

CHAPTER II

ORIGIN OF THE TERM LYNCH-LAW

MANY and various explanations of the origin of the term Lynch's law, or lynch-law, have been offered. Some of these explanations are evidently nothing more than the offspring of minds fertile in resources; others have the support of tradition and are entitled to consideration. Not infrequently confusion and apparent contradiction have resulted from the failure to distinguish clearly between the practice itself and the name by which it has been known. To follow back through history the successive outbreaks of such practices is not to discover the origin of "lynch-law," the term which has now become so firmly established in the English language. The origin is to be found at that time when these practices first came to be known by the name Lynch's law or lynch-law.

According to one account, given more or less indorsement in the encyclopedias, lynch-law owes its name to James Fitzstephen Lynch, mayor and warden of Galway, Ireland. He was the famous "Warden of Galway" who tried, condemned, and executed his own son in the year 1493. The story is told with varying details. One tradition has it that the mayor sent his son to Spain to purchase a cargo of wine. The young man squandered the money intrusted to him, but succeeded in obtaining a cargo on credit from a Spanish friend of his father. This

gentleman's nephew accompanied him on the return voyage to Ireland where the money was to be paid. Young Lynch, to conceal his misuse of the money, caused the Spaniard to be thrown overboard and returned home in triumph with his cargo of wine. But a sailor, on his death-bed, revealed to the mayor of Galway the crime which his son had committed. The young man was tried before his father, convicted and sentenced to be hanged. Another tradition states that the son of the Spanish friend of his father was visiting him at his home in Ireland. This son was fast supplanting him in the affections of a Galway lady to whom he was engaged. One night, in a fit of jealous passion, he stabbed the Spaniard to the heart and threw his body into the sea. The crime was quickly discovered, and on being brought before his father for trial he was condemned to die as a sacrifice to public justice. Public sympathy, however, turned in favor of the young man, and every effort was made to effect his pardon. The father "undauntedly declared that the law should take its course." On the way to the place of execution a mob appeared, led by members of the mother's family, demanding mercy. The father, finding that he could not "accomplish the ends of justice at the accustomed place and by the usual hands," conducted his son up a winding stairway to a window overlooking the public street. "Here he secured the end of a rope, which had been previously fixed around the neck of his son, to an iron staple which projected from the wall, and, after taking from him a last embrace, he launched him into eternity." The people, "overawed by the magnanimous act, retired slowly and peaceably to their

several dwellings." In the council books of Galway there is said to be a minute that "James Lynch, mayor of Galway, hanged his own son out of the window for defrauding and killing strangers, without martial or common law, to show a good example to posterity." In commemoration of this "Roman act of justice," a stone sculptured with a skull and crossbones was erected in Lombard Street, Galway, in 1524, and in 1854 was re-erected on the wall of St. Nicholas Churchyard.¹

This "Galway story" may be dismissed with but little consideration. Howell Colton Featherston of the Lynchburg (Va.) Bar has clearly shown that this act of the mayor of Galway was entirely without any definition ever attached to lynch-law and that there was no reason for bestowing upon it any name, and more particularly his name. Mayor Lynch was the legally constituted authority presiding over the tribunal in which his son had had, presumably, a fair and regular trial. He merely persisted in executing the laws in the face of popular opposition and tumult. Lynch-law has always been considered as operating wholly without, or in opposition to, established laws of government.²

Equally fanciful and fictitious but less romantic is the "pirate story" of the origin of the name lynch-law. It is said that about 1687 one Lynch was sent to this country from England under a commission to suppress piracy. He is credited with having faithfully executed, without

¹ See Hardiman's History of Galway (Dublin, 1820), p. 70. Also, *Spectator* (London), April 13, 1889 (62: 511). The story can be traced back as far as the year 1674. See Miscellany of the Irish Archæological Society (1846), I, 44-80. (M.)

² The *Green Bag*, March, 1900 (12: 150).

the formality of a trial, every pirate that he captured. It is presumed that owing to the difficulty of adhering to the usual forms of law in the colonies, this Judge Lynch was empowered to proceed summarily against pirates and thus gave rise to the term.¹ But whatever the facts may be about the methods employed by this man Lynch to suppress piracy,² there is no evidence to show that they were ever known as Lynch's law or had any connection whatever with lynch-law.

On its etymological side the word lynch has been traced to an old Anglo-Saxon verb *linch*, meaning to beat severely with a pliable instrument, to chastise or to maltreat, which is said to have survived in this cognate meaning in America, as have many other words and expressions long obsolete in Great Britain.³ For this derivation, however, there seems to be no authority. There is no evidence that such a verb "survived" in America; nor is there any evidence that such an Anglo-Saxon verb ever existed.⁴ According to Skeat the name Lynch is from

¹ See "lynch law," *The American Cyclopædia* (edition of 1875). See also, *Notes & Queries*, 2d Series, Oct. 23, 1858 (6: 338), where reference is made to *London Gazette*, 6-9 February, 1687-8, No. 2319.

² That he succeeded in making himself thoroughly unpopular with every one is shown in the *Calendars of State Papers, Colonial Series, America & West Indies, 1685-1688, and 1688-1692.* (M.)

³ See "lynch law," *Encyclopædia Britannica* (9th edition); also, under "to lynch," *Bartlett's Dictionary of Americanisms* (4th edition, 1877).

C. A. Bristed, in an essay on *The English Language in America* (*Cambridge Essays, 1855, p. 60*) says: "*Linch*, in several of the northern-county dialects, means to beat, or maltreat. Lynch Law, then, would be simply equivalent to *club-law*; and the change of a letter may be easily accounted for by the fact that the name of Lynch is as common in some parts of America as in Ireland."

⁴ No such verb as *linch* or *linge* is found in *Bosworth's Dictionary of the Anglo-Saxon Language*, or in *Stratmann's Middle-English Dictionary*. *Murray's Oxford Dictionary* (1903) gives the verb *linch* as a variant of *linge*, a word "of obscure origin."

hinc, an Anglo-Saxon word meaning a ridge of land.¹ Furthermore, as was noted in the preceding chapter, when the word lynch first came into general use, it was stamped as of American origin.² No English lexicographer recognized the terms lynch or lynch-law until 1848, and in 1849 Craig gave the verb "lynch" as meaning "to punish summarily without judicial investigation, as by a mob.—An American word."³ The fact that Wright's English Dialect Dictionary (1902) does not contain the word lynch, and the further fact that Murray's Oxford Dictionary (1903) states that the term was originally used in the United States, may be regarded as conclusive evidence that the origin of "lynch-law" is not to be sought in England.

There is a tradition in the Drake family of South Carolina which ascribes the origin of the term to the precipitate hanging, to prevent a rescue, of a Tory named Major Beard, on Lynch Creek in Franklin County, North Carolina. The following account of it is given by John H. Wheeler, to whom it was communicated by Hon. B. F. Moore, who received it from the Drake family:

"The origin of lynchlaws: During the revolution there was a noted tory . . . in that portion formerly called Bute County, now embraced within the counties of Franklin and Nash, called Major Beard. Major John H. Drake lived near Hilliardston; he and his family were decided whigs. He had a

¹ See "lynch," Skeat's Etymological Dictionary.

² Although Bristed ingeniously traces lynch-law back to the verb *linch*, he remarks, in passing, that "if there ever was a phrase deemed particularly Trans-atlantic in origin, it is that of Lynch Law for summary and informal justice."

³ See p. 10, note 1.

daughter, beautiful and accomplished, by whose charms Beard was captivated; and the tradition runs, that the handsome figure and commanding air of Beard had its effect on the young lady, notwithstanding the difference in politics between him and her father. On one occasion, Beard encamped for the night near a mill on Swift Creek. This became known to Major Drake and other whigs, and they organized a force . . . and captured him. . . . After some consultation it was resolved to take him as a prisoner to headquarters of Colonel Seawell, commanding in camp at a ford on Lynch Creek, in Franklin County, about twenty miles off. He was tied on his horse and carried under guard. After reaching camp, it was determined to organize a court-martial, and try him for his life. But before proceeding to trial, a report came that a strong body of Tories were in pursuit to rescue him; this created a panic, for they knew his popularity and power, so they hung him. The reported pursuit proved a false alarm, and it being suggested that as the sentence had been inflicted before the judgment of the court had been pronounced, therefore it was illegal. The body was then taken down, the court reorganized, he was tried, condemned and re-hung by the neck until he was dead.

“The tree on which he was hung stood not far from Rocky Ford, on Lynch’s Creek; and it became a saying in Franklin, when a person committed any offence of magnitude, that ‘he ought to be taken to Lynch Creek’; and so the word ‘Lynch law’ became a fixture in the English language.”¹

In passing, the resemblance of this affair to Lydford law rather than lynch-law is to be noted, and also the fact that Wheeler, in his “History of North Carolina,” published thirty-three years earlier, gives an account of the hanging of “Captain Beard about 1778,” but says

¹ “Reminiscences and Memoirs of North Carolina” (1884), p. 172.

nothing about its being in any way connected with the origin of the term lynch-law. Indeed, according to this earlier account there was nothing irregular in the proceeding; he was hung in accordance with the ordinary rules of war. Beard and one of his band, named Porch, who had been captured with him, "were tried by a court-martial and both were forthwith hung. Such was the end of Captain Beard."¹ The two accounts vary somewhat, but there is no room for doubt as to their having reference to the same occurrence. In short, the "tradition" in the Drake family must have arisen between 1851 and 1884. There is no evidence, further than this statement found in Wheeler's book, that "Lynch law" became a fixture in the English language because of a saying common in Franklin County, North Carolina, that any one who committed a grave offense "ought to be taken to Lynch Creek."

Some evidence has recently been brought forward indicating that lynch-law may have derived its name from Lynch's Creek, South Carolina.² Some extracts from Boston newspapers in the year 1768, dated Charlestown, South Carolina, show the existence of "Regulators" at that time, and mention is made of a meeting that they were to have on Lynch's Creek "where it was expected 1,200 would be assembled." It is also evident that one of their methods of inflicting punishment was by whipping. One extract states that "the people called regulators have lately severely chastised one Lum, who is come to town; but we have not yet learnt the real cause

¹ "History of North Carolina" (1851), p. 274.

² See article by Albert Matthews in the *Nation*, Dec. 4, 1902 (75: 439).

of this severity to him." The assertion has been made, therefore, that lynch-law derived its name from Lynch's Creek, South Carolina, because at that place the practice of lynching began.

The practice which came to be known as "regulating" had its beginning earlier than 1768, however, and this beginning was not in the neighborhood of Lynch's Creek. As early as 1766 it had begun in North Carolina and had extended from Granville County into Orange and Anson counties. Up to April, 1768, those who had taken part in these proceedings in North Carolina were designated by the appellation of the "Mob," and seem to have adopted it themselves. But on April 4, 1768, at a general meeting, they dropped this name and formally adopted the name of "Regulators."¹ When this practice of "regulating" was started in South Carolina it was instituted by Thomas Woodward, Joseph Kirkland, and Barnaby Pope,² who lived in the region between the Catawba and the Saluda Rivers, and not on the Pedee or Lynch's Creek. Thus, a name — that of "Regulation," not "Lynch Law," — had been given this practice before it reached the Pedee section of the Province. If the conduct of the Regulators in South Carolina was to give the name to the practice of illegal punishment, it would have been called, not "Lynch Law," but "Broad River Justice" or "Savannah Law."³

¹ Alexander Gregg: "History of the Old Cheraws" (1867), p. 129. F. X. Martin: "History of North Carolina" (1829), II, 228, 233. Hugh Williamson: "History of North Carolina" (1812), II, 128, 131.

² J. B. O'Neill: "Annals of Newberry" (1859), p. 76. It is not stated by O'Neill at what time these gentlemen instituted this practice in South Carolina. From the evidence that Gregg gives, it apparently took place in the summer of 1767. See the following chapter, p. 53.

³ See article by Edward McCrady, in the *Nation*, Jan. 15, 1903 (76: 52). This article as originally written was published in full in the

No evidence has yet been found which shows any connection between "Lynch Law" and "Regulation" at this time.¹ Alexander Gregg, writing of the Regulator movement in the Carolinas, makes the statement: "They called themselves 'Regulators'; and thus 'Lynch law' had its origin at this period."² Dr. R. W. Gibbes had written eight years earlier than Gregg: "The Regulation, an association of respectable planters, took the matter in hand, and enforced order by a system of Lynch law."³ Neither of these writers, however, implies that the Regulation in South Carolina had anything to do with the origin of the term lynch-law. Joseph Johnson, in a book

Sunday News, Charleston, S. C., Jan. 11, 1903. In a letter published in the *Nation*, March 19, 1903 (76: 225), Mr. George S. Wills cites an example of the use of the word lynch in connection with this creek, which is found in a journal kept by the Rev. William H. Wills, a Methodist minister of North Carolina, who traveled in his sulky from Tarboro, North Carolina, to Alabama, in the early summer of 1837. After describing a narrow escape from drowning in an attempt to cross Lynch's Creek while it was swollen, the Rev. Mr. Wills writes in his journal: "Probably I shall never forget Lynch's Creek; for it had well nigh Lynch'd me." — See "Publications of the Southern Historical Association," November, 1902 (6:479). This example, however, shows no original connection between the term lynch-law and Lynch's Creek, South Carolina. As will appear in the following pages, by the year 1837 the word lynch had come to be widely used to indicate summary punishment. Evidently the writer in this case merely noticed the similarity between the name of the creek and the word which had recently come into use, and so made this play upon words, using the word lynch in a somewhat figurative sense.

¹ See article by Albert Matthews in the *Nation*, Jan. 29, 1903 (76: 91). In a monograph by William A. Schaper, on "Sectionalism and Representation in South Carolina," the statement is made, in reference to the Regulators of 1768, that "the settlers agreed to rely on lynch law, which received its name at this time." — Annual Report of the American Historical Association (1900), I, 337. The author of this statement that lynch-law received its name at this time was, however, unable to cite facts to support it. (M.)

² "History of the Old Cheraws" (1867), p. 128.

³ J. B. O'Neall: "Biographical Sketches of the Bench and Bar of South Carolina" (1859), I, p. x.

published in 1851, gave a brief account of the Regulators and Schofilites. He says, "the most respectable inhabitants united to inflict summary justice on the depredators and called themselves Regulators."¹ In this connection he does not refer to lynch-law at all. In another connection he writes: "This process, in what is now called 'lynch law,' was then designated 'regulating,' and the associates for this purpose were called 'Regulators.'"² No reference to lynch-law is to be found in Ramsay's History of the Revolution in South Carolina which was published in 1785. Both of the accounts given by Wheeler of the occurrence at Lynch Creek, North Carolina, referred to above, imply that the term lynch-law was not in use any time previous to the Revolutionary War. As will appear later, the terms regulation and lynch-law are not found together until a much later date, and then they are not used in connection with events in the Carolinas.

Still another "Origin of Lynch's law" is given in Niles' Register for August 8, 1835.³ An anecdote is related of an occurrence "in Washington County, Pa., many years ago." A poaching vagabond, long under suspicion, was finally detected and told to leave the neighborhood in twenty-four hours on penalty of prosecution. The poacher refused to comply and a party of five or six of his neighbors went to his home and "proceeded to try him in due form, choosing one of their number, a farmer named Lynch, to be judge." The judge "decided that the poacher should be tied up and receive three hundred lashes, 'well laid on,' and then be given twenty-four hours

¹ "Traditions and Reminiscences," pp. 44-45.

² *Ibid.*, p. 544.

³ Vol. 48, p. 402.

to leave the place under penalty of receiving three hundred more if found after that time. The first part of the sentence was inflicted on the spot, with such *good intent* as to render its repetition unnecessary. The culprit made off as fast as his lacerated limbs would permit him."

Nothing further is known of this farmer named Lynch, who acted as judge at this impromptu trial, and there is no reason for regarding this incident as in any way connected with the origin of lynch-law. It is merely an instance of recourse to summary procedure against an unpopular individual. It may or may not have been known at the time as punishment by Lynch's law.

We now come to the explanation of the origin of the term which has been most frequently given and which was for years accepted without question. It is to the effect that lynch-law originally had reference to the kind of law administered by Charles Lynch, in Virginia, during the latter part of the Revolutionary War.

It is needless to recount here all the variations in the stories connecting the origin of lynch-law with the Lynch family in Virginia.¹ In certain accounts Charles Lynch has been confused with his older brother, John Lynch, who remained a Quaker all his life and was the founder of Lynchburg, Virginia. Some accounts refer vaguely to a Virginia farmer, or planter, by the name of

¹ One such story will be found in the following chapter on p. 73. For an account of the Lynch family in Virginia, see Mrs. Julia Mayo Cabell: "Sketches and Recollections of Lynchburg" (1858), pp. 9-23. The chief available sources of information for the facts and events pertaining to the life of Charles Lynch are an article by Thomas Walker Page in the *Atlantic Monthly*, December, 1901 (88: 731), and one by Howell Colton Featherston in the *Green Bag*, March, 1900 (12: 150). Both of these articles have been largely drawn upon in the following pages.

Lynch, whose vigorous methods of punishing wrongdoers gave rise to the term lynch-law.¹ Haydn's Dictionary of Dates (1860) apparently is responsible for the fiction that this mode of administering justice began about the end of the seventeenth century and derives its name from John Lynch, a farmer, who exercised it upon the fugitive slaves and criminals dwelling in the Dismal Swamp, North Carolina, when they committed outrages upon persons and property which the law could not promptly repress. This story is repeated in the editions of 1873 and 1885, and is also given in Harpers' Popular Cyclopædia of the History of the United States,² and seems to have become generally accepted in France.³ It is, however, wholly erroneous.

The movement for independence had from the first a great many opponents in the mountainous sections of Virginia, and there was a considerable number of Tories in Bedford County, where Charles Lynch lived.⁴ The un-

¹ A writer ("Claverhouse") in the *New York Evening Post* for June 2, 1864, says: "In America, the term 'Lynch law' was first used in Piedmont, on the western frontier of Virginia. There was no court within the district, and all controversies were referred to the arbitrament of prominent citizens. Among these was a man by the name of Lynch, whose decisions were so impartial that he was known as Judge Lynch, and the system was called 'Lynch law,' and adopted in our pioneer settlements as an inexpensive and speedy method of obtaining justice."

² Edited by Benson J. Lossing, published in 1882.

³ See article by Arthur Desjardins, *Revue des Deux Mondes*, May, 1891.

⁴ Charles Lynch was born in 1736, at Chestnut Hill, his father's estate, upon a part of which the city of Lynchburg now stands. His father was a "redemptioner" who came to Virginia from Ireland about 1725. The young adventurer subsequently married the daughter of the planter to whom the captain of the ship that brought him over had sold him, took up a large tract of land lying between the James and the Staunton rivers, and became a tobacco planter on a large scale. At his death the home on the James fell to his eldest son, John, and Charles took the

settled condition of affairs also led many desperadoes to resort to this section of Virginia. Both Tories and des-

part of the family lands that lay nearer the frontier. The mother, Sarah Lynch, then a widow, had joined the sect of the Quakers at the Cedar Creek meeting on April 16, 1750, and it is in the records of this congregation of Quakers that the following item appears: "14 of Dec., 1754. Charles Lynch and Anne Terrill published for the first Time their Intentions of Marriage." The young couple established their home on the Staunton, in what is now the southwestern part of Campbell County.

For years Charles followed his mother's teachings and was an active member of the Society of Friends; for some time he was "Clerk of the monthly meetings." Later, however, the exigencies of the times caused him to forego some of his scruples and accept public office. In 1767 he became "unsatisfactory" to the peace-loving Quakers and he was "dis-owned for taking solemn oaths, contrary to the order and discipline of Friends." It was in this year, 1767, that he was elected to the Virginia House of Burgesses, where he held a seat till the colony became an independent State. He was prominent in the earliest organization of Bedford County, formed from Lunenburg County in 1753 (Henry Howe: "Historical Collections of Virginia" (1845), p. 188; Hening's Statutes at Large, VI, 381), and was a member of the Virginia convention of 1776, which, by sending instructions to the delegates from Virginia in the Continental Congress, exercised a decisive influence on the movement for independence. He had been made a justice of the peace under a commission from Governor Dunmore in 1774, and when the county court was reorganized, according to the ordinance of the Convention, passed on the 3d of July, 1776, he retained the position.

At the beginning of the Revolutionary War his Quaker principles seemed still to influence his actions to an extent sufficient to keep him out of active military service. His loyalty was well known, however. Mr. Page says: "He did not enlist in the army, partly because of his Quaker principles, but chiefly because his presence was imperatively necessary at home. He had to rouse the spirit of his constituents to support the action he had advocated in the convention. He had to raise and equip troops for the army. He had, as it were, to mobilize the forces of his country, and attend to all the duties of a commissary department. In addition, he had to make some provision in the event of an attack from hostile Indians." In 1778 the court of Bedford recommended him to the Governor for the office of Colonel of Militia in that county. He accepted the commission and organized a regiment, but the call to the front did not come till two years later when the war was shifted to the south and Lord Cornwallis was sent to co-operate with General Philips and Benedict Arnold in the invasion of Virginia.

The records of the court of Bedford County, the minutes of various Quaker meetings, the journals of the Virginia House of Burgesses and of the first Constitutional Convention, taken together with family documents and traditions, show Charles Lynch to have been a thoroughly capable and highly respected man, a leader among the men in his com-

peradoes harassed the Continentals and plundered their property with impunity.¹ The prices paid by both

munity. Before the close of the war he made a record for himself as an officer in the army. At the battle of Guilford Court House, March 15, 1781, a battalion of riflemen under his command behaved with much gallantry and aided in bringing considerable credit to the Virginia militia. [Henry Howe: "Historical Collections of Virginia" (1845), p. 212. W. G. Simms: "Life of Nathanael Greene" (1859), p. 186. Henry Lee: "Memoirs of the War" (1812), I, 341, 345. William Johnson: "Sketches of Life and Correspondence of Nathanael Greene" (1822), II, 3. Banastre Tarleton: "History of the Campaigns of 1780 and 1781" (1787), p. 272. C. Stedman: "History of the American War" (1794), II, 338.]

He lived for a number of years after peace had been declared with England, and voted for the new constitution. In the family burying-ground on his homestead plantation a tombstone bears the simple inscription:

"In memory of Colonel Charles Lynch, a zealous and active patriot. Died, October 29, 1796; aged 60 years."

Many anecdotes are still in circulation among the old inhabitants of his neighborhood illustrative of his habits and character. The chorus of a once popular patriotic song runs as follows:

"Hurrah for Colonel Lynch,
Captain Bob and Callaway!
They never turned a Tory loose
Until he shouted 'Liberty!'"

Another version of this refrain runs this way:

"Hurrah for Captain Bob,
Colonels Lynch and Callaway!
Who never let a Tory off
Until he cried out 'Liberty!'"

¹ Mr. Page makes no mention of any trouble with desperadoes. Referring to the Tories in Bedford County, he says: "Numerous records of the county courts, taken together with other sources of information, show that here, as in many other western counties, there was a strong and influential party opposed to the struggle for independence. For the most part they were quiet, thrifty men, far different from the ruffians and desperadoes that prejudice has since represented them to be." That there were cliques of depredators and that much lawlessness prevailed in Virginia and the Carolinas at about this time is undoubtedly true, however. William Wirt, in his "Sketches of the Life and Character of Patrick Henry" (p. 217), cites the case of Josiah Philips who, at the head of a band of banditti, spread terror in the counties of Norfolk and Princess Anne, and was made an outlaw by an act of the legislature of Virginia, by which act it became lawful for any person to kill him whenever opportunity offered. Lyman C. Draper presents the record of a great deal of lawlessness and depredation in his "King's Mountain and its Heroes." See pp. 241, 331, 332, 336, 340 note, 343 note, 384, 448-449.

armies for horses made horse-stealing a lucrative practice, and the inefficiency of the judiciary made punishment practically out of the question. The county courts were merely examining courts in all such cases, and the single court for the final trial of felonies sat at Williamsburg, more than two hundred miles away. To take the prisoners thither, and the witnesses necessary to convict them, was next to impossible. Frequently the officers in charge of prisoners would be attacked by outlaws and forced to release their men, or be captured by British troops and themselves made prisoners.

It was under these circumstances that Colonel Lynch conferred with some of his neighbors as to what was best to be done. After deliberation they decided to take matters into their own hands, to punish lawlessness of every kind, and so far as possible restore peace and security to their community. For the purpose of attaining these ends they formed an organization with Mr. Lynch at the head. Under his direction suspected persons were arrested and brought to his house, where they were tried by a court composed of himself, as presiding justice, and his three neighbors, William Preston, Robert Adams, Jr., and James Callaway, sitting as associate justices.

The practice of this court was to have the accused brought face to face with his accusers, permit him to hear the testimony against himself, and to allow him to defend himself by calling witnesses in his behalf and by showing mitigating and extenuating circumstances. If acquitted, he was allowed to go, "often with apologies and reparation." If convicted, he was sentenced to receive thirty-

nine lashes on the bare back, and if he did not then shout "Liberty Forever," to be hanged up by the thumbs until he did so. The execution of the sentence took place immediately upon conviction. The condemned was tied to a large walnut tree standing in Mr. Lynch's yard and the stripes inflicted — with such vigor, it is said, that even the stoutest hearted Tory shouted for "Liberty" without necessitating a resort to further punishment.¹

The news of the invasion of Virginia by Cornwallis gave the Bedford Tories strong encouragement and a conspiracy was formed to overthrow the county organization and seize, for the use of Cornwallis on his arrival, the stores that Lynch had collected for Greene's army in North Carolina. The conspirator's plans, however, became known to Colonel Lynch, tradition says through one of their own number, and he had them all arrested. In the case of these conspirators, who were guilty of a treasonable offense, a more serious situation presented itself. Lynch himself was on the point of setting out with his regiment for the east to oppose the British under Benedict Arnold. It was not wise to inflict the usual punishment and then give the conspirators their freedom again; neither could he take them as prisoners along with him on the rapid march that he was forced to make. After careful deliberation, Colonel Lynch, as the presiding justice, sentenced them to terms of imprisonment varying from one to five years. Robert Cowan, who had formerly been a fellow justice on the county bench and who seems to have been

¹ It is to be understood that these statements are based on tradition and not on contemporary evidence.

the ringleader, was sentenced to a year's imprisonment and a fine of £20,000.¹

This court, even though it be considered as still the regular county court, had clearly transcended its powers; the General Court alone had jurisdiction in cases of treason. After the war, therefore, the Tories who had suffered at his hands threatened to prosecute Colonel Lynch and his friends. To avoid lawsuits and as a means of finally settling the affair, Lynch brought the whole matter before the Virginia legislature. After a lengthy debate, which, according to Mr. Page, "aroused the interest of the whole country," the following act was passed in October, 1782:

"An act to indemnify certain persons in suppressing a conspiracy against this state.

I. WHEREAS divers evil-disposed persons in the year one thousand seven hundred and eighty, formed a conspiracy and did actually attempt to levy war against the commonwealth; and it is represented to the present general assembly, that William Preston, Robert Adams, junior, James Callaway, and Charles Lynch, and other faithful citizens, aided by detachments of volunteers from different parts of the state, did, by timely and effectual measures, suppress such conspiracy: And whereas the measures taken for that purpose may not be strictly warranted by law, although justifiable from the imminence of the danger;

II. BE IT THEREFORE ENACTED, That the said William Preston, Robert Adams, junior, James Callaway and Charles Lynch, and all other persons whatsoever, concerned in

¹ Mr. Page remarks that the fine was not so heavy as it seems, for in that year the prices fixed by the court were: rum and brandy per gallon, £40, corn and oats per gallon, £2 8s., dinner at an "ordinary," £4 10s., &c.

suppressing the said conspiracy, or in advising, issuing, or executing any orders, or measures taken for that purpose, stand indemnified and exonerated of and from all pains, penalties, prosecutions, actions, suits, and damages, on account thereof. And that if any indictment, prosecution, action, or suit, shall be laid or brought against them, or any of them, for any act or thing done therein, the defendant, or defendants may plead in bar, or the general issue, and give this act in evidence.”¹

“The proceedings in Bedford, which the legislature thus pronounced to be illegal, but justifiable, were imitated in other parts of the State, and came to be known by the name of Lynch’s Law. In justice to Colonel Lynch, it should be remembered that his action was taken at a time when the State was in the throes of a hostile invasion. The General Court, before which the conspirators should have been tried, was temporarily dispersed. Thomas Jefferson, then the governor of the State, was proving himself peculiarly incompetent to fill the position. The whole executive department was in a state of partial paralysis. It was, therefore, no spirit of insubordination or disregard of the law that induced Lynch to act as he did. There were few men living more inclined than this simple Quaker farmer to render due respect in word and deed to the established authorities.”²

The old walnut tree on which lynch-law is said to have been first administered was still standing, in 1900,³ on

¹ Hening’s Statutes at Large, XI, 134-135.

² Quoted from the article by Mr. Page. No evidence is cited in support of the statement that the proceedings in Bedford were imitated in other parts of the State and came to be known by the name of Lynch’s Law.

³ See article by Mr. Featherston. A drawing of this tree “from a sketch from nature” may be found in the *Green Bag*, December, 1892 (4: 561).

the lawn of the Lynch homestead, two miles from the village of Lynch Station on the Southern Railway. A part of it was dead but the rest was still vigorous and bore its annual crop of nuts. The death penalty, however, was never inflicted under its shadow. Some say that the Quaker proclivities of "Judge Lynch"¹ prevented him from passing sentence of death; others say that it was due to his native sense of humanity. Mr. Page presents some evidence showing that "both custom and sentiment were violently opposed to visiting capital punishment upon the detected Tory conspirators."²

¹ Mr. Featherston states that Charles Lynch was often called "Judge Lynch" by his neighbors. He seems to have been more commonly known as "Colonel Lynch."

² "The infliction of capital punishment was extremely rare. There were only three instances of it, and these for most heinous offenses, between the organization of the county (Bedford) and the Revolution. The first case was on May 24, 1756, when the court assembled 'to hear and determine all Treasons, Petit Treasons, Murders, and other Offenses committed or done by Hampton and Sambo belonging to John Payne of Goochland, Gent.' 'The said Hampton and Sambo were set to the Bar under Custody of Charles Talbot (then sheriff) to whose Custody they were before committed on Suspicion of their being Guilty of the felonious Preparing and Administering Poysonous Medicines to Ann Payne, and being Arraigned of the Premises pleaded Not Guilty and for their Trial put themselves upon the Court. Whereupon divers Witnesses were charged and they heard in their Defence. On Consideration thereof it is the Opinion of the Court that the said Hampton is guilty in the Manner and Form as in the Indictment. Therefore it is considered that the said Hampton be hanged by the Neck till he be dead, and that he be afterwards cut in Quarters, and his Quarters hung up at the Cross Roads. And it is the Opinion of the Court that the said Sambo is guilty of a Misdemeanor. Therefore it is considered that the said Sambo be burnt in the Hand, and that he also receive thirty-one Lashes on his bare Back at the Whipping Post. Memo: That the said Hampton is adjudged at forty-five Pound which is ordered to be certified to the Assembly (that his owner may be remunerated according to law).' That it was a convincing proof of his guilt, and not race prejudice, that led the court to impose this savage punishment is evident from the fact that in the same year a negro was tried for murder, another for poisoning, and a third for arson, and all were cleared." — Quoted from the article by Mr. Page.

In the determination of origins it is frequently impossible to obtain direct evidence bearing on the point in question. In this case there is direct evidence for connecting the name of Charles Lynch with the origin of "lynch-law."¹ In 1817 Judge Spencer Roane wrote in a letter to William Wirt: "In the year 1792 there were many suits on the south side of James River, for inflicting Lynch's law." Mr. Wirt adds, in a note explanatory of the words "Lynch's law," "Thirty-nine lashes, inflicted without trial or law, on mere suspicion of guilt, which could not be regularly proven. This lawless practice, which, sometimes by the order of a magistrate, sometimes without, prevailed extensively in the upper counties on James River, took its name from the gentleman who set the first example of it."² Though Wirt does not mention Charles Lynch by name, he does say that the lawless practice "prevailed extensively in the upper counties on James River," and Charles Lynch was for years closely identified with the interests of Campbell³ and Bedford counties — two of the upper counties on the James River.

¹ This evidence has been presented by the present writer in a communication to the *Nation*. See issue of May 21, 1903 (76: 415).

² William Wirt: "Sketches of the Life and Character of Patrick Henry" (1818), p. 372. Mr. Matthews, in his article in the *Nation*, Dec. 4, 1902 (75: 439), remarks that it is uncertain whether the note was written by Roane or Wirt. In William Wirt Henry's "Life of Patrick Henry," Vol. II, p. 482, the "MS. Letter of Judge Roane to Mr. Wirt" is given, but the note is not included. The note was undoubtedly written by Wirt.

³ An act for dividing the county of Bedford into two distinct counties, the new county to be known by the name of Campbell, was passed by the General Assembly in 1782. — Hening's Statutes at Large, X, 447; Journal of the House of Delegates, Jan. 5, 1782, p. 73. Howe says that Campbell County was formed from Bedford in 1784, and named in honor of General William Campbell, a distinguished officer of the American Revolution. — "Historical Collections of Virginia," p. 210.

Henry Howe, in his "Historical Collections of Virginia," in a section entitled "Lynch Law," says: "At that time (the time of the Revolution), this country (Campbell County and vicinity) was very thinly settled, and infested by a lawless band of tories and desperadoes. The necessity of the case involved desperate measures, and Col. Lynch, then a leading whig, apprehended and had them punished, without any superfluous ceremony. Hence the origin of the term 'Lynch Law.' This practice of Lynching continued years after the war, and was applied to many cases of mere suspicion of guilt, which could not be regularly proven."¹

In a book written a few years later than the above, Howe has the following to say on the same subject: "The Lynch Law, as it is termed, originated in Virginia at the time of the American Revolution, and was first adopted by Colonel Lynch against a lawless band of tories and desperadoes, who infested the country at the base of the Blue Ridge. This plan was afterwards followed in the west, and its operation was salutary in ridding the country of miscreants whom the law was not strong enough to punish. The tribunal of *Squire Birch*, as the person who personated the judge was called, was established under a tree in the woods; the culprit being usually found guilty was tied to a tree and lashed without mercy, and then expelled from the country. In general, *'the regu-*

¹ Published at Charleston, South Carolina, in 1845. See p. 212 for the quotation. See Mrs. Julia Mayo Cabell: "Sketches and Recollections of Lynchburg" (1858), pp. 9-10, for a similar account of the connection of Colonel Charles Lynch with the origin of "the celebrated code called 'Lynch Law.'" This account is taken from the *St. Louis Republican*, but neither the author's name nor the date of its publication is given.

lators' only exercised this law upon the most base and vile characters."¹

This account given by Howe cannot be considered as wholly independent of the influence of Wirt. In his "Historical Collections of Virginia," Howe quotes from Wirt's book in substantiation of his statement that the "practice of Lynching continued years after the war." On the other hand, however, the fact that he repeated his assertions in regard to the origin of "Lynch Law" in emphatic terms in his later book, and therewith described the operation of "Lynch Law" in the west, is strong evidence that he had other sources of information than Wirt's book on the matter.²

An account, entirely independent of any influence from either Wirt or Howe, is found in "Colonel William Martin's Narrative of Frontier Life," prepared about 1842 for Dr. Lyman C. Draper and now in the Draper MS. Collections in the Wisconsin State Historical Society Library. It is as follows:

"In those times there were a great many bad men settled along the frontiers who by their thefts annoyed the country greatly. Insomuch that the people entered into combinations to suppress them and formed companies called regulators. They formed in military style, with officers, etc.

"They also organized a court and appointed some three or four of their aged, discreet men judges to try criminal causes, award punishment, etc. The company would bring up suspected fellows and the court would try them. But they seldom

¹Henry Howe: "The Great West" (Cincinnati, 1852), p. 183.

²The writer is indebted to Mr. Matthews for the suggestion that Howe's allusion to "Squire Birch" points to Judge James Hall's "Letters from the West" as one such source. See Chapter III, v. 81.

extended punishment beyond whipping and driving them from the country, sometimes making them pay for property stolen, when they had the means.

“This method of breaking up combinations of rogues was first set on foot by Col. Charles Lynch, of Bedford county, Va., where I was raised. He and my father were acquainted. (The same man for whom Lynchburg was named.) This plan was started some seventy or eighty years ago.¹

“The measure seemed to be called for from the situation of the country at the time. And it has been practiced more or less in the settling of new countries from that time until within a few years past, since the laws operate with more efficiency. The authorities generally connived at it from the necessity of the case. And perhaps nowhere has it been more common than in Tennessee. Lynch at first punished with thirty-nine stripes, taking, as I suppose, Moses for his model. And this was for a great while called Lynch’s law, meaning all unlawful whipping. Any of the old men now in the South and West can tell the meaning of Lynch’s law.

“Lynch, however, has been improved upon and more severe punishments sometimes inflicted. I have given this feature of Western history from the presumption that you may not have known it.”²

Such is the strongest evidence bearing directly on the point under consideration. It is true that Martin’s

¹ There are two errors here. Lynchburg was not named for him but for his brother, John Lynch, and the plan was started later than “some seventy or eighty years ago.” Mr. Matthews disagrees with the writer in saying that this account is entirely independent of what Wirt had written on the subject. It seems to the writer, however, that these two inaccuracies indicate that Martin was drawing wholly from his own sources of information. He was, apparently, merely writing down what was considered a matter of common knowledge among the older men in that section of the country, many of whom were emigrants from Virginia.

² “Publications of the Southern Historical Association,” November, 1900, (4: 463).

account, as well as Howe's, was not written until more than forty years after the death of Charles Lynch. It is true, also, that many stories have referred to a man by the name of Lynch in Virginia, sometimes specifically mentioning Charles Lynch or Colonel Lynch, at other times naming some other Lynch.¹ But it is likewise true that it is in this way that tradition has been persistent in attributing the origin of lynch-law to a member of the Lynch family in Virginia. Furthermore, since no evidence whatsoever has been found for tracing the beginning of lynch-law to any other member of that family, it may be said that tradition has thus persistently pointed to Colonel Charles Lynch as the first lyncher. Traditions are in general far from trustworthy, but, on the other hand, they usually have *some* basis in fact. In this case Wirt's statement gives, at the very least, a presumption in favor of the tradition, which facts to the contrary only can remove.²

The earliest use of the expression "Lynch's law" that

¹ Charles Augustus Murray, in his "Travels in North America during the years 1834, 1835, and 1836" (2 vol., N. Y., 1839), gives a traditional account of the origin of the term "lynch-law," such a one as might be given around a camp-fire. He also describes the operation of lynch-law at that time in the Mississippi Valley. See Vol II, p. 79. G. W. Featherstonhaugh, in his "Excursion through the Slave States" (N. Y., 1844), gives "An account of the first Judge Lynch, and the state of Legal Practice in his Court," pp. 89-90. He speaks of a certain Judge Lynch in Arkansas and of "a famous Virginia ancestor of his." He says that "this ancestor, the first Judge Lynch, was a miller and a justice of the peace in the back woods," and then gives a traditional account of his methods of inflicting punishment. See also David Schenck: "North Carolina, 1780-81" (1889), pp. 309-310. L. P. Summers: "History of Southwest Virginia and Washington County" (1903), p. 243.

² Mr. Matthews holds a somewhat different view. See article, "The Term Lynch Law," *Modern Philology*, Vol. II, No. 2, October, 1904. This article should be consulted by any one desiring to investigate this matter further.

is known at the present time is this one found in Wirt's book which was published in 1818. Judge Roane wrote that there were many suits in the year 1792 for inflicting Lynch's law. From his statement it does not follow that the term Lynch's law was in use in the year 1792. It does follow, however, that the term was at least a localism in Virginia in the year 1817.

Other terms were also in use for summary and illegal punishment in the period 1780-1830. The following appeared in the Salem Gazette of October 2, 1812: "People who clamored violently against Mr. Adams' 'gag law' in '99, see nothing to disapprove in the 'club law' enacted at Baltimore, as a substitute for it. — *Messenger*." ¹

In the year 1819 two passages entitled "Summary justice" appeared in Niles' Register. They read as follows: "*Summary justice*. — A tin pedlar at Easton, Pa. was discovered to have two negro children in his cart. On examination, one of the little sufferers was found to have been crammed in such a manner, that his ear was rubbed off! The people indignantly rose and cut off the fellow's ear. I am no advocate for the violation of the laws, but from my heart I can't feel sorry for him. — *Village Recorder*." ² "*Summary justice*. After a late extensive fire which happened at Charleston, a fellow was found secreting some goods that had been stolen during the calamity. The alternative was offered to him, whether he would be prosecuted at law, or suffer punishment on

¹ In the *Salem Gazette*, July 17, 1812, p. 3, the rise and domination of mobs in a community was characterized as "Mob Law." (M.)

² Jan. 9, 1819 (15: 384). (M.)

the spot; he chose the latter, was tied to a tree, received fifty lashes well laid on, and got off *clear*, having restored the stolen goods.”¹

In the year 1822 Niles' Register contained the following: “*Riot*. A parcel of Irish laborers employed in the navy yard at Charlestown, lately attempted to rescue some property of one of their fellows out of the hands of the sheriff. The affray was a severe one — but ‘club law’ did not prevail. Captain Hull exposed himself considerably to quell the riot.”²

Writing under the date of November 29, 1819, W. Faux describes an instance of the use of summary methods against an unpopular individual in Princeton, Indiana, and says: “The people of the place deputed four persons to inform him, that unless he quitted the town and the state immediately, he should receive Lynch's law, that is, whipping in the woods.”³ Under the date of December 16, 1819, referring to “the Rowdies of Kentucky,” the same author writes: “These regulators are self-appointed ministers of justice, to punish or destroy those whom the law cannot touch.”⁴

On July 17, 1824, Niles' Register published the information that several murders had been committed in Kentucky “by persons who called themselves ‘regulators.’”⁵

W. N. Blane published in London in 1824 an account of his travels in America and described “the practice of *Regulating*” that then existed in parts of Kentucky,

¹ July 24, 1819 (16: 368). (M.)

² June 1, 1822 (22: 224). (M.)

³ “Memorable Days in America” (1823), p. 304.

⁴ *Ibid.*, p. 318.

⁵ Vol. 26, p. 326.

Indiana, and Illinois. He tells how the bands of Regulators were organized and their methods of inflicting punishment, but does not use the term lynch or lynch-law.¹

Judge James Hall, in his "Letters from the West," published in 1828, uses the following words: "No commentator has taken any notice of *Lynch's Law*, which was once the *lex loci* of the frontier. The citizens formed themselves into a '*regulating company*.' Sometimes the sufferers resorted to courts of justice for remuneration, and there have been instances of heavy damages being recovered of the regulators."²

It thus appears that summary and illegal methods of punishing offenders were known under various names between 1780 and 1830. The term Lynch's law was not exclusively applied to such practices. The evidence obtainable at present, therefore, indicates that at some time between 1780 and 1817 the term Lynch's law became a localism in Virginia in the region of the James River. By the year 1819 it had spread as far west as Indiana, and by 1828 it had become still more widely used but had not superseded all other terms for the popular administration of justice.

To the question why or how Lynch's name came to be attached to this practice, there is at present no conclusive answer. It may be said that Colonel Charles Lynch was a prominent man in his community, and when he adopted extra-legal methods of punishing public offenders during

¹ "An Excursion through the United States and Canada," pp. 233-236. (M.) An extended extract is given in the following chapter on p. 79.

² pp. 291, 292. A more extended extract is given in the following chapter on p. 81.

the troublous times of the Revolution, he no doubt attracted considerable attention to himself, and thus his name became identified with such practices. It may also be said that the uniqueness of some of his punishments, such as compelling the Tories to shout "Liberty forever," probably brought his name into prominence with the practice. The fact remains, however, that no contemporaneous evidence has yet been discovered which will explain why Lynch's name came to be applied to the practice. We know definitely only that the form of the expression was at first Lynch's law, and that tradition, supported by all the evidence that we have, ascribes its origin to Colonel Lynch. Equally certain it is that Lynch's law originally signified a whipping for reformatory purposes with more or less disregard for its legality, and was so used at a time subsequent to the American Revolution and not before that time. Evidently the term originated in Virginia, and as the tide of emigration moved westward it was carried along the frontier where conditions were such as to encourage the use of extra-legal methods against public offenders.

This becomes more evident when the early history of the popular administration of punishment in the United States is taken into account. A consideration of early lynch-law, or lynch-law down to 1830, constitutes the following chapter.