



## Don't Make A Federal Case Out of It!

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The Constitution of the United States created a federal republic, which provided that most matters would be left to the several states. The common government of the United States, now generally referred to as either the federal government or the national government, was delegated certain enumerated powers, found mostly in Article I, Section 8 of the Constitution.



And to make sure this was understood, the 10th Amendment said that those powers not delegated to that common government were kept, or “reserved,” by the states.

Unless committed on federal land, such as the federal District of Columbia, or a military installation, crimes such as murder, robbery, rape, and the like would be handled in the court systems of the several states. At one time it was so rare for a criminal case (or a civil case) to land in federal court that a popular expression for making too big a deal out of something was to say, “Don’t make a federal case out of it!”

But once again, the U.S. Congress has decided to make a federal case out of yet another crime — murder. Not all murders, mind you, but murders perpetrated by lynching. For the time being, at least, murderers who use a gun, a knife, a hammer, or a tire iron will still be tried in state courts, not federal courts. The House of Representatives overwhelmingly adopted legislation in late February that would make lynching a federal crime. The vote was 410-4.

“I cannot imagine our nation did not have *federal* law against lynching when so many African Americans have been lynched,” said Representative Bobby Rush (D-Ill.), noting that lynching was the “preferred method of the Ku Klux Klan.” (Emphasis added.)

Lynching was certainly horrible, and it is not a proud chapter in U.S. history. But to paraphrase James Madison, “I cannot undertake to lay my finger on that article of the Constitution which granted a right to Congress to pass such a law.” I look in vain in Article I, Section 8 for such a grant of authority.

This law is what I would call a “feel good” law. A feel-good law is one that is passed not because such a law is going to accomplish anything, but because it makes those who voted for it *feel good*. Lynching is already against the law in all 50 states because it is a form of murder. Prosecutions for murder are made all the time in the states, no matter how that murder is performed. There is even a provision, in Article IV of the Constitution, for returning fleeing felons to the state from which they fled.

Unfortunately, this encroachment upon state sovereignty by making federal crimes out of crimes ordinarily handled by the states has been going on for some time. Following the Lindbergh kidnapping, Congress adopted a federal kidnapping law. When Senator Rand Paul (R-Ky.) was assaulted on his front lawn by a neighbor who was a Bernie Sanders supporter, the man was charged in federal court. One



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would think that could have been handled quite well in the criminal courts of Kentucky.

In the early 1990s, Congress even decided to make car-jacking a federal crime. Apparently, the Constitutional Convention in Philadelphia in 1787 was necessary to stop car-jacking — or its 18th-century analog, horse stealing.

No doubt the 410 members of the House who voted for yet another expansion of the federal government feel really good about themselves. The four brave souls who voted no can expect to be castigated as being “for lynching” by opposing this measure.

If Congress voted now to make rape a federal crime, would those voting to keep that a state matter be accused of supporting rape?

Three Republicans — Louie Gohmert of Texas, Thomas Massie of Kentucky, and Ted Yoho of Florida — and one independent, Justin Amash of Michigan, voted no.

Amash explained that it is already against the law to murder someone. He said that by creating federal laws against crimes typically handled at the state level “obscures which government — federal or state — is responsible for investigating and prosecuting the crime, and it gives power to unelected federal officials,” noting that “it’s based on the unconstitutional federalization of criminal punishment.”

Thomas Massie expressed similar sentiments. “The Constitution specifies only a handful of federal crimes and leaves the rest to individual states to prosecute.”

Ted Yoho said, “This bill today is an overreach of the federal government and encroaches on the principles of federalism,” while Louie Gohmert said he would “much rather, if someone is lynched in Texas, [the perpetrator] be subject under Texas law to the death penalty.”

No doubt these explanations will be ignored along with the Constitution itself — the Constitution that all members of Congress take an oath to uphold.

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