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Lynching and The Law. By James Harmon Chadbourn. Chapel Hill: The University of North Carolina Press, 1932. Pp. xi, 221. $2.00.

Can the great American people be 99 20/100% wrong? If not, Governor Rolph is almost as right as Ivory Soap is pure. He has in effect merely proclaimed that no undue discrimination shall be worked against those chivalrous citizens of California who so calmly and courageously murdered the kidnappers of young Brooke Hart. For Professor Chadbourn asserts that of the lynchings in the United States since 1900 only about eight-tenths of one per cent have been followed by conviction of the lynchers. Why this disgraceful demonstration of almost complete impotence by the ordinary offices of criminal justice? What can be done to make prosecutors and courts more effective in bringing lynchers to book? How can the custodians of accused men be induced to make more strenuous efforts to protect them? How can the community be forced to realize the importance of preventing lynching? What prophylactic expedients may be used? Conceding that the ultimate solution requires the discovery of means of creating a sense of decency and fair play in the community, are there any devices by which the existing agencies of government under existing conditions of education and morals can be made reasonably efficient? To these and similar questions Professor Chadbourn attempts to find approximate answers.

Some sources of fault in the functioning of the courts he finds in the following: "(1) Refusal of persons with first-hand knowledge to testify. (2) Trial jury verdict actuated by local prejudice in lieu of consideration of evidence. (3) Failure of the grand jury to make adequate investigation. (4) Failure of the prosecuting officer to investigate and furnish the grand jury with evidence. (5) Nolle prosequi by prosecuting officer. (6) Adverse trial court rulings on motions and evidence. (7) Reversal by appellate court on non-prejudicial error." If these were all, the remedy would be at hand in familiar procedural artifices. Refusal of witnesses to testify could be overcome by statutory abolition of the privilege against self-crimination in return for immunity from prosecution; the obstructing power of the rules of evidence, by statutory liberalization of them; unwarranted reversals, by statutory prohibition of reversals for non-

prejudicial error; the bias of the grand jury, by substitution of information for indictment; the timidity of the local prosecutor, by the transfer of his functions to the Attorney General; and the prejudice of the local jury as well as the cowardice, or worse, of the local trial judge, by a mandatory change of venue.

Dangers lying outside the processes of the court might be lessened by other measures. The sense of local peace officers and of the community might be quickened by requiring the immediate removal of the sheriff of any county in which a lynching occurs and by imposing civil liability upon the municipality within the limits of which it takes place. These would perhaps have some general deterrent or preventive effect, but a more specific prophylaxis in a particular case might be found in impressing additional guards to protect a threatened prisoner, arming him, removing him from the locality, calling a special term of court to try him, or changing the place of his trial; or in rape cases, especially where a negro is accused, requiring a change of venue as of course and clearing the court room while the prosecutrix is testifying; or wherever needful, in declaring martial or military law to be in force. If the threat is directed against a person not under arrest, he should be taken into legal custody.

Each of these suggested correctives with its usual concomitants Professor Chadbourn considers, evaluating it in the light of all available data. To be sure, these data are woefully inadequate. His original sources are files of news clippings kept by the Tuskegee Institute, and the case studies of the Southern Commission on the Study of Lynching. His secondary sources are more numerous but less enlightening. In estimating the potency of various proposed palliatives he was aided by the opinions of a group of some two hundred twenty-three judges, lawyers and legislators from twelve Southern States. As a result he proposes a model statute, which seeks to provide both direct and indirect preventives and to assure the regularity of the judicial process as it affects both the threatened victim and the lynchers.

After defining lynching as the killing or aggravated injury of a human being by the act or procurement of a mob, the proposed enactment imposes upon the county in which a lynching occurs or through which the lynching mob shall have passed a fixed penalty to be recovered in a civil action by the victim or his estate. Payment of the amount recovered is assured by mandates to the taxing authorities

and appropriate contempt proceedings. Members of the mob are made liable over to the county in addition to all other common law and statutory obligations. The Governor is required to remove the sheriff of the county in which a lynching takes place and the peace officer from whose custody the victim was taken; and the official so removed is rendered ineligible thereafter to hold office. (Provision is made for restoration to office upon a showing that the removed official did everything within his power to prevent the lynching). Furthermore, the sheriff or other peace officer who has not done all in his power to prevent the lynching, is made civilly liable for all damages sustained by the victim or his estate. To assure proper prosecution of lynchers, information is permitted in lieu of indictment, the Attorney General replaces the local prosecutor, the privilege against self-crimination is abolished and trustworthy hearsay evidence is declared admissible. To remove the danger of mob interference with court proceedings, trial in the county where the offense occurred is forbidden where a negro defendant is accused of murder, rape or felonious assault and his alleged victim is a white person. For the trial of such cases also a special term must be ordered; and the presiding judge may exclude unnecessary onlookers. In addition adequate provision is made for effective military interference upon order of the Governor without request from local authorities. Finally injunctive relief against threatened lynching is specifically authorized, and punishment for contempt is imposed not only for violation of such an injunction but also for participation in the lynching or attempted lynching of any person in custody, on bail, or on trial, or of any person acquitted of any criminal charge within thirty days preceding the lynching or attempted lynching.

Nowhere does Professor Chadbourn preach; nowhere does he permit himself to become excited. He suffers from neither illusion nor delusion. He knows the difference between fact and prediction. He realizes the frailty of opinion. He sets forth his data with a positively exasperating lack of emotion. His comments are sometimes so cryptic as to lack clarity; but as he demonstrates the inherent impotence of one device after another, showing it to be here effective, there useless, he creates a feeling akin to despair. Judges, lawyers, legislators, each and all may be able to make these manifestations of barbarism more costly and more difficult, but they can do little more. The model statute will be a mighty help to officials desir-

ing to enforce the law in a State whose citizens desire to have the law enforced. But so long as a community is of the sort to elect officials like Governor Rolph, Governor Rolph is the sort of official that community will elect, and model statutes might as well not exist. Professor Chadbourn's little book proves to a demonstration that the cure for the social disease which manifests itself in lynching is not to be found in legislatures or courts.

E. M. MORGAN.

Harvard University School of Law
Cambridge, Mass.