

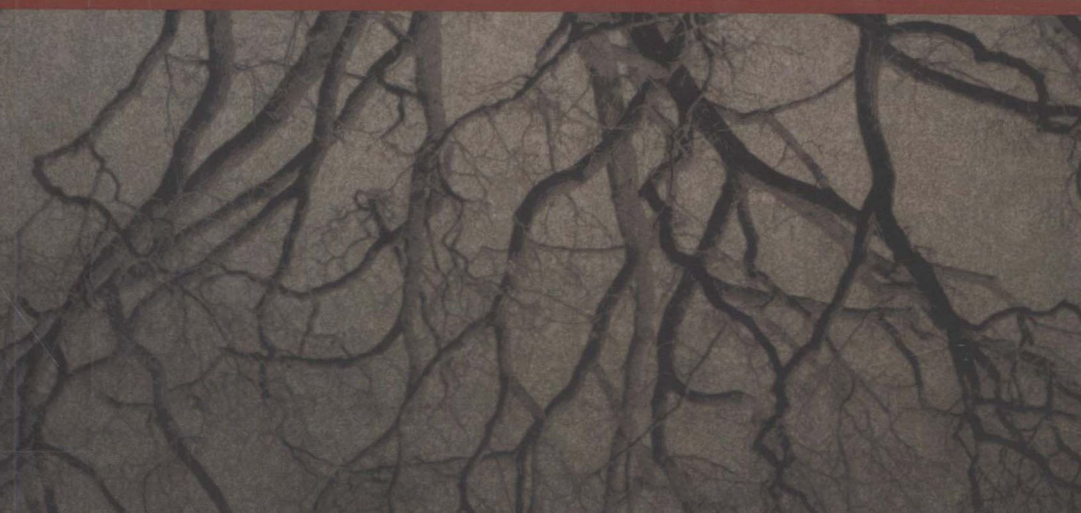


# THE ROOTS OF ROUGH JUSTICE

*Origins of American Lynching*



MICHAEL J. PFEIFER



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American Lynching*



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## *The Roots of Rough Justice*

*In memoriam, Father John P. Boyle*

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## *The Roots of Rough Justice*



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## Introduction

On June 13, 2005, the U.S. Senate approved a resolution apologizing for its historical failure to enact antilynching legislation. The Senate's action in 2005 culminated more than two decades of work by descendants of lynching victims and scholars that has sought to recover and illuminate the history of a practice of collective violence that claimed the lives of thousands of persons in the United States in the nineteenth and early twentieth centuries, including several thousand African Americans and hundreds of Hispanics and whites. As a result of these efforts, we now know much more about lynching in the postbellum United States, including where, when, why, and how it occurred. But where did lynching come from, and why and how did it develop into a pervasive practice in the United States?

This book examines the antecedents of American lynching in an early modern Anglo-American legal heritage and in the transformation of ideas and practices of social ordering, law, and collective violence in the American colonies, the early American Republic, and, especially, in the decades before the American Civil War. The heart of the book is an extensive analysis of the lynching violence that emerged in the middle decades of the nineteenth century on the southern, midwestern, and far western frontiers of the United States. In novel places such as Mississippi, Iowa, and California in the 1830s, '40s, and '50s, I argue, white Americans seized upon lethal group violence unsanctioned by law—particularly hangings—to enforce mandates of racial and class hierarchy and to pull into definition tenuous and ill-defined understandings of social order and community. Collectively murdering African American slaves and free blacks, Native Americans, Mexicans, and working-class, nonlanded whites, white Americans rejected growing legal reforms

that offered the promise of legal fairness to the unpopular and powerless by protecting the rights of those accused of crimes. Antebellum vigilantes mimicked public punishments, the pillory and the gallows, even as reformers sought to abolish those punitive customs on grounds of humanitarianism and public efficacy. Invoking elastic notions of popular sovereignty and republicanism—ideas holding that government was rooted in virtuous citizens and could be reclaimed by them if their life, liberty, and property were threatened—whites on the pre-Civil War frontiers imposed racial and class codes and fashioned practices of repressive violence that would dominate the societies and cultures of the American South, West, and Midwest into the twentieth century.

The field of U.S. lynching studies, which has burgeoned in the last twenty years in case studies,<sup>1</sup> state studies,<sup>2</sup> regional studies,<sup>3</sup> in national studies of mob violence,<sup>4</sup> in studies of gender and lynching,<sup>5</sup> and in studies of lynching and cultural production,<sup>6</sup> has taught us a great deal about lynching in the decades after Reconstruction. Southern historians have led the way, producing rich analyses of postbellum lynching violence below the Mason-Dixon line. The literature on western and midwestern mob killings has been far more limited until recently, but finally historians have acknowledged in their work that the practice of lynching has a national history, that the victims of racially motivated lynching were as diverse as the targets of American racial prejudice,<sup>7</sup> and that western lynching cannot be dismissed as insignificant compared to southern lynching or simply explained through the invocation of the lawless frontier. We now know a great deal about the so-called lynching era of the late nineteenth and early twentieth centuries, a characterization that holds for the South, where most lynching occurred in the postbellum era, but not for the West, where lynching was most prevalent in the mid-nineteenth century.

Overall, historians have told us rather little about lynching as a practice before the 1880s.<sup>8</sup> A pioneering 1990 study of racial violence in Kentucky argued, with considerable evidence, that lynching proliferated in Reconstruction in the Upper South,<sup>9</sup> yet no studies since have systematically explored in quantitative or qualitative terms the transformation of lynching violence in Reconstruction in 1860s and '70s in the Lower South, although scholars in recent years have published suggestive work on Reconstruction lynching violence in central Texas, Louisiana, Mississippi, and the Carolinas.<sup>10</sup> A recent study of Colorado has evocatively sketched the dimensions of lynching violence in the early West of the 1850s and 1860s,<sup>11</sup> but historians have done relatively little to analyze this significant time and place in the annals of American lynching violence. The lynching of slaves in the antebellum

South has been similarly understudied. On the basis of limited evidence, some scholars have argued that lynchings of slaves were rare because slaves were white men's property and planters had an interest in protecting their property holding.<sup>12</sup> Others have suggested that mob killings of slaves occurred regularly.<sup>13</sup> But systematic analysis of the phenomenon has been lacking.

There are additional gaps in American lynching historiography. Several recent studies of lynching have demonstrated an admirable chronological and geographical scope in enlarging and complicating our understanding of the history of the rhetoric surrounding the term *lynching*, but have only peripherally addressed the very real practices of collective violence that the word actually connoted in particular times and places.<sup>14</sup> Perhaps most egregiously, scholarship on the history of lynching in the United States to this date has been largely an exercise in, and an argument for, American exceptionalism, most particularly, the exceptionalism of the American South. U.S. lynching historians have done little to analyze the antecedents for American extralegal collective homicide in early modern Irish and British cultures and have neglected comparison of American lynching with the analogous practices of illegal collective murder that have occurred across global cultures and eras.<sup>15</sup> Though focus on the "lynching frenzy" of the Jim Crow South is fully warranted in light of the several thousand African Americans that died at the hands of southern whites in that era, analysis of earlier contexts for racially motivated mob violence may help to discourage the parochial and ahistorical temptation to view Jim Crow-era southern lynching as *sui generis*. Informed by the strengths and weaknesses of this rich body of recent lynching scholarship, my argument in this book is that the origins of American lynching in the nineteenth century can only be fully understood in national, and indeed transnational,<sup>16</sup> terms.

This book has evolved out of my own contribution to lynching scholarship, a 2004 monograph entitled *Rough Justice*. *Rough Justice* interpreted lynching as an important aspect of a cultural conflict over criminal justice waged across the regions of the postbellum United States. Yet as I was writing that book, it became clear to me that the dynamics it depicted did not begin in the years after the Civil War. Though the postbellum context is essential to understanding the lynching frenzy of the late-nineteenth-century South, the "nadir" of southern race relations in fact marked the apex of phenomena with much earlier roots in American history. To best understand what happened in the United States in the late nineteenth and early twentieth centuries, I realized it would be necessary to discern the development of ideas and practices regarding criminal justice and violence over the course of "the long nineteenth century," that is, stretching back to the years before the Ameri-

can Revolution in the late eighteenth century. *Rough Justice* had sought to transcend the sectional parochialism that has too often walled off particular American regions from comparative analysis. However, as I began writing this book, it became clear that analysis of the origins of American lynching must also transcend continental and political boundaries to encompass the British Atlantic, that is, Britain and its colonies on both sides of the Atlantic in the seventeenth and eighteenth centuries,<sup>17</sup> and beyond. Although the term *lynching* probably originated in the United States<sup>18</sup> and, as is shown in the succeeding chapters, a practice of collective murder known as lynching took profound root in the nineteenth-century United States, group murder that resembles lynching has in fact occurred across historical and contemporary world cultures and eras.

However, to acknowledge that informal group murder inspired by motivations of criminal justice, race, or ethnicity, or lynching as the practice would come to be known in the United States in the early to mid-nineteenth century,<sup>19</sup> has analogues dating to the ancient world<sup>20</sup> and across global cultures<sup>21</sup> should not be the same as suggesting that the practice ultimately lies outside of history, is unrecoverable or unknowable by historians, is knowable only as language or rhetoric, or that in the interest of stressing cultural universals we might ignore or elide the particular historical contexts in which collective murder has actually taken root as a widespread practice, such as in the regions south and west of the Allegheny Mountains in the United States in the nineteenth century. Such assertions are ahistorical. Although lynching has, perhaps since the onset of human societies, expressed a universal impulse toward summary collective punishment of social enemies defined as criminal, the practice over the last several hundred years can best be understood as a specific cultural response to the ambiguities of legal change, especially concerns over the efficacy of formal criminal justice, in particular times and places.

American lynching arose in the early to mid-nineteenth century as a response to alterations in law and social values (the shift from a penology of retribution and deterrence to one centered on reform of the criminal, the rise of the adversarial system and aggressive defense lawyering, the shift from private to public criminal prosecution, and the professionalization of criminal justice) that occurred throughout the Anglo-American world. Crucially, the emergence of the extralegal group murder of lynching was shaped with reference to particular American conditions, most notably the violent libertarian tradition bequeathed by the Revolution and the mobile, fractious social settings of the early to mid-nineteenth century cotton, mining, and agrarian frontiers. Diverging from much of industrializing Britain

and the northeastern United States, the developing American South, Midwest, and West lacked established social elites and strong middle classes that pressed for legal regularity and advocated for legal reforms that recognized the dignity and rights of criminal defendants. Instead, in the regions of the United States south and west of the Alleghenies, skepticism of legal change combined with racial and class republicanism to assert that the communal violence of lynching and vigilantism offered the surest path to the performance of criminal justice that would sustain racial and class prerogatives over slave, free black, Hispanic, and white miscreants whose resistance and criminality threatened the social order.

Crucially, unlike England and western Europe, the United States' transition to a capitalist economy was not accompanied by the emergence of a strong, centralized national state that claimed and enforced an exclusive monopoly over violence and the administration of criminal justice to secure the rule of law. Rather, American criminal justice developed along a distinctive path that emphasized local authority and opinion, self-help and ad hoc law enforcement practices, and the toleration of extralegal violence. Lynching was an important aspect of this distinctive American trajectory in the long nineteenth century, registering many Americans' rejection of due process and the exclusive claims of state authority in criminal law.<sup>22</sup> The formation of American criminal justice was a highly contested process, as lawyers, judges, and middle class reformers fought for due process and the rule of law against rural elites and working class people who sought to retain "rough justice," that is, criminal justice grounded in local prerogatives of honor, class, race, ethnicity, gender, and crime control. Because of factors of demography, economics, and historical development that included industrialization, urbanization, slavery and westward migration, the due process forces were at their strongest in the Northeast but weakest in the South, with the West and Midwest lying in between. Beyond the United States, British-controlled Catholic Ireland was another cultural and legal periphery in the Anglo-American world. In the early to mid-nineteenth century, the Irish developed practices of extralegal violence in ambivalence and opposition to British laws.<sup>23</sup> As will be seen in chapter 4, these practices would be transposed to the northern United States by Irish Catholic immigrants in the form of racial lynching in the 1860s, effectively bridging Irish and American practices of collective violence.

The book is organized chronologically and topically. The analysis begins in the first chapter with a brief survey of collective violence across the early modern Anglo-American world. Then the second chapter traces, in the social and legal context of the southern, midwestern, and western frontiers, the lethal transition from the nondeadly collective violence (typically flog-

gings) perpetrated by regulator movements in the late eighteenth and early nineteenth centuries, to the prolific extralegal hangings of gamblers, alleged slave insurrectionists, horse thieves, and murderers in Mississippi, Iowa, and Wyoming Territory from the mid-1830s through the late 1860s. The third chapter charts the emergence of racially motivated lynching in the antebellum United States. This chapter documents how southern planters created legal institutions that protected the master class's interest in slave property, but also how antebellum southern whites resorted to the lynching of slaves through burning or hanging at times when the master's property interest was effectively nullified by a slave's murder of a member of the master class, or when portions of the white community rejected the criminal justice system's ability to enforce racial control. The focus then shifts to other racial frontiers, examining lynching violence against Native Americans and Hispanics on the midwestern and far western frontiers of Wisconsin, Minnesota, California, New Mexico, and Washington Territory in the 1840s and '50s.

Chapter 4 treats the Far West, the Upper South, and the Midwest in the mid-to-late 1850s as a laboratory for a variety of lynching violence that would become widespread in the postbellum era. In the late antebellum era, westerners, upper southerners, and midwesterners performed carefully targeted collective violence that protested the adjudication of particular cases in the criminal justice system amid a deepening commitment of the northern legal culture to due process law. The book's fifth chapter traces the pivotal transformation of racial lynching across the United States in the era of the Civil War and Reconstruction. The chapter begins with an analysis of lynchings of African Americans in the early to mid-1860s in Wisconsin, New York State, and Michigan, highlighting the role northern whites played in forging a national practice of racial lynching during the Civil War and Reconstruction. The chapter ends by examining the emancipation of the slaves and the transition in legal and social arrangements in Louisiana in the Reconstruction era, identifying within emerging patterns of collective violence and shifts in legal institutions the advent of the ritualized racial violence that would plague the South in the late nineteenth and early twentieth centuries. The epilogue expands to a global, transnational focus, briefly suggesting the implications of the book's analysis for understanding contemporary lynching violence in locales as different as Latin America, sub-Saharan Africa, and the Caribbean.

## 1. Collective Violence in the British Atlantic

The legal and cultural antecedents of American lynching were carried across the Atlantic by migrants from the British Isles to colonial North America. Collective violence was a familiar aspect of the early modern Anglo-American legal landscape. Group violence in the British Atlantic was usually non-lethal in intention and consequence but it occasionally shaded, particularly in the seventeenth century in the context of political turmoil in England and unsettled social and political conditions in the American colonies, into rebellions and riots that took multiple lives. In the years before and after the Declaration of Independence in 1776, Americans transformed older British notions and practices of crowd action and imbued them with new meanings amid the egalitarian and reformist implications of the Revolution and the early American Republic.

Though early modern crowd violence sometimes took on antiauthoritarian implications, seventeenth- and eighteenth-century crowd actions were rooted in a hierarchical conception of society as a corporate body linking gentry and plebeians in an English commitment to and participation in a “rule of law” that reputedly distinguished Englishmen from most Europeans. Such an understanding of an encompassing, participatory rule of law linked members of English and colonial American communities in institutions of criminal justice that included attendance at public punishments such as the pillory and the scaffold. Public spectacle executions meted out a “bloody code” intended to convey the consequences of serious crimes and the majesty of legal authority in a monarchical, hierarchical society. Around the British Atlantic, grass roots criminal justice was also manifested in the “hue and cry” communal apprehension of criminals and, increasingly in the eighteenth century, the posse



comitatus, which gave the sheriff the authority to call upon all physically able men to assist in capturing felons. Elites accepted, sometimes grudgingly, that under such a corporatist constitutional arrangement, commoners might occasionally turn to collective action to seek restoration of what they perceived as their customary rights. Crowd actions often took the form of rituals of misrule, performances that inverted social rank or gender in holiday processions or in charivari that temporarily overturned social arrangements in order to reaffirm conventional political or gender arrangements such as gentry domination of the polity or benevolent patriarchal control of the household (in correction of the aberrant behavior of cuckolds, wife-beaters, overly headstrong wives, or newlyweds of disparate ages).<sup>1</sup>

There is little evidence that informal group murder, that is, what would later become known as lynching, occurred with any frequency in the early modern British Isles or Colonial America, and certainly not sufficient evidence to argue that the practice ever became an aspect of a ubiquitous Anglo-American tradition of crowd violence, which seldom culminated in the deaths of the targets of crowd action. However, summary collective executions did occasionally occur in the early modern British Atlantic, typically in the heat of deep popular passions over situations characterized by perceptions of legal, social, or political injustice. In June 1628, a crowd of London apprentices murdered John Lambe “with stones and cudgels and other weapons.” Lambe, who was probably in his early eighties, worked as a “magical healer and counselor” and had escaped capital convictions for witchcraft and rape through a reprieve and a royal pardon. Significantly, Lambe was also an associate of the Duke of Buckingham, George Villiers, a favorite of Charles I who had become the focus of opposition in Parliament and would soon be assassinated. The crowd murder of Lambe can be read as an act of collective justice that sought to punish a convicted witch and rapist in light of the failure of the legal authorities to do so, but also as a “subversive” act of popular politics in an escalating conflict between Charles I and Parliament over the destiny of the English nation. Furious over the act of political disorder, the king ordered the City of London to punish the rioters and those that had failed to prevent their actions. The city jailed a number of law officers for failing in their duty, but no individuals were arrested for their participation in the crowd. The king responded by suing the city, and the court levied a £1,000 fine.<sup>2</sup>

A collective murder similarly inspired by legal and political anxieties occurred in Edinburgh in September 1736. Captain John Porteous had ordered militia to fire on a crowd that rioted at the gibbet after the hanging of a smug-