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Penal Excess and Surplus Meaning Public Torture Lynchings in 20th Century America

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Abstract

The most notorious lynchings that occurred in the USA between 1890 and 1940 involved publicity, crowds, ritual, and abnormal cruelty. Several hundred of these ‘public torture lynchings’ took place, most of them in the Deep South. The author develops an interpretation that takes seriously the specific forms and discourses that lynchers and their supporters used to describe and justify these events – characterizing them as criminal punishments, albeit summary, informal ones that were shaped by a white supremacist culture and a politics of racial domination. An interpretation of the penal context and meanings of these public torture lynchings helps us understand their specific forms and their claims to legitimacy. The penal character of these lynchings increased the probability that they would be tolerated by local (and even national) audiences and thus made them a strategic form of violence in struggles to maintain racial supremacy. The author argues that a consideration of these events should lead us to revise our standard narratives about the evolution of modern punishments.

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Part 1

In the early 1890s – nearly thirty years after Emancipation, twenty years after the end of Reconstruction, and at precisely the moment when Progressives elsewhere were establishing a new reformist penology – Southern crowds began to torture and burn alleged offenders with unprecedented ferocity and public ceremony. These new kinds of lynching continued in small towns and rural areas throughout the South until the end of the 1930s. The exact number of these ‘public torture lynchings’ is uncertain, but of the nearly 4,000 lynchings that were recorded in newspaper reports and eyewitness accounts between 1882 and 1940, several hundred of them were spectacular events of this kind.

Professional photographers set up shop at the scene of these lynchings and did a brisk business selling photo-souvenirs of the event. Images of mutilated black bodies, some of them horribly burned and disfigured, were purchased as picture postcards, and passed between friends and families like holiday mementoes, dutifully delivered by the U.S. mail. One postcard, with a photograph showing a large crowd in downtown Dallas, is addressed to "Dr. J.W.F. Williams, Lafayette, Christian County, Kentucky" and reads: *"Well John – This is a token of a great day we had in Dallas, March 3rd [1910], a negro was hung for an assault on a three year old girl. I saw this on my noon hour. I was very much in the bunch. You can see the Negro hanging on a telephone pole."* Another, carrying an image of the charred, barely recognizable, corpse of Jesse Washington, suspended from a utility pole in Robinson, Texas, was sent by Joe Meyers to his parents in May 1916. The message reads: *"This is the Barbecue we had last night my picture is to the left with a cross over it your son Joe."* A third carries a photograph showing a group of onlookers (including several young boys), posing with Lige Daniels, who had been

hung from an oak in the town square of Center, Texas, in August 1920. The message on the reverse says: *"This was made in the court yard, In Center, Texas, he is a 16 year old Black boy, He killed Earl's Grandma, She was Florence's mother. Give this to Bud. From Aunt Myrtle."*¹

In his book The Great Cat Massacre, cultural historian Robert Darnton writes: 'When we cannot get a proverb, or a joke, or a ritual, or a poem, we know we are on to something. By picking at a document where it is most opaque, we may be able to unravel an alien system of meaning.' (Darnton 1985:5). To anyone familiar with the history of race relations in the American South, there is of course nothing particularly surprising about evidence of racial violence. But what renders these particular documents "opaque" and thus a challenge to interpretation, is the extent to which the atrocities they record appear to have been perceived as legitimate actions, both by the perpetrators themselves and by sections of their local communities. The evidence for this exists on the face of the picture postcards themselves. It is suggested by the righteous, self-confident poses struck by lynchers and onlookers, by the fact that they allowed themselves to be photographed without any apparent effort to hide their identities, and in the practice of rendering these images as postcards, complete with cheerful messages.² The writers of these postcards – and, presumably, the thousands of others who bought and sent such images – did not experience public lynchings as atrocious acts of savagery but as something else entirely. Somehow the torture and killing of a man by a mob was experienced as 'a good day out', as a conversation piece to pass on to friends and family, as fitting material for that most benign communication, the picture postcard. That torture killings of untried suspects could be represented in such a familiar and casual manner, in the apparent expectation of

group approval, seems to say something surprising and significant about the meaning of these events, and about the social organization and structures of feeling that lay behind them. This article aims to explore these meanings and to identify the sensibilities and social relations that made them possible.

Lynching and conventional wisdom

When a collection of these lynching postcards was assembled in the Without Sanctuary exhibition in New York in the spring of 2000, a recurring comment made by visitors to the exhibition was how little they knew of this history.³ It has been suggested that this ignorance is encouraged by mechanisms of denial and forgetting that are deeply ingrained in American culture, and no doubt there is a degree of unconscious motivation in this tendency to forget.⁴ I will argue, however, that this ignorance is also reproduced more directly by scholarship in the sociology and history of punishment which, for reasons that I will explain, has systematically omitted these events from the standard narratives of penal history.

I will argue that public torture lynchings were, first and foremost, collective criminal punishments and that this is how they were represented and understood by most actors and commentators at the time they occurred. Despite this, these collective punishments are omitted from the standard narratives of penal history. Indeed, a consideration of their form and character would strongly contradict the received wisdom about the course of penal change and the civilizing process that accompanied it. In recovering the meaning of these lynchings as punishment and integrating them into our

understandings of punishment and criminal justice history, we will need to revise these standard narratives in some important respects.

The literature on the history and sociology of punishment makes no sustained reference to the phenomenon of public lynchings. In that literature, spectacles of torture, dismemberment and burning are understood as ‘pre-modern’ phenomena, associated with absolutist monarchs, medieval sensibilities and lawless regions. But the Without Sanctuary photographs show events of precisely this kind taking place in the first decades of the 20th century, in long-settled regions of the world's most advanced capitalist nation, in front of well-dressed crowds who traveled in excursion trains and automobiles, clicked Kodak cameras, and drank Coca-Cola. This is an anomaly that should command our attention.

The standard reference points in the scholarly literature – especially the theories of Emile Durkheim, Michel Foucault, and Norbert Elias – offer narratives of historical change suggesting that violent public punishments tended to decline from the late 18th century onwards and had disappeared in modern western nations by the 20th century (Garland 1990; Evans 1996). These narratives are accompanied by differing explanatory accounts, pointing respectively to the rise of individualism, the transformation of power relations, the formation of the modern state, or the civilizing of elite sensibilities as the underlying dynamic, but their renderings of the facts of penal evolution are more or less convergent. After the early 17th century, torture, maiming, and aggravated executions declined. From the late 18th century onwards, the range of capital offences contracted and authorities abandoned degrading post-mortem penalties such as the gibbeting or anatomizing of corpses (Banner 2002; Gattrell 1994:84). From the middle of the 19th

century, executions gradually ceased to be held in public and were increasingly conducted using methods (the guillotine, the trap-door gallows, electrocution, lethal gas, and eventually lethal injections) designed to minimize suffering and hasten death. More detailed histories of punishment, by authors such as Gatrell (1994), McGowan (1987), Linebaugh (1991), Evans (1996), Spierenburg (1984) and Masur (1989) as well as historical surveys by Friedman (1993) and Banner (2002), tend to confirm this historical pattern, offering supporting evidence from England, Germany, the Netherlands and the USA.

Historical scholarship dealing specifically with the American death penalty makes much of the fact that executions became increasingly ‘privatized’ and ‘civilized’ from the 1830s, as states began to move them into jail yards and behind high prison walls, away from the gaze of the public (Masur 1989). After 1888, many states adopted the more ‘modern’, ‘humane’ method of electrocution – a technology that necessitated a specialized state facility, closed to the general public, and usually located far from the community in which the crime occurred (Banner 2002). In 1890, following the first execution by electric chair, the New-York Daily Tribune declared that “No form of death that draws blood or dissevers the body would be tolerated in America” (quoted in Banner 2002:187). The hundreds of public torture lynchings that occurred between 1893 and 1937 suggest a very different story, and it is this discrepancy that I intend to explore.

My analysis will focus on lynchings that were highly publicized, took place before a large crowd, were staged with a degree of ritual, and involved elements of torture, mutilation, or unusual cruelty. I concentrate on these public torture lynchings because, of all the various kinds of lynchings, they *most* closely conform to the ‘criminal

punishments' typically studied in the sociology and history of punishment and because they *least* closely to conform to our standard narratives about the evolution of modern society and penal practice.

There are two likely reasons why these lynchings are usually omitted from that history and sociology. The first is that they are regarded not as legal punishments but as unofficial conduct: a form of group deviance rather than group-sanctioned punishment. The second is that they are regarded not as criminal punishments but as arbitrary racial violence. I will argue that both of these are based on common misunderstandings of the phenomena: the first being a too naively formalist reading of the situation, and the second being too robustly 'realist'. In the light of this, it may be useful to begin by dispensing with these and other misconceptions.

A close examination of contemporary news reports and the historical literature on public torture lynchings suggests that:

1. These events were not wild outbursts of spontaneous violence. They were staged public events with a conventionally understood form, a recurring sequence of actions, and an accompanying normative discourse.
2. They were not arbitrary or unmotivated. They were typically mounted in response to an allegation of serious crime and were represented – by supporters and critics alike – as summary criminal punishments.
3. These lynchings were not undertaken in the absence of a functioning criminal justice system. Public torture lynchings were a preferred alternative to 'official' justice, not a necessary substitute for it.⁵

4. Public torture lynchings were not highly unusual or infrequent events. Contemporary reports and modern research suggest there were probably between four and five hundred lynchings of this kind in the period between 1893 and 1937, almost all of them in the South.⁶
5. They were not only the work of disreputable mobs or ‘criminal elements’. Respectable people attended, law officers colluded with the lynchers, and community leaders defended their actions (Brundage 1993:38).
6. They were not the continuation of an established, age-old tradition. Public torture lynchings were a new kind of event that emerged around 1890 and continued until the late 1930s, mostly in the rural areas and small towns of the Deep South (Williamson 1997:1235; Moses 1997:xii).⁷

I will argue that public torture lynchings were a mode of racial repression – and more obliquely, of class and gender control – that deliberately adopted the forms and rituals of criminal punishment. That the lynchers’ claims to be imposing criminal punishments were invariably upheld by the actions or inactions of local legal officials means that these events were, at least at some levels of collective authority, defined as public punishments rather than as acts of private vengeance. Of course authority in these situations was always contested, and “law in action” was often at odds with “law in the books”. But far from being irrelevant to the history and sociology of punishment, it seems to me that criminal punishments that emerge in situations of legal ambiguity or political conflict are liable to be very instructive for the understanding of penal change. Rather than neglect such phenomena, we ought to ensure they form part of the historical record

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used by sociologists to ground their understanding. As I will show, sociologists of punishment have much to learn from the history of lynching. But I will also argue that historians of lynching have something to learn from the sociology of punishment, since the distinctively penal character of these events, the punitive rituals that they adopted, and the norms of retributive justice upon which they drew, were crucial to the legitimacy and strategic appeal of this form of racial violence.

Public torture lynchings emerged at a historical moment of unusual stress in the racial and class politics of the American South – a transitional moment in which older mechanisms of racial domination and social control had either been dismantled or else were no longer perceived to be effective, and alternative structures of control had not yet been put in place (Woodward 2002). But what in retrospect appears as a moment of structural transition from one mode of race control (slavery) to another (Jim Crow segregation) was at the time experienced by many white communities as a new vulnerability to crime and an intolerable threat to the status and authority of white southerners.

Public torture lynchings were the most visible, most audacious aspect of a wave of collective violence that emerged in the 1890s as white communities in the Deep South reacted to social, political and economic changes that had disrupted their ways of life and disturbed the pre-existing system of social status and social control (Ayers 1984; Williamson 1984). These changes prompted white anxieties about status, authority, and personal security, which in turn deepened racial hostility. These sentiments found discursive expression in the heightened racism of political rhetoric in the 1880s and 1890s, and in the emergence of popular narratives that condensed these anxieties into the

figure of the dangerous black criminal (Frederickson 1971). They found behavioural expression in the transformation of lynchings into a more intensified, more public, and hence more political ritual of race terror. In a process that is not uncommon, a dominant group that perceived itself to be weakened and under threat, responded by lashing out at its enemies with an intensified punitiveness and a spectacular show of force.

Southern commentators pointed to an increase in black crime, to the looming threat of ‘masterless’ black men roaming the countryside, and to vulnerable white women alone in remote farmhouses (Ayers 1995). As one contemporary put it, ‘when a knock is heard at the door, [the Southern woman] shudders with nameless horror. The black brute is lurking in the dark, monstrous beast, crazed with lust’ (quoted in Frederickson 1971:278). But the most important stress-points in race relations stemmed less from crime than from political, economic and cultural issues that threatened the balance of power between racial and economic groups in the South.

In the 1880s, black voters and black office-holders were still a significant political presence whose support could make a difference to electoral outcomes in several states (Pildes 2002). By the end of that decade, the Populist Party’s attempt to mobilize black votes to overthrow the Democratic Party’s domination of southern politics had ended in failure, but the effort to build political coalitions that crossed racial lines was enough to prompt a reactionary backlash and a renewed commitment to white supremacy (Williamson 1984). From that moment on, we see the emergence of a more harshly racist politics and the beginnings of a concerted effort to remove blacks from the political sphere by means of disfranchisement and Jim Crow segregation.

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The Populist movement and the backlash against it introduced new tensions into the political sphere – at first fomenting tensions between the white masses and the white elites, and then further angering poor whites, some of whom were caught up in the sweep of new disfranchisement laws (Pildes 2002). To these political tensions were added the economic and status fears of poor whites who resented the prospect of competing for jobs with cheap black labour or the sight of black tenant farmers succeeding where they had failed (Tolnay and Beck 1995:69 ff). It was in this context that there emerged a renewed emphasis on white unity, white supremacy, and a Negrophobia more virulent than ever before. The direct result was a reactionary reassertion of traditional hierarchies and white supremacist values, a relaxation of restraints that had earlier been exercised by local elites and external authorities, and the emergence of the ritual of public torture lynchings as a means for their emphatic expression.

There were few external restraints inhibiting this violence because the federal government had signaled its unwillingness to intervene to protect black interests in the South, the federal courts were reversing the gains of Reconstruction, and southern politicians were increasingly adopting the rhetoric of radical racism. As Woodward (2002:69ff) suggests, the actions of federal authorities and state politicians in these years amounted to ‘permissions to hate’ that positively encouraged an outpouring of racist violence. And while the federal authorities sat on their hands, prominent southern figures on occasion were quite outspoken in their support for racial violence. Thus Rebecca Latimer Felton declared in 1897: ‘if it takes lynching to protect women’s dearest possession from drunken, ravening human beasts, then I say lynch a few thousand a week if it becomes necessary’ and a few years later Bill Arp echoed her sentiments: ‘As for

lynching, I repeat what I have said before, let the good work go on. Lynch em! Hang em! Shoot em! Burn em!’ (quoted in Brundage 1993:198; see also Dray 2002:188 and 264).

Thus did motivation and opportunity, a suitable target and a powerful excuse, come together around the lynching tree, creating the conditions for spectacular displays of white-on-black violence. On the occasions when lynchers seized these opportunities, unleashing their rage and hatred upon a black man accused of a heinous crime, large crowds of their fellows understood what was happening, and gathered to watch and legitimate their actions. In ‘making an example’ of a heinous black criminal (or someone unlucky enough to be taken for one) they aimed to mete out ‘justice’ to the individual offender. But in adopting this specific form of punishment – this penal excess – they could also hope to adjust the power relations that obtained between ‘the races’ and to shore up a faltering system of race control.

Lynching: a brief history

A ‘lynching’ is usually understood as the summary hanging of an alleged offender by a mob acting without legal authority. Up until the last decades of the 19th century, American lynchings were typically instances of vigilante justice occurring in frontier areas, with a geographical spread that included western, northern, and southern states (Brundage 1993:3-4) and victims that were as often white as black (Dray 2002:viii). From the 1870s onwards the number of lynchings steadily declined in most US regions as governmental authority became better established and criminal justice agencies more effectively prevented private justice and mob violence. The exception to this national trend was the southern states, where rates increased rather than decreased. These

divergent trends continued, so that by 1890 the institution of lynching had become a predominantly southern one, and its victims overwhelmingly black (Brundage 1993:8).

The years around 1890 saw a sharp increase in reported lynchings of all kinds occurring in the Southern states and a significant change in the form and intensity of some of them.⁸ This wave of inter-racial violence – which involved race riots and terrorist attacks as well as lynchings – lasted for more than a generation, with the highest number of incidents occurring in the period between 1899 and 1902 when over 700 lynchings were reported (Brundage 1993; Dray 2002). During these years, many lynchings took place in front of large crowds, and involved a degree of torture and ceremony that had not occurred in the past. These events, which I have been calling ‘public torture lynchings’, occurred all across the South but were especially frequent in states that had large African-American populations and where cotton was the chief form of industry (c/f Tolnay and Beck 1995:ch.2). These spectacles usually enjoyed the tacit approval of community leaders, law officers, and newspaper editors in the immediate vicinity though news of these events often produced outrage and condemnation elsewhere.

By the 1930s, lynchings in general and public torture lynchings in particular had become much less frequent, though the Florida lynching of Claude Neal in 1934, and the blow-torch lynching of Roosevelt Townes and Bootjack McDaniels at Duck Hill, Mississippi in 1937, had all the characteristics of the public spectacles that first occurred in the 1890s (McGovern 1982; Dray 2002). The general run of lynchings that occurred in the 1920s and 1930s typically involved fewer people and were more secretive: the reduced participation and concern to avoid detection reflecting a decline in community

approval and an increase in law enforcement by state and local authorities. The annual number of lynchings continued to decline in the run up to the Second World War though it was not until 1952 that a full calendar year passed without a single reported lynching (Waldrep 2002). During the second half of the 20th century, there were no reports of public torture lynchings.

Types of lynching

The term ‘lynching’ refers to a wide spectrum of behaviours, ranging from furtive, perfunctory hangings carried out by a few people to elaborately ritualized executions performed before huge crowds (Brundage 1993; Waldrep 2002). In the face of this variation, the typology of lynching behaviours developed by Brundage (1993: ch.1) is invaluable. Brundage describes groups such as the ‘white cappers’, ‘Ku Klux Klan’, ‘night riders’ or ‘regulators’ as *terrorist mobs*. These mobs punished the behaviour of unruly whites; terrorized blacks who threatened insurrection; drove out black tenant farmers to reduce economic competition; and took revenge on informers (of whatever race) who reported moonshiners to the authorities. Typically they lynched their victims under cover of darkness and without any elaborate ritual. *Private mobs* were small groups who lynched in pursuit of personal vengeance.⁹ These revenge killings were also carried out in secret, without much ceremony, often with the collusion of law officers who turned over the alleged offender to the victim and his or her friends. The grievances that motivated these mobs involved all sorts of alleged offences, some of them very petty indeed, such as perceived impertinence or minor breaches of the racial code. Brundage's third type of lynch mob is the *posse* that killed unarmed or wounded suspects rather than take them alive. The posse was regarded as more legitimate than the other two, and rarely

attracted local criticism. His fourth type is the *mass mob* lynching which attracted crowds of 50 people or more.

What I am calling ‘public torture lynchings’ were a particular kind of *mass mob* lynching involving publicity, ritual and abnormal cruelty, as well as large crowds.¹⁰ These spectacle killings, perpetrated before crowds of hundreds and sometimes thousands and were reserved exclusively for blacks: usually black men but in several cases, black women too (Brundage 1993:80). White men were rarely lynched in front of large crowds (with the important exception of Leo Frank, who was lynched by a small group who then displayed his corpse to a large crowd Dray 2002:207ff) and I have found no recorded cases of them being tortured or burned in this period. These large-scale events, which by their nature entailed extensive community support, always occurred in response to allegations of serious crimes (above all murder and rape) and always involved a white crowd and a black lynch-victim.¹¹

Public torture lynchings began with the torture killings of Henry Smith in Paris, Texas in 1893 and of Sam Hose in Newnan, Georgia, in 1899 – each of which occurred before large crowds and was the subject of national newspaper reports and widely circulated photographs (Hale 1996:68-9). Although mass mobs and even burnings had occurred prior to the 1890s, the killings of Smith and Hose inaugurated a new kind of event – or anyway a new and more savagely spectacular version of an old one – that was to be repeated on hundreds of occasions in the next four decades.

The public torture lynching quickly took on a formulaic character – an imitative pattern that was aided by detailed reporting and the circulation of lynching photographs (Jean and Brundage 2002). The characteristic sequence of these events was as follows: A

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black suspect would be named following reports that a respectable white person had been raped or murdered. Lurid accounts of the crime would circulate (Hall 1993; Hale 1998). A posse of victims' relatives and townspeople would chase down the suspect or, if he or she was already in custody, the crowd would seize the suspect from the law officers. If the chase took some time, or if the lynching 'committee' was holding 'the wretch' in secret, local newspapers (and later radio stations) would announce that a lynching was imminent, stating the likely time and place. The lynching of Sam Hose was preceded by a headline in the *Atlanta Constitution* of April 14th 1899: 'DETERMINED MOB AFTER HOSE: HE WILL BE LYNCHED IF CAUGHT' and, prior to the lynching of Claude Neal in 1934 the *Dothan Eagle* of October 26th declared: 'FLORIDA TO BURN NEGRO AT STAKE: SEX CRIMINAL SEIZED FROM BREWTON JAIL, WILL BE MUTILATED, SET AFIRE IN EXTRA-LEGAL VENGEANCE FOR DEED'.

The execution would be staged in a public square, by the railroad, in a field close to the victim's home, or, most often, at the scene of the alleged crime. Visibility would be enhanced by the building of makeshift platforms, or the elevation of the lynch-victim's body. If expediency prompted lynchers to kill their victim away from the preferred locale then the body would be dragged to the home of the victim, a town square, or a black neighbourhood, and put on display there. If the lynching had been announced ahead of time, reporters and telegraph operators would arrive, with portable equipment, ready to send bulletins directly from the scene.¹²

Lynchers debated the appropriate method of execution, sometimes settling the matter with a vote, or else by asking the victim to decide.¹³ If he was compliant and offered up a confession, the person about to be lynched might be granted a last request –

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a meal, or an opportunity to say farewell to friends and relatives.¹⁴ If not, he would be tortured until he confessed the crime, or implicated others. A refusal to confess was taken as a sign of recalcitrance not innocence, though on at least one reported occasion, doubt about the lynch-victim's guilt prompted the lynchers to hang him rather than burn him as originally intended.¹⁵

Lynch-victims were hung from trees, from utility poles, from bridges and in one case, from the ceremonial arch in a city square (Allen 2000). But few died from strangulation. Members of the crowds shot bullets into the suspended bodies or used knives to cut the body into pieces (Brundage 1993 41-2). Many victims were chained to an iron stake and burned to death. During the execution, members of the crowd – often led by relatives of the alleged victim – would torment and physically abuse the dying man. Lynch-victims were maimed while still alive, their ears or fingers or genitals amputated, their bodies stabbed and cut, their entrails pulled out before their eyes (Harris 1995; Lecayo 2000; Downey and Hyser 1991).

Once the man was dead, and his body cooled, members of the crowd would grab pieces of the rope, links of the chain, or pieces of the tree where he had been tied. Some took scraps of his clothes or bones and body parts that had survived the fire. These souvenirs, like the photographs taken at the scene and mass-produced for days afterwards, were much sought-after and often traded for cash (New York Times 2nd February 1893 and 24th June 1903). At the conclusion of the lynching, the remains of the lynch-victim would be displayed or else dragged around town, resting finally in the town square or in an African-American neighbourhood. Sometimes the gibbeted corpse would hang for days, exposed for all to see (New York Times, 16th May 1916).

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In the days following a lynching, local newspaper editors defined and defended the events, while writers elsewhere excoriated them (Jean and Brundage 2002). In the face of criticism from big city newspapers and northern liberals, local spokesmen offered rationales – the horror of the alleged offence, the need to protect women and children, the delay and uncertainty of the law, the honourable tradition of popular self-help and community justice – that expressed their acceptance and tacit approval of the institution.¹⁶ They might assess the particular lynching as better or worse – depending upon the status of the lynch-victim, the evidence against him, the degree of discipline and orderliness that had prevailed, and the kinds of people who had led the crowd – but they rarely criticized the institution of lynching itself. These editorials and exchanges amounted to a struggle over the proper norms within which these events should take place, spelling out a rudimentary jurisprudence of lynching and ‘legitimate’ racial violence (Brundage 1993; Waldrep 2002).

Despite the eye-witness accounts that appeared in their papers, the photographs that circulated, and their frequent claims that ‘the best class of people’ had led the mob, local authorities maintained the pretense that none of the lynchers could be identified.¹⁷ Coroners’ juries charged with investigating the cause of death made cursory inquiries and reported that the deceased had died ‘at the hands of persons unknown’ (Dray 2002).

Less frequent than the lynchings by other kinds of mobs, the impact of these public torture lynchings was nevertheless greater. They were highly-charged public events that emerged at the same time as the camera, modern communications, and the emergence of a nation-wide mass media (Hale 1998). When one of these events occurred, news of it carried well beyond the immediate vicinity, often to the whole nation.

Moreover, the circulation of photographs and detailed newspaper accounts facilitated the spread of the phenomenon by creating a publicly available script, known to lynchers and their audiences, and available for anyone audacious enough to perform it.

Public torture lynchings as ‘rituals’

To describe these public torture lynchings ‘rituals’, as I intend to do, may appear to overstate their organization and solemnity, and imply that they had a religious or aesthetic quality that most of them singularly lacked: even the most elaborate lynchings were crude affairs, hastily convened and roughly performed.¹⁸ Invoking the idea of ‘ritual’ will also mislead if it suggests the automatic production of ‘solidarity’ and ‘communal unity’. Public torture lynchings were conflictual, aggressive events, undertaken in the context of ongoing struggles over power and meaning. If we think of rituals as routine expressions of an established faith, as Durkheimian analyses often do – we will badly misunderstand the phenomenon (Desan 1989). These rituals were violent political acts, staged as moments in an ongoing struggle – more like acts of war than acts of worship. And the conflicts in which these combative acts were struck were often political struggles *within* a white community, as well as between a white community and black ‘offenders’.

Public torture lynchings were a particular kind of ritual then, but rituals were what they were nevertheless. For, despite these qualifications, and despite their rough and ready character, these events were collective performances that involved a set of formal conventions and recognizable roles; a staging that was standardized, sequenced, and dramatic; and a recognized social meaning that set the event apart as important, out-of-

the-ordinary, highly charged in symbolic significance. Lynchers sought to represent their violent acts as collective rituals rather than private actions – seeking the public authority that came with the crowd – and they used the ritual forms of criminal punishment to do so.

To say this is not to deny the initially spontaneous, reactive character of the mob actions that subsequently developed into public lynchings (Griffin 1997). It is simply to claim that, once a lynching was underway, its participants' conduct was generally shaped and sequenced by a familiar script, and produced a performance with a distinctive form and character. Lynchers and spectators were performing a morality play – or, more precisely, a piece of political theatre – which had a shape that was dimly familiar from public executions years before,¹⁹ and which had been recently rehearsed in public lynchings elsewhere. In its grim particulars, each new lynching was improvised and distinctive, but in their broad outlines and narrative sequence, they generally adhered to an established institutional form. That there were lynchings that were regarded as having being *spoiled* – bad events that failed to adhere to the customary procedures – also tends to support this view (Harris 1995; Jean and Brundage 2000).

These were not occasions on which an established and broadly accepted faith was simply put on display and re-affirmed in a routine, predictable manner – as would have occurred had the case gone to court. The act of staging a lynching was much more contingent and more unpredictable than our usual notion of ritual behaviour implies. There was no settled 'cultural system' that was being 'reproduced' by lynching – Geertzian analysis is unhelpful here. Instead there were local structures of power and authority and value that were under pressure from outside and engaged in ongoing

contests and struggles from within. And each exercise of mob power, each invocation of the lynching values and symbols, was an aggressive assertion of a certain racial politics, a certain way of conceiving social order, undertaken in defiance of the forces arrayed against it.

In embarking on the lynching of a criminal suspect, ring leaders were attempting to wield a form of power and to invoke a set of values that could be expected to produce community support and approval. Their adoption of the ritual forms of public executions was an implicit appeal for legitimacy that invited collective recognition. Their targeting of perpetrators of the ‘worst’ crimes was a reliable way of invoking community norms and harnessing them to their cause. Their success in attracting a crowd, orchestrating its actions, and staging a public lynching was not, therefore, a routine expression of an underlying sentiment. (As must have been apparent to would-be-lynchers who failed to gain public support for their efforts – see Griffin et al 1997.) It was an activating, constitutive, defining exercise of power that produced the very values it claimed to celebrate and display. Some rituals may be, as Durkheim claimed, a celebration and reaffirmation of what everyone already believes. But these rituals were something else entirely – a shocking display of blood and suffering intended to transform the relations of blacks to whites and of whites to each other.

Lynchings, state laws and local norms

However much local support they attracted, public torture lynchings were always highly controversial. If many locals saw them as necessary, even admirable, expressions of popular justice, people there and elsewhere saw them as scandalous affronts to a

civilized nation. And if their moral status was essentially contested, their legal status was no less unsettled.

Was public torture lynching a crime? A deviant act? Yes and no. According to the criminal codes of the states in which they occurred, these acts amounted to *prima facie* cases of premeditated homicide. Measured against the letter of the law, mob lynchings always involved murder and conspiracy to murder, and often other lesser crimes as well – kidnapping, assaulting law officers, breach of the peace, and so on. No doubt charges of perjury and contempt of court could also have been brought in the many cases where official investigations were thwarted by the silence of witnesses and residents. But the fact is that laws were rarely enforced against the lynchings.²⁰ Prosecutions were not brought for lack of political will at the state level, or for lack of co-operation in the local community. In practice, lynchings enjoyed immunity from state or local prosecution. Anti-lynching campaigners were well aware of this, which is why they generally appealed for intervention by the federal government, even though crimes such as homicide were a matter of state law and the federal authorities had no jurisdiction to intervene. But this appeal to national law also failed. No federal anti-lynching statute was ever enacted, though from 1891 onwards bills were regularly presented to Congress and some came close to being passed. It was not until the 1930s that the federal courts intervened to uphold civil rights (typically of black defendants) in state criminal matters (Klarman 2000), and it would not be until the Civil Rights Act of 1968 – three decades after the worst excesses had ceased – that lynching victims could seek effective remedies in federal law (McGovern 1982:147).

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One might regard this situation as one of under-enforcement, where an unambiguously criminal act goes unpunished because of the weakness of the state government and its criminal justice agencies. But this would mis-describe the normative status of lynching and miss the important dimension of legal pluralism that characterized these situations. These lynchings may have violated the letter of state law, but they were not violations that were ever liable to be sanctioned. This *de facto* suspension of state law occurred not because of a lack of enforcement capacity but because, in these situations, local norms of justice contradicted state law and interrupted its operation. The fact is that the lynchings' conduct was usually regarded with broad approval by large sections of the communities in which the lynchings occurred, and it was tolerated (and often applauded) by local politicians and law officers. In these locales, for these crimes, and for these suspected criminals, lynching was not deviance from group norms but instead the direct enforcement of group norms in a situation of conflicting powers and multiple authorities. Whatever state law said, and whatever the rest of the nation thought, in the counties and townships where they took place, public torture lynchings could claim to be socially approved civic undertakings, and not deviant acts.

Northern liberals might call it 'homicide by lynching' (Reynolds 1897/8), but closer to the action lynching made claim to be a legitimate expression of community justice, a normative order that substituted for state law whenever local circumstances required. As a commentator in the Yale Law Journal put it, 'The underlying purpose in all these cases is not to violate, but to vindicate, the law; or to speak more accurately, the law is violated in form that it may be vindicated in substance' (Bonaparte 1899). In the Deep South, at least until the 1930s, lynching was evidence of an intermittent and

situational legal pluralism.²¹ Racially coded community norms and the rules of state law competed for jurisdiction, and whenever lynchings occurred, the behaviour of local law officers, witnesses and jurors ensured that the norms of local law generally prevailed. Constitutional provisions and state legal norms regarding the status and rights of African Americans were weakly enforced, highly contested, and often of marginal significance in the daily lives of these communities. In contrast, the norms of the southern racial code were precise, exacting, and vigorously enforced. When public torture lynchings were carried out, it was the latter norms that governed conduct, not just of the lynchers but also of the local law officers and community leaders, who tolerated their conduct and granted it impunity.

Were public lynchings criminal punishments? That black men were the characteristic victims of mass mob lynchings, and that declarations of white supremacy were often part of the accompanying discourse, prompt us to understand these events as furious expressions of racial hatred, which is, in large part, what they were.²² Public torture lynchings were highly visible instruments of terror that functioned – along with race riots, debt peonage, disfranchisement, segregation laws and violently enforced codes of racial etiquette – to ensure the subordination of southern blacks in the period after 1890. But if public lynchings functioned, as all white-on-black lynchings did, as racialized social control, they were also, in way that was quite definitive for those concerned, a form of criminal punishment. The most important evidence of this is that that the news reports of the period – critical accounts as well as supportive ones – made it clear that public torture lynchings always occurred in response to an alleged crime of a very serious nature.²³ Minor insults, personal feuds, economic competition and ‘uppity’

behaviour, might prompt a private lynching or a terrorist group attack, but mass mobs assembled to watch a black man being tortured and killed in public only when they held him responsible for a heinous crime.²⁴

The victims of these enraged mobs were African Americans accused of gross criminal outrages. They were black men accused of raping or murdering white women, black men accused of murdering their employers, black men accused of killing law officers, and black men accused of sexually assaulting white children (Brundage 1993:37). Of course the key word here is ‘accused’: the lynch mobs acted on allegations, and were liable to make mistakes. They viewed uncorroborated allegations and wild rumours as reliable evidence. They took the word of white victims or their relatives. They relied on confessions induced under torture. Newspaper headlines frequently stated ‘Innocent Negro Burned’.²⁵ And sometimes the mob’s punitive fury would spill over beyond the alleged offender to attack his family members or the neighbours with whom he had sought refuge. In short, the mob’s version of ‘popular justice’ was a grotesque caricature of due process and the rule of law. But lynchers generally convinced themselves that they had the right man by asking the victim to make a positive identification or forcing the suspect to make a public confession and thus confirm the rectitude of the proceedings.²⁶ At a fundamental level, racial hatreds were what provided their special energy, and caste distinctions determined their peculiar choice of methods. But in more immediate terms – above all in the public forms and discourses through which they were represented (see pp.16-18 above) – these public lynchings were understood by participants as criminal punishments, not arbitrary and unprovoked acts of violence, and this characterization was crucial to their local meaning and legitimacy.

Contemporary newspaper reports give the same impression, referring to the events as ‘executions’ and always describing the crime of which the lynch-victim was accused.²⁷

In keeping with this understanding, the lynch mobs of the 1890s and 1900s conducted themselves in ways that resembled official public executions – with their processions, the raised platform or gallows tree in the public square, the condemned man's confession, and the watching crowd.²⁸ Local newspaper editorials compared ‘the execution’ to official ceremonies, indicating that a ‘good’ lynching was one where the crowd acted in a restrained, sober manner and observed the niceties of the legal ceremony. This, despite the fact that eyewitness accounts suggest a much more raucous, savage business, using torture and torments that had long disappeared from official execution practice.

Revealingly, it was in fact archaic, early-modern executions these lynchings most resembled, rather than the reformed methods legal officials were using in the late 19th century. By the 1890s the great majority of legal executions in the USA (in the South as elsewhere) took place behind prison walls, using methods – the trap-door hanging, hanging machines like the ‘upright jerker’, and, after 1888, the electric chair (Banner 2002) – designed to minimize pain and ensure a swift death. If public lynchings were like ‘executions’ they were most like the executions of a bygone age, above all the 17th century punishment of burning alive reserved for the crime of *petit treason* – typically a wife who killed her husband or a slave who rose up against his master (Banner 2002:71) This choice of methods was no accident. When they seized their black suspect, lynch-mobs reached for methods that would most forcefully convey the hatred and contempt they felt for the supposed perpetrator and his unspeakable crimes. It was thus

unsurprising that the specific techniques they came up with – burning alive, hanging in chains, torturing and maiming the offender – were the same harsh forms of penal debasement that had historically been used in America and elsewhere, to set inferiors in their place and strip them of their humanity (Banner 2002:71; Merback 1998:141). Regular punishments were too good for these ‘offenders’, regular justice too respectful and too dignified. Torture, burning, dismemberment, and display were all traditional, simple, and readily available modes of combining an excess of pain with the debasement of the person and the desecration of his body. By reviving these ancient penalties, the lynchers created an aggravated form of capital punishment, more terrible than official justice, and more nearly proportionate to the horror and rage provoked by the lynch-victim’s ‘crimes’. The public torture lynching was invented to communicate impassioned sentiments that could no longer be expressed in the official idiom of the criminal law, and to inflict a level of suffering that had long since been officially disavowed.

Hence what appears, from the perspective of penal evolution, as the strikingly *anachronistic* character of these events. Southern crowds began to torture, mutilate, burn at the stake, and display corpses centuries after America’s criminal justice authorities had abandoned these very same practices (Banner 2002; Masur 1989; Friedman 1993). They did so not because they were ‘primitive’ or ‘pre-modern.’ They did so to invoke a set of meanings and distinctions that America’s increasingly egalitarian legal system had sought to leave behind. The lynchers’ use of ‘cruel and unusual’ punishments was a deliberate²⁹ flouting of the norms of modern law and civilized penology, a self-conscious choice, intended to degrade and defile black offenders and to refuse them the treatment afforded to convicted criminals by the criminal justice institutions of the time.³⁰ The penal excess

of these new lynchings was not an accidental effect of a crowd getting carried away – it was at the very core of the event’s penal purpose and political meaning.

Why lynch?

Public torture lynching was staged by lynchers as a heinous punishment for a heinous crime – an act of vengeance and social defense against wrongdoers who threatened the security and authority of the white community. But we should notice that this was a ‘punishment’ that they chose in the presence of clear alternatives. Places such as Newnan, Georgia; Dallas, Texas; Waco, Texas; or Jackson County, Florida were not, at the turn of the century, frontier settlements that lacked effective law enforcement.³¹ They were established towns and counties with functioning police, courts, and jailhouses. Mobs typically seized hold of their victims when they were already in the custody of law officers. If the townspeople had chosen to let the law take its course, they would likely have had the satisfaction of seeing the accused person rapidly tried, convicted and executed. But they preferred to do it themselves.³²

What was it about mass mob lynching that made it preferable to official trial and punishment? Supporters of lynching complained that official justice was too slow, too uncertain, too prone to reversal on appeal because of technical loopholes.³³ But the record of the trials that did take place in those lynching counties suggest that slow, uncertain justice was not much of a problem when the defendant was a black man accused of raping or murdering a white victim. These cases were handled with such dispatch that sometimes less than a day elapsed between the empanelling of the jury and the execution of the man they promptly convicted (Banner 2002:229). Aggrieved victims and their

supporters could confidently expect the legal process to produce the right result and a speedy one at that. So why did they wrestle control of events away from the law, and enact a ‘justice’ of their own?

In the eyes of the mobs, the legal process was not just slow and uncertain; it was also too removed and too restrained. For these particular ‘criminals’, and for these particular ‘crimes’, southern mobs wanted to wreak their own brand of vengeance without intermediaries. The mode they preferred was impassioned, personalized, and communal; the techniques they utilized were deliberately cruel and unusual. Why? Because the crimes in question were perceived as crimes of *lese-majesty* – challenges to the social order and the racial code upon which that order depended. Homicidal assaults upon white employers or law officers or public officials were serious affronts to the caste hierarchy around which southern race relations were organized. Sexual assaults on white women violated the most intense taboo of the southern racial code. Crimes such as these carried a collective insult, a racial dishonour, and a background threat of insurrection that implicated the whole white community. The outrage they produced was more intense and more collective than that produced by ordinary crimes and ordinary criminals, and this collective aspect was never more apparent than when relations between racial groups seemed volatile and uncertain.

In this context, the lynching of a black ‘criminal’ could be a very popular form of ‘justice’. Lynchers disregarded the externally-imposed restraints of state law and legal procedure and encouraged the crowd to respond to the offence by affirming its power and enjoying its self-expression. Lynchers acted in ways that proclaimed the sovereign power of ‘the people’ acting directly on their own behalf, avenging their victimized kin,

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upholding white honour, and demonstrating their collective strength. The heinous crime of the black man – and behind it the suggestion of an insubordinate black underclass – was a challenge to these values and demanded a vigorous rebuttal.

To allow the matter to go to the authorities and be dealt with by the legal system was to depersonalize the relationship of white to black and to treat the matter of black misconduct as a question of law. By avenging the crime themselves, the lynchers implied that the relationship that counted was between blacks and whites, and that this was a relationship not of laws and citizens but of superiors and subordinates, masters and slaves. For the lynchers and the community they invoked, this was personal.

That crowds did turn out, often in massive numbers, helped confirm these claims, giving the lynchers' actions a communal authority that was hard to deny. The amassing of a crowd around events of this kind serves as an 'officializing' gesture (Bourdieu 1990:108), especially in settings where state governance is weak or contested. The crowd converted an act of 'private' justice into a public act. It *politicized* it, converting its significance from an act of unlawful violence into a law of its own. Punitive sanctions could have been administered quietly, under cover of darkness, in the style of a private lynching or a Ku Klux Klan attack. The accused could have been swiftly dispatched by a single bullet to his head. But such methods would have robbed the act of much of its political force. The essence of this form of lynching lay in its brutal, communal character – a display of raw power that that used blood and crowds to stake its claim.³⁴

The penal excess of the lynching spectacle said things that a modernized legal process could not. It cut vivid statements into the flesh of its victim and used broken bodies to establish indispensable truths. It demonstrated that unrestrained violence and

unlimited power were hallmarks of communal justice and that moderation was out of place when race supremacy was at stake. At the same time it re-established the correlative status of the troublesome black man, which was as nothing, with no rights, no protectors, no personal dignity and no human worth. To allow a black rapist or murderer the due process of law would be to treat him as a citizen, a fellow American, a fellow human being. The public torture lynching worked to deny this fellowship and to insist on the utter worthlessness of any black man who offended against white people.

If torture and penal excess were gestures of nullification, they were also, of course, deterrent reminders that any black man who attacked white women or children could expect to endure hell on earth. In the 1880s and 1890s, and indeed for decades later, casual violence by whites on blacks was commonplace (Litwack 1998). Violence also characterized the treatment of blacks in southern criminal justice, which alternated the death penalty with the brutal servitude of the chain gang (Oshinsky 1996). Against this background, the penal excess of the spectacle lynchings ‘deepened’ the significance of the event, rendering it more emphatic and more ‘proportionate’. Responding to what they took to be the ultimate, aggravated crime, the lynch-mob reached for a penalty that would mark its extraordinary significance.

That this ritual was banned by criminal law, was characteristic of the South and of nowhere else in the USA, and was guaranteed to scandalize the rest of the nation, also gave it a definitional power that official executions could never match. Mass lynchings were crowd events through which lynching activists and their supporters proclaimed a distinctive communal identity. They defined themselves as *sovereign* in opposition to state (and later, federal) authorities for whom their actions were not law but lawlessness.

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They defined themselves as *superior* against the fact of black emancipation and the aspirations of African Americans for social status and legal protection. They defined themselves as *southern* by invoking old codes of southern honour (Brown 1975; Wyatt-Brown 1982) that demanded self-help and direct action whenever personal interests were threatened. And they defined themselves as *immoderate* in defence of these values, in a way that expressed disdain for race ‘conciliators’ and voices of moderation in the white community, as well as the reformed criminal justice system and its humane concern for black offenders.

These lynchings were entertainments, diversions from the workaday routine, and in small-town and rural settings, this was a large part of their appeal. Thousands of picture postcards are proof enough of this. But they were also defining moments of political expression, where groups of people who felt themselves besieged by status threats, rocked by political and economic upheaval, and humiliated by defeat in war and Northern condescension, responded to allegations of black criminal outrages with these aggressive, insurgent acts of symbolically-charged violence. In these excruciating punishments southern townspeople acted out a collective fantasy of white supremacy and sovereign power. When local newspapers opined about these events, they characterized them as instruments of popular vengeance, designed to suppress the threat of black criminality (Jean and Brundage 2002). But their most basic meaning was more intimate, more inward; communicated not to outsiders but *to* the crowd *by* the crowd itself, as directed by the lynchers who had activated it. The central function of these rituals was to assert and celebrate a specific communal identity – sovereign, southern, supremacist – by

brutally responding to black crimes that challenged that self-image, and, more obliquely, to any white reformist politics that would undermine it.

This is a social dynamic that Kai Erikson (1966) or Stuart Hall (1978) would certainly have recognized. In their manifest form, and in the justifications offered by their proponents, public lynchings were summary punishments, prompted by criminal allegations, purporting to ‘do justice’ and restore ‘law and order’. But in substance, in their latent social function, and in the intuitive understandings of participants and onlookers, what was essential to them was their distinctive, customized violence, staged by an autonomous, local authority, implementing a racialized form of justice designed to reassert the power and values of a reactionary social order. A punitive ritual then, but also a political theatre. One that requires us to think not in terms of crime and punishment, but in terms of the political uses of penal excess.

Lynching’s social meanings

If public torture lynchings were political theatre, what dramas were performed there? What meanings did they convey and to whom did they convey them? What languages and symbols did they employ and how were their gestures interpreted? Existing historical monographs give us a rich source of empirical material with which to interpret the political and cultural meanings of these lynchings, as well as some persuasive accounts of what specific events meant in the particular context in which they occurred. The analyses that follow describe the social functions served by public torture lynchings and the various meanings that they had for the people involved. No single lynching communicated all of the meanings or served all of the functions described

below: each event occurred and signified in a specific time and place. But these descriptions provide some sense of the institution's social uses and the social meanings that its rituals conveyed, which in turn helps explain how such an institution could find so much support. Besides an excess of punishment, these lynchings conveyed a surplus of meaning, articulating the destruction of a dangerous black offender onto the different dimensions of local culture and social structure.

Crime control: The lynching eliminates an allegedly dangerous criminal and does so with speed and certainty. The terrifying cruelty of the lynching is a powerful gesture of deterrence, sending a forceful message to would-be offenders. In a region that is hard to police, with a 'problem population' that is no longer closely supervised, it utilizes the old tactic of exemplary punishment and vivid public display.³⁵

Vengeance and vindication: The punishment of the alleged offender is an emphatic act of retaliation, countering his alleged crime and vindicating his victim. The violence avenges the crime, and vindicates the social worth of the victim, his or her family, and his or her race. The punishment is retribution for an offence but also the re-establishing of honour following an intolerable insult.³⁶ That a huge crowd turned out to avenge the crime is at once a mark of esteem for the victim and an affirmation of the community's strength.

Dishonouring and degradation: The penal excess of the event – its torments and emasculations – together with the event's public character, are designed to degrade the offender, to strip him of human dignity and to restore him to his place as an inferior (c/f Scarry 1985; Whitman 2003). The ritual humiliation of the lynch-victim responds to the status affront, the *lese-majesty*, involved in his alleged crime. The traditional symbols of

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infamous, low status, punishment are employed to this end, as are the taunts and humiliations spontaneously inflicted by the crowd.

Expressive justice: The lynching's proximity to the alleged crime permits the cathartic release of powerful emotions.³⁷ The public ritual provides an occasion for acting out communal outrage and an opportunity for injured victims to express their (socially sanctioned) fury. Contemporary newspaper reports emphasize that the people were 'aroused', 'incensed', 'impassioned', 'furious', 'bent on vengeance'

Cultural instruction: The lynching serves a didactic purpose, both for insiders and outsiders. For victims and kin who hesitate to do what is required of them, lynchers provide instruction and the crowd provides encouragement and pressure. For others in the crowd it is a 'bleeding' of sorts – an experience that organizes subjectivity, teaching white southerners what it means and how it feels to be a white southerner. To blacks in the vicinity it is a brutal reminder of their place in southern society. For the rest of the nation, it is a demonstration of 'how we feel down here' (Litwack 2000:27).

Purification: In what Cash (1941) called 'the mind of the South', African Americans were regarded as unclean as well as inferior, and intimate contact between black and white – sharing a toilet, drinking from a public fountain, trying on hats and coats in a store – was viewed as a source of contamination (Harris 1995; Litwack 1998). The pollution of the white women's purity by the black man's sexual assault was the ultimate contamination – an abomination that polluted the community as well as the woman,³⁸ violated the prohibition on miscegenation, threatening to 'mongrelize' the races and bring down the whole system of racial division and hierarchy (Cox 1945; Frederickson

2002). Burning the black man's body was an act of purification, reducing the taint of the violated taboo and reinforcing the strength of its prohibitions (Paterson 1998:218).

Terror and racial control: Spectacle lynchings functioned as the extreme point on a continuum of violently enforced racial controls (Tolnay and Beck 1995: 57). The ferocity of these events worked to charge the rest of the control network – private lynchings, lesser assaults, the everyday threat of violence that backed up racial etiquette and the demand for deference – with a surge of surplus power. Extraordinary violence – *penal excess* – served to increase the day-to-day effectiveness of more routine racial controls³⁹. The sadistic cruelty of the lynching may have been expressive, but it was at the same time fully strategic: the one aspect reinforcing the other.

Sovereignty and private police power: Staging a public lynching in open defiance of state law was a political statement, validated and made more emphatic by crowd support. By ‘taking the law into their own hands’, southern lynch mobs transformed felt weakness into a show of strength, claiming the sovereign power to manage their own affairs, defeat their own enemies, and assure their own security. Lynchings asserted the continuing autonomy of local communities and marked out the practical limits of state and federal power.⁴⁰ In the South, this direct power to punish had a special significance as a legacy of the personal right of white men to control slaves and to exercise police power over them. That this sovereignty should be expressed in savage form is not surprising. We know from Foucault (1977) and Merback (1998) that cruelty in punishment is the mark of sovereign power in absolutist regimes, and from Evans (1996) that horror in punishing is the resort of absolutist powers that are under threat.

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Control of meaning: Absolutism in punishment is also marked by the absence of doubt. In contrast to the legal process, lynching allowed a single narrative, a single truth, to be publicly proclaimed. Where courts – even southern courts dealing with black defendants – threatened to introduce evidence that could disrupt stereotypes, dispute facts and humanize defendants, public lynchings allowed the untrammelled projection of pure racial stereotypes and stark moral contrasts. The mass mob attests to a single structure of meaning, unopposed and unquestioned. In that sense, crowds are a device for the avoidance of doubt (including self-doubt) and the suppression of dissent. In marked contrast to the official hanging day crowds described by Vic Gatrell (1994) – which loudly expressed dissent and criticized the executioners – reports of lynch crowd conduct record few contrary opinions.

Canceling civil rights: Public lynchings demonstrated the emptiness of black people's constitutional claims to legal process and protection.⁴¹ They made it plain, to blacks and to whites, that despite Emancipation and Reconstruction, despite the 13th and 14th Amendments, black bodies remained the property of white people and could still be exploited for profit and for pleasure. The message of these ceremonies was that the black legal subject did not exist. Critics called lynchings 'lawless' but this fails to capture their true relation to the legal system. These events were a kind of counter-law: their lawlessness aimed not to *evade* the law but to *undo* it. It has sometimes been noted that public torture lynchings emerged at the same time and in the same place as the movement to disenfranchise black Southern voters (Cox 1945). But it would be more accurate to say that these lynchings were themselves a form of practical disfranchisement,

simultaneously symbolizing and substantiating the black man's lack of citizenship or legal status.

Scapegoating: The violence of lynchings was fueled by hatreds and tensions between blacks and whites, but it also expressed other anxieties and drew energy from other social divisions. Economic divisions between planters and sharecroppers; status divisions between 'crackers' and the 'best citizens'; political divisions between conservative and radical, gender division between men and women – such conflicts lay in the background of lynchings and sometimes found expression in the actions and discourses surrounding the events (Tolnay and Beck 1995:19; Williamson 1984). The outrage provoked by the alleged crime made it possible to stage a collective action that surmounted these conflicts and channeled the hostilities that they produced.

Solidarity: The lynchings themselves, together with the subsequent circulation of images, tales and mementoes, functioned to produce solidarity of a kind. Participation – even vicarious participation, after the event – had a binding effect, establishing complicity and implying group membership. Lynching postcards were sent to friends so that they too would be included in the collective transgression and the community it implied. They drew the recipients into an awareness of acts that were illegal but locally approved. They communicated a knowing involvement and a tacit approval. That the law prohibited lynching; that lynching violated the norms of conduct prevailing elsewhere in the USA; that lynching was savage, bloody, and brutal – all of this added to the force of the event as a binding mechanism in an embattled, defiant community.

Lynching as power play: Lynchings were events that allowed the most virulently reactionary elements of a community to take charge, to display their power and mark out

their distance from more moderate or conciliatory elements. In attracting a large crowd, and effectively carrying out a public lynching, these individuals advanced a claim for themselves as local leaders who could command popular support. Wherever this ruthlessness appeared to succeed, local elites were inclined to go along with it, defending the lynchers' actions, rather than challenge their credentials and commitments (McGovern 1982). Public lynchings brought about various political adjustments, shifting the balance of power in relations between blacks and whites, and moving white local sentiment in a more populist, racist direction (Cox 1945:581). One can see the negotiation of new status hierarchies and the working out of new political settlements in the editorials, debates and declarations that pour forth in the aftermath of one of these lynchings in the community concerned (SoRelle 1984).

Gender and racial hierarchies: Also at stake in these rituals were the complex social and sexual relations between southern men and women. As Jacqueline Hall (1993:xx) puts it, 'the racism that caused white men to lynch cannot be understood apart from the sexism that informed their policing of white women and their exploitation of black women.' Most explicitly and most explosively, lynchings spoke to the taboo relation between black male assailants and white female victims. But, more obliquely, they also spoke of the relationship between the white male lynchers and the white women in whose name and for whose protection, lynchings were carried out. The standard rationale for public lynchings – the protection of white women from sexual attack by predatory black males – was a rationale that carried obvious consequences for white women, confirming their dependent status, reinforcing the expectation that they would be

sexually 'pure', and making it clear that sexual relations across the colour line would bring dire consequences.

The figure of the pure white woman occupied a strategic position in the Southern racial structure, which helps explain the tenacity of the 'rape complex' (an emotional mindset focused on the threat of black man/white woman assault) and the ferocity of the punishment that it brought forth (Cash 1941; Cox 1945). In the lynching drama, the themes of sex- race-violence-power are setting as well as action, background as well as foreground.

Sexual violence: The frequent use of lynchings as a punishment for rape, the embroidering of murder allegations with fabricated rumours of sexual assault, the frequency with which lynch-victims were castrated, the hanging display of their nude bodies, and the exuberant sadism of much crowd behaviour – all of these suggest that sexual impulses formed part of the psychological dynamic that animated these events (Hall 1993: xx). Myths about the sexual potency of black men, southern ideals of white female purity, and the anxious discontent of white males whose unrealistic views of female sexuality were recipes for frustration and infidelity, produced an explosive mix of sexualized emotions. Public torture lynchings offered a socially sanctioned occasion for the projection of these fantasies and an outlet for the cathartic release of these frustrations (Williamson 1984; Frederickson 1971).

Lynching as carnival: Lynch leaders would typically impose a degree of order on the crowd, if only to observe the proprieties of giving the victim's relative the first blow at the black man's body, or to ensure that shots meant for that body did not hit crowd members instead. But beyond this minimum of discipline, mass lynchings were often

riotous, carnivalesque affairs – recall Henry Smith ‘placed upon a carnival float, in mockery of a king upon his throne’ (New York Times, 2nd Feb 1893, p. 1). People went to see popular justice done, but they also went to enjoy themselves. ‘Lynching bees’, ‘Negro barbecues’ ‘lynch carnivals’ – these were southerners’ familiar names for these events. Watching a black man put to death was an entertainment and – as contemporary news reports and photographs make clear – southern crowds found excitement and pleasure in it. H. L. Mencken was only half in jest when he identified the cause of lynching as the absence of concert halls.

Lynching as mnemonics: Public torture lynchings used suffering to make a memory (c/f Nietzsche 1956:192-3). The didacticism of the lynchings began when the lynchers inscribed the marks of white power and popular vengeance on the body of their lynch-victim. It continued its lessons on the signs that were posted at the scene – signs saying ‘Justice’ and ‘Our wives, mothers, daughters and sisters shall be respected’ or simply ‘White Supremacy’ (Brundage 1993:42; Tolnay and Beck 1995:64). It spread outwards as newspaper stories were written and read, photographs and postcards circulated, and views exchanged in editorial columns and letters pages. Over time, stories passed from neighbour to neighbour, from generation to generation. The memory of these big days structured the consciousness and conduct of the people they touched (Hall 1993: 136; Litwack 1998). For many African-Americans, it still structures consciousness today (Markovitz 2004).

Symbolic reversals and ritual outcomes

These, then, are the recurring motives and meanings about which we have some evidence and some understanding. It is not a comprehensive account – there will certainly be others not identified here that other historians may discover, as well as many localized references or contemporary communications that are lost to us now. Nor is it a list of discrete purposes – these meanings overlapped and flowed into one another, creating polysemic meanings and overdetermined events (c/f Garland 1990:280-1). But it is more than sufficient to give a sense of the deep significance of these events, of the complexity of the politico-cultural field onto which they imposed themselves, and of the wide-ranging effects that they could sometimes produce. But to describe the lynchers's actions and the cultural conventions on which they drew is not to imply that they always succeeded in creating the effects they intended.

As I stressed above, these actors were engaged in a struggle over power and meaning in a setting that was highly contested and deeply conflictual. The outcomes of their actions were always contingent and never certain. Lynchers' actions were viewed by multiple audiences, local and national, black and white, male and female, supportive and critical. The symbols they invoked were capable of contrary readings and interpretive reversals. The values they aimed to uphold could sometimes be undermined by the very methods they used to affirm them.

Thus the celebration of local sovereignty often appeared to others an argument for imposing national norms (NAACP 1919). Claims of white superiority could be mocked by the very savagery with which they were affirmed. A punishment intended to mark the awfulness of an offender's crime could reveal the barbarity of his persecutors

(Williamson 1984) . The ‘black beast’ who was supposed to be degraded by his treatment could end up being elevated by it. Being the focal point of so much passion and such an elaborate ritual, the man being lynched was easily transformed into a Christ-like martyr, as is suggested by much of the critical art that has grown up around lynching (Langa 1999). The southern white women whose honor and security lynchers claimed to protect could come to feel oppressed and ashamed by these atrocities and to revolt against the ‘chivalry’ they entailed (Ames 1937; Hall 1993). Photographs that celebrated and commemorated the lynchings also helped build a national campaign against them (NAACP 1934; Hale 1998:222). Violence intended to keep black workers in their place, helped produce instead the Great Migration (Tolnay and Beck 1995).

No ritual is guaranteed to achieve its intended outcomes, or to secure its social functions – least of all a transgressive political ritual operating in a highly contested social context (Kertzer 1988). The meaning of an event is never fully controlled by the actors who stage them it, and where different audiences are involved – some local, some distant; some supportive, some hostile – the significance of any symbol is always multiple and contested. Public torture lynchings were notorious, high-visibility events that always made an impact; but that impact was not necessarily of the kind that their stagers intended.

That these reversals increased over time rather than decreasing (Dray 2002; Griffin 1997) suggests that these savage spectacles were probably symptomatic of the ruling group’s weakness – a crude mechanism of power produced by a fear of powerlessness. Always excessive, always disruptive, always inviting controversy and opposition, these spectacles could never function as a routine mode of control. They

were, instead, a transitional institution, a stopgap measure that used blood and mobs to proclaim white power, until such time as a more reliable system of control – Jim Crow segregation – could be put in place.⁴²

Criminal Punishment and Racial Oppression

‘Lynching is not punishment; it is racial aggression’ – this is the conclusion to which Oliver C. Cox came in what is still one of the most powerful sociological analyses of lynching that we possess (Cox 1945:582). In respect of the specific lynchings I have been analyzing here, Cox’s statement is too starkly dichotomous, its contrastive terms too sharply opposed. In its concern to expose the (racial) substance of the institution it pays too little heed to its (penal) form. In his focus upon underlying structural conflicts, Cox ignores the situational strategies through which these conflicts were fought out. Criminal punishment and racial oppression are not mutually exclusive terms. Indeed if we are to understand a recurring strategy through which powerful racial groups dominate powerless ones, we need to think of these as a linked couplet, a pair of mutually enhancing terms like ‘power-knowledge’ or ‘military-industrial’.

To interpret these public torture lynchings as a summary form of criminal punishment, as this essay has sought to do, is not to miss their role in racial repression – it is to focus more precisely on the nature of an institution through which that repression was, for a while, sustained. The lynch-victim’s alleged crime provided a motive for vengeance and a trigger for collective punishment. But it also operated as an occasion for the socially-approved expression of racist sentiment and for public displays of racial dominance. And unlike white race riots or unprovoked acts of racial violence – both of

which were common in the period after 1890 (Brown 1975: 205 ff) – public lynchings could make claim to be a legitimate expression of popular justice, and summon large crowds to attest to the power of this claim. For us to appreciate the significance of that claim is not, of course, to accept its validity. It is to see the importance of *making* the claim and of pursuing racial politics through the socially-sanctioned forms of criminal punishment. Black on white crime – or the allegations thereof – presented opportunities for racial violence to be forcefully expressed and broadly legitimated. In the aftermath of Reconstruction, criminal punishment and racial oppression became intertwined in modes of thought and action that continue to operate today (Johnson 2003).

Rethinking the Sociology of Punishment

Recovering the history of lynchings-as-punishments should prompt us to revise our understanding of penal evolution and to rewrite the standard narratives that for so long have omitted and occluded the phenomenon of lynching, helping us forget it in fact by rendering it so anomalous in theory. Rather than ignore these events we need to weigh their theoretical significance. We need to recognize that practices of punishment not only *have* a history; they also have a relationship *to* that history; a relationship that is at times self-conscious and contrarian. Public torture lynchings are a vivid example of penal developments that are shaped in (oppositional) relation to the course of penal development. They were punishments that took the form that they did precisely because their stagers chose to transgress against the norms of civilized punishment, to make themselves an exception to the rule that modern punishment is humane and discreet, to confound the civilizing process when it comes to punishing hated enemies. Refusing the

modern idea of punishment as an ‘economy of suspended rights’ where blacks were concerned, they revived a penalty that understood punishment as an ‘art of unbearable sensations’ (Foucault 1977:11). For the history of punishment, the theoretical significance of these lynchings is not that of an anomaly, a regression, or an instance of uneven development. Instead, we ought to see them as constituting a self-consciously *reactionary* development, a penal institution (albeit a minor, localized, temporary one) shaped by a self-conscious opposition to the trajectory of penal change.

This self-consciously uncivilized penal conduct was possible because, in the areas where it was common, the American state was weak, its legal institutions were underdeveloped, and elite sensibilities were blunted by class interests and racist ideologies. This too, tells us something about penal evolution and modern society. We need to relax our too rigid sense of historical periodization and take a broader view of what ‘modernity’ can entail. We need to bear in mind that the penal reforms that were introduced in the urban centres of modernizing nations often took many years or decades to reach underdeveloped regions at the nation’s periphery where the state’s writ did not run, or where local traditions died hard. Like all long-term historical narratives, the story of penal modernization must be regarded as a developmental trajectory, a central tendency of change that co-exists with underdeveloped regions and the persistence of unreformed institutions. These lynchings fit better in our story when that story is made less unilinear and its tolerance for variation greater.

Finally, we need to rethink those accounts that point to a long-term change in the sensibilities of elites as the key dynamic in the ‘civilizing’ of state punishment (see Garland 1990 for a discussion). These conventional accounts overstate the importance of

civilized sensibilities in the process of penal change, just as they exaggerate the extent of refined feeling in modern societies. As a result, we tend to under-estimate the extent to which socially adjusted ‘normal’ people can be indifferent to, or take vicarious pleasure in, the suffering of others with whom they do not identify – particularly where racist ideologies play a part in socialization and day-to-day experience (Garland forthcoming). Too often we fail to appreciate the degree to which the operation of ‘civilized sensibilities’ in punishment depends upon a series of prior social conditions, among which are an effective state, a sense of secure disinterestedness on the part of key social groups, and a degree of intra-group identification or solidarity that links punishers to punished.

When government power is weak, when elites experience insecurity or have material interests inimical to the civilized treatment of other groups, or when outgroups are regarded as less than fully human, the force of such sensibilities is quite limited. The norms of ‘civilized sensibility’, once established in working practices and institutional ideologies, can restrain punitive passions and place limits upon the open use of violence (Spierenburg 1984; Garland 1990; Evans 1996; Gatrell 1994). Civilized sensibilities are, to that extent, real social forces. But the development of these sensibilities is by no means a given of ‘modernity’, nor are their effects unconditional. The force of civilized manners is situational and contingent, and must be made to converge with the interests of social elites and the practices of institutions before it has much effect. Public torture lynchings in the American South give us a glimpse at the frailty of these sensibilities in situations where dominant groups feel threatened and insecure, or believe their interests to be closely tied to those of lower class whites who espouse racial violence. Insecurity, racism

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and vengeance are powerful solvents in which refined sensibilities may easily dissolve.

Picture postcards of lynchings are evidence enough of that.

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Endnotes

¹ Allen (2000) reproduces the texts and images of these and other postcards. In 1908, after two decades of delivering these postcards, the US Postal Service banned them as ‘violent mail’.

² As we will see, contemporary newspaper reports, and statements by local officials, contribute further evidence of this kind.

³ See reports of the viewers' responses – see website forum of responses to the exhibition at <http://www.musarium.com/withoutsanctuary/main.html> viewed on 29th May 2003.

⁴ Peter Gay talks about the defence mechanism of ‘learnt ignorance’ – an ‘ignorance unconsciously desired, informally imparted, and assiduously fostered’ which served as an ‘unplanned if highly adaptive defence against socially dangerous feelings’ (quoted in Gatrell 1994: 270).

⁵ An indication of this is the fact that the majority of lynch-victims were already in official custody when they were seized by the mob, and would most likely have been rapidly tried and executed (Brundage 1993:39) Tolnay and Beck (1995:92) show that ‘the majority of black victims – more than two thirds – were accused of crimes that were frequently punished by legal execution.’ This percentage would be closer to 100% for victims of public-torture lynchings.

⁶ Brundage (1993:8) estimates that between 1882 and 1930 there was a total of 723 whites and 3,220 blacks lynched in the South. Based on his research in Georgia and Virginia, Brundage estimates that between 10 and 15% of these were public torture lynchings.(personal communication). E.M.Beck agrees with this estimate (personal communication.). White (1929) identifies 62 cases of “abnormal savagery” in the 9 years between 1918 and 1927. The present author’s analysis of the New York Times archive identifies 75 reports describing lynchings that involved ‘burning at the stake’ and the attendance of large crowds in the period between 1880 and 1940, as well as references to other such events that were not the subject of reports in the Times..

⁷ There were mass mob lynchings long before this time, and during the 1870s and 1880s, there are several reported cases of Negroes being burned at the stake: see, for instance, The New York Times Jan 28, 1859; Dec 29 1867; July 8 1879; Sep 17 1881.

⁸ The statistics on lynching prior to 1882 (when the Tuskagee Institute began to keep count) are unreliable, but it is clear that lynchings were frequent events in many parts of the USA., especially in frontier regions. Since our knowledge of events relies upon reports – usually local newspaper reports – estimates are affected by under-reporting, especially in earlier periods when lawlessness and racial violence were a more commonplace phenomenon. The increase in reported cases in the 1880s and 1890s may have been an effect of increased concern about these events, as well as a consequence of improved communications and the growth of the mass media. The data from 1920s and 1930s, which show a decline, are liable to be more reliable. The most reliable data is that concerning the public torture lynchings, which were, by their very nature, high-visibility, media events. We do not currently have a comprehensive count, coding for these characteristics – publicity, crowds, ritual and torture – but the New York Times reported 75 such events in the period from 1880 to 1940, and researchers such as Brundage and Beck estimate that there may have been as many as 500 in total. It would be useful to have a more exact enumeration, but the key point for present purposes is that these events were not rare or aberrational.

⁹ The use of the term ‘private’ here should not be misunderstood. All lynchings, ‘private’ and otherwise, had a collective, communal dimension inasmuch as the local community and law officers shielded lynchers from prosecution and punishment.

¹⁰ Brundage (1993:42) reports that in a quarter of reported Georgia mass mob lynchings involved ‘torture’, ‘mutilation’ and ‘grisly ceremonies’. The proportion was closer to 10% in the Virginia cases.

¹¹ See the data reported in footnote 23 below.

¹² See, for instance, New York Times Nov 17 1900.

¹³ See, for instance, the New York Times Oct 3 1900: ‘...the manner of death was discussed by the mob. To decide the matter a vote was taken, and the balloting showed that a majority of the crowd favored death at the stake.’ See also New York Times Jun 14 1901.

¹⁴ See, for instance, the New York Times Jan 16 1901 on the lynching of Fred Alexander or the report of Sep 29 1902: ‘Clark said that he deserved death, but asked that the execution be delayed until today, so that he could have a farewell interview with his mother and brother who lived in Memphis. The request was granted, and the two relatives were telegraphed for...’

¹⁵ See New York Times Jul 8 1893: ‘There was doubt before the lynching and for that reason it was decided not to burn the man at the stake as originally intended.’

¹⁶ Following an inquest into a lynch burning in Corsicana, Texas, Justice H.G.Roberts gave the following verdict: ‘I find that the deceased came to his just death at the hands of the incensed and outraged feelings of the best people in the United States, the citizens of Navarro and the adjoining counties. The evidence, as well as the confession of guilt by the deceased, shows that his punishment was fully merited and commendable.’ New York Times Mar 14 1901. See Dray (2002) for many further examples.

¹⁷ The Dec 7 1899 New York Times report of the Richard Coleman lynching in Maysville Kentucky notes ‘In all the thousands who constituted the mob there was not a single effort made to disguise or conceal identity. No man wore a mask. All the leaders of the mob are well known and there are hundreds of witnesses who can testify to their participation in the tragedy. They are leading citizens in all lines of business and many are members of churches.’

¹⁸ But see Paterson (1998) who argues for a religious interpretation of public lynchings.

¹⁹ On the use of burning as a means of execution in America prior to the 19th century – particularly for rebellious slaves – see Banner (2002: 70-72) and Friedman (1993).

²⁰ Successful prosecutions of lynchings, though uncommon, did occur. Allen (2000:170) reports that after a lynching of five African Americans by a mob of thousands in 1906 authorities in North Carolina took steps to punish its leaders. The governor ‘ordered the National Guard to restore order [and] local officials arrested more than two dozen suspected leaders. One of the killers...was sentenced to hard labor in the state penitentiary.’

²¹ ‘Intermittent’ and ‘situational’ because these local norms could be successfully invoked only in certain kinds of cases. As studies of failed lynchings have shown, the capacity to raise a crowd and obtain its support, depended on community judgements of the event, the evidence, and the status of the parties involved (Senechal de la Roche (2001); Griffin (1997)). The ‘legal pluralism’ I identify here involves a tension between the general norms of state law and the local norms of racial justice. The latter did not amount to a separate legal code, but nevertheless guided the conduct of lay and legal actors in certain situations. To invoke John Griffith’s distinction, it is legal pluralism in the social scientific rather than the legal sense that I use it here (Griffith 1986; Merry 1988).

²² The racial composition of other types of lynching was more varied. Thus although 80% of all lynchings between 1882 and 1930 were white on black lynchings, in the other 20% of incidents, white mobs killed white victims, and black mobs killed black victims. Beck and Tolnay (1997:132) calculate that between 1882 and 1930 over two hundred white-on-white lynchings occurred in the American South and ‘148 southern blacks died at the hands of mobs that were integrated or composed entirely of African Americans’.

²³ The punitive nature of public torture lynchings has been obscured by the tendency of the literature to bundle together different types of lynching. Brundage does take care to distinguish the different modes, but even he talks of “mass mob” lynchings rather than the more specifically penal form that I discuss here. Brundage (1993: appendix tables 22 and 23) gives a detailed breakdown of the alleged crimes that reportedly led to mass mob lynchings in Georgia and Virginia between 1880 and 1930. Of the 120 mass mob lynchings in Georgia, 50 (or 42%) followed allegations of murder; 3 (2.5%) of attempted murder; 32 (27%) of rape; 23 (19%) of attempted rape. Of the 23 mass mob lynchings in Virginia, 10 (43%) followed allegations of murder; 8 (35%) of rape; and 4 (17%) of attempted rape. Only some of the events that Brundage classifies as mass mob lynchings involved the elements of torture and ceremony required to qualify as ‘public torture lynchings.’ The present author’s search of the New York Times archive discovered 75 reports of public torture lynchings. (It is clear that the Times did not report all such lynchings: see for example the note on June 24th 1903 which lists four instances of burning at the stake that had occurred between January and June of that year. Only two of these four events were the subject of news stories in the paper.) Every one of these 75 reported events involved allegations of serious crimes for which the death penalty was legally available, The breakdown of allegations is as follows: multiple murder of white women and children (8); multiple murder of children (3); multiple murder of white males (1); murder of a white woman (16); murder of a white child (2); murder of a sheriff, policeman or public official (6); murder and robbery of a white male (1); murder of a prominent white man (4); rape of a white woman (22); rape and murder of a white woman (8); housebreaking and attempted rape of a white woman (1); rape of a minor (3). Data on file with the author: source: Proquest Historical Newspapers, The New York Times.

²⁴ Lynchings attracted a large crowd only under certain circumstances, largely to do with the nature of the alleged offence and the perceived status of the parties. ‘Private’ lynchings often occurred when the parties’

attempts to stage a public lynching had failed for lack of communal support. The longer time period that typically elapsed between the alleged offence and the private lynching is suggestive in this regard – see Brundage (1993:29). On the conditions that rendered violence ‘collective’, see Senechal de la Roche (2001).

²⁵ See for instance, New York Times reports Jul 8 1893; Sep 29 1884; Apr 16 1903; Jul 18 1903; each of which is headlined ‘Innocent Negro Lynched’

²⁶ As a New York Times editorial of 13th August 1901 pointed out, this concern to elicit confessions suggested a concern for form and the appearance of proper procedure. When confessions were not forthcoming, the accused’s denials did not stop the lynchers from proceeding to kill him.

²⁷ Even the most critical newspaper accounts accept that these public torture lynchings were prompted by outrageous crimes. The following report from the New York Times (Dec 8th 1899) is typical: “The murder of the negro Coleman at Maysville, Ky. is an outrage so terrible and so shameful that it can only be explained as an outbreak of popular delirium.....The negro had committed and confessed the double crime of assault and murder, he had been arrested and was being taken to trial by officers of the law when he was seized by a mob and burned amid demonstrations of brutality and barbarity of the most revolting character. There was, of course, not the slightest occasion or possibility for doubt that he would have been convicted of his crimes and would have received with the utmost promptness the full penalty fixed by law. His murder at the hands of the mob was not needed or intended to make sure that justice would be done. It was due in part to the feeling that the penalty fixed by law was inadequate to the offense and in part to a wild and uncontrollable thirst for vengeance aroused by the most infuriating of crimes.”

²⁸ Although public executions had been abolished in most northern states by the middle of the 19th century, the tradition of public executions lasted longer in the South. In Georgia, Mississippi, North Carolina, Oklahoma and Florida, public executions continued into the 20th century and one state, Kentucky, was staging them as late as 1936 (Banner 2002:155-6).

²⁹ Readers should appreciate that claims about the lynchers’ choices are necessarily inferential. We have little direct evidence about what lynchers actually said, though we do possess extensive secondary reports of their actions and choices. More importantly, we can establish the patterns that emerge in their choice of victim, in precipitating events and allegations, and in the specific forms that they utilized, all of which give

clues to aims and intentions. Finally, we also possess extensive evidence (newspaper reports, books, political statements, etc.) of what commentators and reporters at the time made of the events. The present analysis is based on these sources. Inferences about the meaning of actions taken by lynchers, crowds, and community leaders are necessarily inferences based on partial evidence. But the concern is not to establish the thoughts and intentions of individuals so much as to establish the idiom in which their public actions were conventionally interpreted and understood (c/f Geertz 1973).

³⁰ Politicians and legal scholars took up the critique of official criminal justice procedure implicit in these lynchings and articulated them more explicitly. Prominent jurists of the time proposed that the legal procedures and punishments be amended to respond to these complaints. Simeon E. Baldwin (of Yale Law School, and later of the Connecticut Supreme Court) advocated the legalization of whipping and castration (Dray 2002:144). Other jurists, including Charles J. Bonaparte (subsequently Attorney General under President Theodore Roosevelt) and Supreme Court Justice David J. Brewer, recommended modifying due process safeguards: see Bonaparte (1899); Baldwin (1899?), Reynolds (1897/8), Dray (2002:149) and Brown (1975). One ought not to overstate the refinement of official southern legal procedure, especially as it applied to black defendants. On southern justice and ‘legal lynching’ in this period, see Klarman (2000).

³¹ Commenting upon a public torture lynching in Corsicana, Texas, a columnist in the *New York Times* (Mar 15th 1901) notes: “Corsicana, it must be remembered, is no frontier hamlet, but a prosperous and progressive city, a railway center of some importance, with many and varied manufacturing interests, and equipped with all the facilities of civilization, including those for the prompt and vigorous execution of legal justice” (at page 8)

³² Banner (2002) describes a legal development in Kentucky that suggests this preference for direct local involvement in the punishment of black criminals: ‘Kentucky had adopted the electric chair ten years earlier, but in 1920 the legislature brought back local public hanging for two crimes – rape and attempted rape. In the South, rape was in practice a capital crime only when the defendant was black and the victim white. This was the offense that provoked the most community outrage. Murderers could be electrocuted in secrecy by employees of the state prison, but when black men raped white women, the community preferred to take matters into its own hands.’ (p. 205)

³³ Ayers (1984:246) quotes a typical editorial from the *North Georgia Citizen* in 1893: ‘The punishment of crime is too lax, it is not speedy enough – there are too many delays and failures of the law in this particular – too many continuances and granting of new trials in criminal cases – and hence, in great measure, may be attributed the number of lynchings.....’

³⁴ The parallel with Foucault (1977)’s account of the spectacle of the scaffold is apparent. but the fact that these public torture lynchings took place in 20th century America tends to disrupt Foucault’s assumption that “the disappearance of torture as a public spectacle” occurred in the late 18th century and his model of penal change, which would assign such spectacles to the pre-modern absolutist regimes, and not to modern democracies.

³⁵ The New York Times Jun 4 1898 reports that, after William Street was burned at the stake for the attempted assault and murder of a white woman, ‘Well known lawyers made speeches warning the crowd of negroes that such crimes as Street’s would not be tolerated in a civilized community’.

³⁶. ‘To swallow an insult from a negro would be perpetual infamy. Accordingly the whites do not think it wrong to shoot, stab, or knock down negroes on slight provocation.’ From Ayers, (1984:235), quoting a South Carolinian in 1877

³⁷ Brundage (1993:37): notes that, unlike private lynchings, mass mob lynching occurred rapidly – in Georgia 53% within a day of the alleged crime; 85% within a week.

³⁸ “”The white man”, explained a participant in the Montgomery race conference of 1900, “regards the rape of white women by Negroes not as ordinary criminality, [but as] an attack on the integrity of the race”” (Hall 1993:145).

³⁹ According to Cox (1945:577) the aftermath of one of these lynchings was typically as follows: ‘There is a new racial adjustment. Negroes become exceedingly circumspect in their dealings with whites, for they are now thoroughly frightened. Many are obligated to their “white friends” for having saved their lives; and few will dare even to disagree with white persons on any count whatsoever. The man who does so is not considered a hero by the majority of Negroes; rather he earns their censure.’

⁴⁰ As James Cutler argued in 1905, ‘the people consider themselves a law unto themselves. They make the laws: therefore they can unmake them....To execute a criminal deserving of death is to act merely in their

sovereign capacity, temporarily dispensing with their agents, the legal administrators of the law.’ Quoted in Ayers 1984:245.

⁴¹ W.P. Beard, the editor of a South Carolina newspaper, stated that lynching was an attempt to maintain ‘racial integrity’ which had been threatened by what he called ‘a non enforceable constitutional guarantee of equality.’ *The Abbeville Scimitar*, February 1st 1917, quoted in Finnegan (1997: 210).

⁴² This interpretation is in keeping with the thesis developed by Garland (2001) to explain outbursts of punitiveness (and re-invented control structures) in late 20th century America and Britain.