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The Dog that Stopped Barking: Mass Legal Executions in 21st Century America

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Abstract: During the first two centuries of European colonization of what is now the United States, executions for a variety of offenses relatively frequently involved mass executions, that is, the execution for the same criminal incident of four or more persons. By the time of American independence, some of those crimes had largely ceased to exist or to elicit such punishment, like witchcraft and piracy. However, the punishment of slaves and Indians kept the percentage of executed persons involved in mass executions significant, if not large. During the last quarter of the 19th and first six decades of the 20th century, mass legal executions diminished as a percentage and were largely limited to punishing robbery-related homicides, including felony-homicides of conspirators. Throughout that period, the end of mass executions for a particular crime presaged the end of all executions for that offense, and the last mass legal execution occurred in 1960.

Keywords: Colonial America; United States; capital crimes; mass executions; aggravated homicide; felony-murder

1. Introduction

To the study of the future of capital punishment in America in this new century, our report is the story of a dog that will no longer bark: mass legal executions (MLEs)—that is, the execution of four or more

persons for the same criminal incident ¹—will probably not occur again. For many students of capital punishment, the surprise will not be that we expect no more mass legal executions, but that there were ever enough to warrant study.

In fact, however, during the past roughly 450 years of European settlement, short- or long-term, in what is now the United States, roughly ten percent of persons executed were subjects of mass legal execution. Of known legal executions, the first—near the St. John River in Florida in 1565, of four men for mutiny—was a mass execution, 43 years before the first execution reported in the most thorough list of American executions ([3], p. 70; [4]) ².

For the next 300 years, perhaps one of every 4–6 persons executed was part of a mass execution. For the following 100 years, the percentage fell to more like three percent, for an overall total of something likely in the 7–8 percent range. Numbers and percentages are perforce estimates. The best-known and most complete list of American executions has severe limitations, some known to the collector and some not, with too many executions missed, misidentified, or repeated to have complete confidence in the ability to come up with estimates on the percentage which consisted of mass executions [4,5]. We can, however, be fairly confident that there have been no such mass legal executions in the fifty-plus years since the last one reported, in 1960, and foresee none [4].

During those centuries, what has generally happened is that crimes that led to either mass or fewer legal executions saw first the end of the mass executions presaging the eventual end of all executions for that particular offense. For example, the end of mass executions for witchcraft ended early in the 18th century, with the last single executions several decades later, around the time of American independence. Mass executions for piracy gradually petered out, with just a handful between American independence and 1835, followed three decades later by the last lone execution of a pirate. The last mass execution for rape occurred in 1951, with all executions for rape ended by the Supreme Court decades later. Executions for slave revolts were an exception, with both mass and individual execution ending with the termination of slavery ³. The last mass execution for felony-murder occurred in 1960, with only the slightest possibility of another this decade, effectively ending all felony-murder executions—that is, executions of non-triggermen in a group robbery-related homicide.

2. From Then to Now

In the Colonial era, a fairly common crime earning mass legal executions was piracy (invariably involving at least one homicide, although to be capital, the crime of piracy only required robbery on the high seas). This century, pirates tried in the United States for piracy are sentenced at most to life

¹ This figure for legal homicide is based on its use in the past for illegal homicides, that is, mass murders, and what might be viewed—at least in the eyes of the perpetrators—as mass quasi-legal homicides, lynchings [1,2].

² With initial settlements run by the military well before America's *Uniform Code of Military Justice*, there were some summary executions earlier ([3], e.g., p. 49). Europeans and American natives periodically killed each other, generally without pretense that crime and punishment were involved. Most Indian tribes lacked anything comparable to due process, with intertribal killing more common than intratribal, where the very few executions would be interpreted by those from a Euro-American tradition as more legislative than judicial in nature. Even if the native Americans had legal executions, until the tribes acted under federal supervision, there were no records of their number or nature.

³ Arguably, both mass and individual executions continued informally with lynching and other punishments [6,7].

imprisonment—again, even though only murderous pirates are actually prosecuted [8]. Perhaps the best evidence against additional MLEs is that, following the terrorist bombing of the World Trade Center in 1993, killing six and injuring over 1000 in a near-successful attempt to kill 1000s, none of the ten Muslim terrorists convicted was even initially sentenced to death [9].

There are a number of reasons for the decline, and apparent demise, of MLEs, some of which apply to the decline of capital punishment in general, and in others the decline in mass executions seems to precede a decline in other similar offenses. Fewer offenses constitute capital crimes, particularly those that were apt to involve groups and thus allow mass executions as a possibility, and some have ceased to be crimes at all, such as witchcraft, slave revolt, and Indian uprising. Most military offenses are not capital; more importantly, perhaps, we no longer have troops in a position where they are likely to desert or mutiny in this country. Espionage is not really a capital offense now; it is only potentially capital if done in wartime, and wars are no longer declared⁴. By the end of the Civil War, aside from a few executions for military offenses and rape, about the only offenses for which mass executions occurred were robbery-related murders. More recently, even those offenses are not apt to bring about more than one sentence of death due to the near demise of the use of the felony-murder rule, which allowed more than just the primary gunman to be sentenced for a robbery-related murder [4]⁵.

3. From the Colonial Era through the 19th Century

That first mass execution in what is now the United States typified about one-fifth of the mass executions that took place in the ensuing 300 years, but fewer than one-percent of mass executions since the end of the Civil War. They were criminal offenses related to military activities, such as desertion, mutiny, treason, espionage, and other military offenses. There were a number of reason these offenses occurred more frequently, involving groups, with capital punishment, during the colonial period and first century of American Independence [4,11–16].

In the case of desertion, it was more in our earlier wars, partly because of more summary extensions of obligatory service times. Related to that, the frequency of the offense was perceived by commanders as a greater threat to their ability to maintain adequate strength and military discipline. Mass executions were believed essential as a deterrent to others. For example, during the French and Indian War, a group of deserters was separated into two different groups for public execution in two different locations to spread the warning to as many as possible ([17], p. 14). During the War of 1812, General Winfield Scott ordered that men be resented to death after an initial court martial showed leniency ([17], p. 33). More recently, there is less desertion, and that which occurs is less of a threat to our ability to wage war. In

⁴ Even the execution of the Rosenbergs was dubious legally, since their “wartime” espionage was not for the enemy but for an ally, the Soviet Union.

⁵ There is one more theoretically possible mass legal execution. In Texas, seven escaped convicts, during a robbery spree, murdered a police officer on Christmas eve while they were robbing a big-box store. One convict died prior to arrest, but the other six were tried and sentenced to death. The actual killer has been executed, preceded by a member of the gang who believed he deserved execution and ceased appeals. In theory, if two of the remaining four under sentence of death are executed, there will be a mass execution, but we do not really expect that to happen [10]. What is more surprising than that six men were sentenced to death is that more than one has actually been executed. The execution of the non-triggerman was unusual, even for Texas, and probably only occurred because he decided he deserved execution and wanted it to happen. The result was that his death actually preceded that of the actual murderer.

addition, the “civil” nature of the Wars of Independence and Southern Secession—plus the location of other wars on or near American territory (War of 1812 and the Mexican War) —were more apt to create military situations where capital military offenses were perceived by the authorities as warranting death. One man’s mass desertion was another side’s group enlistment. Abusive treatment of ethnic minorities encouraged desertion while making authorities more willing to resort to massive and fatal punishment, having less concern about the lives of those minorities ([12,13,15];[18], pp. 100–01).

Fear of retaliation may have kept the number of such executions down, during both wars with Great Britain and the War Between the States and, later, in the war against the Axis Powers. The British did not execute Patriots for their perceived treason for fear of retaliation. One mass execution for desertion during the Civil War stands out because the Confederacy was successfully threatened with retaliation for any replication [19,20]. It is probably no coincidence that, except for the execution of six Nazi saboteurs in August 1942, before American troops had really engaged the Germans, mass execution of German POWs here—or German or Japanese overseas—did not occur until their retaliation against American POWs was precluded by our victory. At any rate, the only post-Civil War mass execution of Americans for military offenses was of 19 black soldiers during World War I for what was deemed a mutinous response to a race riot in Houston in 1917 ([21], pp. 170–74; [22]).

Other mass executions that occurred before the 20th century ceased because the group crime ceased to occur. Whether the huge number of *antebellum* mass executions of black slaves, and a few free blacks and a handful of whites—overall accounting for almost half of the mass executions during that period—were for real slave revolts or just white paranoia imagining it, with slave conspiracies “proven” by torture, the end of slavery ended those legal executions [4,23,24] ⁶.

Similarly, the mass executions of Indians ended once their resistance to European conquest and colonization had finally ceased. Until then, the executions always had a one-sided nature, from King Philips’ War in 1675–76 to the mass execution of the Modoc Indian leader, Captain Jack, and three of his men in 1873. When American settlers or soldiers killed an Indian, it was perceived as self-defense or a military operation. Indian resistance was often treated not as war or self-defense, but as an Indian revolt or as a murder. Peaceful relations between the two peoples aggravated the situation from the white point of view, as resistance to one more white incursion increased the perception of Indian crime. Indians who had never cooperated with the invaders were more apt to be viewed as the enemy, subject to killing, perhaps, but not the ignominy of trial and execution—especially where the standard method of punishment, hanging, was perceived as threatening the Indian’s soul. From the American perspective, agreements meant hostilities were over and renewed fighting was criminal behavior, even if really reactive to settler misbehavior. At any rate, such mass legal executions ended with the Modoc responses to white aggravations two decades before the non-peaceful Sioux were finally pacified, with killings but not executions [25–27].

Another crime that often involved mass executions, from colonial days through 1835, was piracy—robbery on the high seas. Seventeenth-century American colonists were more apt to benefit from piracy rather than to suffer from it. Pirates plied their trade more in the same trade routes as now, along the east coast of Africa and, to a less extent, in the Caribbean, rather than against American

⁶ The sequence was lynching for a variety of real and imaginary offenses, with about seven percent of those involving mass illegal executions ([7], p. 274).

shipping. In addition, pirates spent their money and brought some of the Navigation-Act violating imports to the colonies. So Americans were no more inclined to punish pirates than Somalis are now, until they were largely forced to by the British early in the 18th century, with legal changes even sometimes removing ordinary colonists from juries. Massive consolidated international attacks on piracy from roughly 1715 to 1725 largely wiped it out, with only sporadic executions during the rest of the century. A brief increase occurred in the Caribbean associated with the Latin American independence movements, ending, for American purposes, with a mass execution of Hispanic pirates in 1835. After that, piracy was more an individual offense, robbery and murder, that happened to occur at sea, often committed by a crew member, with the last American execution in 1860 [28–31].

When piracy was actively practiced as crime—accounting for almost one-tenth of the *antebellum* mass legal executions—it was frequently one subjecting the guilty to mass execution. There were several reasons for this, including the likelihood of mass arrests on the few occasions when any arrests occurred, and the democratic nature of the piratical trade, making all participants equally guilty unless they could really prove coercion, no easy matter [4,24,28,32].

Another crime actually famous for mass executions was witchcraft, for which mass executions ended by the end of the 17th century, and all such executions by 1779 ⁷ [4,33]. Executions of pirates were relatively rare after American Independence. With the end of mass executions for slave revolts in 1865 and Indian uprisings in 1873, as with executions in general, mass executions from then on were almost exclusively for aggravated murder [4].

4. Alternatives to Mass Legal Executions

In some ways, mass executions for various crimes simply declined ahead of non-mass executions. So it should not be too surprising that during the 100 years between the Civil War and the Supreme Court's moratorium on all executions almost all mass executions were for aggravated murder [4,34] ⁸. Indeed, although a few executions officially involved a crime other than murder after 1865, we have thus far found only two mass executions that occurred without a single criminal homicide having been committed by at least one of the perpetrators. The 1873 Indian uprising included the killing of an Army general, the first general so killed ([27], pp. 205–13). A mixed-race gang (Indian and black) was officially executed for rape, but it had also committed at least one murder [37].

⁷ There was reportedly but one execution for witchcraft in the 18th century, and there is some reason to suspect the report was erroneous in some ways, if not all [4,5]. A black male slave was reported burned to death for witchcraft in Illinois, southwest of St. Louis, shortly after Illinois was taken over by Americans from the British, but before it was organized as a territory. It is, by over 20 years, the first execution reported in Illinois. Giving credibility to the facts are that the execution was reportedly by military authority; the manner of execution, burning, had been a common form of punishment of European witches, but was not used in America, where it was largely reserved for special punishment of slaves. Moreover, most witches were women. It is possible that the execution took place but that there were some coding errors in the Espy File (place, sex, crime—for example, the code for witchcraft is 09 while that for slave revolt is 08), or it may have been recorded accurately, or it may not have occurred at all.

⁸ Aggravated homicide was required to execute groups of whites, but simple murder was sometimes sufficient for executing groups of blacks. There was even one mass legal execution of blacks for second-degree murder in 19th-century Georgia [35,36].

In some ways, the limitation of mass legal executions to aggravated homicides between the Civil War and World War II is misleading. The extension of due process and the curbs on what constituted a capital offense certainly and sharply curtailed the number of mass legal executions. They were partially replaced, however, by mass illegal or extralegal executions: killings by authorities of the state without due process of law, and state-, or at least socially, sanctioned homicides without direct state action, including riots and lynchings. There were two examples of mass legal executions for political reasons, with homicide formally the underlying crime—for the Haymarket Riots and for the Molly Maguires. In addition, however, there were several incidents of private security forces or state militias being used to suppress labor activities with massive casualties—informal mass executions for what labor leaders might have considered a variant on slave revolt [9,38–44].

In addition to private and state militia personnel involvement in labor-related killings, state and local police were involved in group executions without due process. Perhaps the most dramatic was the killing by Texas Rangers, with some less formal assistance by civilians, of 100s of Hispanics (Texans and Mexicans) related to Mexican revolutions in the 1910s. More recently, and arguably the most murderous quasi-accidental FBI-involved killing involved the Branch Davidians in 1993, following the killing of six by the Bureau of Alcohol, Tobacco and Firearms during the initial effort to serve an arrest warrant on one of the roughly 130 persons living in the group home/church. Ending the standoff, a fire killed 76 persons, including 24 children. In between, there were a few instances of multiple deaths, especially of black activists, in the course of arrests, most prominently, the deaths of 11 MOVE activists (five of them children) in Philadelphia in 1985, and the deaths of six members of the Symbionese Liberation Army in 1974 [45–49].

With the decline of formal excuses for prosecuting blacks, there were two other ways to persecute them, as individuals or as groups. For example, in addition to about 2,000 blacks being executed, mostly for aggravated homicide, about 3,000 blacks were lynched between about 1880 and World War II, roughly seven percent of those killed were victims of mass illegal executions, with the last mass lynching recorded in 1946 [2,4,7,34]. In addition, there were a number of race riots with massive black mortality between the end of the Civil War and World War II, mass killings which rarely involved any prosecution of the whites involved [43].

One of the two exceptions was the execution of six Nazi saboteurs early in World War II, turned in by a man in one of the two teams of Nazis landed, and before any harm had been done. Objectively, the pressures by the President quickly to try and execute the men leaves some questions about the constitutionality of the process—questions that might eventually be addressed should the prisoners now held at Guantanamo eventually be tried by military tribunals [50].

5. The End of Mass Legal Execution

By the end of World War II—and certainly by the time the Supreme Court temporarily suspended capital punishment, mass legal executions were a thing of the past—as were a century’s substitution, except for a few police-related killings involving fringe groups among racial and religious minorities, and two mass legal executions. One of them, in 1960 in Arkansas, was of four blacks for robbery-related murder [4,51,52].

The other, almost inexplicably, was Virginia's execution of seven black males for rape in 1951, one of only two mass executions to occur after World War II, by which time rape was close to effectively disappearing as a capital offense in America [53]. That race was obviously a factor here also brings up one other factor that always increased the likelihood of a group who committed a crime would be executed en masse. Those executed were likely to be either literal or figurative outsiders in the executing community. This did not just mean African and Native Americans involved in slave revolts and Indian uprisings. Mass-executed pirates, too, were more likely to be foreigners than the few granted leniency. Even with gang-related aggravated murder, being from some minority group (racial, ethnic, immigrant) seems to have enhanced the likelihood of a mass execution [18].

What has apparently doomed mass legal executions is the decline of felony murder, at least as a capital offense. That change has probably meant more individuals charged with felony murder, even if convicted, are found to lack the aggravating circumstances that would qualify them for execution. For gang-type murders, the result is that only the actual triggerman is seriously considered for execution. Whether, or for how long, individual executions may occur, the likelihood of any more mass executions in the United States appear unlikely for the foreseeable future.

Two examples from the past 20-plus years emphasize that likelihood. First, as mentioned previously, following the first terrorist attack on the World Trade Center in 1993, none of the convicted Muslims was sentenced to death [9]. Second, with international concern about murderous Somali pirates, America is so far only prosecuting pirates when they kill, and even in those instances, a piracy conviction earns life imprisonment, not death [8,54,55]. Only the unlikely possibility of the execution of two more murderous escaped convicts in Texas provides an apparent possibility for the first mass legal execution since 1960, with no particular reason to believe others are likely to follow.

In the past, underlying crimes resulting in mass legal executions foreshadowed similar ends of single executions for the same crimes. With rare exceptions, there are no longer informal substitutes for mass legal executions, although those rare exceptions may occasionally recur. Aside from those, the question of whether the end of mass execution even for aggravated homicide—and the revived crimes of terrorism and “aggravated” piracy—the question is whether that foreshadows, for better or worse, the demise of all executions in the United States some time in the 21st century, or just those for felony-murder.

Author Contributions

Vance McLaughlin is responsible for digging up information on the various incidents of mass legal execution, and for revising and editing the writing of Paul Blackman, who is responsible for researching the background and contexts for the crimes and punishments, and for the initial drafts.

Conflicts of Interest

The authors declare no conflict of interest.

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