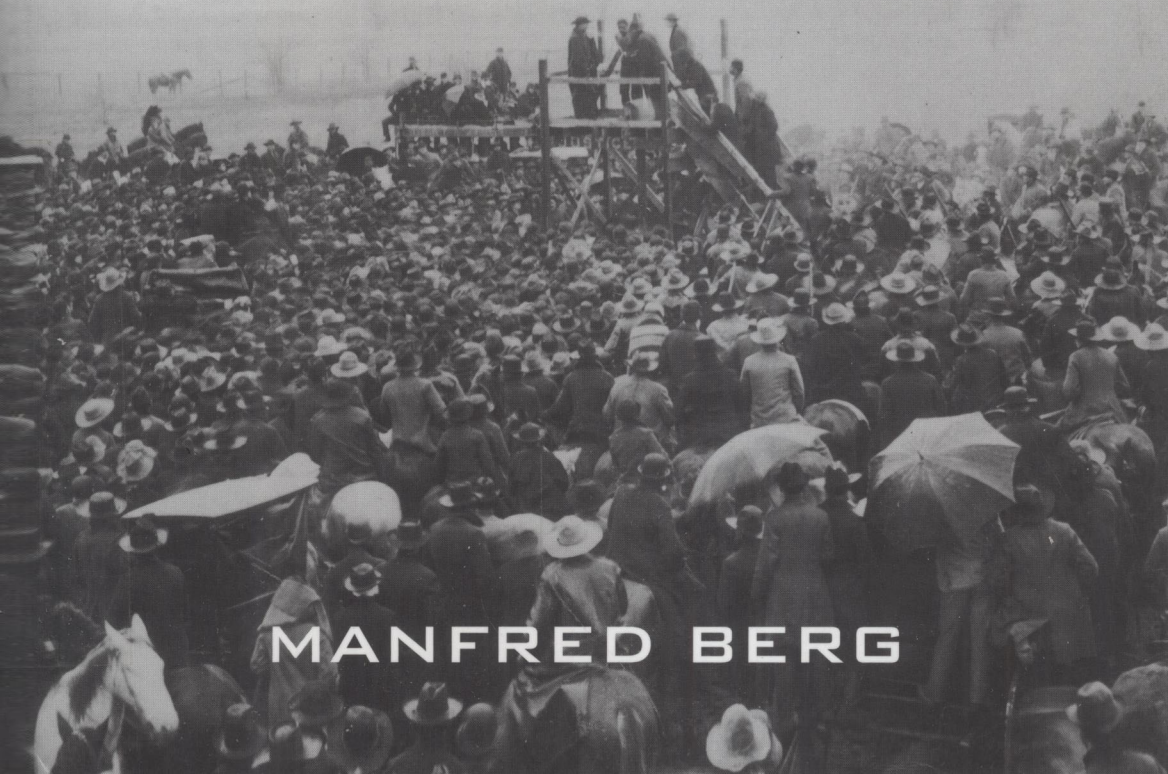


POPULAR JUSTICE

A HISTORY
OF LYNCHING
IN AMERICA



MANFRED BERG

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A History of Lynching in America

Manfred Berg



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Popular Justice

To my friend John David

Preface

IN 1905 the sociologist James E. Cutler introduced his book *Lynch-Law: An Investigation into the History of Lynching in the United States* with these words:

It has been said that our country's national crime is lynching. . . . The practice whereby mobs capture individuals suspected of crime . . . , and execute them without any process of law . . . , is to be found in no other country of a high degree of civilization. Riots and mob executions take place in other countries, but there is no such frequent administration of what may be termed popular justice which can properly be compared with lynch-law procedures in the United States.

Although Cutler's study is outdated in many respects, its characterization of lynching as "popular justice" may yet be considered the best starting point to define the subject of this book. While anti-lynching activists and historians have endlessly argued over the proper definition of lynching, it is indisputable that since the term originated during the American Revolution it has referred to extralegal punishment meted out by a group of people claiming to represent the will of the larger community and acting with an expectation of impunity. Until the mid-nineteenth century, lynching or lynch law did not necessarily mean that mobs killed their victims. The terms also included nonlethal forms of communal punishment such as flogging or tarring and feathering. Whether deadly or not, lynching typically entailed a strong element of ritual aimed at reinforcing a sense of community among the executioners of popular justice. Hence some scholars have compared lynchings to rituals of human sacrifice designed to symbolically restore a disrupted world.

Lynching as an act of communal punishment must be distinguished from hate crimes on the one hand and riots on the other. Hate crimes are random acts of violence against racial, ethnic, religious, and sexual minorities without the pretext of punishing a particular crime and, at least in recent years, without community approval. Riots involve large-scale collective violence in which the participants make no claim to be agents

of justice. To be sure, it is often difficult to draw clear lines between hate crimes, riots, and lynchings.

To speak of lynching as extralegal punishment takes for granted the principle that only government institutions have the authority to enforce the law, suppress crime, and punish criminals. In short, the word lynching assumes the existence of the modern state which, theoretically, holds a "monopoly of legitimate violence." In historical terms this is a fairly recent idea. Throughout most of human history the punishment of crime has been a matter of retribution by the wronged victims and their kinfolk. In Europe blood feuds persisted into the late Middle Ages, and it was generally accepted that a legitimate way to avenge a slain family member was to kill the slayer or members of his family. While blood vengeance may appear barbaric in modern eyes, it nevertheless provided a basic sense of protection in an age without a centralized power to ensure a general peace. Moreover the advance of formal law was slow and uneven. Among the rural populations of Europe, traditions of communal justice continued into the late nineteenth century. In American history the practice of lynching has often been attributed to conditions on the frontier, where the people were supposedly forced to take the law into their own hands because no effective system of law enforcement and criminal justice existed.

But it is misleading to see lynching primarily as communal self-help that ceased as soon as the state had successfully secured a monopoly of legitimate violence. On the contrary, American lynchers in the late nineteenth and early twentieth centuries, as the historian Michael Pfeifer has argued, were reacting to the establishment of a modern criminal justice system that attempted to replace the community's desire for "rough justice" with an "abstract, rational, detached, antiseptic legal process." Opponents condemned lynching as lawlessness, but its apologists justified it as an instrument of a "higher law" that heeded the values, traditions, and vital interests of the community. In order to dramatize their claim to meting out true popular justice, lynchers often staged ritualistic mock trials aimed at creating a semblance of "law and order" administered by a righteous community.

Mob violence can be found in most societies, but James Cutler, writing in the early twentieth century, surely had a point that the frequency and cruelty of lynchings singled out the United States among the so-called

“civilized” nations of the time. What accounts for this “negative exceptionalism”? Why were Americans such a lynch-prone people, especially during the nineteenth and early twentieth centuries? In trying to answer these questions, historians have usually considered three core themes that will also be central to this book: the frontier experience, the race conflict, and the anti-authoritarian spirit of grassroots democracy.

The “lawlessness” of the frontier is the classic apology for vigilantism and lynching. The folkloristic image of hardened pioneers making short work of brazen outlaws has left a deep mark on American popular culture and greatly contributed to a highly ambivalent attitude toward mob violence. The significance of racism is equally evident, given that during the age of Jim Crow the vast majority of lynch victims were African Americans. White supremacists defended lynching as necessary to protect the purity of the white race against the allegedly insatiable drive of black men to rape white women. In contrast, readers may find it more difficult to accept that the spirit of grassroots democracy also was a well-spring of lynching in American history. Yet in claiming to execute the will of the people, the executioners of popular justice asserted their own ideas of democratic participation and local self-government. “In a democracy,” James Cutler aptly noted, “the people consider themselves a law unto themselves. . . . To execute a criminal deserving of death is to act merely in their sovereign capacity.”

The late Charles Tilly, a leading student of collective violence, once confessed that he preferred a “rough-and-tumble democracy” over a “nonviolent tyranny.” But this is a false alternative. This book is predicated on the premise that liberal democracy has provided a solution to the problem of balancing order and liberty, namely the state monopoly of legitimate violence controlled by the rule of law, an independent judiciary, and the democratic process. Wherever this system works reasonably well, there is no need for law enforcement by private individuals and extralegal communal justice. American legal culture, in this regard, has been shaped by a striking contrast. While there has always been a strong tradition of popular justice and private violence, Americans have been rightly proud of their contributions to implementing a “government of laws, and not of men,” as John Adams famously phrased it in the Massachusetts Constitution of 1780. Ordered liberty and the rule of law require the prudent self-restraint of the people, especially in the realm

of criminal justice. It is no coincidence that the Constitution twice, in the Fifth and the Fourteenth amendments, mandates the fundamental principle that no person shall be “deprived of life, liberty, or property, without due process of law,” binding both the federal and the state governments. Over the course of American history, lynchers ignored this pillar of liberty. They ignored the intent of due process, which exists not to shield criminals from justice but to protect all members of society from despotism, including the despotism of the people taking the law into their own hands.

The following chapters trace the history of lynching in America from colonial times to the present. They do not tell an uplifting story. Inevitably the record involves graphic violence and appalling injustice. Although there were numerous heroes in the struggle against lynching, many opponents were highly ambivalent in their views of its causes and its remedies. What is more troubling, lynching cannot be blamed on aberrants and the riffraff. Most lynchers were ordinary people and often respectable community leaders. And while the victims deserve recognition and sympathy, it would be disingenuous to pretend that they were all innocent of the crimes that had triggered their lynching.

There is also no redeeming end to this story. Unlike segregation or disfranchisement, lynching was not brought down by momentous court rulings or legislative acts. Rather, its demise was a slow process fraught with paradoxes and unacknowledged continuities, especially in the administration of the death penalty.

* * *

In writing this book I relied on the help and encouragement of many people. My editor and friend John David Smith invited me to write a history of lynching for the American Ways Series and suggested numerous improvements, constantly reminding me to keep an eye on the general reader. I also thank Ivan Dee for his constructive response to my proposal and his careful editing. Phil Racine read the entire manuscript and made numerous helpful comments. He also generously invited me to spend a semester at Wofford College in Spartanburg, South Carolina, where I could concentrate on writing and research. Kirsten Fischer read various drafts and helped me hone both my prose and my arguments. As

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Popular Justice

1

The Roots of Lynching in Colonial and Revolutionary North America

SEVERAL COMPETING STORIES seek to explain the origins of the term lynching, including the tale of James Lynch Fitz-Stephen, the mayor of Galway, Ireland, who in the late fifteenth century allegedly tried, convicted, and executed his own son for killing a man in a fit of jealousy. But most historians consider Colonel Charles Lynch (1736–1796) of Bedford County, Virginia, as the most likely namesake for the practice of punishment outside the law. During the American Revolution, Charles Lynch presided over extralegal courts that claimed to fight lawlessness in general and loyalist activities in particular. Colonel Lynch himself spoke of “Lynchs [sic] law” in reference to irregular punishment. Although Lynch’s associates executed several of their prisoners, they mostly limited themselves to severe corporal castigation. Subsequently, until the mid-nineteenth century, lynching did not necessarily mean lethal punishment. More typically it referred to violent forms of public humiliation, to whipping and to tarring and feathering. Moreover for several decades usage of the word remained confined to Virginia and scarcely appeared in writings before the 1830s.

Yet does the absence of the term before the late eighteenth century mean that lynching did not exist? At first glance this appears highly implausible. After all, British North America was a frontier society with no effective system of law enforcement in the modern sense. Thus, according to the theory that in a quasi state of nature the people have no choice but to take the law into their own hands, one might expect that lynch law was the rule rather than the exception, even if people had not yet coined a term for the practice. Indeed, as this chapter will demonstrate,

the colonial frontier played a key role in shaping the American tradition of vigilantism. But while it is impossible to know how many people were executed without a legal warrant in the remote hinterlands, there is no evidence that extralegal punishment—in competition with the official administration of criminal justice—was a frequent occurrence or a major public concern during the colonial era. Still, a closer look at colonial institutions and practices affords a better understanding of the roots and patterns of lynching in the nineteenth and twentieth centuries.

The “classic” defense of popular justice held that, basically, lynching was a response to inefficient law enforcement and lenient courts in the face of rampant serious crime. Viewed from this perspective, British North America presents a paradoxical picture. On the one hand, historians describe the colonial system of criminal justice as ineffective, reflecting a generally weak administration of government. Distances were great and travel was slow. In many areas courts were few and far between, and court sessions were held rather irregularly. There were hardly any jails in which to lock up suspects, and most of them were in dismal condition. Not surprisingly, many prisoners easily escaped, including quite a few of those awaiting execution. On the other hand, the colonists apparently were not particularly worried about crime or about offenders not receiving their just punishment. Although there are few precise figures on crime rates for the seventeenth and eighteenth centuries, they appear to have been relatively stable, at least before about 1750, and not alarmingly high in the eyes of the colonial populace. This stands in sharp contrast to eighteenth-century England where the fear of rising crime perpetrated by the “dangerous classes” triggered intense public debate on the perceived weakness of the criminal justice system. Accordingly the English criminal code, the harshest in Europe, imposed extremely tough sentences on criminals.

This was especially true with regard to the death penalty, which was inflicted much more frequently than in the North American colonies and for a much broader range of crimes. In England the vast majority of criminals were hanged for property crimes such as theft, burglary, or robbery. This rarely happened in the colonies. And although crimes against morality and religion, including adultery, blasphemy, and sodomy, carried the death penalty during the early colonial period, these laws were rarely enforced. The only confirmed execution for adultery took place in

Massachusetts in 1643. By and large, the death penalty was reserved for murder and other serious felonies such as rape, arson, counterfeiting, or horse stealing on the frontier, and for supposedly incorrigible repeat offenders. Moreover a death sentence did not automatically mean that the execution would be carried out. The records of colonies such as Pennsylvania, New York, and North Carolina indicate that roughly half of all those condemned received a pardon or a commutation of their sentences and that most colonies, on average, had not even one official execution per year. One study of crime in North Carolina between 1663 and 1776, then mostly a frontier outpost, found a total of sixty-seven death sentences but only sparse evidence of executions. The same may also be true of severe corporal punishment like whipping, branding, or ear-cropping. Equally remarkable, there is little evidence that the colonists reacted to the supposed weakness of their criminal justice systems by taking the punishment of criminals into their own hands. For example, by the mid-eighteenth century the residents of New York complained about an alarming rise in crime which the courts were hard-pressed to deal with. Colonial authorities reacted by imposing more severe punishments, including a greater number of executions, but mob action against criminals did not seem to become a public concern.

One must be careful, however, not to read present-day ideas of “efficient” criminal justice into the premodern era. Colonial Americans and their European contemporaries viewed and experienced crime and punishment very differently from people living in the twenty-first century. By today’s standards the colonial institutions of law enforcement may look weak. But in fact the small and predominantly rural communities of colonial North America were quite successful in enforcing their codes of behavior and morality.

Religion dominated the early modern view of criminal justice. No clear distinction existed between crime and sin. Offenders not only broke the law but violated God’s commandments and therefore could bring His wrath onto the entire community. The key purpose of punishment was to restore the divine order by purifying both the community and the sinners, whose souls were saved by destroying their bodies. Since the root causes of crime were human depravity and sinfulness, to which all mortals were susceptible, punishment was staged as a moral drama in which the whole community participated and from which