

Understanding the Passage of the Emmitt Till Antilynching Act from the Kingdon's Multiple Streams or Three Stream Policy Window Model Perspective

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ABSTRACT

The historical signing into law of the Emmitt Till Antilynching Act in March 2022 ends a long struggle of over a century of almost 200 failed attempts to pass anti-lynching legislation that makes lynching a federal hate crime. For a bill to become law, it must be approved by the House and passed by the Senate in identical form, and be signed by the President. The purpose of this review paper is to understand the policy process leading to the famous signing into law of the Emmitt Till Antilynching Act in March 2022. We use one of the most used models for comprehending policy processes called Kingdon's Multiple Streams or Three Stream Policy Window Model to evaluate this process. John Kingdon's model postulates that for a societal issue to pass on as law, it must satisfy three streams, that is (1) Problem Stream, (2) Policy Stream, and (3) Politics Stream. These three streams must come together (policy window) for legislation to be signed into law. However, a policy window could open but if the political climate is not favorable, legislation may not be signed into law at the close of that policy window. It might take several years before another policy window opens again. This was the case of the 200 failed anti-lynching bills from the first anti-lynching bill introduced in 1900 until the historical Emmitt Till Antilynching Act that was approved by the House, passed by Senate, and signed into law by President in 2022.

Keywords: Emmitt Till Antilynching Act, Lynching, Anti-Lynching Legislation, Kingdon's Multiple Streams Model, Public Policy Process, African Black American

INTRODUCTION

As humanity continues into the 21st century we are faced with an ever-changing sea of social and political issues that we are forced to navigate. These issues are both age-old and brand new. Our response to these issues is shaped by the environment and context in which we find ourselves. One example of this is the passage of the Emmitt Till Antilynching Act on March 29th, 2022. This momentous achievement occurred after over a century of failure to pass antilynching legislation and ensures that lynching is finally recognized as a hate crime on the

federal level and has a mandatory minimum sentence. The purpose of this paper is to examine the social and political context in which this legislation was successful after over 200 attempts to pass antilynching legislation in over a century that did not come to fruition. Furthermore, the paper will contextualize this information in Kingdon's Multiple Streams or Three Stream Policy Window Model and will break down the problem stream, policy stream, and politics stream aspects of the said theory as they apply to the legislation under investigation. In the following pages, the reader will find a sociohistorical background that has set the stage for the passage of the Emmett Till Antilynching Act; a discussion of the previous legislative attempts and failures embedded therein; and a discussion of the current social and political climate which has made the passage of this legislation possible in the current era; a presentation of the ideas and precepts of Kingdon's Multiple Streams or Three Stream Policy Window Model; and finally an application of the said model to the process and outcome under investigation. The paper will conclude with the authors' discussion of the strengths and weaknesses of this approach as well as avenues for future research.

BACKGROUND AND THE ADVENT OF THE EMMETT TILL ANTILYNCHING ACT

Sociohistorical Background

The phenomenon of lynching is not new. Emerging as a social control mechanism in the aftermath of Reconstruction (Library of Congress, 2020), lynching involves a form of vigilante justice that entails the public execution of an alleged transgressor by a mob for punishment and/or intimidation (The U.S. Government Publishing Office, 2022). The following are various murder categories that thousands of lynched African Americans fell into between 1877 and 1950: "(1) lynchings that resulted from a wildly distorted fear of interracial sex; (2) lynchings in response to casual social transgressions; (3) lynchings based on allegations of serious violent crime; (4) public spectacle lynchings; (5) lynchings that escalated into large-scale violence targeting the entire African American community; and (6) lynchings of sharecroppers, ministers, and community leaders who resisted mistreatment" (The U.S. Government Publishing Office, 2022). According to The Equal Justice Initiative, the recorded number of lynchings in the aforementioned period was 4,081 in 12 Southern states (Granitz, 2022). Additional evidence indicates that 4 out of 5 African American murder victims were lynched between the end of the Civil War and the beginning of WWII in the Southern states (The U.S. Government Publishing Office, 2022).

The widespread use of lynching for intimidation and social control led to the formation of social movements designed to combat these embedded inequalities in society. As African Americans galvanized efforts to stop lynching as well as the menace of racial viciousness, they laid the foundation for the civil rights movements in America. The profound societal inequalities facing African Americans at the turn of the 20th century fueled the creation of the National Association for the Advancement of Colored People (NAACP) in 1909. The purpose of the NAACP is the elimination of racial prejudice and the establishment of equality for all through democratic processes. The NAACP was significant in waking the nation to the urgency of battling lynching as it carried out a detailed investigation on lynching and other crimes carried out against African Americans. In addition to these investigations, the NAACP regularly published reports concerning incidents including the 1919 report entitled "30 Years of Lynching in the U.S."; as well as actively endorsing anti-lynching legislation as early as 1921 (The U.S. Government Publishing Office, 2019).

For more than a century, anti-lynching bills created in the US Congress met with failure. One such example of past legislative attempts is the Dyer Antilynching Bill of 1918 which was proposed by the U.S House of Representatives Missouri Republican leader Leonidas C. Dyer (Francis, 2014). During the time of said proposal, St. Louis was plagued by race riots spurred by labor relations and competition for employment. Within the context of the Dyer Antilynching Bill, lynching would have been classified as a federal felony. The sentence for being convicted was tiered with those city/government officials failing to prosecute or failing to act on foreknowledge to prevent a lynching receiving up to 5 years in prison and a \$5,000 fine, those colluding or participating in a lynching receiving a minimum of 5 years in prison, and a \$10,000 fine for any county where a lynching took place (Francis, 2014). Furthermore, the bill proposed to prosecute law enforcement officers who failed to protect all citizens equally. The Dyer Anti-Lynching Bill was passed by the House of Representatives in 1922 but failed to gain traction in the Senate. Therefore, the Dyer Anti-Lynching Bill was not signed into law (Francis, 2014).

Another example from the mid-20th century is the Costigan-Wagner Bill of 1934 which was co-sponsored by Senators Edward P. Costigan of Colorado and Robert F. Wagner of New York, both Democrats (The University of Virginia Library, n.d.). The purpose of this legislation was to end mob behavior and vigilante justice via federally prosecuting participants as well as public officials and law enforcement personnel who failed to protect potential victims of said behavior. This bill died because it failed to achieve proper political support before it could appear before the Senate (The University of Virginia Library, n.d.). The next significant piece of legislation to address this issue was the Justice for Victims of Lynching Act of 2018 (S.3178 - 115th Congress (2017-2018)). This Act was drafted by Senators Kamala Harris, Cory Booker, and Tom Scott as a bi-partisan legislative initiative to redefine lynching. Within the context of this bill, lynching would be interpreted as the intentional and willful death of someone by a collective intent on said end. This bill passed the Senate but was not voted on by the House of Representatives or signed into law (The Library of Congress, 2018).

However, the urgency of a federal antilynching status became more glaring after the murder of a 25-year-old unarmed African American (Fausset, 2020), Ahmaud Arbery on February 23rd, 2020. Mr. Arbery was killed by a father and son who suspected him of theft. This murder was tagged as a 'modern-day lynching'. This event spurred Representative Bobby Rush (Illinois Democratic Rep.) to introduce H.R. 35, the Emmett Till Antilynching Act on January 3rd, 2019, (The U.S. Government Publishing Office, 2022). It was approved by the House of Representatives on February 28th, 2022, by a vote of 422-3; unanimously passed by Senate on March 7th, 2022, and on March 29, 2022, President Joseph Biden signed it into law making it a federal crime (Jenkins & Peck, 2022; Zaslav, 2022; Shear, 2022; Death Penalty Information Center, 2022). Rooted in a history of discrimination that has plagued the United States for centuries, The Emmitt Till Antilynching Bill is named after a black boy, Emmett Till, who was tortured and murdered in Mississippi in August 1955 at the age of 14 years (Cochrane, 2022; Metress, 2002). This African American teenager from Chicago was accused and tried for provocative actions toward a white woman. Till was acquitted of the crime and murdered in the aftermath of the trial. Interviews with those involved uncovered that no impropriety on the part of Till's actions had ever taken place (McDaniel & Moore, 2022). This incident, coming on the heels of centuries of discrimination and racism which are still present in our society today, was chosen to highlight the importance of this bill at both the individual and societal levels from both a specific moment in history and as a critical lens to view society in the 21st century. After

over a century of failed attempts, the U.S. Congress has unanimously passed a bill that makes lynching a federal hate crime punishable by up to 30 years in prison (Everett, 2022; Granitz, 2022; McDaniel & Moore, 2022).

The Current Socio-Cultural Climate

To say that the socio-political climate of the 21st century has been dynamic would be a gross understatement. In just the past decade the United States has faced political divisiveness, a global pandemic, and consequent restrictions which will forever alter our individual, social, economic, and technological worlds, as well as racial tensions sparking the bringing of inequality to the national limelight. All these cultural changes have been spread across a backdrop of growing economic inequality, job insecurity, global political instability, and shifts in fundamental beliefs about what it means to be human in the 21st century (The University of Alabama at Birmingham (UAB), 2022). One spark, the acquittal of George Zimmerman for the death of Trayvon Martin, led to the 2013 creation of #BlackLivesMatter (#BLM), a “Black-centered political will and movement building project” (Silverstein, 2021)

The declaration of a global pandemic in March of 2020 led to a new normal in which nonessential businesses closed, schools (from elementary to college) went online, social distancing and isolation became standard operating procedure to prevent the spread of COVID-19, and any work that could be done from home was transitioned to remote platforms. The death of George Floyd in police custody in May of 2020 led to a series of protests across the globe and the #BLM movement was a flag for those seeking to address racial inequalities (Silverstein, 2021). This apex in time fanned the spark of addressing racial injustice at the individual and societal levels and forever changed the dynamic of how our nation approaches and reacts to racial inequality. Furthermore, the social and economic changes which occurred in the opening months of the said year allowed the latitude for individuals seeking to engage in events directed toward social change to participate in events locally, nationally, and globally.

The Current Political Climate

116th United States Congress

The 116th United States Congress convened on Jan 3, 2019, and ended on January 3, 2021. The 2018 mid-term elections resulted in the Democrat Party winning a majority in the House of Representatives and the Republican Party increasing their majority in the Senate. Donald Trump was the Republican President, with Republican Vice President Michael Pence serving as the Senate President. Republican Mitch McConnell was the Senate majority leader, and Democrat Nancy Pelosi served as the speaker of the House (The U.S. House of Representatives, n.d.).

Of the 16,601 pieces of legislation introduced by the 116th Congress, 746 received a vote. One bill that did not receive a vote was House Resolution 8561, a bill to acknowledge the crime of lynching, and for other purposes, which was introduced by Justin Amash, a Libertarian Representative from Michigan's 3rd congressional district (The U.S. House of Representatives, n.d.; The Library of Congress, 2020).

117th United States Congress

The 117th United States Congress convened on Jan 3, 2021, and will end on January 3, 2023. The 2020 elections resulted in the Democrat Party retaining a majority in the House of

Representatives and sharing an even split with the Republican Party in the Senate (50 Democrats, 48 Republicans, and two Independents who caucus with the Democrats). Joe Biden is the Democrat President, with Democratic Vice President Kamala Harris serving as the Senate President (after January 21, 2021). Democrat Chuck Schumer is the Senate majority leader, and Democrat Nancy Pelosi serves as the speaker of the House (The United States Senate, 2022)

Of the 15,578 pieces of legislation introduced by the 117th Congress to date, 599 have received a vote. On Jan 4, 2021, Bobby Rush, a Democrat Representative from Illinois' 1st congressional district, introduced HR55, the Emmett Till Antilynching Act. On Dec 8, 2021, a committee reported the bill to the full chamber for consideration. On Feb 25, 2022, the House Committee on the Judiciary reported on the bill, addressing the bill's intentions, and providing background information. The bill passed a House vote on Feb 28, 2022, with a 99% majority. No Democrats and only 3 Republicans voted against the bill, with a total of 8 members comprised of both parties not voting. On Mar 7, 2022, the bill passed the Senate by unanimous consent, meaning no record of the individual vote was made and was referred to the President. The bill was then signed into law by President Joe Biden on Mar 29, 2022, as Pub.L. 117-107 (GovTrack.us, 2022, The Library of Congress, 2022).

The Emmitt Till Anti-Lynching Act

In January 2019, Rep. Bobby (Democratic Rep. From Illinois) introduced an earlier version of The Emmitt Till Anti-Lynching Act which although passed by the House by 410-4 votes on February 26, 2020, did not pass the Senate. He introduced a later version of this bill in January 2021, and it was successfully approved by the House by 422-3 votes (eight members did not vote) on March 7th, 2022, and passed Senate unanimously. The Emmitt Till Anti-Lynching Act was historically signed into law by President Joseph Biden on March 29th, 2022, making lynching a federal hate crime punishable by 30 years in prison and fines (Williams, 2022). In the exact wordings of the Emmett Till Antilynching Act by the Library of Congress (2022), "the bill imposes criminal penalties—a fine, a prison term of up to 30 years, or both—on an individual who conspires to commit a hate crime offense that results in death or serious bodily injury or that includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill."

Gap in Literature / Purpose / Contribution of this Study

Despite the widespread public and media attention that the Emmett Till Antilynching Act has received since its historical enforcement into law as a federal crime by both the U.S. Congress and President, very few academic journal publications have emerged on the subject. Thus, the purpose of this article is to analyze the policy process leading to the historic signing of the Emmett Till Antilynching Act (anti-lynching legislation) from Kingdon's Multiple Streams Theory Perspective. This will add to the limited scholarly publications on the subject matter and provide a public policy theoretical framework for a better understanding of the policy process leading to the Emmett Till Antilynching Act by researchers, undergraduate students, and graduate students, especially Public Policy and Criminal Justice students.

THEORETICAL FRAMEWORK OF THE STUDY

This review is based on Kingdon's Multiple Streams or Three Stream Policy Window Model, which is a modification of Cohen, March, and Olsen's garbage can model. Although several researchers have pointed out weaknesses in this model, John Kingdon's model remains one of

the most used models for comprehending policy processes (Rawat & Morris, 2016). This theory suggests three significant processes called streams that are vital in policy formulation: problem stream, policy stream, and politics stream. (1) the problem stream is simple societal problems that need attention; (2) the policy stream refers to the several policy propositions or proposed solutions from policymakers, experts, or lobby groups to solve a specific societal problem; and (3) the politics stream pertains to factors like changes in public view, legislative turnover, and government changes (Howlett et al., 2014; Mbah 2021a; Mbah 2021b). Therefore, for an issue to pass on as legislation, (1) it must be determined as a significant societal problem (problem stream) to move up into the government's agenda as a matter of urgency; (2) several viable solutions must be proposed by policymakers (policy stream); and (3) if the politics is played strategically, one of these proposed solutions could successfully pass on as legislation (politics stream) (Mbah, 2021b).

When the three independent streams merge, then a 'policy window' opens and the 'time is ripe for legislation to pass' (Cammisa & Manuel, 2014, p.119; Cammisa, 2018; Mbah, 2021a). However, a policy window could open for a limited period but does not guarantee that a policy will pass on as legislation and when a missed policy window closes, it could take several years before it opens again (Mbah, 2021b).

THEORETICAL APPLICATION

Problem Stream

Connecting Kingdon's Multiple Streams theory to the Emmett Till Antilynching Act, it is evident that lynching has been a societal problem (problem stream) that had moved its way up the ladder of government's agenda. From our background history section, it is evident that lynching has been a long-standing societal problem since the aftermath of Reconstruction leading to the creation of various social movements to combat this societal injustice, especially among African Americans. A total of about 4,081 lynchings were recorded in 12 Southern States between 1877 to 1950 as reported by the Equal Justice Initiative. This societal problem laid the foundation for civil rights movements in the USA; from the creation of The National Association for the Advancement of Colored People (NAACP) in 1909 to the most recent BlackLivesMatter (#BLM) in 2013 to put an end to racial prejudice.

Policy Stream

Given the pressures from diverse interest groups and civil rights movements, lynching moved up into the government agenda and witnessed several proposed bills, hence, passing the 'Policy Stream' of Kingdon's theory. For over a century, several anti-lynching bills emerged in the US Congress but met with failure. Examples of such bills include the 1918 Dyer Antilynching Bill by Rep. Leonidas C. Dye of Missouri; the 1934 Costigan-Wagner Bill by Sen. Edward P. Costigan of Colorado and Sen. Robert F. Wagner of New York; 2018 Justice for Victims of Lynching Act by Senators Kamala Harris, Cory Booker, and Tom Scott and several others which all failed.

Politics Stream

Overall, about 200 bills had been proposed over the last century but had all failed to pass on as legislation due to the unsuitable political climate (politics stream). It took several failed attempts and presidencies for the policy window to reopen and because the politics stream was strategically managed, the new Emmett Till Antilynching Act was able to pass through Congress and was finally signed by President Joseph Biden after a century. The White House (2022)

reported “on Tuesday, March 29, 2022, the President signed into law: H.R. 55, the ‘Emmett Till Antilynching Act,’ which makes lynching a federal hate crime.”

Senator Collins (2022) said, “After decades of failed attempts to outlaw lynching at the federal level, Congress has finally succeeded in passing the *Emmett Till Anti-Lynching Act*. This long overdue legislation affirms the United States’ commitment to combatting lawlessness, bigotry, and violence. I am pleased that President Biden has signed this bill into law. We must commit ourselves to a future of greater understanding, reconciliation, and justice.” At the signing ceremony, tributes were paid to several activities that had relentlessly fought for lynching to pass into law as a federal crime like Ida B. Wells-Barnett, a U.S. investigative journalist and one of the founders of NAACP. During the ceremony, Da Wells’ great-granddaughter, Michelle Duster recounted that Wells first visited the White House in 1898 during President William McKinley’s reign to urge him to pass a federal antilynching law. She further said, “since my great-grandmother’s visit to the White House 124 years ago, there have been over 200 attempts to get legislation enacted...But we finally stand here today, generations later, to witness this historic moment” (Edelman, 2022).

CONCLUSION AND AVENUES FOR FUTURE RESEARCH

For a bill to become law, it must be approved by the House and passed by the Senate in identical form, and be signed by the President. This review paper uses the Three Stream Policy Window Model to trace and understand the anti-lynching policy process leading to the historical signing of the first anti-lynching bill after over a century of almost 200 failed attempts. With a record of over 4,400 Blacks dying by lynching between 1877 and 1950, it is no doubt that lynching qualifies as a policy problem based on Kingdon’s Multiple Streams theory. This societal policy problem moved onto the government agenda as Rep. George Henry White from North Carolina and the only Black member of Congress at the time introduced the first bill in 1900. Even though this problem was first considered by Congress over 120 years ago, it had failed to pass any of the introduced anti-lynching legislation almost 200 times (Superville, 2022), hence, passing Kingdon’s policy stream but failing his politics stream until March 2022. This supports Kingdon’s Multiple Streams theory which postulates that a societal policy problem can pass the problem stream and the policy stream but if the political atmosphere is not suitable, it will not pass the politics stream and it might take several years before an avenue opens again for such legislation to eventually pass on to law. This is the case with the anti-lynching legislation. After failing almost 200 times for over a century, it was in March 2022 that one of the anti-lynching bills finally was approved by the House, passed by the Senate, and signed into law by the President. Although this review establishes a proper detailed analysis of the anti-lynching bill process, a significant limitation to this review is the fact that we could not find a detailed list of all the 200 failed anti-lynching bills for a deeper evaluation of why they failed. We however propose that future research should consider finding this detailed list of all the 200 failed anti-lynching bills for an in-depth evaluation of why they failed. This could be a significant doctoral dissertation topic to fill the gap existing in this field and help future bills like the student loan forgiveness bills.

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