

CHAPTER 1

The Mere Extinguishment of Life?

Technological Efficiency, Botched Executions, and the Legitimacy of Capital Punishment in the United States

On September 28, 1900, the state of North Carolina hanged Art Kinsauls for a murder committed in Sampson County. Born in that county in 1865, Kinsauls had lived there his entire life, marrying a local girl, Posunnie Gibly Bass, in 1896. Even though Art weighed only 110 pounds, he was said to be “tough as iron.”¹ He had the unfortunate habit of getting into violent arguments and carried on a long running feud with John C. Herring, his neighbor. One night when Kinsauls was in Art Vann’s Store at Beaman’s Crossroad, an argument began and then a fight broke out. “Kinsauls reached into the meat box and got a sharp butcher knife and stabbed young Herring to such an extent that he died during the night.”²

Kinsauls was arrested a few days after Herring’s death and taken to the county jail in Clinton. With the help of a group of his friends, he soon escaped, and avoided capture for nine months. The sheriff and a posse only recaptured him after a gunfight at his farm, which left him seriously wounded. Brought to trial in October 1899, Kinsauls was found guilty of murder and was sentenced to hang.

On the surface at least, there was nothing remarkable about North Carolina’s plan for the Kinsauls execution. Hanging had been the primary method of execution in the United States since the founding of the American colonies. It was an inexpensive, low-tech way of putting people to death. Hangings could be handled at the local level, and did not require elaborate execution protocols.³

Kinsauls refused to go quietly. He tried to kill himself twice, first with an overdose of sleeping pills and later by using a tin lid to cut his throat. Both attempts failed, but each resulted in a postponement of his

execution. In the meantime, North Carolina governor Daniel Russell received many requests for a reprieve from influential Sampson County citizens, each of which the governor refused.

On the day of the hanging, hundreds of people traveled from all over the county to witness it. The gallows was erected near the jail where Kinsauls had originally been held. As in all its executions, Sampson County used a stepladder as its gallows, but in this instance it failed to do its job. The drop height proved insufficient to break the condemned's neck. With Kinsauls suspended at the end of the rope, the attending physician quickly determined that he was still alive.

Compounding the problem was the fact that his neck had only partially healed from his last suicide attempt. As a result, when Kinsauls fell from the stepladder, the rope ripped open his neck wound and left him bleeding profusely. The assembled crowd of friends and neighbors nearly rioted. Undaunted by the failure of their first execution attempt and the increasingly chaotic, bloody scene, officials cut him down, forced him up the ladder again, and repeated the drop. This time the execution succeeded and Kinsauls died. His was the last public hanging in Sampson County.⁴

Newspapers all over the country took note of the Kinsauls execution. Headlines in the *Atlanta Constitution*, the *New York Times*, the *Washington Post*, and the *Republic* (St. Louis, Missouri) announced that it had not gone as planned. For example, the *Washington Post* titled its article "Murderer Hanged Twice."⁵ The stories, in turn, used vivid language to convey the horror of Kinsauls's last minutes on earth. The *Post* described a "Ghastly Gallows Scene,"⁶ and the *Virginian Pilot* called it a thoroughly "revolting execution."

Almost a century later, in March 1997, American newspapers carried stories of another botched execution—the electrocution of Pedro Medina, a thirty-nine-year-old Cuban immigrant convicted and condemned for stabbing a Florida high school teacher to death.⁷ After the current was turned on, as one newspaper put it, flames "leaped from the head" of the condemned. "It was horrible," a witness was quoted as saying, 'a solid flame covered his whole head, from one side to the other. I

had the impression of somebody being burned alive.”⁸ Another reporter wrote, “The electrocution of Pedro Medina on Tuesday was the stuff of nightmares and horror fiction novels and films. A foot-long blue and orange flame shot from the mask covering his head for about 10 seconds, filling the execution chamber with smoke and sickening witnesses with the odor of charred human flesh.”⁹

Yet news reports also conveyed the “reassuring” reaction of Dr. Belle Almojera, medical director at Florida State Prison, who said that before the apparatus caught fire Medina already had “lurched up in his seat and balled up his fists—the normal reaction to high voltage. . . . ‘I saw no evidence of pain or suffering by the inmate throughout the entire process. In my professional opinion, he died a very quick, humane death.’”¹⁰ The Florida Supreme Court found that “Medina’s brain was instantly and massively depolarized within milliseconds of the initial surge of electricity. He suffered no conscious pain.”¹¹ And others defended his botched electrocution by noting that it “was much more humane than what was done to the victim.”¹²

Despite these attempts to contain adverse public reaction, the Medina execution, like the Kinsauls execution before it, made headlines because it suggested that the quest for a painless, and allegedly humane, technology of death was by no means complete. Both botched executions remind us of the ferocity of the state’s sovereign power over life itself. At the same time, these news stories also offered capital punishment’s supporters a hint of relief. Most stories treated Medina’s electrocution as a mere technological glitch rather than as an occasion to rethink the practice of state killing itself. Florida’s Fort Lauderdale *Sun-Sentinel* opined, for example, that the state “is justified in imposing the death penalty. . . . But it has no justification for retaining a method . . . that is so gruesome and violent and sometimes flawed.”¹³ What might have been a challenge to the legitimacy of the killing state was quickly written off as Florida’s failure to keep up with the technology of the times.

Botched executions, like those of Kinsauls and Medina, have been, and remain, an important part of the story of capital punishment in the United States. From the beginning, American execution practices

have been designed to differentiate law's violence from violence outside the law—to sharply set capital punishment apart from the crimes the law condemns. This was especially true in the twentieth century, when enormous efforts were made to put people to death quietly, invisibly, and bureaucratically.¹⁴ The course of the last century is littered with various technologies—hanging, firing squad, electrocution, the gas chamber, lethal injection—used in a continuing effort to find an apparently humane means by which the state could take life.¹⁵ Executions, in this system, are not supposed to make headlines.

Headlines today tell of a remarkable transformation in America's death penalty. Over the course of the last decade, death sentences and executions have both fallen dramatically.¹⁶ We now impose fewer death sentences and execute fewer people than at any time in a quarter century. These changes have been driven by concerns about the reliability of the death penalty system in fairly adjudicating guilt and innocence, and in differentiating those who deserve a death sentence from those who do not. In addition, today the state's dealing in death is linked to a concern for technological efficiency. We are invited, following Dr. Almojera, to imagine the body as a legible text, readable for what it can tell us about the capacity of technology to move us from life to death, swiftly and painlessly¹⁷—to ensure that execution is nothing more than “the mere extinguishment of life.”

But why should the state care about the suffering of those it puts to death? Painful death might be more just and more effective as a deterrent than a death that is quick, quiet, and tranquil. Because justice would seem to demand equivalence between pain inflicted in the crime and the pain experienced as part of the punishment, there is something unsettling and paradoxical about the state's constant search for a painless way of killing those who kill. As Arlene Blanchard, a survivor of Timothy McVeigh's 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City, in which 168 people were killed, explained after McVeigh's death sentence was handed down, “death by injection is ‘too good’ for McVeigh.” She said he should be put in solitary confinement for life or simply hanged from a tree. “I know it sounds uncivilized, but

I want him to experience just a little of the pain and torture that he has put us through.”¹⁸ Or, as William Baay, an emergency worker who helped remove bodies from the Murrah building, put it, “I don’t think conventional methods should be used. They should amputate his legs with no anesthesia . . . and then set him over a bunch of bamboo shoots and let them grow up into him until he’s dead.”¹⁹

Even as capital punishment seeks to do justice and/or satisfy the public desire for vengeance, the state has countervailing concerns. It must distinguish execution from the acts to which it is a supposedly just response. The state must also find ways of killing in a manner that does not allow the condemned to become an object of pity, or to appropriate the status of the victim. But despite determined claims to the contrary, capital death never simply means death. Rather, since its inception, it has been inextricably tied to the instruments used to carry it out. The legitimacy of state killing depends largely on execution method. Technology mediates between the state and death by masking physical pain and allowing citizens to imagine that execution is clean, efficient, and painless.

When executions go wrong, they signal a break in the ritualization and routinization of state killing. Such mishaps can turn the organized, state-controlled ritual into torture. Solemn spectacles of sovereign power morph into horrible events and critical attention gets focused on the evolving execution technologies—and, even more intently, on their failures.

Gruesome Spectacles: Botched Executions and America’s Death Penalty examines the history of botched executions in the United States from 1890 to 2010, a period in which approximately 3 percent of all executions were botched.²⁰ Botched executions occur when there is a breakdown in, or departure from, the “protocol” for a particular method of execution. The protocol can be established by the norms, expectations, and advertised virtues of each method or by the government’s officially adopted execution guidelines. Botched executions are “those involving unanticipated problems or delays that caused, at least arguably, unnecessary agony for the prisoner or that reflect gross incompetence of the executioner.”²¹ Examples of such problems include, among other things,

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