

## NEED OF FEDERAL LEGISLATION IN RESPECT TO MOB VIOLENCE IN CASES OF LYNCH- ING OF ALIENS\*

The killing of Albert Piazza by a mob on October 12, 1914, followed by the lynching of Joe Speranza, June 12, 1915, has again called to the attention of the public the need of a federal law to cover cases of mob violence where the victims are subjects of a foreign power. Such need has been considered on several occasions but thus far no act yet proposed has been put to a test vote in Congress.

The need of such legislation and the utter inability of bringing guilty parties to justice in a state court may be seen by going into the facts of the two above named cases.

Albert Piazza, an Italian subject, was shot to death by a mob near Willisville, Illinois, on the evening of October 12, 1914. In order to consider the circumstances directly connected with the lynching, it will be necessary perhaps also to consider some of the facts that led up to the same, although it is not contended for a moment that any criminal act of the lynched party would justify in any sense an act of mob violence. Willisville is a little mining town of 1,500 or 1,600 people in southern Illinois, about 90 miles southeast of St. Louis. About one-half of its population is American and one-half foreign—very largely Italian. Sunday night, October 11, 1914, Albert Piazza and his brother engaged in a scuffle with two Americans, the brawl taking place on a public street in the central part of the town. Guns were drawn and Piazza's brother was shot and instantly killed and the two Americans were seriously injured and died in the hospital the following day. An inquest was held on Monday and the coroner recommended that Piazza, who had been placed in the village jail, be held to the grand jury. The coroner at once telephoned the county sheriff at Pinckneyville, the county seat, that he had recommended that Piazza be held to the grand jury; that there was a great deal of feeling on the part of the American people at Willisville; that the streets were filled with people and that there was a crowd around the jail and he feared there might be trouble. The sheriff asked the coroner to take custody of the prisoner and

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to take him to the county jail at Pinckneyville. Thereupon the coroner demanded from the acting mayor of the village the custody of the prisoner, relating to him the substance of his conversation with the sheriff. The acting mayor replied that he would not under any condition release the prisoner and that if anyone took the prisoner to the county jail, he would do so himself. The coroner being a man well along in years, did not care to engage in any difficulty and did not press his demand. About 4 o'clock in the afternoon, the acting mayor with three men, whom he had sworn in as deputy marshals, got a livery rig, went to the village jail, handcuffed the prisoner and put him in the carriage. There was some scuffling around the jail and a good deal of talking and some threats made but no real acts of violence. The road taken by the acting mayor and his deputies with the prisoner ran west from the village for a distance of a mile and thence north about a mile and a half to the little town of Percy. As the rig went down the road, the crowd that had gathered in front of the jail, started down the railroad track which forms the hypotenuse of the right angled triangle with the two mentioned wagon roads. When the acting mayor and his deputies and the prisoner reached a point about one mile south of Percy, the party was intercepted by a mob of some 25 or 35 men. They came out on to the road from behind a barn which was a short distance from the railroad. They surrounded the rig, asked that the acting mayor turn over the prisoner to them and demanded the prisoner to get out of the rig and run down the road north toward Percy. As he ran down the road, the members of the mob fired several shots into his body and he was instantly killed. It will be interesting to note that in going from Willisville which is in Perry county to Pinckneyville by way of Percy, the road goes through a corner of Randolph county and that the place where the lynching occurred was in Randolph county.

The following day the coroner's inquest was held at Percy and the state's attorney of Randolph county attended the inquest and questioned the witnesses. The acting mayor and his three deputies were on the stand and while they admitted that none of the members of the mob were masked, they stated that they did not know a single person. The result was that the coroner's jury brought in an open verdict. A very thorough investigation of the facts surrounding the whole of the occurrence above enumerated was made by the state's attorney of Randolph county and the writer, who made the investigation at the request of the

Italian consul; also an operative of one of the well-known detective agencies was employed, who spent about a month on the case. The result of the information thus secured led to the indictment of the acting mayor of Willisville and four of the persons who were alleged to be members of the mob. The real information which led to the indictments, however, was furnished by a young man who confessed to be a member of the mob. He was before the grand jury and for a long time maintained that he had no information as to the acts of the mob or as to the members composing the mob, but after a series of questions by the state's attorney, he confessed that he was not telling the truth; that he himself was a member of the mob, explaining that he was along the railroad about a mile northwest of Willisville when the mob came along. He stated that the members were armed and that they threatened to shoot him if he did not join them. He detailed the acts of the mob from that time practically as they have been set forth, adding further that when the man had been shot to death, the mob went back across the fields toward the railroad; that they stopped in a little grove near the railroad track and that each party raised his hand and took an oath never to reveal the identity of the mob or to make any statement concerning their actions.

Governor Dunne acted very promptly and did all in his power to see that justice was done. He dispatched the adjutant general of the Illinois National Guard to Willisville to get the people off the streets and to restore normal conditions. He also communicated with the state's attorneys of Randolph and Perry counties, urging them to do their utmost to bring the guilty parties to justice, strongly denouncing the acts of mob violence and expressing the earnest desire that convictions might act as a deterrent and that mob law be made impossible in the state of Illinois. Later he called these officials to the executive office and with the general counsel for the Italian consul discussed plans for prosecuting the guilty parties.

In order to see the necessity of a federal law to punish parties guilty of such acts, it will be necessary to take a look at the scene in the court room at the trial of the five parties that were indicted. At the request of the Italian consul the writer went to Chester, Illinois, the county seat of Randolph county, and assisted in the prosecution of the case. On arriving at Chester on the day preceding the trial, he found that Kilgrove, the man who had confessed before the grand jury and of course the star

witness for the state, was nowhere to be found; that he was last heard of a few weeks before at Christopher, a town about 40 miles from Chester. A subpoena had been sent to the sheriff of the county in which Christopher is located, and the sheriff reported that although he had made a diligent search at Christopher, he could not locate the witness. As it was believed that considerable depended upon the statements that he would make, it was considered very important that the witness be found and the writer was therefore deputized by the sheriff of Randolph county and went at once to Christopher, where he located the witness an hour after his arrival. This shows the diligence that had been used by the sheriff of Franklin county and how lightly he must have regarded his duty in serving the subpoena that had been sent to him. The witness was taken to Chester the following morning in time for the trial. It must be remembered that a murder trial in a small place causes no little excitement and that the trial of five persons indicted for the murder of an Italian subject, the latter person having been supposed to have been guilty of a murderous assault upon two Americans in the brawl that took place at Willisville the night preceding the lynching, raised such excitement and interest to the highest possible point. Time will not allow to enumerate all the acts or occurrences that took place at this trial. Considerable time was necessitated in securing a jury that would be accepted by both parties. During the time the jurors were being questioned at a recess period in the afternoon of the second day, the witness Kilgrove asked to speak to the state's attorney. When he did this, several of the friends of the indicted parties who had been with the witness from the time of his arrival, endeavored to take him from the court room. The state's attorney appealed to the court, telling him that one of the state's witnesses was being molested and that force was being used to get him away from the court room. The court explained that it being at a recess period, he was without power to take any steps. The attorneys for the defense thereupon openly urged the witness to have nothing to do with the state's attorney and to make no statement and to stay with his friends if he wished to do so. The following day when the jury had been selected and the state was ready to proceed to trial, Kilgrove was nowhere to be found. The sheriff and his deputies made an exhaustive search but he could not be located. It is supposed that he was secreted and taken across the Mississippi River into Missouri.

Regardless of the absence of Kilgrove, the state put on a number of witnesses showing the conditions that existed around the village jail at the time the acting mayor with his deputies took the prisoner from the jail; also that the acting mayor refused to turn over the prisoner to the coroner at the sheriff's request. The evidence also disclosed the fact that the acting mayor could have taken the prisoner by train to Percy—that a train was due about 40 minutes after he left with the rig. It further showed that a mob of some 30 or 40 men left, started down the railroad tracks at the time the carriage started down the wagon road and that the four indicted men (all except the acting mayor) were in the mob; that two boys who had seen the mob going down the railroad tracks had climbed up on top of a barn a half mile away, saw the mob leave the railroad tracks and conceal themselves behind a barn and corn shocks near the wagon road, about a mile south of Percy. The wife of a farmer who lived in the house just 167 yards from the actual scene of the shooting, stated that she saw the rig pass her gate; that just after it had passed, she saw a number of men run out from behind the barn and corn shocks out upon the road and immediately thereafter she heard shots fired. On this the state entered a nolle-pros as to the acting mayor, believing that a case could not be made out against him in the absence of Kilgrove. Thereupon the other four defendants entered a motion for a directed verdict. Extensive arguments were made by counsel for both sides, the state contending that in view of the facts as have been above set out, a chain of circumstantial evidence had been offered which was strong enough to justify the case going to the jury. The court, however, directed the jury to find the defendants not guilty. The court room in which this trial took place was a small room. At the time, upon the decision of the motion, it was packed with friends of the indicted parties. A special train had been run from Willisville to Chester and there were some 300 or 400 people in the court room and when the court gave its decision there was something similar to a riot and there were many cries of "Long live Judge B——!". This trial took place in the month of March and an election was to follow in June of the same year. The presiding judge of this trial was a candidate for re-election. On account of the divided population of Willisville and of the mining towns around there, the feeling against the Italians was very, very strong. A great deal would naturally result from an opinion rendered by a trial court in such a trial. It may be

parenthetically remarked that the trial judge has since been re-elected.

In considering the circumstances that surround a trial in this kind of case, it must be borne in mind that regardless of the sterling qualities of a state's attorney, the state is very much handicapped for the reason that the trial must take place in the county where the acts of mob violence occurred; that there is no change of venue allowed to the state. In this case the state's attorney did all that was within his power to secure convictions and spent much time in personal investigation and this at the risk of the position he held, for it was apparent to the casual observer that there was feeling against him for the part he took.

It may be added that some time after the close of the trial Kilgrove returned. An attachment had been issued for him and when he came back into the county, he was brought into court and the trial court sentenced him to serve 90 days in the county jail. He was the only man who was punished in any way for the shameful acts that disgraced the state.

The result of this trial no doubt had its influence in causing certain acts that led to the lynching of Joe Speranza, June 12, 1915, at Johnston City, only a few miles distant from the scene of the killing of Piazza. In this case the conditions were somewhat similar to those mentioned in the Piazza case. Johnston City is largely a mining town and the population is well divided, being perhaps half foreign and half American. The father-in-law of one of the mine superintendents was shot to death in his own home on the evening of June 11th. It is supposed that the party who did the shooting thought he was shooting at the mine superintendent, as these men lived in the same house and they resembled each other in appearance. This superintendent had had trouble during the preceding days with some of the miners and he had received black-hand letters threatening his life. When it was found that an innocent man had been killed in his own home, the feeling among the American population ran very high and a crowd formed and instituted a very thorough search of the town. Word spread rapidly that the murderer must have been one of the members of the black-hand society and also the word that all Italians who had been suspected in any way should be taken by the members of the searching party. The following morning, Joe Speranza was found hiding in a shed. There was no proof that he had been a member of the black-hand society or had anything to do with the letters that had been written. The only

fact was that he was hiding and this when the word had been spread broadcast that all such persons should be taken into custody. He was taken to the village jail and put in a cell. At the noon hour the chief of police went home to lunch. While he was gone, a very large crowd assembled in the streets and walked down to the city hall. The village jail is in the basement of the city hall building. In some way the chief and likewise the mayor got word that there was a crowd gathering and both went to the city hall. The mayor himself stated that the crowd outside of the hall numbered perhaps 1,000. The mayor talked to them and urged them to go home and let the law take its course. The chief started at once to go to the stairway that led to the jail but was stopped by some of the members of the mob that had forced their way into the hallway and these parties engaged in a tussle with him. While they were still tussling on the stairway, a cry was heard from the rear of the building and the chief looked out of the window that was at the end of the hallway just at the head of the stairs and saw that they had broken into the jail, secured the prisoner and were taking him down the street. They took him down just a block away to a shed located along the railroad tracks, about a half block from the railroad station. A rope was put around his neck and thrown up over a rafter of the shed. As the rope was tightened, they asked him to confess and Speranza declared that he was innocent; that it was another party who had killed the man the evening before but he would not disclose his identity. He appealed to his friends in the mob for help. Upon his declaration that he was not the party, the rope was drawn up and he was left hanging to the rafter.

On account of the experience in the preceding lynching, it was deemed advisable, in order to prevent further acts of violence, to send in some of the troops of the Illinois National Guard. In this Governor Dunne acted very promptly and that night three companies of the guard arrived and patrolled the streets for the following two days.

At the request of the Italian consul the writer also made a personal investigation of the facts surrounding the acts of violence on the second day following the lynching. He had a personal letter of introduction to the state's attorney from his Excellency, Governor Dunne, which letter denounced in the strongest terms the acts of the members of the mob and expressed the sincere hope that the state's attorney would do all in his power to co-operate with the writer in making a very thorough investiga-

tion and in bringing the guilty parties to justice and thus remove the blot that had been placed on the state. On the day mentioned, there was considerable talk by the residents of the village, and by going in unknown, it was not difficult to secure considerable information. Under our law a party who either abets or assists in such acts is as guilty as a party who fastens the rope around a man's neck. The parties in this mob were residents of this village. Yet the chief of police told the writer and again repeated before the grand jury that he did not know who these men were. The mayor also stated that he did not know who the members of the mob were whom he addressed and urged to return to their homes. The state's attorney has had some 40 or 50 men before the grand jury, men whom, it is apparent, must have had knowledge as to the identity of some of the members of the mob, yet they all stated under oath that they could not tell who a single member was. It may be remarked that this is the usual outcome of such acts. On account of it being a matter of race feeling and on account of the further fact that as a rule there have been instances preceding where foreigners who have been supposed to have been guilty of felonies, have been allowed to go free by our courts on account of insufficiency of evidence or for some reason, the feeling is intensified to such a point that no resident deems it safe to take an opposite view or to give any information whatever. The natural result is that a local grand jury is unable to bring in an indictment.

Suppose for the moment that a federal court had jurisdiction in the last case mentioned. Johnston City is located in the Eastern District of Illinois. If a federal grand jury were investigating, the investigation would be made at East St. Louis, Illinois—some 80 or 90 miles distant from the place where the lynching occurred. The probabilities are that the grand jury would be composed of members located in a part of the state somewhat distant from the county where the lynching occurred. Further, the United States district attorney would feel free to do his utmost in making an investigation and in bringing the guilty parties to justice. He, like the judge of the court, is appointed by the President. His continuation in office does not depend upon the vote of a local community at a coming election. He is absolutely free to do the thing which at the time of his appointment he takes oath to do—to support the Constitution and the laws of the United States. There is to him no higher local law that would act as a deterrent. The fact that indictments



were secured against five parties in the Piazza case is in itself most remarkable for there have been but few cases of mob violence in this country where the person lynched was an alien where the state authorities have been able to secure indictments. In the language of President McKinley, "Local justice is too often helpless to punish the offenders."<sup>1</sup> Had the federal government had power by virtue of a federal statute to assume control in the Piazza case, it is a fair assumption that convictions would have resulted under the state of facts that has been above set out. There would have been absolutely no local influence, the court would have been free from any compulsion either by friends or by his constituents. He holds office for life. He need have no fear of any act of his that might directly affect the locality in which the acts of mob violence occurred. Then again, the trial itself by reason of the location of the court would be free from the influence that must have had a decisive effect in the trial of the Piazza case at Chester. The court would be far removed from the scene of the acts of mob violence and the trial would be conducted in an orderly manner without any interruptions that are likely to occur where the place where the trial occurs is wrought up into an unnatural state on account of the intense race feeling and where the majority of the people feel that the trial of parties alleged to have been members of the mob is not a trial of parties for murder but rather a trial of American rights as against the rights of foreigners temporarily domiciled here. It is also fair to assume that no one would dare tamper with a witness, and if acts of molestation were brought to the attention of the court, such witness would be properly protected and the offending parties dealt with severely.

Having seen the advantages of a trial in the federal court in such a case, the question is then raised: Has not the federal government power at present to take charge of such a case? In 1891, this question was directly presented to the department of state and a negative answer given. The occasion was the lynching of 11 Italian subjects on March 14, 1891, at New Orleans. At the request of the Italian government that the federal government make an investigation and institute criminal proceedings, the matter was submitted to the department of justice for an opinion and that department notified the department of state that in the absence of federal legislation, the federal gov-

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<sup>1</sup> Pres. McKinley, Annual Message, Dec. 5, 1899, For. Rel. 1899, XXII.

ernment was without power to take charge of such a case.<sup>2</sup> In recommending that Congress enact legislation, such as is here proposed, President Harrison said: "The federal officers and courts have no power in such cases to intervene either for the protection of a foreign citizen or for the punishment of his slayers."<sup>3</sup> It has been well stated that the want of power spoken of by President Harrison was that arising from the failure of Congress to act and not a want of inherent power in the national government.<sup>4</sup> That such is the case may be found by reference to our Federal Constitution.

First, let us see what inherent rights these two Italians who were lynched in Illinois had by virtue of the treaty made between the United States and Italy. Article III of the Italian treaty provides that: "The citizens of each of the high contracting parties shall receive in the states and territories of the other the most constant protection and security of their persons and property and shall enjoy in this respect the same rights and privileges as are or shall be granted to the natives on their submitting themselves to the conditions imposed upon the natives."<sup>5</sup> Both of these victims, therefore, had the right to expect that they would be entitled to the same protection as would be given to an American citizen, under similar circumstances. If, in either case, an American citizen had been guilty of the alleged wrong of which it was supposed the Italian in each case was guilty, he would have been entitled to a trial in a court of justice; he would have been entitled to have complained of an infraction of his constitutional right if the local authorities had been unable to have assured him a fair trial. Under the treaty, therefore, the Italian subjects, victims in these cases, had the right to expect that having been in custody of local officials, they were entitled to the full protection, the same as an American citizen. They had the right to expect that the local authorities would protect them from acts of violence by the mob and would keep them safely in custody until at least a court of justice had heard the evidence and a jury had returned its verdict. Take either one of the two

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<sup>2</sup> Foreign Relations, 1891, p. 686.

<sup>3</sup> Moore's Digest, Vol. VI, p. 840; Foreign Relations, 1891, p. 5.

<sup>4</sup> Address of Honorable George Turner before the Second Annual Meeting of the American Society of International Law at Washington, D. C., April 24, 1908. See Proceedings of the American Society of International Law, Vol. II, p. 29.

<sup>5</sup> Malloy's Treaties, Vol. I, p. 970.

cases that have been mentioned and see if our government has kept faith in this respect. It is evident from the facts given that it has not. It has had to depend upon the local or state authorities in seeing to it that the party in custody was given sufficient protection and in both instances the local authorities were unable to do this very thing. Having failed in its first duty, namely, the duty to afford adequate protection to a party in custody of a local official, we are confronted with the question of rights that the Italian government has as the representative of the non-resident alien heirs of these victims. A perusal of the diplomatic correspondence in the cases of mob violence shows that the question is two-fold—that in nearly every instance, the first thing that has been demanded by the foreign government is that our federal government sees to it that the guilty parties are brought to justice and secondly, that the federal government pay an indemnity to the demanding government for the use of the heirs of the victims.

In 1851, a riot took place in New Orleans, the Spanish consul and the consulate and various Spanish subjects being the objects of attack. The consul was obliged to take refuge in the house of a friend, considerable of his property was destroyed and the Spanish consulate was raided. Mr. Webster, then secretary of state, had the first occasion to pass upon both of the last named questions. As to the first, he stated that the matter of bringing the parties to justice was purely a matter within the local control of the state and that the aggrieved parties must resort to the courts of justice of that state and as to the second, he contended that there was no duty, by reason of international law, that would make the federal government liable to pay an indemnity to these parties. However, he did recommend that the federal government pay an indemnity to the Spanish consul, claiming that his case was different from that of the Spanish subjects whose property had been destroyed and that on account of his official position and the insult to him as an official of the Spanish government, an indemnity should be paid.<sup>6</sup>

Again, in 1880, both of these questions were brought fairly before the department of state. The occasion was the lynching of Chinese subjects, October 31, 1880, at Denver. The Chinese minister in bringing the matter to the attention of the department of state stated first, that his government expected our federal

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<sup>6</sup> Moore's Digest, Vol. VI, p. 812.

government to extend protection to the Chinese in Denver; secondly, to see that the guilty persons were arrested and punished, and thirdly, that it seemed to his government to be just that the owners of the property wantonly destroyed should in some way be compensated for their losses.<sup>7</sup>

A similar demand was again made by the Chinese government a few years later, the occasion being the lynching of several Chinese subjects at Rock Springs, Wyoming, September 2, 1885. In replying to the communication of the Chinese minister, Mr. Bayard, secretary of state, took the position "that when the courts of justice are open to a foreigner in a state, the federal executive will not take cognizance of his complaint," following the interpretation of the question of international law that had been adopted by his predecessors, Mr. Evarts and Mr. Blaine, in respect to the acts of mob violence in Denver in 1880. The reply of Mr. Cheng Tsao Ju, the Chinese minister at Washington, is well worthy of note. He pointed out the circumstances that surrounded the acts of mob violence at Rock Springs. He stated first, that the attack upon the Chinese was unprovoked on their part; secondly, that although it occurred in broad daylight, the local authorities made no attempt to prevent or suppress the riot, and thereafter held an inquest that was described as a "burlesque"; thirdly, according to the reports of the consuls, none of the offenders was likely ever to be brought to punishment by the territorial or local authorities. He therefore, made three demands: first, that the persons who had been guilty of the murder, robbery and arson be brought to punishment; secondly, that the Chinese subjects be fully indemnified for all losses and injuries they had sustained; and thirdly, that suitable measures be adopted to protect the Chinese residing in Wyoming and elsewhere in the United States from similar attacks. In supporting each of these demands he pointed out the position taken by the United States in respect to claims of Americans who had been subjected to acts of mob violence or lawlessness in the Chinese Empire; that under the treaty between the United States and China of 1868, American citizens in China so far as the full protection of the law was concerned had no greater rights than Chinese subjects in the United States; that before the year 1858, the Chinese provisional and local authorities had on intervention of the American diplomatic and consular representatives indemnified American citizens in many instances

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<sup>7</sup> Foreign Relations, 1881, p 319; Moore's Digest, Vol. VI, p. 820.

for losses occasioned by riots and violence and that by the convention of the year 1868 the sum of \$735,258.97 had been paid the United States government "in full liquidation of all claims of American citizens"; that at other times the government of the United States had sent its consuls and vessels of war to demand the trial of rioters where a single American had suffered losses valued at less than \$500.00; that our minister had intervened with the Imperial Government to secure the return of sums as small as \$73.00 stolen from American citizens and to see that our citizens were guarded with greater vigilance. He declared, therefore, that his demands were supported "by usages of national comity" as well as the guarantees of the treaty. The reply of Mr. Bayard was very technical and is a good illustration of fine spun argument supporting a view that the United States was different from the Chinese Empire; that the acts of mob violence to the Chinese at Rock Springs occurred within a territory at a place sparsely settled and far distant from any large and important center; that the criminal prosecution of the guilty parties rested with the territorial authorities and that as to the losses suffered by the burning of property by the members of the mob, he again contended that the aggrieved parties had the privilege of presenting their claims to the local courts. It is quite clear when it is understood that the Chinese victims had been attacked by the members of the mob in a small mining community because they had refused to join certain other laborers in promoting a strike, that little justice could be expected from the hands of the very parties that had caused the acts of mob violence. It may be noted, however, that President Cleveland in his message to Congress, March 7, 1886, invoked the benevolent consideration of Congress in order that that body in its high discretion might direct the bounty of the government in the aiding of innocent and peaceful strangers whose maltreatment has brought discredit upon the country; with the distinct understanding that such action was in no wise to be held as a precedent, was wholly gratuitous and was resorted to in a spirit of pure generosity toward those who were otherwise helpless.<sup>8</sup> While the President recommended payment of an indemnity, it will be observed that liability was strongly denied.

Perhaps one of the most serious cases in its international aspect is found in the acts of mob violence at New Orleans, March 14, 1891, when 11 Italians who were charged with having

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<sup>8</sup> Foreign Relations, 1886, p. 101; Moore's Digest, VI, pp. 826-835.

been concerned with the murder of the chief of police at New Orleans were killed by a mob of citizens in the parish prison of that city. Of these 11, 5 had not been tried, while 3 had been acquitted and 3 were to be tried a second time. The following day Baron Fava in pursuance of the instructions of the Italian government brought the matter to the attention of Mr. Blaine, secretary of state, with the request that he cause the competent authorities of the state of Louisiana to take special care that the lives of Italians in New Orleans should be protected and "that the guilty parties whether perpetrators, accomplices or instigators of the massacre be speedily brought to justice." He reserved the right of his government to demand any other reparation which it might think proper. Mr. Blaine at once communicated with the governor of the state of Louisiana, requesting that every precaution be taken and that ample protection be afforded to Italian subjects residing in New Orleans, stating that the treaty between the United States and Italy guaranteed to such subjects the most constant protection and security for their persons and property and expressed his regret as well as that of the President that citizens of New Orleans should have so disgraced the purity and adequacy of their own tribunals as to transfer to the passionate judgment of a mob a question which should have been judged dispassionately and by settled rules of law. A copy of the telegram sent to the governor was communicated to Baron Fava. The Italian government was very insistent in its demands of a promise of reparation and failing to obtain a prompt compliance of this request, withdrew its minister. When advising our government of his departure, the Italian minister advised that the reparation insisted upon by his government consisted of, first, the official assurance by the federal government that the guilty parties should be brought to trial; secondly, the recognition in principle that an indemnity is due to the relatives of the victims. Without admitting the facts as alleged by the Italian minister, the secretary of state said that if the victims were Italian subjects residing in this country in conformity to the treaty provisions and not in violation of the emigration laws and if the public officers charged with the duty of protecting the life and property at New Orleans failed to take any steps for the preservation of public peace and if afterwards such was the case and there was a failure to bring the guilty parties to trial, the President would, under such circumstances, he maintained, feel that a case was established that should be submitted to the consideration of Congress with a view

to the relief of the families of the Italian subjects who had lost their lives by lawless violence.<sup>9</sup> It may be observed that there was no statement in direct reply to the Italian minister's first demand because it was known by the secretary of state that the federal government was without power to bring the guilty parties to justice; that such matter rested purely within the control of the Louisiana state authorities. It may be observed that on May 5, 1891, the grand jury at New Orleans made a report excusing those who had participated in the attack on the jail and none of them were indicted or brought to trial. The critical situation thus produced and the view which the Italian government took of the failure of the federal government to be able to carry out or to fulfill the guarantees made in a treaty and the resulting breach of international diplomatic relations with the Italian government was so apparent that President Harrison in 1891 in his message to Congress recommended that a law be passed that would give the federal government power to fulfill its guarantees in such respect. In presenting copies of the diplomatic correspondence and his own conclusions he stated: "Some suggestions growing out of this unhappy incident are worthy of the attention of Congress. It would, I believe, be entirely competent for Congress to make offenses against the treaty rights of foreigners domiciled in the United States cognizable in the federal courts. This has not, however, been done and the federal officers and courts have no power in such cases to intervene either for the protection of a foreign citizen or for the punishment of his slayers. It seems to me to follow in this state of the law that the officers of the state charged with police and judicial powers in such cases must, in consideration of the international questions growing out of such incidents, be regarded in such sense as federal agents as to make this government answerable for their acts in cases where it were answerable if the United States had used its constitutional power to define and punish crimes against treaty right."<sup>10</sup> He made a similar recommendation in his Annual Message of December 6, 1892. However, Congress did not act upon his recommendation. It will be observed that from President Harrison's statement that in view of the treaty provisions as well as from rules of international law, it was the federal government which was responsible for crimes to foreigners residing within our bor-

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<sup>9</sup> Foreign Relations, 1891, pp. 665, 713; Moore's Digest, VI, pp. 837-441.

<sup>10</sup> Foreign Relations, 1891, V; Moore's Digest, VI, p. 840.

ders, that we could in no wise shift the responsibility so that the punishment of such parties should rest with a state; and that the state authorities who had acted in regard to such matters were agents of the federal government so as to make the latter responsible for the former's acts. It is interesting to note also that he considered that the federal government had no authority to punish the individuals; that such want of power was due rather to the failure of Congress to enact appropriate legislation than from a want of or lack of a constitutional provision. In passing it may be noted that an indemnity of \$24,330.90 was paid by our government and that the same was accepted by the King of Italy and diplomatic relations were again resumed. It was less than three years from the date that three Italians were murdered and two others received serious injury at the hands of a mob at Rouse, Colorado. The matter was brought to the attention of the department of state in a similar way to the claim that was formerly presented in 1891. In this case the Italian ambassador was at once asked to formulate a claim and in recommending to Congress the payment of an indemnity, President Cleveland urged the payment "without discussing the question of the liability of the United States either from the standpoint of treaty obligations or under the general rules of international law." As a result of this recommendation our government paid the Italian ambassador the sum of \$10,000.00.<sup>11</sup>

Similar instances of the position taken by the United States may be found in the views expressed to the foreign powers in the case of two Mexicans killed by a mob at Yreka, California, in 1895,<sup>12</sup> the lynching of Italians at Hahnville, Louisiana, in 1896,<sup>13</sup> the lynching of Italians at Tallulah, Louisiana, in 1899,<sup>14</sup> and the killing of two Italians by a mob at Irwin, Mississippi, in 1901.<sup>15</sup> There have been two other instances of mob violence that have not been officially reported: the acts of mob violence that occurred in 1909 at South Omaha, Nebraska, when several Greek subjects were killed; and the killing of Angelo Albano, an Italian subject, by an armed mob while in custody on a charge of crime in the city of Tampa, Florida, September 20, 1910.

<sup>11</sup> Foreign Relations, 1895, II, p. 950; Moore's Digest, VI, p. 843.

<sup>12</sup> Message of President McKinley, January 18, 1898, House Doc. 237, 55 Cong. 2 Sess.; Moore's Digest, VI, p. 851.

<sup>13</sup> Foreign Relations, 1897, p. 353; Moore's Digest, VI, pp. 843-5.

<sup>14</sup> Foreign Relations, 1900, pp. 715-31; Moore's Digest, VI, pp. 845-48.

<sup>15</sup> Foreign Relations, 1901, p. 283; Moore's Digest, VI, p. 848.



A bill to provide for the punishment of parties guilty of offenses against the treaty rights of aliens was introduced in the Senate, March 1, 1892, but failed to come to a test vote. The bill provided "that any act committed in any state or territory in the United States in violation of the rights of a citizen or subject of a foreign state secured to such citizen or subject by treaty between the United States and such foreign country and constituting a crime under the laws of the state or territory shall constitute a like crime against the United States and be cognizable in the federal courts."<sup>16</sup>

On December 5, 1899, President McKinley, in his annual message, brought the need of such legislation very forcibly to the attention of Congress. After pointing out the fact that notwithstanding the efforts of the federal government, the production of evidence tending to inculpate the authors of the acts of mob violence and the repeated inquests made by the Louisiana state authorities and the further fact that successive grand juries had failed to return indictments, he said: "I renew the urgent recommendation that I made last year that the Congress appropriately confer upon the federal courts jurisdiction in this class of international cases where the ultimate responsibility of the federal government may be involved. I invite action upon the bills to accomplish this which were introduced in the Senate and the House. It is incumbent upon us to remedy the statutory omission which has led and may again lead to such untoward result. I have pointed out the necessity and precedent for legislation of this character. Its enactment is a simple measure of previsory justice toward the nations with which we as a sovereign make equal treaties requiring reciprocal observance."<sup>17</sup> It is interesting to note that President McKinley's statement indicates that in respect to the acts of mob violence at Tallulah, Louisiana, there had been a denial of justice that could well be complained of by the Italian government.

When the Italians were killed at Irwin, Mississippi, in 1901, the Italian ambassador at Washington presented a similar claim to the one made to the department of state in 1891. In protesting against the failure to bring the guilty parties to justice the Italian ambassador described our omission to confer jurisdiction

<sup>16</sup> President McKinley, Annual Message, December 5, 1899, Foreign Relations, 1899, XXII. Moore's Digest, VI, p. 847.

<sup>17</sup> President McKinley, Annual Message, December 3, 1900, Foreign Relations, 1900, XXII; Moore's Digest, VI, p. 848.

in such cases on the federal courts in order to make the federal government directly responsible as "a denial of justice, a flagrant violation of contractual conventions, and a grave offense to every human and civil sentiment." He further stated that the Italian government would not cease to denounce the systematic impunity enjoyed by crime and would hold the federal government responsible therefor.<sup>18</sup> An indemnity was paid "without reference to the question of liability."

It is interesting to observe that President McKinley's statement in respect to the last named case intimating that there had been a denial of justice is strictly in accord with the view taken by the department of state in presenting a claim on behalf of American citizens for property destroyed in Turkey. The secretary of state declared that "a government being able to quell and not quelling such disorders, and damage to American property having resulted, the United States contends that Turkey can be held responsible under a well-recognized principle of international law."<sup>19</sup> We have also insisted that a foreign government could not deny its accountability for acts of mob violence by maintaining that the injured parties must find redress from the provincial or local authorities.<sup>20</sup> It may be noted, however, where there is a state statute providing for the payment of an indemnity for injury occasioned by the acts of a mob that the federal government might refer the claimant to the local court for the purpose of exhausting his remedy and that if justice were not secured under such statute, he could then complain of a denial of justice to the federal government.

A federal law providing for the punishment of crimes against aliens in violation of the guarantees of the treaties, such as was suggested by President Harrison and President McKinley, has also been recommended by President Roosevelt<sup>21</sup> and President Taft.<sup>22</sup> The chief objection raised to the enactment of such

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<sup>18</sup> Foreign Relations, 1901, pp. 283-299; Moore's Digest, VI, pp. 848-9.

<sup>19</sup> Foreign Relations, 1897, p. 592; see also Foreign Relations, 1895, p. 1257; Moore's Digest, VI, p. 798.

<sup>20</sup> Moore's Digest, VI, pp. 815-17.

<sup>21</sup> Foreign Relations, 1906, I, XLIII.

<sup>22</sup> At a reception to the members of the American Society of International Law at Washington, Friday, April 29, 1910, President Taft in declaring that Congress should put in the hands of the executive means by which the federal government could perform its international obligations, stated:

legislation is that it accords to an alien a better right than it accords to a citizen of this country. It will be noticed that such an objection is based upon the theory that when an alien receives the protection of a state law, the same as a citizen, then the guarantee of the treaty is fulfilled and there is no breach on the part of our government in respect to any rule of international law. This, however, is based upon a false standard. It may well be that the state law and the local tribunals enforcing such law may be adequate to secure justice and fully protect a citizen and yet entirely inadequate in case of an alien.<sup>23</sup> This was well illustrated in the trial in the Piazza case as above set out. In such cases race feeling makes it next to impossible for local authorities to be free from prejudice, and does not accord the same degree of justice that is accorded in the case of a citizen. When, therefore, there is a failure to render that degree of justice which is accorded to citizens, it is maintained that there is a failure on the part of the government to perform its international duty and likewise there arises a right on the part of the government, whose citizen has failed to secure justice, to demand an indemnity in payment for the failure to perform such international obligations. Thus, it is seen that the question is not merely one of rights as between citizens and aliens, but when there is a failure to secure

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"We should not be obliged to refer those who complain of a breach of those obligations to governors of states and county prosecutors to take up the procedure of vindicating the rights of aliens which have been violated on American soil.

"I do not think that any one, however—I will not say extreme, but however strong his view of the necessity of the preservation of state rights under the Federal Constitution—will deny the power of the government to defend, and protect, and provide procedure for enforcing the rights that are given to aliens under treaties made by the government of the United States. Therefore, it is no excuse, it seems to me, to any one who is a supporter of the Federal Constitution at all to say that he is in favor of a strict construction of that Constitution, and the preservation of state rights, in order to defend his refusal to give the central government the means of enforcing its own promises. If it has a right to make promises, I think it has a right to fulfill them, or at least ought to have power to fulfill them. I can not suppose that the Federal Constitution was drawn by men who proposed to put in the hands of one set of authorities the power to promise and then withhold from them the means of fulfilling them." (Proceedings of the American Society of International Law, Vol. IV, p. 44.)

<sup>23</sup>From a recent manuscript of Charles Cheney Hyde, Professor of International Law at Northwestern University Law School.

the same protection to the latter as is given to the former, the question becomes international on account of the failure of the government to fulfill a treaty obligation which guarantees to the alien residing within our borders that degree of justice and protection that is accorded a citizen. If there is such a failure, our government cannot shield itself from responsibility by saying that the alien was accorded the benefit of the same local or state laws and also the right of trial in the same courts as a citizen, for the reason that the standard of justice in such case is not a matter to be determined by one of the states of the union but by a standard which is already set by the family of nations. It has been well stated that "the condition upon which any country is entitled to measure the justice due from it to an alien by the justice which it accords to its own citizens is that its system of law and administration shall conform to this general standard (standard of international law). If any country's system of law and administration does not conform to that standard, although the people of the country may be content to live under it, no other country can be compelled to accept it as furnishing a satisfactory measure of treatment of its citizens."<sup>24</sup>

Our government originally took the position that there was no liability on its part for acts of mob violence; that protection to aliens residing within the states must rest with the local authorities and that criminal prosecution for any acts of mob violence must also rest with the state authorities; that in paying indemnities for acts of mob violence, payment was made purely as an act of charity and liability was strongly denied. This placed the United States in a very embarrassing position for the reason that we contended that foreign governments were responsible for acts of mob violence against American citizens residing abroad.<sup>25</sup> In 1891 our attitude was changed. Since that time we have not denied liability and in cases where an indemnity has been paid, such payment has been made "without respect to the question of liability." We have realized that we are not in a position to shelter ourselves from responsibility on account of a failure to

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<sup>24</sup> Hon. Elihu Root, Address on The Basis of Protection to Citizens Residing Abroad, delivered at the meeting of the American Society of International Law, April 28, 1910, Proceedings of the American Society of International Law, Vol. IV, p. 21.

<sup>25</sup> Address of Hon. Robert Lansing, now secretary of state, made before the American Society of International Law, April 24, 1908, Proceedings of the American Society of International Law, Vol. II, p. 60.

enact legislation that would enable the federal government to fulfill its treaty obligations.

We have realized to a certain extent that it may be necessary to afford to the alien a different degree of protection or the benefit of a different law than is accorded the citizen. Thus in certain civil cases the alien may resort to the federal courts whereas the citizen is not accorded that privilege.<sup>26</sup> If this right is accorded in civil cases, it would seem that it would be no more objectionable to confer similar jurisdiction in a criminal case and thus give to the federal government the power to fulfill or carry out the solemn promises of a treaty.

It has been noted that in the cases of mob violence where the victims are aliens, there may be a denial of justice, first, in the failure of the local or state authorities to afford adequate protection to the alien who is in custody; second, a failure to prosecute criminally the alleged guilty parties; and third, a denial of justice in a failure to secure to the relatives of the victims indemnity for the wrong suffered. The two cases that have been set forth in more or less detail clearly show the inadequacy of local authorities to protect the alien while in custody and the Piazza case also points out the inability to secure convictions in a local tribunal. The enactment of the proposed legislation would give a greater guarantee that parties alleged to have taken part in acts of mob violence would be speedily brought to justice and punished and that our federal government would then be in a better position to fulfill its international obligations.

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<sup>26</sup> Constitution, Art. III, Section 2; also Art. XVI, Section 16, of the Judicial Code which declares that the United States district courts shall have jurisdiction "of all suits brought by an alien for a tort 'only' in violation of the law of nations or of a treaty of the United States." See also Sec. 1, 25 Stat. at Large, 434.