring to an African-American journalist who supported the anti-lynching bill, Bilbo said if he dared to print his views in the south, “I doubt not that his mongrel carcass would mar the beauty of a southern magnolia tree.”<sup>60</sup> Instead, most saw it as an infringement of state sovereignty, while other southern senators feared setting a precedent for federal interference in the region’s race relations. The more liberal—racially or otherwise—southern Democrats like Hugo Black could not jeopardise the support of their state party or constituents by not wholeheartedly opposing it.<sup>61</sup> The bill’s opponents claimed its advocates sought only to appeal to their black constituents. This certainly motivated some, but their desire to eradicate summary justice was also an important element. The party had no explicit preference, but the president’s evident desire to maintain party unity was enough to push those moderate Democrats with no strong feeling either way to oppose the bill.

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<sup>58</sup> Franklin Burdette, *Filibustering in the Senate*, (Princeton, 1940), 181; Sitkoff, *New Deal*, 288

<sup>59</sup> Lees, *Political System*, 190-91

<sup>60</sup> Quote from Taylor Merrill, ‘Lynching the Anti-Lynching Bill,’ *Christian Century*, 239, I:C427, NAACP Papers

<sup>61</sup> For a full discussion of southern opposition to federal anti-lynching legislation, see Rable, ‘Antilynching’

Its opponents and supporters both had a hand in the failure of the Costigan-Wagner anti-lynching bill of 1934 and 1935. Southern senators in positions of power made full use of Senate procedures to frustrate the bill at almost every turn. In contrast, its backers made only desultory efforts to overcome the determined group of filibusterers and they certainly got no help from Robinson. Most Democrats were unwilling to risk party unity and the coalition that had finally brought them to national power for a bill that benefited a small group of voters who generally continued to support the Republican party.

In January 1936, Senator Van Nuys introduced a resolution to establish a Senate investigation into the fourteen lynchings that had occurred in the eight months since the filibuster of the Costigan-Wagner bill. Even the president was willing to back the idea. The investigation would publicise the failure of the states to prevent lynchings and take action against members of the mob, which could help the passage of a future anti-lynching measure.<sup>62</sup>

Well-positioned southern opponents were again able to obstruct the measure. Although the Judiciary Committee favourably reported the resolution, it was then bottled up in another committee, where South Carolina's James Byrnes and Nathan Bachman of Tennessee delayed a meeting on it, preventing even the \$7,500 recommended by the Judiciary Committee for the investigation from being appropriated.<sup>63</sup> The Van Nuys resolution, like the Costigan-Wagner bill before it, was finished.

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<sup>62</sup> Weiss, *Farewell*, 116

<sup>63</sup> Zangrando, *NAACP*, 132-33; Weiss, *Farewell*, 116-17

In 1937 the Association tried again. With Edward Costigan having left the Senate because of ill-health, Van Nuys replaced him as co-sponsor.<sup>64</sup> The signs augured well for the bill's passage during the 75<sup>th</sup> Congress. The Democrats had swept the country in the 1936 elections, winning enough seats to theoretically be able to pass legislation with no southern Democrat or Republican support.<sup>65</sup> The NAACP claimed support from almost 70 senators, easily enough to pass the measure if it came to a vote.<sup>66</sup> Public opinion was also in the bill's favour: a Gallup poll of January 1937 showed large majorities favouring anti-lynching legislation, even in the south.<sup>67</sup>

Once again, however, political calculations at all levels of the government put paid to these hopes. The bill was far from the only controversial measure before the Senate in 1937 and 1938. Wagner was distracted by the campaign for his low-cost urban housing bill, which as the summer wore on was joined by the anti-lynching bill and Hugo Black's Supreme Court nomination on the list of issues sure to stir sectional opposition. The president's 'court-packing' plan, relief spending and a Fair Labor Standards bill all contributed to the emergence of a conservative coalition during the first session.<sup>68</sup> The court fight in particular dented the bill's chances. Rather than build on the momentum from the

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<sup>64</sup> The Wagner-Van Nuys bill was similar to the Costigan-Wagner bill, but its text was replaced by the text from the 1937 Gavagan bill after that had been passed by the House. See chapter 4 for details of the House bill.

<sup>65</sup> The election returned 76 Democrats, 16 Republicans, two Farmer-Laborites and one Independent to the Senate.

<sup>66</sup> Press release, May 21, 1937, I:C258, NAACP Papers

<sup>67</sup> Zangrando, *NAACP*, 148. Though it seems this did not translate to support for the specific bill under consideration, *Washington Post*, January 21, 1938, 2

<sup>68</sup> For the issues around which the Senate conservative coalition formed, see Patterson, *Conservatism*, chapters 3 and 4.

successful House passage of the Gavagan bill, Van Nuys, who was vehemently opposed to the court plan, insisted that action on the anti-lynching bill be postponed until that bill had been dealt with. The administration, in turn, feared the inevitable anti-lynching filibuster would derail the court plan.<sup>69</sup>

In these circumstances, it is likely that the Wagner-Van Nuys bill would have gone much the same way as its predecessors, had not Robinson dropped dead of a heart attack in the middle of the court-packing fight. His replacement was chosen in a close election that saw Roosevelt pulling the strings in favour of the more amenable Alben Barkley of Kentucky over Mississippi's Pat Harrison, further riling the southern contingent.<sup>70</sup>

The Judiciary Committee reported out the bill in June, but Congress still had to consider measures on minimum wages, low-cost housing, executive reorganisation, regional development and farming, and Barkley and the administration had no desire to see their 'must' legislation delayed by consideration of an anti-lynching bill. But with all sides seeking to escape the hot Washington summer at the end of a protracted, difficult session, Wagner outmanoeuvred the inexperienced Barkley on the Senate floor to make the anti-lynching bill the first order of business when Congress reconvened.<sup>71</sup>

Newspaper reports suggested that southern senators believed the legislation had enough support to pass and would offer only perfunctory

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<sup>69</sup> 'Lynch & Anti-Lynch,' *Time*, April 26, 1937; White to Van Nuys, May 8, 1937, I:C258, NAACP papers

<sup>70</sup> Burns, *Roosevelt*, 308-10

<sup>71</sup> 'Lynch Logorrhea,' *Time*, Nov. 29, 1937

opposition, enough to satisfy their voters back home.<sup>72</sup> In the event, at the special session called to deal with the recession in November, the bill provoked another six-day filibuster, which was only brought to an end by the farm bill's eventual release from committee. None of the administration's top-priority measures were enacted in this session, a clear indication of the strength of the coalescing conservative opposition.

Nothing up to this point prepared the bill's backers for the unprecedented six-week filibuster against it in January and February 1938. A relay of southern senators made interminable speeches, often to an almost empty chamber. Louisiana's Allen Ellender emulated his predecessor Huey Long's exploits by holding the floor for a record six days. Again the measure's opponents—unlike its advocates—used Senate rules to full effect: Ellender and the other filibusterers were ably assisted by well-timed quorum calls and distinctly non-germane questions from their cooperators. Even after more than a week of debate Barkley was still only threatening a “gradual enforcement” of Senate rules.<sup>73</sup> Tom Connally later conceded that continued night sessions would have broken the filibuster, but Barkley called only two during the six-week period. The vast majority of the time, senators did not even need to be in the chamber, and most days recessed at 5pm.<sup>74</sup>

Robert Zangrando points to this as the main reason for the Senate's failure to pass any anti-lynching bill, arguing that the bill's advocates failed to make a

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<sup>72</sup> Wagner to White, August 13, 1937, Robert Wagner papers; *Washington Post*, November 19, 1937; White to Wagner, October 20, 1937, Wagner papers

<sup>73</sup> *NYT*, Jan 9, 1938, 1; Jan 21, 1938, 2

<sup>74</sup> Tom Connally, *My Name is Tom Connally*, (New York, 1954), 170-72; *NYT*, Jan 27, 1937, 6

“genuine effort” to force a vote. He reports Senator Arthur Vandenberg (R-Michigan) as claiming that proponents of the bill never used the main weapon at their disposal, round-the-clock sessions with a quorum intact, to break the filibuster.<sup>75</sup>

Although the party leadership did fail to make use of all the possible procedures in ending the filibuster, to cast Alben Barkley—a vulnerable senator from Kentucky—as a major proponent of an anti-lynching measure in an election year is to entirely misrepresent the situation.<sup>76</sup> The party leadership, from Roosevelt and Garner down to Barkley and beyond, never favoured the legislation. They were never its advocates and did the bare minimum that was required. Another Republican, Henry Cabot Lodge Jr., took a slightly different tack to Vandenberg. He told Walter White that “the attempt to break the filibuster has been weak, timid, vacillating and half-hearted...if the leadership was sincere...it could have brought [the] bill to [a] vote without invoking [the] gag rule.”<sup>77</sup> The leadership were not actively opposed to its passage, but were unwilling to give it support because of the potential political ramifications. Walter White’s warnings about the importance of the black vote were not enough to counteract these fears. Barkley, as majority leader, had to follow the president’s programme, which did not include the Wagner-Van Nuys bill.

This is not to say that the bill’s actual proponents—such as Wagner, Matthew Neely (D—W. Virginia) and Bennett Clark (D—Missouri) did as much as

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<sup>75</sup> Zangrando, *NAACP*, 164

<sup>76</sup> Burns, *Roosevelt*, 361; *Indianapolis Times*, January 28, 1938, I:C261, NAACP Papers

<sup>77</sup> Lodge to White, Jan 27, 1938, I:C261, NAACP Papers

they could. They made few speeches in support of the measure, for fear of lengthening the filibuster, which enabled the filibusterers to promote—and gain support for—their opposition.<sup>78</sup> This strategy was misguided and as the days turned into weeks, with important economic legislation piling up, opinion turned against the bill.<sup>79</sup> Still, it was Barkley, not the bill’s supporters, who controlled the debate proceedings.

On the other hand, historian Harvard Sitkoff contrasts the behaviour of the bill’s supporters in 1938 with the “charade” of 1935 when both sides “went through the motions.”<sup>80</sup> His positive opinion no doubt reflects his generally upbeat assessment of the impact of the New Deal on black Americans, but he is correct in noting the unprecedented attempt to twice invoke cloture.

The rule for cloture—the mechanism by which Senate debate can be ended—in place during the New Deal years required an affirmative vote of two-thirds of the senators present and voting. The first cloture vote was taken on January 27 and despite the professed support for the bill of well over 60 senators, the motion failed by 37 votes to 51. Along with all 22 southern senators, every Republican except Capper, who voted for it, and James Davis of Pennsylvania, who paired for it, opposed the motion. The remainder were eight western Democrats and a sprinkling of senators from the Midwest, north and border states.<sup>81</sup>

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<sup>78</sup> *NYT*, Feb 3, 1938, 9

<sup>79</sup> Huthmacher, *Wagner*, 241-2

<sup>80</sup> Sitkoff, *New Deal*, 293

<sup>81</sup> *Cong. Record*, 75<sup>th</sup> Cong., 3<sup>rd</sup> Sess., 1166

A second vote on February 16 fared slightly better, but at 46 to 42 against the bill, it was still short of even a simple majority, let alone the required supermajority.<sup>82</sup> Capper was joined by fellow Republicans Davis and John Townsend of Delaware—who had evidently had a change of heart since telling a constituent after the first cloture vote that he was opposed to cloture because it might be used “sometime in the future on other legislation affecting the colored race.”<sup>83</sup> Three Democrats also changed their vote from no to yes. After the second failed vote, the bill was eventually laid aside on February 21, to make way for an emergency relief appropriations bill.

The filibusterers claimed that political expediency was behind the push for anti-lynching legislation. The *New York Times* argued that the votes were merely an opportunity for senators privately opposed to the bill to court the black vote by going on record as voting for it without it actually becoming law.<sup>84</sup> The stronger push for the legislation, then, would have been because 1938, unlike 1935, was an election year. A remark by Harry Truman—a border state politician with a large black electorate—to a southern senator during the filibuster backs up this position: “You know I am against this bill, but if it comes to a vote, I’ll have to vote for it. All my sympathies are with you but the Negro vote in Kansas City and St. Louis is too important.”<sup>85</sup>

Many of the other senators who supported the measure came from states with very small African-American populations, however. Capper, for instance,

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<sup>82</sup> *Ibid.*, 2007-08

<sup>83</sup> Townsend to Louis Redding, January 27, 1938, I:C261 NAACP papers

<sup>84</sup> *NYT*, January 9, 1938, 1 and January 30, 1938, 3

<sup>85</sup> Quoted in William Berman, *The Politics of Civil Rights in the Truman Administration*, (Columbus, 1970), 10

was certainly motivated by moral conviction: a lifelong Quaker, he was also on the NAACP's board of directors, and subsequently co-sponsored an anti-lynching bill in 1940.<sup>86</sup> He could not be accused of cynical vote-catching as Kansas's black population was insignificant in statewide politics, while Arizona's few African Americans were clearly not what motivated Senator Ashurst to change his mind between the two votes.

Throughout the filibuster newspapers reported that there was no chance for cloture to succeed, as too many of the Democrats pledged to support the measure in fact hoped to see it fail.<sup>87</sup> *New York Times* commentator Arthur Krock claimed that many believed it be to unconstitutional, while "one or two disaffected Northern Democrats" hoped to embarrass the president. Only around six senators were "sincere, convinced advocates" of the bill.<sup>88</sup>

The Democrats were consummate political animals, however, and while the black vote may not have been important to them all, many understood its importance to their colleagues and their party. As the debate dragged on, different concerns for their party won out over many senators' desire to end lynching. Two weeks into the filibuster, a large group of northern Democrats indicated they were willing to displace the measure to move onto other matters, particularly if their votes were not recorded. "I do not want it said that the party cannot function," Senator Pope of Idaho told the *New York Times*.<sup>89</sup> Personal

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<sup>86</sup> Homer Socolofsky, 'Arthur Capper,' *American National Biography*, Volume 4, (New York, 1999), 364-65

<sup>87</sup> 'Arithmetic,' *Time*, February 7, 1938; *NYT*, January 7—February 22, 1938, *passim*

<sup>88</sup> Arthur Krock, "In the Nation," *NYT*, Jan. 28, 1938, 20

<sup>89</sup> *NYT*, January 22, 1938, 5

ambitions were also a factor. Barkley, for one, had presidential aspirations, and was torn between his conservative state party and the need to appeal to the northern-dominated Democratic National Committee. Southerners, meanwhile, could pressure other senators with talk of favourable committee appointments.<sup>90</sup>

Despite pledges of support for the bill from many Republican senators, minority leader Charles McNary led the Republicans in a stand against cloture. He claimed to be opposed to cloture on principle, as unlimited debate was the GOP's final weapon in protecting its minority position. The NAACP quickly released his record on previous cloture votes, which showed he had voted for cloture—and signed cloture petitions—on numerous occasions.<sup>91</sup> More likely is that McNary was simply playing politics, seeking to take advantage of the growing rift within the Democratic party, with little concern for the effect on African Americans. It was a strategy he had followed on other measures throughout the 75<sup>th</sup> Congress, and the longer the filibuster wore on, the more evident the divisions in the Democratic party became.<sup>92</sup>

Anti-lynching campaigners had worked hard to publicise the facts about lynchings, but were often unable to get past some politicians' prejudices. Warren Austin (R—Vermont) believed the right of unlimited debate to be “a question of greater importance than the one raised by the Bill,” while George Norris (I—Nebraska) felt anti-lynching legislation was not required because southerners had every “right to be proud” of their record since Reconstruction, and he feared

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<sup>90</sup> *Chattanooga News*, January 22, 1938, I:C261, NAACP Papers

<sup>91</sup> White to McNary, February 2, 1938, I:C261, NAACP Papers

<sup>92</sup> Patterson, *Conservatism*, 107, 142, 157; *Washington Times*, February 17, 1938, I:C427, NAACP papers

any such legislation would raise again the “agonizing animosities” that marred the years following the Civil War.<sup>93</sup>

Most opposition to federal anti-lynching legislation was based on states’ rights, and non-southern opponents of the bill, most notably William Borah (R—Idaho), were against it on the grounds that it granted more power to the federal government. Events in Europe and Roosevelt’s perceived dictatorial tendencies lent this view particular significance during the 1938 filibuster. The anti-lynching bill also gave southern opponents of the New Deal an opportunity to indirectly attack northern Democrats, without criticising measures that benefited their states and had their constituents’ support.<sup>94</sup>

The Senate failed to enact federal anti-lynching legislation for much of the 1930s because southern dominance of the chamber prevented full consideration of various measures put before it. By 1938, the Senate’s political complexion had changed enough that passage appeared possible, with a growing number of liberal politicians and those representing black constituents. These hopes were in vain, however, as overreaching by the administration turned the Senate, and the country, away from further liberal reform.

There were sincere politicians—Capper and Costigan, for example—whose moral repugnance of lynching led them to support the cause despite there being little electoral incentive to do so. But political considerations shaped most senators’ behaviour, and the African-American vote was not organised or

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<sup>93</sup> Austin to Mrs C.G. Austin, January 26, 1938, UVM Libraries’ Center for Digital Initiatives, <http://cdi.uvm.edu/collections/getItem.xql?pid=austinAIf010i004>; Richard Lowitt, *George W. Norris*, (Urbana, 1978), 226

<sup>94</sup> ‘Lynch & Anti-Lynch,’ *Time*; Rable, ‘Antilynching,’ 212

significant enough to inflict serious political retribution on politicians who otherwise had nothing to gain, or something to lose, from its passage. Ultimately, moderate Democrats, including the president, were unwilling to risk splitting the cross-sectional coalition that had brought them to national power, for the sake of legislation for black Americans.

Given Roosevelt's waning influence by 1938, it is open to question whether his support would have made enough difference, although he could have pressured Barkley to make a stronger effort to break the filibuster. The anti-lynching bills faced a two-fold problem: the bill's opponents felt much more strongly about the issue than its supporters did, and the Democratic leadership was never sincere in its support for the bill, whether Barkley read senators the "riot act" or not.<sup>95</sup>

The black vote had greater, though far more concentrated, impact in elections for the House of Representatives than the Senate. African Americans did not hold the balance of power in a majority of House districts, so the argument that support for any anti-lynching measure was nothing but a cynical appeal to the northern black electorate just does not hold up when looking at the chamber that gave anti-lynching campaigners their sole congressional success: the House.

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<sup>95</sup> David Mayhew, 'Supermajority Rule in the U.S. Senate,' *PS*, (Jan 2003), 36(1): 34; *New York Times*, January 7, 1938, 1

## The House of Representatives

In 1935, a friendly AFL lobbyist, Mike Flynn, advised Walter White against introducing a bill in the House because of the staunch opposition of Texan Hatton Sumners, chairman of the Judiciary Committee. Flynn told White that only a high-impact campaign would overcome this obstacle, involving increased grassroots pressure on individual congressmen, and the Association encouraging legislators to introduce anything from 60 to 100 anti-lynching bills, with a few representatives then calling for a caucus demanding that the bill be discharged from the Judiciary Committee and brought to a vote.<sup>96</sup> White followed this advice, deciding to again focus the NAACP's energies on the Senate; it did not launch a sustained push for House passage until 1936 and 1937.

The House proved to be far more favourable to the legislation than the Senate and the bill's sponsors twice secured House passage during the Roosevelt years, despite a strong conservative leadership hostile to anti-lynching legislation. The African-American vote had a more direct impact on members of the House, but the chamber's rules also enabled anti-lynching supporters to bypass the opposition far more easily than in the Senate.

Joseph A. Gavagan, a Democrat representing Harlem, New York, was the NAACP's chief ally in the House. He sponsored numerous anti-lynching bills

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<sup>96</sup> Zangrando, *NAACP*, 125

throughout his House career, motivated by a combination of personal conviction and political calculation. Gavagan was always keen to have his contribution recognised, going on nationwide speaking tours with White to promote the campaign, for instance. After the House had passed his bill, and it was being considered by the Senate during the special session of the winter of 1937, he complained to White about the “studied effort” to “take credit away from” him after press reports referred to the measure as the Wagner-Van Nuys bill.<sup>97</sup>

He first introduced an NAACP-sponsored bill in the House in 1935, at a time when the Costigan-Wagner bill was before the Senate for the second time, but the proposal languished with the Judiciary Committee for more than a year with no action being taken. Although the Judiciary Committee itself was somewhat better disposed to the legislation than the House as a whole, chairman Sumners was adamantly against the measure. He had previously announced that he would never permit action in favour of any anti-lynching measure.<sup>98</sup>

The NAACP initially requested that the Democratic leadership call a caucus to endorse the bill, but came up against numerous obstacles in their attempt. White received reports that the leaders had pressured individual representatives not to sign the caucus petition, then, once he had secured well over the necessary 25 signatures, the leadership twice refused to accept it on spurious grounds. Even Thomas Ford (D-California), an assistant majority whip who had sponsored another anti-lynching bill that session, urged White to drop the petition because of conflicting pressures, which trumped the need to appeal

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<sup>97</sup> Gavagan to White, November 30, 1937; White to Gavagan, December 2, 1937, I:C259, NAACP Papers

<sup>98</sup> Bensel, *Sectionalism*, 237; Zangrando, *NAACP*, 134

to African Americans. The caucus finally met in late May 1936, but was prevented from doing anything because the leaders decided that the 65 Democrats present did not constitute a quorum. A discharge petition was eventually submitted in mid-June, but by this point it was too late for the bill to be considered before adjournment.<sup>99</sup>

Once the NAACP decided to direct greater attention and resources to House passage in the 75<sup>th</sup> Congress, however, events moved relatively swiftly. On February 19, 1937, Gavagan, frustrated with the Judiciary Committee's refusal to consider his bill, tried to force the Rules Committee to act. But under the chairmanship of John O'Connor of New York, the committee was a conservative thorn in the New Deal's side, happy to obstruct administration measures, let alone bills like Gavagan's that were unsupported by most of the Democratic leadership.<sup>100</sup> In early March, Gavagan filed a petition to discharge the measure from both the Judiciary and Rules committees.<sup>101</sup>

Gavagan's petition was the only one of 27 filed during that session to be signed by a majority of members, a sign of support for the bill among northern legislators.<sup>102</sup> To head off this threat, Sumners overcame his steadfast opposition to anti-lynching bills to report out a far-weaker bill sponsored by the sole black member of Congress, Arthur Mitchell of Illinois. Zangrando has succinctly compared the Gavagan and Mitchell's bills: "The Mitchell bill applied only to

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<sup>99</sup> Zangrando, *NAACP*, 134-5; O.R. Altman, 'Second Session of the Seventy-Fourth Congress,' *American Political Science Review*, (Dec. 1936), 30(6):1088

<sup>100</sup> Patterson, *Conservatism*, 179-82

<sup>101</sup> 'Significant Dates in the Fight for the Gavagan-Wagner-Van Nuys Anti-Lynching Bill,' undated, Wagner papers, 1-2

<sup>102</sup> O.R. Altman, 'First Session of the Seventy-Fifth Congress,' *American Political Science Review*, (Dec. 1937), 31(6):1081

victims seized from official custody; the Gavagan bill covered all instances of mob violence against life and person. For officials found guilty of conspiring or cooperating with the mob, the Mitchell bill proposed imprisonment from two to ten years; the Gavagan bill carried a term of from five to twenty-five years. While Mitchell's bill remained silent about initial federal jurisdiction, Gavagan's invoked action by the United States District Court thirty days after the crime, if state and local officials had failed to respond. The Mitchell bill provided only for a \$2,000 to \$10,000 fine on the county of death; Gavagan's version held both the county of abduction and the county of death liable. Finally, unlike Mitchell's the Gavagan bill explicitly exempted from creditors' claims any damages assessed against the county(s) on behalf of the victim's survivors."<sup>103</sup>

The NAACP was outraged at this attempt to rush the "emasculated, ineffective and virtually worthless" Mitchell bill through the House, charging that it would be "bitterly resented" by supporters of anti-lynching legislation.<sup>104</sup> Sumners later told White "quite frankly that he had not believed that the [NAACP] would have the nerve to oppose passage of a bill introduced by the one Negro member of Congress."<sup>105</sup>

The discharge petition with all 218 signatures was submitted on March 29 and the start of debate scheduled for April 12. The Judiciary Committee, meanwhile, favourably reported the Mitchell bill on March 31, having only decided to hold hearings on it a week earlier, and arranged for discussion to begin on April 7.<sup>106</sup> In this way, Sumners hoped to forestall the Gavagan bill.

On April 7, by a 257 to 123 vote, the House refused to consider the Mitchell bill.<sup>107</sup> A few days later, discussion of Gavagan's proposal began. As in the Senate, opposition to the bill generally focused on the constitutional question of the

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<sup>103</sup> Zangrando, *NAACP*, 141-2

<sup>104</sup> *NYT*, April 5, 1937, 4

<sup>105</sup> White, *White*, 172

<sup>106</sup> 'Significant dates,' 1-2

<sup>107</sup> *Cong. Record*, 75<sup>th</sup> Cong., 1<sup>st</sup> Sess., 3523

federal government's right to intervene with the police powers of the states, but it was not always carried out on a particularly high plane. John Rankin (D—Mississippi) fulminated that it was “a bill to encourage Negroes to think they can rape white women”, while Edward Cox of Georgia voiced fears that became ever-more familiar as the years went on: “It is an attempt to break the spirit of the white South and in time bring about social equality.”<sup>108</sup>

The blowtorch lynchings in Mississippi as the House debated the bill forcefully underscored to legislators the need for anti-lynching legislation, and two days later, on April 15, they passed the Gavagan bill by 277 votes to 120, with the chamber split along sectional lines.<sup>109</sup> Living up to his name, Maury Maverick of Texas was the sole southern Democrat to vote for the measure, while Tennessee's two Republican representatives were the only other southerners to support it. Frank Boykin of Alabama apparently favoured the bill but could not openly support it because of the potential political consequences in his home state; he paired against it.<sup>110</sup> The bill had so riled most southern Democrats that the Speaker, William Bankhead (D—Alabama), took the unusual step of recording his opposition to it. A slight majority in the border states, and a vast majority in every other section of the country, voted in favour of the bill. The yes vote crossed party lines, with all the Progressives and Farmer-Laborites voting it, unlike in the Senate. Just 28 of 220 non-southern Democrats voted or paired against it; sixteen of them came from districts in the border states. Seventy-five of the House's 88 Republicans also voted in favour.

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<sup>108</sup> Quoted in *Chicago Defender*, April 17, 1937, 2

<sup>109</sup> *Cong. Record*, 75<sup>th</sup> Cong., 1<sup>st</sup> Sess., 3563

<sup>110</sup> Zangrando, *NAACP*, 257n.50

The Duck Hill lynching was one important factor in the bill's successful House passage. It even seemed to have affected Sumners' position. White reports him as remarking that "maybe we will have to have an anti-lynching bill after all," after the news was read to Congress.<sup>111</sup> The bill's Senate advocates were not able to make use of the revulsion towards Duck Hill in the same way because of the delay in Senate consideration caused by the court-packing plan. Bennett Clark (D—Missouri) pinned a placard to the Senate bulletin board with photos of the lynching victims and the caption: "There have been *No Arrests, No Indictments, and No Convictions of Any One of the Lynchers. This was NOT a rape case.*"<sup>112</sup> It greatly angered the southerners, but its impact was diminished by the time the filibuster was underway.

In the House, grassroots pressure from African-American constituents—and fear of repercussions at the polls—had greater impact than it did on senators. Gavagan's need to appeal to his district certainly prompted him to work so resolutely for the legislation. As election campaigns got underway the year after House passage, White received many requests from congressmen asking that he provide a letter of recommendation detailing their involvement in the campaign for anti-lynching legislation.<sup>113</sup>

Nevertheless, the concentration of the northern black population in major urban centres restricted their influence to those representing big cities, with a few exceptions, so political expediency alone does not explain the repeated success of

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<sup>111</sup> White, *White*, 124

<sup>112</sup> Janken, *White*, 224

<sup>113</sup> See, for example, Edward O'Neill to White, June 8, 1938 (quotation) and Edward Curley, June 20, 1938, I:C262, NAACP Papers

anti-lynching legislation in the House. Members were motivated not just by their own re-election needs, but the wish to cement African Americans into the burgeoning New Deal coalition far into the future.

In some respects, House passage would seem less likely than Senate passage. Legislative malapportionment meant rural areas were overrepresented in the House. In 1930, the proportion of the population that lived in urban areas was 56.2 percent, while only 46 percent of seats were in urban districts.<sup>114</sup> James Patterson's study of congressional conservatives during the New Deal found that representatives from rural districts tended to be more conservative than those representing urban areas.<sup>115</sup> Rural representatives also had far fewer black constituents, reducing their electoral incentive to favour anti-lynching bills. Anti-lynching did have the advantage, however, of having a particular appeal to northerners in a way that the other issues affecting African Americans did not. Northern politicians' perception that lynching was a southern phenomenon meant that dealing with it did not impinge on economic factors or social customs in their own region, so they could more easily be affected by their moral abhorrence towards it.

The Republican party's strategy in the House was different from the one McNary pursued in the Senate. Some wanted to embarrass Roosevelt's government by siding with liberal northern Democrats to pass a bill the administration did not favour.<sup>116</sup> Others hoped to return the black vote to the

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<sup>114</sup> 'The Rural-Urban Distribution of the Population,' *Population Index*, (January, 1941), 7(1):2; Patterson, *Conservatism*, 346

<sup>115</sup> Patterson, *Conservatism*, 346, 351

<sup>116</sup> Zangrando, *NAACP*, 140

Republicans. In any case, even without their votes, the measure still would have passed. In contrast, cloture could not have been invoked in the Senate without the support of at least two Republicans, even had all 54 non-southern Democrats, the Farmer-Laborites and La Follette voted for it.

The discharge petition rule allowed the bill's sponsors to circumvent the party leadership to bring the bill to a vote. Without it, the measure would have got nowhere because, as Gavagan later explained, he "got very little active support from the White House in the first or second term."<sup>117</sup> The upper chamber's less formal procedures and more consensual customs, as well as the right to filibuster, made it much harder to get past an indifferent party leadership there.

Gavagan's position was also different to Costigan, Wagner or Van Nuys's. Not only was the significance of the black vote in Harlem a powerful motivating force, but also, as a representative, he dealt with fewer assignments so could dedicate more of his time and resources to the bill. The size of the House makes passage easier and given the two-to-one majority favouring the bill, individual representatives' votes were less significant, so vote trading and southerners' chance to influence other members was less important.

Once it came to the floor, the House debate on the bill took a few days. As it was not subject to a lengthy filibuster, no legislation got bottled up behind it, so any equivocating legislators could not claim that the bill was jeopardising 'emergency measures' to withdraw their support. The need to invoke cloture in the Senate enabled those senators whose support was half-hearted to fall back on

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<sup>117</sup> Gavagan quoted in Patterson, 'Party Realignment,' 611

arguments about fundamental principles to avoid the issue, which again was not possible in the House. Nonetheless, undoubtedly some of those who voted for the bill in the House never expected it to get through the Senate, but the House vote gave them and their party the opportunity to reap the full political reward for their support.

The House considered the bill in 1937, at a time when the various issues that flared tempers in the Senate had not yet reached the lower chamber. The court bill, for one, never made it out of the Senate, while Wagner's housing bill and relief appropriations were considered after the Gavagan bill had been passed.<sup>118</sup> This calmer atmosphere contributed to the bill's success.

The confluence of greater commitment to the bill engendered by a greater electoral motivation, and external factors such as the gruesome lynching at Duck Hill and the lack of other competing pressures in 1937, as well as institutional differences between the two chambers, eased passage of the Gavagan anti-lynching bill through the House. Ultimately, though, success there was worthless without a similar achievement in the Senate and that proved impossible to achieve given the decision moderate Democrats came to about the priorities they faced during the New Deal.

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<sup>118</sup> Patterson, *Conservatism*, chapter 5

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