

TITLE PICS TO COME

IN DEFENSE OF FLOGGING

By Associate Professor Peter Moskos

Editorial Note

Peter Moskos, former US police officer turned academic, visited Australia in November 2013 as part of the *Festival of Dangerous Ideas* to speak in favour of flogging as an alternative to prison. As an American he does so in the context of a country with the largest prison population in the world – in raw numbers as well as per head of population. It's an interesting idea to pose in Australia for a different reason: while we don't incarcerate criminals to anywhere near the level of the Americans, as a former penal colony we do have a close and recent relationship with the lash. Flogging was a harsh, yet common punishment meted out to convicts. So it may seem surprising that when Peter Moskos posed the question to his Sydney audience – if they were convicted of a crime and had the option of a flogging or a prison term, which would they prefer – two thirds voted for the flogging. Which would you choose?

You're about to get whipped – mentally more than physically. It's going to hurt – but it's supposed to.

I write in defense of flogging, something most people consider too radical for debate and even unworthy of intellectual discussion. But please, don't turn the page, upset I dared to broach the subject.

My defense of flogging – whipping, caning, lashing, call it what you will – is meant to be provocative, but only because something extreme is needed to shatter the status quo. There are 2.3 million Americans in our prisons and gaols. That is too many. I want to reduce cruelty, and corporal punishment, once common in America and still practiced in places like Singapore, may be the answer.

So first let me begin with a simple question: Given the choice between five years in prison and ten brutal lashes, which would you choose?

Yes, flogging is a severe and even brutal form of punishment. Under the lash, skin is literally ripped from the body. But prison means losing a part of your life and everything you care for. Compared to this, flogging is just a few very painful strokes on the behind. And it's over in a few minutes.

If you had the choice, if you were given the option of staying out of gaol, wouldn't you choose to be flogged and released?

Consider your answer to that question. Then consider the fact that the United States now has more prisoners than any other country in the world – ever – in sheer numbers and as a percentage of the population. Our rate of incarceration is roughly seven times that of Canada or any Western European country¹. Despite our 'land of the free' rhetoric, we deem it necessary to incarcerate more of our people than the world's most draconian regimes. We have more prisoners than China, and they have a *billion* more people than we do. We have more prisoners than soldiers; prison guards outnumber Marines.

It wasn't always this way. In 1970, just 338,000 Americans were behind bars. There was even talk of abolishing prison altogether. That didn't happen. Instead, fear of crime led to 'tough-on-crime' politics and the war on drugs. Crime has gone up and down since then, but the incarceration rate has only increased, a whopping 500 percent in the past 40 years.

In truth, there is very little correlation between incarceration and the crime rate. From 1970 to 1991 crime rose while we locked up a million more people. Since then we've locked up another million and crime has gone down. Is there something so special about that second million? Were they the only ones who were 'real criminals'?

Did we simply get it wrong with the first 1.3 million people we put behind bars?

Today's prison reformers – and I wish them well – tinker at the edges of a massive failed system. We need much more drastic action. To bring our incarceration back to a civilized level, one we used to have, and one much more befitting a rich, modern nation, we would have to reduce the number of prisoners by 85 percent. Without alternative punishments, this will not happen anytime soon. Even the most optimistically progressive opponent of prison has no plan to release two million prisoners.

Perhaps, as a law-abiding citizen, with all there is to worry about in the world today, you don't have the fate of convicted criminals in our prison system at the top of your list of concerns. But who hasn't, at some point, committed a crime? Perhaps you've taken illegal drugs. Maybe you once got into a fight with a friend, stranger, or lover that came to blows. Or you drove back from a bar drunk. Or you clicked on an online picture of somebody who turned out to be a bit young. Perhaps you accepted a 'gift' from a family member and told the IRS (tax office) it was a loan. Or did you go for the white-collar big leagues and embezzle millions of dollars? If your luck runs out, you can end up in gaol for almost anything, big or small. Even if you have done nothing wrong, imagine that in a horrific twist of fate you are convicted of a crime you did not commit. It's not inconceivable; it happens all the time.

As you sit in court on sentencing day, you begin to wonder what prison will be like. Are there drugs, gangs, and long times in solitary? Will you come out stronger – or broken? Will you be raped? Will it be like the brutal TV show *Oz*? God, you hope not. But you don't know. And that's the rub. Prison is a mystery to all but the millions of people forced to live and work in this gigantic government-run system of containment. And as long as we don't look at what happens on the inside, as long as we refuse to consider alternatives, nothing will change.

Is flogging still too cruel to contemplate? If so, given the hypothetical choice between prison and flogging, why did you choose flogging? Perhaps it's not as crazy as you thought. And even if you're adamant that flogging is a barbaric, inhumane form of punishment, how can offering criminals the choice of the lash in lieu of incarceration be so bad? If flogging were really worse than prison, nobody would choose it. Of course most people would choose to be caned over incarceration. And that's my point. Faced with the choice between hard time and the lash, the lash is better. What does that say about prison?

Sometime in the past few decades we seem to have lost the concept of justice in a free society. Now we settle for simple efficiency of process. We tried rehabilitation and ended up with supermax and solitary confinement. Crime, violence, and drug prohibition help explain why so many people are behind bars. But they don't explain why so many people are behind bars.

I am not proposing to completely end confinement or shut down every prison. Some inmates are, of course, too violent and hazardous to simply flog and release. Pedophiles, terrorists, serial rapists, and murderers, for example, need to remain behind bars – but they are relatively few in number. They are being kept in prison not only to punish them, but also because we don't want them to hurt us. We're afraid of them. But for the millions of other prisoners – particularly those caught up in the war on drugs (which I for one would end tomorrow if I could – the lash is better than a prison cell. Why not at least offer the choice?

About the Author

Peter Moskos is a former Baltimore City police officer and Harvard and Princeton trained sociologist. He is currently an associate professor in the Department of Law and Police Science at John Jay College of Criminal Justice and is also on the faculty of CUNY's Doctoral Program in Sociology and LaGuardia Community College in Queens. He focuses on police culture, crime prevention, qualitative methods, and ending the war on drugs.

His first book, *Cop in the Hood*, won the 2008 American Publishers Award for Professional and Scholarly Excellence, Best Book in Sociology. His second book, *In Defense of Flogging*, was listed as a *Favorite Book of the Year* by Mother Jones and earned Moskos recognition as one of Atlantic Magazine's *Brave Thinkers of 2011*.

This article first appeared in the May/June 2011 edition of the *Washington Monthly*.

© Peter Moskos retains exclusive copyright of this article and no part may be reproduced in any form or by any means, electronic or mechanical, including photocopying, recording or by any information storage and retrieval system, without prior permission in writing from him.

That prisons have failed in such a spectacular manner should matter more than it does. But it should come as no surprise, since prisons were designed not to punish, but to 'cure'. Just as hospitals were for the physically sick, penitentiaries were created – mostly by Quakers in the late eighteenth century – to heal the criminally ill. A stated goal of the early prison advocates was nothing less than the complete elimination of punishment. The penitentiary would be a kinder and gentler sentence, one geared to personal salvation, less crime, and a better life for all. Like so many utopian fairy tales, the movement to cure criminals failed. Early prison reforms may have had the best of intentions, but today we should know better.

The disastrous consequences of prison became clear as soon as the first one was built, in Philadelphia in 1790: inmates began to go crazy. When Charles Dickens toured this prison, he noted with despair, "I hold this slow and daily tampering with the mysteries of the brain, to be immeasurably worse than any torture of the body."

Today violent offenders are mixed with immigrants who may have committed no crime other than crossing our border. Lifers are thrown in the same cellblock as people who serve 12 months. Kids get raped. The mentally ill are left to fend for themselves in some antipsychotic-medicine haze. And given the impossible task of total control, some guards inevitably abuse their authority.

Because one stint in prison so often leads to another, millions of criminals have come to alternate between incarceration and freedom while their families and communities suffer the economic and social consequences of their absence. When I was a police officer in Baltimore's rough Eastern District, I don't think I ever arrested anybody for the first time². Even the juveniles I arrested all had a record. Because not only does incarceration not 'cure' criminality,



PIC TO COME?

in many ways in makes it worse. From behind bars a prisoner can't be a parent, hold a job, maintain a relationship, or take care of their elders. Their spouse suffers. Their children suffer. And because of this, in the long run, we all suffer.

But maybe you still have your doubts about flogging. Perhaps you are concerned that the practice is torture. It is not. Torture is meant to achieve a goal, and until that goal is achieved, it continues. Punishment is finite and is prescribed in accordance with clear rules of law. And certainly offering criminals the option of flogging cannot be viewed as more torturous than the status quo.

Indeed it is our current system of imprisonment that most resembles torture. Overwhelming evidence suggests that by locking people in cells and denying them meaningful human contact, as is the case with solitary confinement, we cause irreparable damage; when prisoners are held in group living quarters, they often form criminal associations and reinforce aggressive antisocial norms; and through parole boards' decisions, we hold the power to continue such punishment for extended periods of time. In addition, it's terribly expensive. And for what? What do we gain? Why incapacitate criminals in a non-rehabilitative environment never meant for punishment? It is like being entombed alive, something more torturous than flogging could ever be.

And worse, given that life inside the concertina wire is so well hidden from those of us on the outside, prison is a dishonest way of dealing with the problem of punishment. Flogging, on the other hand, is different. Physical violence has the advantage of being honest, transparent, inexpensive, and easy to understand. What you see is what you get. If you want someone to receive more punishment, you give more lashes. If you want them to receive less punishment, you give fewer.

As ugly as it may seem, corporal punishment would be an effective and comparatively humane way to bring our prison population back in line with world standards. To those in prison (after the approval of some parole board designed to keep the truly dangerous behind bars) we could offer the lash in exchange for sentence years. I propose that each six months of incarceration be exchanged for one lash. As a result, our prison population would plummet.

This would not only save money, it would also save prisons for those who truly deserve to be there. And if you think that flogging isn't punishment enough, that prisons are necessary precisely because they torture so cruelly and horribly – then we've entered a truly bizarre world of unparalleled cruelty. Flogging may be too harsh or too lenient, but it can't be both.

Make no mistake: this is punishment, and punishment must by definition hurt. Even under controlled conditions, with doctors present and the convict choosing a lashing over a prison sentence, the details of flogging are enough to make most people queasy. Those receiving lashes have described the cane cutting through layers of flesh and tissue, leaving "furrows that were ... bloody pulp." Even if these wounds were attended to immediately, a full recovery could take weeks or months. In some cases, the scars would remain as permanent reminders of the ordeal.

The lash, which metes out punishment without falsely promising betterment, is an unequivocal expression of society's condemnation. For better and for worse, flogging would air the dirty laundry of race and punishment in America in a way that prisons – which, by their very design, are removed from society – can never do. To highlight an injustice is in no way to condone it; quite the opposite.

Without a radical defense of flogging, changes to our current defective system of justice are hard to imagine. The glacial pace of reform promises only the most minor adjustments to the massive machinery of incarceration. Bringing back the lash is one way to destroy it – if not completely, then at least for the millions of Americans for whom the punishment of prison is far, far worse than the crime they have committed. Yes, flogging may seem brutal and retrograde, but only because we are in mass denial about the greater brutality of our supposedly civilized and progressive prisons. 

1 Incarceration rates in the USA are approximately 743 per 100 000 according to the International Centre for Prison Studies. In Australia in 2013, according to the Australian Bureau of Statistics, the prison population is 170 per 100 000, up from 157 in 2003.

2 According to the Australian Bureau of Statistics as at December 2013, over half (58 per cent) of all prisoners have served a sentence in an adult prison prior to the current episode.